

## THE MOST LITIGATED TAX ISSUES

### MOST LITIGATED ISSUES: INTRODUCTION

Internal Revenue Code § 7803(c)(2)(B)(ii)(X) requires the National Taxpayer Advocate to identify the ten tax issues most often litigated in the federal courts, classified by the type of taxpayer affected. Through analysis of these issues, the National Taxpayer Advocate will, if appropriate, make recommendations designed to mitigate disputes that result in litigation. The recommendations included in this analysis could minimize some of the litigation covered in this section.<sup>1</sup>

Taxpayer Advocate Service (TAS) analysts utilized commercial legal research databases to identify the ten most litigated issues (Most Litigated Issues) in federal courts during the period of June 1, 2004 through May 31, 2005.<sup>2</sup> For purposes of the Most Litigated Issues section of the report, the term “litigated” refers to cases in which the court issued an opinion.<sup>3</sup> The ten Most Litigated Issues identified for this year are:

- ◆ Collection Due Process hearings, under IRC §§ 6320 and 6330;
- ◆ Gross income, under IRC § 61 and related Code sections;
- ◆ Failure to file penalty, under IRC § 6651(a)(1);
- ◆ Trade or business expenses;
- ◆ Frivolous issues penalty, under IRC § 6673;
- ◆ Negligence penalty, under IRC § 6662(b)(1);
- ◆ Family status issues, under IRC §§ 2, 21, 24, 32 and 151;
- ◆ Relief from joint and several liability for spouses, under IRC § 6015;
- ◆ Summons enforcement, under IRC § 7604; and
- ◆ Trust Fund Recovery Penalty, under IRC § 6672.

The top ten litigated issues are substantially similar to those identified in 2004,<sup>4</sup> with some important exceptions. For the first time, summons enforcement is a Most Litigated Issue, which may be due in part to the IRS’s increased emphasis on enforcement.<sup>5</sup> While the

<sup>1</sup> For example, Collection Due Process (CDP) is again the number one most litigated issue this year. The National Taxpayer Advocate is making a legislative recommendation to reform CDP legislation, designed to increase the availability of review for some taxpayers while reducing the incentive to appeal solely for the purpose of delaying collections. See Key Legislative Recommendation: *Restructuring and Reform of Collection Due Process Provisions*, *supra*.

<sup>2</sup> Federal tax cases are tried in the United States Tax Court, the United States district courts, the United States Court of Federal Claims, the United States bankruptcy courts, United States Courts of Appeals and the United States Supreme Court.

<sup>3</sup> We recognize that many cases are resolved prior to the court issuing an opinion. Some taxpayers are able to reach settlement with the IRS before trial while other taxpayers’ cases are dismissed for a variety of reasons, including lack of jurisdiction and lack of prosecution. In addition, courts can also issue less formal “bench opinions” which are not published or precedential. For example, bench opinions are issued by the United States Tax Court pursuant to Tax Court Rule 152, wherein Tax Court Trial Judges or Special Trial Judges read oral findings of fact or opinion into the trial transcript. We received copies of some bench opinions for Collection Due Process cases, this year’s most litigated issue.

<sup>4</sup> See National Taxpayer Advocate 2004 Annual Report to Congress 495.

<sup>5</sup> Beginning in 2002, the IRS identified the increased use of summonses as a part of the overall shift in audit priorities toward abusive schemes and promoter investigations. IRS News Release, *IRS Sets New Priorities*, September 2002.

other issues remain substantially the same, there was a reordering of the top ten issues caused by a decrease in litigation involving family status issues<sup>6</sup> and an increase in litigation involving the failure-to-file penalty, the negligence penalty, and the frivolous issues penalty.<sup>7</sup>

Once the ten issues were identified, TAS personnel provided analysis for each issue that includes four sections: a summary of the findings, a description of the present law, analysis of the litigated cases and a conclusion. We have listed each of the cases litigated, by issue, in Appendix 3 of this report and have categorized the cases by type of taxpayer. The case listings for each issue identify the specific citation of the case, the main issue(s), whether the taxpayer was represented at trial or argued the case *pro se*, and the decision of the court. We classify the “opinion” of the court as a decision for the taxpayer, the IRS, or as a split decision. For purposes of this analysis, when identifying the decision of the court we only considered the issue analyzed, and a split decision was defined as a partial allowance of the specific issue litigated.

#### AN OVERVIEW OF HOW TAX ISSUES ARE LITIGATED

Taxpayers generally have access to four different tribunals in which to initially litigate a tax matter – the United States Tax Court, United States district courts, the United States Court of Federal Claims, the United States bankruptcy courts. With limited exceptions, taxpayers have an automatic right of appeal from decisions of the trial court.<sup>8</sup>

The United States Tax Court is generally a “prepayment” forum in that taxpayers have access to the Tax Court without having to pay the disputed tax in advance. The Tax Court has jurisdiction over a variety of issues, to include deficiencies, certain declaratory judgment actions, collection due process, and relief from joint and several liability.<sup>9</sup>

The federal district courts and the Court of Federal Claims have concurrent jurisdiction over tax matters in which (1) the tax has been assessed and paid in full,<sup>10</sup> and (2) the taxpayer has filed an administrative claim for refund.<sup>11</sup> The federal district courts are the only forums in which a taxpayer can receive a jury trial. Bankruptcy courts can adjudicate tax matters that were not previously adjudicated before the initiation of a bankruptcy case.<sup>12</sup>

<sup>6</sup> There was a 60 percent decrease in Family Status related issues down from 72 litigated in 2004 to 45 litigated in 2005.

<sup>7</sup> There was also a 60 percent increase in failure-to-file penalty litigation and a 91 percent increase in litigation involving application of the frivolous issues penalty.

<sup>8</sup> See IRC § 7482 (providing that the United States Courts of Appeals have jurisdiction to review the decisions of the Tax Court). There are exceptions to this general rule. For example, IRC § 7463 provides special procedures for small Tax Court cases (where the amount of the deficiency or claimed overpayment totals \$50,000 or less) from which appellate review is not available. See also 28 U.S.C. § 1294 (appeals from district court are to the appropriate Court of Appeals); 28 U.S.C. § 1295 (appeals from Court of Federal Claims are heard in the Federal Circuit Court).

<sup>9</sup> IRC §§ 6214, 7476-7479, 6330, and 6015.

<sup>10</sup> 28 U.S.C. § 1346(a)(1). See *Flora v. United States*, 362 U.S. 145 (1960).

<sup>11</sup> IRC § 7422(a).

<sup>12</sup> See 11 U.S.C.A. §§ 505(a)(1) and (a)(2)(A).

**ANALYSIS OF PRO SE LITIGATION**

As in the previous two years our analysis indicated that many taxpayers represented themselves before the courts, *pro se*.<sup>13</sup> The following table (Table 3.I-01) lists the most litigated tax issues for the period June 1, 2004, through May 31, 2005, and identifies the number of cases in which taxpayers represented themselves before the court.

**TABLE 3.I-01, PRO SE CASES BY ISSUE**

Most Litigated Issue	Total Number of Litigated Cases Reviewed	Pro Se Litigation	Percentage of Pro Se Cases
Collection Due Process	209	165	79%
Gross Income	108	60	56%
Failure to File Penalty	75	58	77%
Trade or Business Expense	67	46	69%
Frivolous Issues Penalty	67	64	96%
Negligence Penalty	57	33	58%
Family Status Issues	45	39	87%
Joint and Several Liability	45	27	60%
Summons Enforcement	44	20	45%
Trust Fund Recovery Penalty	34	8	24%
<b>Total</b>	<b>751</b>	<b>520</b>	<b>69%</b>

Table 3.I-02 demonstrates that taxpayers have a higher chance of prevailing in litigation if they are represented.

**TABLE 3.I-02, OUTCOMES FOR PRO SE AND REPRESENTED TAXPAYERS**

Most Litigated Issue	Pro Se Taxpayers			Represented Taxpayers		
	Total Cases	Taxpayer Prevailed in whole or in part	Percent	Total Cases	Taxpayer Prevailed in whole or in part	Percent
Collection Due Process	165	15	9%	44	9	20%
Gross Income	60	11	18%	48	14	29%
Failure to File Penalty	58	2	3%	17	3	18%
Trade or Business Expense	46	7	15%	21	9	43%
Frivolous Issues Penalty	64	17	27%	3	1	33%
Negligence Penalty	33	10	30%	24	8	33%
Family Status Issues	39	5	13%	6	2	33%
Joint and Several Liability	27	6	22%	18	6	33%
Summons Enforcement	20	0	0%	24	2	8%
Trust Fund Recovery Penalty	8	1	13%	26	12	46%
<b>Totals</b>	<b>520</b>	<b>74</b>	<b>14%</b>	<b>231</b>	<b>66</b>	<b>29%</b>

<sup>13</sup> “Pro Se” means “for oneself; on one’s own behalf; without a lawyer.” *Black’s Law Dictionary* 1236-37 (7th ed. 1999).

LITIGATED  
ISSUE #1APPEALS FROM COLLECTION DUE PROCESS (CDP) HEARINGS UNDER  
INTERNAL REVENUE CODE SECTIONS 6320 AND 6330

## SUMMARY

Collection Due Process (CDP) hearings, established by the IRS Restructuring and Reform Act of 1998 (RRA 98), provide taxpayers an important opportunity for independent review by the Office of Appeals (Appeals) of the IRS's decision to file a lien or its proposal to undertake a levy action.<sup>1</sup> At the CDP hearing, the taxpayer has the statutory right to raise certain issues, including the appropriateness of collection actions, collection alternatives, spousal defenses, and under certain limited circumstances, the underlying tax liability.<sup>2</sup>

The taxpayer also has an automatic right to judicial review of Appeals' determination, provided that the taxpayer timely requests the CDP hearing and timely requests judicial review.<sup>3</sup> Generally, collection action is stayed during the CDP hearing process and any judicial review that may follow.<sup>4</sup>

As was the case in 2003 and 2004, Collection Due Process is the most frequently litigated tax issue in federal courts during the period analyzed for the Annual Report to Congress. CDP rights are a dramatic departure from the post-deprivation hearings that characterized IRS collection procedure utilized prior to RRA 98.<sup>5</sup> CDP has been criticized by many for slowing down the collection process and allowing a forum for some taxpayers to expound frivolous arguments. These critics contend that the costs of CDP are significant, while the benefits of CDP are few.<sup>6</sup> However, other commentators note that CDP hearings bring vital independent oversight to bear upon IRS tax collectors who are not infallible and whose collection powers are considerable.<sup>7</sup> The CDP cases litigated in the federal courts reflect that there is an element of truth to these competing points of view. On balance, we believe that collection appeal rights with limited judicial review protect taxpayers from arbitrary collection decisions. In the Key Legislative Recommendations section of this report, the National Taxpayer Advocate proposes significant changes to CDP legislation.<sup>8</sup>

<sup>1</sup> Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. No. 105-206 § 3401, 112 Stat. 685.

<sup>2</sup> IRC §§ 6320(c) and 6330(c).

<sup>3</sup> IRC §§ 6320(a)(3)(B) and 6330(a)(3)(B) set forth the time requirements for requesting a CDP hearing and IRC §§ 6320(c) and 6330(d) set forth the time requirements for obtaining judicial review of Appeals' determination.

<sup>4</sup> IRC § 6330(e)(1) provides that in general there is a suspension of levy actions during the CDP process (along with a corresponding suspension in the running of the collection statute of limitations). However, IRC § 6330(e)(2) allows the IRS to resume levy actions during judicial review upon a showing of "good cause."

<sup>5</sup> *Phillips v. Comm'r*, 283 U.S. 589 (1931) (holding that where there is adequate opportunity for judicial determination after levy there is no right to pre-levy hearings).

<sup>6</sup> Bryan T. Camp, *Failure of Collection Due Process, Pt. 1: The Collection Context*, 104 Tax Notes 969 (Aug. 30, 2004); Bryan T. Camp, *The Failure of CDP, Part 2: Why it Adds No Value*, 104 Tax Notes 1567 (Sept. 27, 2004); Bryan T. Camp, *The Costs of CDP*, 105 Tax Notes 1445 (Dec. 6, 2004).

<sup>7</sup> Leslie Book, *The Collection Due Process Rights: A Misstep or a Step in the Right Direction?*, 41 Hous. L. Rev. 1145 (2004).

<sup>8</sup> See Key Legislative Recommendation: *Restructuring and Reform of Collection Due Process Provisions*, *supra*.

**PRESENT LAW**

Current law provides taxpayers an opportunity for independent review of a lien<sup>9</sup> filed by the IRS or a proposed levy action.<sup>10</sup> The purpose of CDP rights was to give taxpayers adequate notice of collection activity and a meaningful hearing before the IRS deprives them of property. The hearing allows the taxpayer an opportunity to raise issues germane to the collection of the tax, including:<sup>11</sup>

- ◆ Appropriateness of collection actions;<sup>12</sup>
- ◆ Collection alternatives such as installment agreement, offer in compromise, posting a bond or substitution of other assets;<sup>13</sup>
- ◆ Appropriate spousal defenses;<sup>14</sup> and
- ◆ The existence or amount of the tax, but only if the taxpayer did not receive a notice of deficiency or did not otherwise have an opportunity to dispute the tax liability.<sup>15</sup>

A taxpayer may not reintroduce an issue that was raised and considered at a prior administrative or judicial hearing if the individual participated meaningfully in the prior hearing or proceeding.<sup>16</sup>

Procedurally, the IRS must provide notice to the taxpayer of the lien filing<sup>17</sup> and of its intent to levy.<sup>18</sup> The Notice of Federal Tax Lien must be provided to the taxpayer not more than five days after the day of the filing of the notice of the lien.<sup>19</sup> The Notice of Intent to Levy must be provided to taxpayers at least 30 days before the day of the levy.<sup>20</sup> The IRS is also required to notify the taxpayer of his or her right to a CDP hearing after the filing of the Notice of Federal Tax Lien (NFTL) and before any levy action can take place. In the case of a lien, the CDP hearing notice must be provided to the taxpayer not more than five days after the filing of the NFTL and must inform the taxpayer of his

<sup>9</sup> IRC § 6320.

<sup>10</sup> IRC § 6330.

<sup>11</sup> Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3401, 112 Stat. 685; S. Rep. No. 105-174.

<sup>12</sup> IRC §§ 6330(c)(2)(A)(ii) and 6320(c).

<sup>13</sup> IRC §§ 6330(c)(2)(A)(iii) and 6320(c).

<sup>14</sup> IRC §§ 6330(c)(2)(A)(i) and 6320(c).

<sup>15</sup> IRC §§ 6330(c)(2)(B) and 6320(c).

<sup>16</sup> IRC §§ 6330(c)(4) and 6320(c).

<sup>17</sup> IRC § 6320(a).

<sup>18</sup> IRC § 6331(d).

<sup>19</sup> IRC § 6320(a)(2). The Notice of Federal Tax Lien can be provided to the taxpayer in person, left at the taxpayer's residence or dwelling, or can be sent by certified or registered mail to the taxpayer's last known address.

<sup>20</sup> IRC § 6331(d)(2). The Notice of Intent to Levy can be provided to the taxpayer in person, left at the taxpayer's residence or dwelling, or can be sent by certified or registered mail to the taxpayer's last known address.

or her right to request a CDP hearing within the 30-day period that begins on the expiration of the fifth day after the filing of the NFTL.<sup>21</sup> In the case of a levy, the CDP hearing notice must be provided to the taxpayer no fewer than 30 days before the first levy and must inform the taxpayer of his or her right to request a hearing 30 days from the date that the notice is sent.<sup>22</sup>

Under both lien and levy procedures, the taxpayer must return a signed, written request for a CDP hearing within 30 days of the date of notice.<sup>23</sup> Taxpayers who request a CDP hearing after the 30 days will receive an “equivalent hearing,” which is similar to a CDP hearing except there is no judicial review of an equivalent hearing.<sup>24</sup> Proposed revisions to the CDP regulations require the taxpayer to put the reasons for the CDP hearing in writing (preferably using Form 12153, *Request For A Collection Due Process Hearing*), and the failure to provide the basis for hearing may result in a denial of a face-to-face hearing.<sup>25</sup> Proposed revisions also eliminate the availability for equivalent hearings if the taxpayer does not make a request for a hearing within one year from the date of issuance of the CDP Notice.<sup>26</sup>

When a taxpayer requests CDP hearings with respect to both a lien and a proposed levy, the IRS Appeals officer will attempt to conduct one hearing.<sup>27</sup> The IRS will suspend collection action throughout the hearing process, unless it determines that the collection of the tax is in jeopardy.<sup>28</sup> Collection activity is also suspended throughout any judicial review of Appeals’ determination, unless the underlying tax liability is not at issue and the IRS can demonstrate to the court good cause to resume collection activity.<sup>29</sup>

Collection Due Process hearings are informal. The Office of Appeals presumptively establishes telephonic CDP hearings, and it is incumbent on the taxpayer to request a

<sup>21</sup> IRC § 6320(a)(2).

<sup>22</sup> IRC § 6330(a)(2). The CDP hearing notice can be provided to the taxpayer in person, left at the taxpayer’s residence or dwelling, or can be sent by certified or registered mail (return receipt requested) to the taxpayer’s last known address.

<sup>23</sup> IRC §§ 6330(a)(3)(B) and 6330(a)(3)(B); Treas. Reg. § 301.6320-1(c) and Treas. Reg. § 301.6330-1(c).

<sup>24</sup> Treas. Reg. § 301.6330-1(i).

<sup>25</sup> Prop. Treas. Reg. § 301.6320-1 and Prop. Treas. Reg. § 301.6330-1. The proposed regulations provide taxpayers an opportunity to cure a failure to provide a basis for the CDP hearing.

<sup>26</sup> *Id.*

<sup>27</sup> IRC § 6320(b)(4).

<sup>28</sup> IRC § 6330(e)(1) provides the general rule for suspending collection activity while IRC § 6330(f) provides that if collection of the tax is deemed in jeopardy, section 6330 does not apply.

<sup>29</sup> IRC § 6330(e)(1) and 6330(e)(2). In *Burke v. Comm’r*, 124 T.C. 189 (2005), the Tax Court granted the IRS’s motion to levy while the case was on appeal since the taxpayer was espousing only frivolous arguments; see also *Howard v. Comm’r*, T.C. Memo. 2005-100, where the IRS moved for and obtained from the court an order allowing resumption in levy activity on the taxpayer due to the taxpayer’s frivolous arguments made solely for the purpose of delaying collection.

face-to-face hearing.<sup>30</sup> Courts have determined that, depending on the circumstances, a CDP hearing need not be face-to-face with the Appeals officer,<sup>31</sup> but instead, can take place by telephone,<sup>32</sup> or by an exchange of correspondence.<sup>33</sup> The hearing is to be held by an impartial officer from the Appeals function of the IRS.<sup>34</sup> In addition to the issues described above that the taxpayer is permitted to address, the Appeals officer must obtain verification that the requirements of all laws and procedures have been satisfied for the IRS to proceed with collection activity.<sup>35</sup> In making its determination, Appeals must weigh the issues raised by the taxpayer and determine whether the proposed collection action balances the need for efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.<sup>36</sup> Within 30 days of the Appeals determination, the taxpayer may petition the United States Tax Court or where appropriate, the U.S. district court for judicial review of Appeals' determination.<sup>37</sup>

Where the validity of the tax liability is properly at issue in the CDP hearing, the amount of the tax liability will be reviewed by the appropriate court on a *de novo* basis.<sup>38</sup> Where the appropriateness of the collection action is at issue, the court will review the IRS's administrative determination for abuse of discretion.<sup>39</sup>

### ANALYSIS OF LITIGATED CASES

Collection Due Process was the most litigated tax issue in the federal court system between June 1, 2004 and May 31, 2005. Two hundred and nine (209) CDP court deci-

<sup>30</sup> Appeals Letter 3855. *See also* Treas. Reg. § 301.6320-1(d)(2) Q&A D6 and Treas. Reg. § 301.6320-1(d)(2) Q&A D6 regarding the informality of CDP hearings.

<sup>31</sup> For example, in *Casey v. Comm'r*, T.C. Memo. 2004-228, the Tax Court held that a face-to-face hearing was not required where taxpayer had a reasonable opportunity for a hearing, but changed addresses and failed to provide the IRS her new address. However, in *Cavanaugh v. U.S.*, 93 A.F.T.R.2d (RIA) 2004-1522 (D. N.J. 2004), where the facts were disputed as to whether the taxpayer knew that phone conversations constituted the taxpayer's CDP hearing, the court remanded the case for Appeals to provide a face-to-face hearing.

<sup>32</sup> In *Whiting v. Comm'r*, T.C. Memo. 2004-136, the Tax Court held that two phone conversations by the taxpayer's representative and the Appeals officer were sufficient to constitute a CDP hearing in the absence of testimony regarding the content of the phone conversations.

<sup>33</sup> Treas. Regs. §§ 301.6320-1(d)(2), Q&A-D6 and 301.6330-1(d)(2), Q&A-D6.

<sup>34</sup> IRC §§ 6320(b)(1), 6320(b)(3), 6330(b)(1) and 6330(b)(3).

<sup>35</sup> IRC § 6330(c)(1).

<sup>36</sup> IRC § 6330(c)(3).

<sup>37</sup> IRC §§ 6330(d)(1) and 6320(c).

<sup>38</sup> The legislative history of RRA 98 addresses the standard of review courts should apply in reviewing the IRS's administrative CDP determinations. H.R. Rep. No.105-599 at 266 (Conf. Rep.). The term *de novo* means anew. *Black's Law Dictionary*, 447 (7th ed. 1999).

<sup>39</sup> *Robinette v. Comm'r*, 123 T.C. 85 (2004), *appeal docketed*, No. 04-4081 (8th Cir. Dec. 16, 2004) (noting that *abuse of discretion* means an adjudicator's decision which is arbitrary, capricious, clearly unlawful or without a sound basis in law or fact).

sions were reviewed.<sup>40</sup> Excluding unpublished bench opinions that were not included in prior years' statistics, this represents an eight percent increase from the 182 CDP cases from last year's analysis and a one percent decrease from the 199 CDP cases reported in 2003.<sup>41</sup> The 209 decided cases do not reflect the full measure of CDP litigation involving taxpayers and the IRS during the review period. Not all CDP cases result in decisions for or against taxpayers. For example, from June 1, 2004 to May 31, 2005, taxpayers filed approximately 1,098 CDP cases in the United States Tax Court and 114 cases in United States district courts.<sup>42</sup> Some cases are resolved through negotiated settlements while other taxpayers do not pursue their litigation after filing their petitions with the courts, resulting in dismissal of the action. While these 209 decided cases may not provide the full measure of all CDP litigation, they do provide useful insight into the costs and benefits of CDP by shedding light on the situations of taxpayers utilizing CDP. Table 1 in Appendix 3 provides a detailed listing of litigated CDP cases, including specific information about the types of taxpayers involved.

### Litigation Success Rate

Taxpayers prevailed in whole or in part in 24 of the 209 cases reviewed (or approximately 11 percent). In 16 of the 209 cases (approximately 8 percent), courts either remanded the case to Appeals because issues of material fact remained, or ruled that the IRS abused its discretion.<sup>43</sup> Of the remaining eight cases where taxpayers prevailed, four involved the existence or amount of underlying liability or application of the relief from joint and several liability provisions under IRC § 6015,<sup>44</sup> and four cases involved procedural rulings.<sup>45</sup> Table 3.1.1 below compares litigation success rates in CDP cases for the 2002, 2003, and 2004 Reports to Congress.

<sup>40</sup> The cases reviewed for the Most Litigated Issues section of the report are those opinions that are published through on-line legal research services. In addition, the 209 litigated CDP opinions include 12 bench opinions issued pursuant to United States Tax Court Rule 152, wherein Tax Court Trial Judges or Special Trial Judges render oral findings of fact or opinion into the trial transcript. Bench opinions are not available through on-line research services and we did not have access to all bench opinions or orders of dismissal issued during this timeframe.

<sup>41</sup> See National Taxpayer Advocate 2003 Annual Report to Congress 318; National Taxpayer Advocate 2004 Annual Report to Congress 498.

<sup>42</sup> Statistics were provided by the Internal Revenue Service Office of Chief Counsel.

<sup>43</sup> *Berger v. Comm'r*, No. 19535-02L (Dec. 15, 2004); *Calderone v. Comm'r*, T.C. Memo. 2004-240; *Demus v. Comm'r*, No. 6636-04L (Dec. 15, 2004); *Fowler v. Comm'r*, T.C. Memo. 2004-163; *Jackson v. Comm'r*, T.C. Summ. Op. 2005-12; *Johnson v. Comm'r*, T.C. Summ. Op. 2005-47; *Karara v. Comm'r*, No. 7748-02L (Dec. 15, 2004); *Langer v. U.S.*, 95 A.F.T.R.2d (RIA) 894 (8th Cir. 2005); *Parker v. Comm'r*, T.C. Memo. 2004-226; *Pollack v. U.S.*, 327 F.Supp.2d 907 (W.D. Tenn. 2004); *Robinette v. Comm'r*, 123 T.C. 85 (2004), *appeal docketed*, No. 04-4081 (8th Cir. Dec. 16, 2004); *Skrizowski v. Comm'r*, T.C. Memo. 2004-229; *Thorpe v. Comm'r*, T.C. Summ. Op. 2004-98; *Zapara v. Comm'r*, 124 T.C. 223 (2005); *Cox v. U.S.*, 345 F.Supp.2d 1215 (W.D. Okla. 2004); *Newstat v. Comm'r*, T.C. Memo. 2004-208.

<sup>44</sup> *Hayes v. Comm'r*, T.C. Memo. 2005-57; *Hendricks v. Comm'r*, T.C. Memo. 2005-72; *Molina v. Comm'r*, T.C. Memo. 2004-258.

<sup>45</sup> *Beverly v. Comm'r*, T.C. Memo. 2005-41; *Klet v. Comm'r*, T.C. Summ. Op. 2004-172; *Smith v. Comm'r*, 124 T.C. 36 (2005); *Electro, Inc. v. Comm'r*, 95 A.F.T.R.2d (RIA) 700 (D. Or. 2005).



TABLE 3.1.1, CDP LITIGATION SUCCESS RATES

COURT DECISIONS	2002 Percentage	2003 Percentage	2004 Percentage	2005 Percentage
Decided for IRS	90%	96%	95%	89%
Decided for Taxpayer	7%	1%	4%	8%
Split Decision <sup>46</sup>	3%	3%	1%	3%

The increased litigation success rate for taxpayers in the 2004 - 2005 review period does not likely suggest any particular trend.

### Issues Litigated

In 2004, we focused on the numerous procedural problems that taxpayers experienced with CDP hearings and judicial review of those hearings.<sup>47</sup> Taxpayers continued to experience these problems, and we discuss that issue further below. However, this year we focused more on the substantive issues raised by taxpayers in an effort to determine how useful CDP was for litigants and for tax administration. As was described above, taxpayers are able to raise a variety of issues at CDP hearings. It is essential for taxpayers to raise all relevant issues with Appeals so that the issue is preserved in the event it is necessary to pursue judicial review.<sup>48</sup> If the issue is not raised in the CDP hearing, it may not be raised on judicial review.<sup>49</sup> Table 3.1.2 below demonstrates the different issues raised by taxpayers and the frequency of success for each issue.<sup>50</sup>

<sup>46</sup> A "split" decision refers to a case with multiple issues where both the IRS and the taxpayer prevail on one or more substantive issues.

<sup>47</sup> National Taxpayer Advocate 2004 Annual Report to Congress 498.

<sup>48</sup> Treas. Reg. § 301.6330-1(f) Q-AF5 provides:

Q-F5 What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A-F5 In seeking Tax Court or other district court review of Appeals' Notice of Determination, the taxpayer can only ask the court to consider an issue that was raised in the taxpayer's CDP hearing.

<sup>49</sup> *Id.*

<sup>50</sup> The number of issues does not equal the number of cases reviewed for three reasons. First, for purposes of identifying issues, we did not take into consideration issues considered by the courts to have been frivolous or raised solely for the purpose of delay. Second, other cases had multiple issues. Third, numerous decisions addressed only threshold procedural questions and did not address the substantive issue raised by the taxpayer.

TABLE 3.1.2, SUCCESS OF LITIGANTS BY ISSUE<sup>51</sup>

Issue	No. Cases Issue Argued	IRS Prevailed	Taxpayer Prevailed
Collection Alternatives	40	35	5
Validity of Liability	39	33	6
Procedural Requirements	37	31	6
Abatement of Penalties	15	15	0
Payment of Liability <sup>52</sup>	9	7	2
Bankruptcy Issues	6	3	3
Abatement of Interest	5	4	1
Collection Statute Expiration	4	4	0
Relief from Joint & Several	2	1	1
<b>Total:</b>	<b>157</b>	<b>133</b>	<b>24</b>

### Collection Alternatives

Collection alternatives were litigated more than any other CDP issue. Taxpayers have a statutory right to raise collection alternatives in their CDP hearings.<sup>53</sup> The two most frequently litigated collection alternatives were offers in compromise<sup>54</sup> and installment agreements.<sup>55</sup> Each of these collection alternatives requires current filing compliance on the taxpayer's part; offers in compromise additionally require that taxpayers remain in filing and payment compliance for an additional five years or until the liability is full paid, whichever is longer, or else the offer will be defaulted and the tax reinstated.<sup>56</sup> Courts review Appeals' consideration of collection alternatives, such as offers in compromise utilizing an abuse of discretion standard.<sup>57</sup>

Five taxpayers were able to demonstrate that the IRS abused its discretion when considering

<sup>51</sup> This count excludes numerous cases where taxpayers raised procedural issues that the courts deemed frivolous or groundless. See e.g., *Kubon v. Comm'r*, T.C. Memo. 2005-71 (the Secretary or delegate may issue collection notices, assessment was valid) *Henderson v. Comm'r*, T.C. Memo. 2004-157 (assessment was proper, notice of balance due/Notice of Intent to Levy meet requirement for notice and demand for payment).

<sup>52</sup> In these cases, taxpayers argued that previous payments, levies, or credits satisfied liabilities.

<sup>53</sup> IRC §§ 6330(c)(2) and 6320(c).

<sup>54</sup> Offers in compromise are provided for in IRC § 7122 and allow the IRS to compromise the taxpayer's liability based on doubt as to liability, doubt as to collectibility, and effective tax administration. Treas. Reg. § 301.7122-1.

<sup>55</sup> Installment agreements are provided for in IRC § 6159 and allow taxpayers who cannot immediately satisfy the liability to full-pay the liability in installments.

<sup>56</sup> See IRM § 5.14.1.5.1 for installment agreements; see § IRM 5.8.3.4.1 and IRS Form 656 for offers.

<sup>57</sup> *Robinette v. Comm'r*, 123 T.C. 85 (2004), appeal docketed, No. 04-4081 (8th Cir. Dec. 16, 2004).

their collection alternatives.<sup>58</sup> While relatively few in number (taxpayers prevailed in 13 percent of CDP cases in which collection alternatives were raised), these cases demonstrate the importance of judicial review to CDP rights as a check against arbitrary collection actions. For example, in *Johnson v. Commissioner*, Appeals rejected the proposed installment agreement of an individual who alleged that he was homeless (living in a temporary shelter), and Appeals determined to let levy action proceed against the taxpayer because he had failed to file two tax returns, although the taxpayer had given evidence that his income was insufficient to require the filing of those returns.<sup>59</sup> In *Fowler v. Commissioner*, the court held that the IRS abused its discretion in denying a taxpayer's offer in compromise proposal based on the Appeals officer's use of national expense standards to compute the taxpayer's expenses when the taxpayer's actual expenses were available.<sup>60</sup> In *Robinette v. Commissioner*, the Tax Court held that it was an abuse of discretion to default the taxpayer's offer in compromise (which requires that the taxpayer remain in compliance for five years) for the late filing of a tax return when the taxpayer's representative testified that he mailed the return and when the return reflected that the taxpayer was entitled to a refund.<sup>61</sup> These cases are examples of how judicial review can improve IRS collection policy by helping to instill more flexibility and common sense to its resolution practices.

### Validity of the Underlying Liability

The next largest category of issues raised by taxpayers on judicial review was the validity of the taxpayer's underlying liability.<sup>62</sup> Taxpayers are able to argue the underlying liability in the CDP hearing and in *de novo* proceedings before the Tax Court if they did not receive a notice of deficiency or have a previous opportunity to argue the issue prior to the hearing.<sup>63</sup> In 26 of the 39 cases where the underlying liability was raised, courts found that the taxpayers had received a notice of deficiency or had had another opportunity to argue the underlying liability.<sup>64</sup> In three cases, however, courts made pre-trial rulings allowing taxpayers to argue the underlying liability where it appeared that the taxpayers

<sup>58</sup> *Skrizowski v. Comm'r*, T.C. Memo. 2004-229 (holding it was an abuse of discretion to not fully investigate the OIC before rejecting it and not basing rejection on taxpayer's income, assets and allowable expenses and ability to pay. The court found that the taxpayer did not receive \$5 million in business income reported on taxpayer's return when taxpayer was intoxicated when he submitted the delinquent return after allegedly being told by an IRS collections officer that he could go to jail if he did not file the return, and further noted that the Appeals officer did not believe the reported income was valid); *Cox v. U.S.*, 345 F.Supp.2d 1215 (W.D. Okla. 2004) (holding it was abuse of discretion to conclude that taxpayer could not make installment agreement payments when the company had been making payments on the tax); *Robinette v. Comm'r*, 123 T.C. 85 (2004), *appeal docketed*, No. 04-4081 (8th Cir. Dec. 16, 2004); *Fowler v. Comm'r*, T.C. Memo. 2004-163; *Johnson v. Comm'r*, T.C. Summ. Op. 2005-47.

<sup>59</sup> *Johnson v. Comm'r*, T.C. Summ. Op. 2005-47.

<sup>60</sup> *Fowler v. Comm'r*, T.C. Memo. 2004-163.

<sup>61</sup> *Robinette v. Comm'r*, 123 T.C. 85 (2004), *appeal docketed*, No. 04-4081 (8th Cir. Dec. 16, 2004).

<sup>62</sup> See Key Legislative Recommendation, *Restructuring and Reform of Collection Due Process Provisions*, *supra*, proposing elimination of *de novo* judicial review of the underlying liability in CDP cases.

<sup>63</sup> IRC §§ 6320(c) and 6330(c)(2)(B); H.R. Rep. No. 105-599 at 266 (1998) (Conf. Rep.).

<sup>64</sup> See Table 1 in Appendix 3 for a list of cases where the court found the taxpayer was not entitled to argue the underlying liability.

may have been denied an earlier opportunity to do so.<sup>65</sup> In three other cases, taxpayers successfully raised and prevailed on the issue of the underlying liability.<sup>66</sup>

### Satisfaction of Procedural Requirements

The third largest category of CDP cases were taxpayers who argued that Appeals failed to follow all procedural requirements in offering and conducting the CDP hearing. In making its determination, Appeals is required to consider all issues raised by the taxpayer, and obtain verification that all laws and procedures have been followed to take the proposed collection action. In making its determination, Appeals must balance the need for efficient tax collection with the taxpayer's legitimate concern that any proposed collection alternative be no more intrusive than necessary.<sup>67</sup> The CDP statute and Treasury Regulations also impose notice and hearing procedural requirements on the IRS.<sup>68</sup>

Five taxpayers prevailed in their arguments that the IRS failed to follow all required procedural steps.<sup>69</sup> In *Cox v. Commissioner*, the court stressed the importance of CDP's procedural requirements, holding that the taxpayer was entitled to prior notice of the CDP hearing and that the taxpayer did not receive prior notice or any notice that two phone conversations constituted the CDP hearing.<sup>70</sup> The court emphasized the important role that adequate notice plays in the provision of CDP rights: Finally, although it is true that the Act does not import all federal due process protections into its requirements, it is also true that the opportunity to be heard at a meaningful time and in a meaningful manner is a bedrock principle of federal due process. See *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965) (a fundamental requirement of due

<sup>65</sup> *Berger v. Comm'r*, No. 19535-02L (Dec. 15, 2004) (finding that taxpayer's signature signing for notice of deficiency appeared to be forged); *Calderone v. Comm'r*, T.C. Memo. 2004-240 (holding that taxpayer's representative may not have informed taxpayer about the notice of deficiency); *Newstat v. Comm'r*, T.C. Memo. 2004-208 (finding that there was no apparent record of a notice of deficiency for one year at issue).

<sup>66</sup> *Molina v. Comm'r*, T.C. Memo. 2004-258 (holding that distribution from retirement plan was not taxable in 2000); *Zelaya v. Comm'r*, T.C. Summ. Op. 2004-163 (holding that liability stemming from issuance of second refund check was invalid since evidence showed that check had been forged); *Langer v. U.S.*, 95 A.F.T.R.2d (RIA) 894 (8th Cir. 2005) (holding taxpayer not collaterally estopped from raising FICA tax issues in district court after improperly raising the issue in Tax Court).

<sup>67</sup> IRC § 6330(c)(3).

<sup>68</sup> See IRC §§ 6320(a) and 6330(a) governing notice requirements; see also Treas. Reg. §§ 301.6320 et seq. and 301.6330 et seq. governing the hearing procedure.

<sup>69</sup> *Demus v. Comm'r*, 6636-04L (Dec. 15, 2004) (remanding the case to Appeals to consider and address in the Notice of Determination all issues raised by taxpayer); *Karara v. Comm'r*, No. 7748-02L (Dec. 15, 2004) (holding taxpayer did not receive adequate CDP notice for tax year); *Parker v. Comm'r*, T.C. Memo. 2004-226 (when taxpayer requests face-to-face hearing, Appeals was required to hold hearing in closest Appeals office to taxpayer); *Pollack v. U.S.*, 327 F.Supp.2d 907 (W.D. Tenn. 2004), reconsidered at 95 A.F.T.R.2d 1191 (W.D. Tenn. 2004) (holding procedure not followed when Appeals Officer did not properly complete form prior to giving it to taxpayer in accordance with IRM; upon reconsideration, the court found that the notice of deficiency mailed to wrong address and the taxpayer could contest underlying liability); *Cox v. U.S.*, 345 F.Supp.2d 1215 (W.D. Okla. 2004) (holding notice of CDP hearing was inadequate).

<sup>70</sup> *Cox v. U.S.*, 345 F.Supp.2d 1218 (W.D. Okla. 2004).

process is the opportunity to be heard, granted at a meaningful time and in a meaningful manner). Inadequacy of notice of the hearing required by § 6330 inevitably impairs the protections which are explicitly provided for in that section.

Last year we reported numerous cases where taxpayers had objected to Appeals' refusal to allow them to record their CDP hearings notwithstanding the holding in *Keene v. Commissioner*, which recognized taxpayers' right to record hearings. Taxpayers continued to use this argument in an attempt to invalidate Appeals' determination; however, courts have demonstrated little inclination to remand a case on this basis where the taxpayer has failed to make other substantive arguments in the CDP process.<sup>71</sup> The IRS has changed its procedures to permit recording of CDP hearings when the hearing is face-to-face if certain requirements are met.<sup>72</sup> Taxpayers also continue to make similar arguments about the right to a face-to-face hearing, but courts have recognized there is no absolute right to a face-to-face hearing and are unwilling to remand the case back to Appeals on this basis where the taxpayer makes no other substantive arguments.<sup>73</sup>

Most taxpayers raising the argument of noncompliance with CDP procedures argued in general fashion that the IRS failed to adequately complete the verification requirements of IRC § 6330(c)(1). None of these taxpayers prevailed.<sup>74</sup>

Taxpayers continued to demonstrate confusion with procedural aspects of CDP. Appeals from CDP hearings relating to income taxes are appealed to the Tax Court, while employment taxes and certain penalty appeals, such as the IRC § 6702 frivolous return penalty, are made to the appropriate district court.<sup>75</sup> At least ten of the taxpayers filed their appeals in the wrong court.<sup>76</sup> As we described in last year's report, judicial review would be greatly simplified if jurisdiction was consolidated in the Tax Court.<sup>77</sup>

<sup>71</sup> *Borchardt v. Comm'r*, 338 F.Supp.2d 1040 (D. Minn. 2004).

<sup>72</sup> IRM § 8.6.1.2.5

<sup>73</sup> *Casey v. Comm'r*, T.C. Memo. 2004-228; *Chandler v. Comm'r*, T.C. Memo. 2005-99; *Gardner v. Comm'r*, 95 A.F.T.R.2d (RIA) 2023 (D. N.J. 2005); *Quigley v. Comm'r*, 358 F.Supp.2d 427 (E.D. Pa. 2004). *See also*, Treas. Reg. § 601.106(b), providing in part "the appeal procedures do not extend to cases involving solely the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds."

<sup>74</sup> *See* Table 1, Appendix 3 for cases where this argument was made. Additionally, many of the taxpayers whose arguments were deemed "frivolous" or made solely for the purpose of delay also raised the verification argument.

<sup>75</sup> IRC §§ 6330(d)(1) and 6320(c).

<sup>76</sup> *Israel v. U.S.*, 93 A.F.T.R.2d (RIA) 2044 (S.D. Iowa 2005); *Kupcho v. Comm'r*, 95 A.F.T.R.2d (RIA) 1439 (D. N.J. 2005); *Mackinnon v. Fredrickson*, 95 A.F.T.R.2d (RIA) 1973 (D. Or. 2005); *Peterson v. Kreidich*, 95 A.F.T.R.2d (RIA) 2416 (11th Cir. 2005); *Rustam v. Comm'r*, T.C. Memo. 2005-42; *Torczone v. Lucas*, 95 A.F.T.R.2d (RIA) 681 (9th Cir. 2005); *Updegrave v. U.S.*, 94 A.F.T.R.2d (RIA) 6155 (D. Or. 2005); *Burns v. U.S.*, 95 A.F.T.R.2d (RIA) 1160 (M.D. Tenn. 2005); *Canaday v. U.S.*, 94 A.F.T.R.2d (RIA) 6311 (S.D. W.Va. 2004); *Cobin v. Comm'r*, A.F.T.R.2d (RIA) 717 (D. S.C. 2005).

<sup>77</sup> National Taxpayer Advocate 2004 Annual Report to Congress 502; *see also* Key Legislative Recommendation: *Restructuring and Reform of Collection Due Process Provisions*, *supra*.

### Penalty Abatement

Taxpayers can request the abatement of penalties in CDP hearings provided that the taxpayer has not previously had an opportunity to raise the issue.<sup>78</sup> The most frequently litigated penalties that taxpayers sought to abate through CDP hearings were:

- ◆ **IRC § 6651:** The penalty for failure to file a timely tax return pursuant to IRC § 6651 can be abated by demonstrating that the failure to file was due to reasonable cause, and courts review the issue on a *de novo* standard.<sup>79</sup> Jurisdiction for judicial review from CDP hearings pertaining to the failure to file penalty applicable to income tax returns is with the Tax Court.<sup>80</sup> In cases where taxpayers sought abatement of the failure to file penalty, the issue was raised in conjunction with other issues, and none of the taxpayers were able to demonstrate reasonable cause.<sup>81</sup>
- ◆ **IRC § 6702:** The frivolous return penalty under IRC § 6702 is assessed against taxpayers who file a tax return that does not contain substantially correct information due to a position taken by the taxpayer that is frivolous or is based on a desire to impede or delay the administration of federal taxes.<sup>82</sup> Jurisdiction for judicial review from CDP hearings pertaining to the frivolous income tax return penalty is with the appropriate United States district court.<sup>83</sup> The reviewed decisions reflected a disagreement among the courts about the standard of review for this type of penalty (i.e. *de novo* or abuse of discretion).<sup>84</sup> All of the taxpayers assessed these penalties had filed returns showing zeroes in the boxes where taxable income is reported, and none of these taxpayers raised meritorious issues on appeal.<sup>85</sup>

<sup>78</sup> IRC §§ 6320(c) and 6330(c)(4) provide that taxpayers are precluded from raising issues in a CDP hearing if the issue was raised in any other administrative or judicial proceeding, provided that the person meaningfully participated in the proceeding.

<sup>79</sup> *Goza v. Comm’r*, 114 T.C. 176 (2000).

<sup>80</sup> IRC § 6330(d)(1)(A) and (B).

<sup>81</sup> Most of these taxpayers failed to offer any evidence on reasonable cause. See *Conner v. Comm’r*, T.C. Summ. Op. 2005-27; *Seavey v. Comm’r*, T.C. Summ. Op. 2005-8; but see *Jackson v. Comm’r*, T.C. Summ. Op. 2005-12 (holding that taxpayers failed to prove that the IRS agreed to abate penalties).

<sup>82</sup> IRC § 6702(a)(1)-(2).

<sup>83</sup> IRC § 6330(d)(1)(A) and (B); see *Hoffman v. U.S.*, 209 F.Supp.2d 1089 (W.D. Wash. 2002).

<sup>84</sup> *Le Doux v. U.S.*, 375 F.Supp.2d 1242 (D. N.M. 2005). In *Le Doux*, the court noted that some courts have held that a frivolous penalty is reviewed on a *de novo* standard, citing *Lemieux v. U.S.*, 230 F.Supp.2d 1143 (D. Nev. 2002), while other courts have held that the standard is abuse of discretion, citing *Carroll v. U.S.*, 217 F.Supp.2d 852 (W.D. Tenn. 2002). The court in *Le Doux* held that under either standard the taxpayers had filed a frivolous return.

<sup>85</sup> *Gardner v. U.S.*, 95 A.F.T.R.2d (RIA) 2023 (D. N.J. 2005); *Herip v. U.S.*, 95 A.F.T.R.2d (RIA) 537 (6th Cir. 2004); *Holmes v. U.S.*, 351 F.Supp.2d 526 (W.D. La. 2004); *McCurdy v. U.S.*, 95 A.F.T.R.2d (RIA) 2776 (D. Mass. 2005); *Meyer v. Comm’r*, 95 A.F.T.R.2d (RIA) 2471 (W.D. WI 2005)(incurring additional Rule 11 sanctions for making frivolous arguments); *Quigely v. U.S.*, 358 F.Supp.2d 427 (E.D. PA 2004); *Ray v. U.S.*, 94 A.F.T.R.2d (RIA) 5925 (W.D. Mo. 2004); *Schultz v. U.S.*, 95 A.F.T.R.2d (RIA) 1977 (W.D. MI 2005); *Sergio v. U.S.*, 95 A.F.T.R.2d (RIA) 1174 (2005); *Turner v. U.S.*, 372 F.Supp.2d 1053 (S.D. Ohio 2005); *Updegrave v. U.S.*, 94 A.F.T.R.2d (RIA) 6155 (D. Or. 2004).

### Application of Payments

Taxpayers also argued that payments, levies, or credits satisfied all or part of the outstanding liabilities and the IRS misapplied their payments. Taxpayers prevailed on this issue in two of six cases. In *Hayes v. Commissioner*, the taxpayers and the IRS disagreed about whether the disputed liability had been paid. Before trial, however, the IRS's counsel discovered that the IRS had misapplied the taxpayer's payment to a different year and disclosed this fact to the court.<sup>86</sup> In *Zapara v. Commissioner*, the Tax Court held that pursuant to IRC § 6335(f)<sup>87</sup> taxpayers were entitled to a credit for the value of stock accounts, which had been seized, as of the date which the IRS was required to sell the stock, having been requested to do so by the taxpayers.<sup>88</sup>

### Bankruptcy

Some CDP cases raised the automatic stay provisions and discharge provisions of the Bankruptcy Code. When a taxpayer files a petition in bankruptcy court, there is an automatic stay on the commencement or continuation of any judicial or administrative proceeding against the debtor that was or could have been started before the commencement of the bankruptcy case.<sup>89</sup> Over the past year, the Tax Court dealt with different scenarios involving the interaction of taxpayers' CDP cases and their bankruptcy petitions. In *Smith v. Commissioner*, the Tax Court found that it did not have jurisdiction, holding that Appeals' Notice of Determination was issued in violation of the automatic stay where the taxpayer filed his bankruptcy petition after his CDP hearing but before Appeals' determination, thus invalidating the determination.<sup>90</sup> The automatic stay worked to the taxpayer's disadvantage in *Prevo v. Commissioner*, where the Tax Court held that it had no jurisdiction when the taxpayer filed a bankruptcy petition after the Notice of Determination was issued, but before petitioning the Tax Court. The Court stated that this was a "trap for the unwary," noting the absence of a tolling provision in IRC §§ 6320 or 6330 comparable to IRC § 6213(f).<sup>91</sup> The National Taxpayer Advocate recommended a legislative change in the 2004 Annual Report<sup>92</sup> to fix this unintended result.

In general, tax liabilities for taxable years in which a return was due, including extensions, within three years of the date of the filing of the bankruptcy petition may not be

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<sup>86</sup> *Hayes v. Comm'r*, T.C. Memo. 2005-57.

<sup>87</sup> IRC § 6335(f) requires the IRS to sell seized property within 60 days of the request by taxpayers.

<sup>88</sup> *Zapara v. Comm'r*, 124 T.C. 223 (2005).

<sup>89</sup> 11 U.S.C.A. § 362(a).

<sup>90</sup> *Smith v. Comm'r*, 124 T.C. 36 (2005); see also *Beverly v. Comm'r*, T.C. Memo. 2005-41 (invalidating the IRS's Notice of Intent to Levy where it was issued after the filing of taxpayer's bankruptcy petition).

<sup>91</sup> *Prevo v. Comm'r*, 123 T.C. 326 (2004). Other taxpayers were unsuccessful in attempting to use the automatic stay to shield them from collection actions. *Meadows v. Comm'r*, 405 F.3d 949 (11th Cir. 2005) (holding that application of wife's \$10,000 offer-in-compromise payment to debt that was later discharged in bankruptcy was not a violation of the automatic stay from taxpayer's previous bankruptcy filing).

<sup>92</sup> National Taxpayer Advocate 2004 Annual Report to Congress 490.

discharged in bankruptcy.<sup>93</sup> One taxpayer unsuccessfully argued that his liabilities were discharged, but the Tax Court determined that the taxes were not discharged and were not dischargeable. The court determined that the tax liabilities for several years at issue were liabilities for which returns were due (including extensions) within three years of the filing of the bankruptcy petition and thus, were not dischargeable. The tax liability for the remaining year was not dischargeable because the due date for the return (including extensions) for the year at issue was after the date that the bankruptcy petition was filed.<sup>94</sup>

### Interest Abatement

In CDP hearings, taxpayers may raise the issue of abatement of interest from the liability pursuant to IRC § 6404(e), which allows the IRS to abate interest attributable to unreasonable error or delay resulting from a ministerial or managerial act.<sup>95</sup> Courts review the Appeals' determination on abatement of interest utilizing an abuse of discretion standard.<sup>96</sup> In one case, the taxpayer was able to demonstrate that the IRS unreasonably delayed in providing the taxpayer an escrow demand letter, which the taxpayer needed so that he could finance the repayment of the tax liability.<sup>97</sup>

### Collection Statute Expiration

Generally, the IRS has ten years from the date of assessment to collect a tax.<sup>98</sup> The running of the ten-year collection period is suspended on the occurrence of certain events, including the filing of a CDP hearing request<sup>99</sup> and the submission by taxpayers of offers-in-compromise or installment agreements.<sup>100</sup> Four taxpayers raised the expiration of the statute of limitations as a defense to the imposition of collection action; none prevailed.<sup>101</sup>

<sup>93</sup> 11 U.S.C.A. §§ 523(a)(1)(A) and 507(a)(8)(A)(i).

<sup>94</sup> *Klet v. Comm'r*, T.C. Summ. Op. 2004-172.

<sup>95</sup> IRC § 6404(e); Treas. Reg. § 1.6404-2(a)(2).

<sup>96</sup> *Woodral v. Comm'r*, 112 T.C. 19 (1999).

<sup>97</sup> *Jackson v. Comm'r*, T.C. Summ. Op. 2005-12 (holding in a split decision that some of the accrued interest was attributable to the IRS's delay in providing taxpayer an escrow demand letter and also holding that Appeals had not abused its discretion in refusing to abate penalties).

<sup>98</sup> IRC § 6502(a)(1).

<sup>99</sup> When a CDP hearing is elected, the suspension of the collection statute exists until the hearing and any related appeals are concluded. IRC § 6330(e)(1).

<sup>100</sup> The collection statute is suspended while offers-in-compromise and installment agreements are pending. IRC § 6331(i)(5) and (k)(1)-(2).

<sup>101</sup> *Van Dyke v. Comm'r*, T.C. Summ. Op. 2005-5; *Griffith v. Comm'r*, T.C. Memo. 2004-267; *Picchiottino v. Comm'r*, T.C. Memo. 2004-231; *Picchiottino v. Comm'r*, T.C. Memo. 2004-232.



### Relief From Joint and Several Liability On Joint Returns

Relief from joint and several liability on joint returns pursuant to IRC § 6015 is also a Most Litigated Issue for this year's report. Taxpayers have the option to raise these issues in CDP hearings.<sup>102</sup> Two taxpayers litigated the Appeals determination on IRC § 6015 issues in CDP hearings, with one taxpayer prevailing.<sup>103</sup>

### Pro Se Analysis

One hundred and sixty-five (or 79 percent) of the 209 cases litigated were brought before the courts by the taxpayer, *pro se*, without benefit of counsel. This is a modest increase from 74 percent in the previous year.<sup>104</sup> Table 3.1.3 shows the breakdown of *pro se* and represented taxpayers and the decisions rendered by the court, indicating that approximately nine percent of *pro se* taxpayers receive some relief on judicial review while 20 percent of represented taxpayers received full or partial relief from their CDP appeals.

**TABLE 3.1.3, SUCCESS RATES AND REPRESENTATION**

Court Decisions	Taxpayer Pro Se		Representation	
	Volume	Percentage of Total	Volume	Percentage Of Total
Decided for IRS	150	91%	35	80%
Decided for Taxpayer	10	6%	8	18%
Split Decision	5	3%	1	2%
<b>Totals:</b>	<b>165</b>	<b>100%</b>	<b>44</b>	<b>100%</b>

### CONCLUSION

CDP continues to be the most litigated issue in federal tax courts. This volume is due in part to the breadth of issues that can be raised in CDP hearings. Despite weaknesses in the CDP legislation, we think CDP and judicial oversight of the collection process serves as an important check on the IRS and balances the taxpayers' concerns about collection action with the government's need to collect taxes. We have attempted to address these weaknesses in a Key Legislative Recommendation in this year's report so that the value of CDP is preserved.

<sup>102</sup> IRC § 6330(c)(2)(A)(i).

<sup>103</sup> *Zachry v. Comm'r*, T.C. Summ. Op. 2005-55; *Hendricks v. Comm'r*, T.C. Memo. 2005-72.

<sup>104</sup> National Taxpayer Advocate 2004 Annual Report to Congress 509.

LITIGATED  
ISSUE #2GROSS INCOME UNDER INTERNAL REVENUE CODE SECTION 61  
AND RELATED CODE SECTIONS

## SUMMARY

Gross income is the starting point for computing taxable income and the amount of tax that must be paid. The issue of what constitutes gross income under IRC § 61 is once again a most litigated issue, as it has been in each of the National Taxpayer Advocate's Annual Reports to Congress. The cases reviewed for this report involved whether income was includible in taxable gross income, whether the Internal Revenue Code (IRC) specifically excluded an item of income, and whether taxpayers reported the correct amount of income. While the cases touched on a variety of issues, the four most prevalent were:

- ◆ Awards and settlements;
- ◆ Disability and Social Security benefits;
- ◆ Constructive dividends; and
- ◆ Unreported income.

## PRESENT LAW

IRC § 61 broadly defines gross income as “all income from whatever source derived.”<sup>1</sup> The courts also construe this provision broadly, categorizing income as “any accession to wealth.”<sup>2</sup> However, the Code excludes many specific items from gross income,<sup>3</sup> and the courts construe these exclusions narrowly.<sup>4</sup>

## ANALYSIS OF LITIGATED CASES

This analysis covers cases involving gross income that were decided in the federal court system between June 1, 2004, and May 31, 2005.<sup>5</sup> The detailed analysis of cases is limited to certain categories with a high volume of cases, and to a follow-up of issues identified in the Annual Report to Congress for fiscal years 2002, 2003 and 2004.<sup>6</sup> Table 2 in Appendix 3 provides a detailed listing of the cases analyzed for this report.

<sup>1</sup> IRC § 61(a).

<sup>2</sup> *Comm'r v. Glenshaw Glass Co.*, 348 U.S. 426, 430 (1955).

<sup>3</sup> See e.g., IRC §§ 104, 105, and 108.

<sup>4</sup> *Comm'r v. Schleier*, 515 U.S. 323 (1995).

<sup>5</sup> The methodology used to identify income cases was based on a review of federal cases involving IRC § 61.

<sup>6</sup> National Taxpayer Advocate 2002 Annual Report to Congress 260-271; National Taxpayer Advocate 2003 Annual Report to Congress 332-351; and National Taxpayer Advocate 2004 Annual Report to Congress 511-523.

### AWARDS AND SETTLEMENTS

Taxation of settlements and judgments remains a frequently litigated issue. Taxpayers disagree with the IRS over whether the award or a portion of the award qualifies for exclusion from gross income as an amount “received on account of personal physical injuries or physical sickness”<sup>7</sup> and whether the attorney fee portion of the award or settlement is includible in gross income.

The Supreme Court’s decision in *Commissioner v. Banks* clarifies the tax treatment of *contingent* attorney fees only, holding that generally, when a litigant’s recovery of damages constitutes income, contingent attorney’s fees should be included in the taxpayer’s gross income.<sup>8</sup>

In 2004, Congress passed legislation addressing the deductibility of attorneys’ fees and court costs in discrimination suits, effective for awards received after October 22, 2004.<sup>9</sup> The new provision allows an “above the line” deduction not to exceed the amount of the judgment or settlement. This means that attorney fees in discrimination cases are generally deducted from gross income when computing adjusted gross income.<sup>10</sup> For contingent fee awards in discrimination cases received on or before October 22, 2004, the taxpayer must include the fee in gross income and deduct it as a miscellaneous itemized deduction, subject to a reduction by two percent of the taxpayer’s adjusted gross income and Alternative Minimum Tax (AMT).<sup>11</sup>

### IRC § 104(a)(2)

Under IRC § 104(a)(2), the award (other than punitive damages) is excluded from gross income if the judgment or settlement is “on account of personal physical injuries or physical sickness.”<sup>12</sup> This exclusion can lead taxpayers to structure judgments or settlements to reflect compensation for physical injuries, rather than other forms of damages not eligible for the exclusion. Nine opinions were issued this year on whether an award was “on

<sup>7</sup> IRC § 104(a)(2) excludes from gross income damages (other than punitive damages) received “on account of personal physical injuries or physical sickness.”

<sup>8</sup> *Comm’r v. Banks*, 543 U.S. 426, 125 S. Ct. 826 (2005).

<sup>9</sup> On October 22, 2004, the President signed into law H. R. 4520, the American Jobs Creation Act of 2004. Section 703, Civil Rights Tax Relief, provides relief from the double taxation of attorneys’ fees and court costs awarded to plaintiffs in lawsuits for unlawful discrimination. The new law allows an “above the line” deduction of these amounts for adjusted gross income (AGI), thus effectively subtracting these amounts for purposes of the taxable income of the plaintiff.

<sup>10</sup> IRC § 62(a)(19).

<sup>11</sup> *Comm’r v. Banks*, 543 U.S. 426, 125 S. Ct. 826, 830-31 (2005); IRC § 67— limitation on miscellaneous itemized deductions. See description of contingent attorney fees, *infra* for more analysis of *Banks* and its implications.

<sup>12</sup> IRC § 104(a)(2).

account of personal physical injuries or physical sickness.”<sup>13</sup> Taxpayers lost all nine cases.

Courts interpret § 104(a)(2) very narrowly.<sup>14</sup> In *Vincent v. Commissioner*, the taxpayer received a settlement in a wrongful termination suit. The taxpayer alleged she missed work due to an ulcer, and the settlement agreement allocated \$240,000 of the settlement award for “personal injuries and emotional distress.” The court looked to the underlying claim, and held that despite the wording of the settlement agreement, the award was really for discrimination and not “personal physical injuries” and the award was includible in gross income.<sup>15</sup>

In *Murphy v. IRS*, the taxpayer sued the New York National Guard for employment discrimination. The taxpayer offered medical testimony that she experienced physical injuries, including teeth grinding, due to the discrimination. The taxpayer later settled the case, and the agreement allocated \$45,000 of the award to “mental pain and anguish.”<sup>16</sup> The court held this award did not qualify for the § 104(a)(2) exclusion, as “mental pain and anguish” is not a physical injury even when it leads to a physical injury, and hence the award was fully taxable.<sup>17</sup>

### Contingent Attorneys’ Fees

For those awards not excludable under IRC § 104(a)(2), the issue has arisen as to whether the attorney fees portion of a taxable award is also includible in gross income. In *Commissioner v. Banks*, the Supreme Court held that generally, when a plaintiff’s settlement or judgment constituted income, the plaintiff’s income includes the portion of the judgment or settlement allocated to attorney fees as a contingent fee. The court did not address the issue of claims brought under federal statutes that authorize fee awards to attorneys, stating that because the attorney’s fees in *Banks* were paid on the basis of a contingent fee contract, it was unnecessary to address the taxation of attorneys’ fees that could have been awarded under federal statute.<sup>18</sup> Before the Supreme Court decision in *Banks*, the lower courts were split on the tax treatment of attorney fees.<sup>19</sup> The Fifth, Sixth, and Eleventh Circuits held that the contingent fee portion of a judgment or settlement should not be included in plaintiff’s gross income. Six other circuits held that such fees are includible in gross income, with some circuits relying on state law property

<sup>13</sup> *Bolden v. Comm’r*, T.C. Summ. Op. 2004-114; *Brooks v. U.S.*, 383 F.3d 521 (6th Cir. 2004); *Henderson v. Comm’r*, 94 A.F.T.R.2d 5246 (9th Cir. 2004); *Kidd v. Comm’r*, T.C. Memo. 2004-135; *Murphy v. IRS*, 362 F.Supp. 2d 206 (D.D.C. 2005); *Ndirika v. Comm’r*, T.C. Memo. 2004-250; *Valia v. Comm’r*, T.C. Summ. Op. 2005-17; *Vincent v. Comm’r*, T.C. Memo. 2005-95.

<sup>14</sup> *Kidd v. Comm’r*, T.C. Memo. 2004-135.

<sup>15</sup> *Vincent v. Comm’r*, T.C. Memo. 2005-95.

<sup>16</sup> *Murphy v. IRS*, 362 F.Supp.2d 206, 210 (D.D.C. 2005).

<sup>17</sup> *Id.*

<sup>18</sup> *Comm’r v. Banks*, 543 U.S. 426, 125 S. Ct. 826 (2005).

<sup>19</sup> *Id.*

interests while others disregarded state law.<sup>20</sup> In *Banks*, the Supreme Court held that the contingent attorneys' fees portion of the settlement was taxable income to the plaintiff under the anticipatory assignment of income doctrine.<sup>21</sup>

Inclusion in gross income of contingent attorney fees that the individual plaintiff never receives can cause inequitable results because of the way the Internal Revenue Code deals with the corresponding deduction of the fees. While taxpayers can deduct the full amount of attorney fees they are required to take into income, many taxpayers are adversely affected because the deductions are treated as miscellaneous itemized deductions.<sup>22</sup> Miscellaneous itemized deductions are deductible only if the taxpayer itemizes, and are subject to a two percent floor under IRC § 67. More importantly, miscellaneous itemized deductions are not taken into account for purposes of computing the AMT.<sup>23</sup> Therefore, the taxpayer may end up paying more in taxes than the amount of the award settlement he or she actually received for awards received on or before October 22, 2004.<sup>24</sup>

In *Banks* and its companion case, *Commissioner v. Banaitis*, the taxpayers received settlement awards and their attorneys received portions of the awards under contingent fee arrangements.<sup>25</sup> The taxpayers argued that because applicable state law granted the attorney a property interest in the contingent fee portion of the award, the taxpayer should not have to include the contingent fee in gross income. The Supreme Court rejected that argument, holding that amounts representing the contingent attorney fee portions of the awards are includible in the plaintiff's gross income because the fee arrangement was an "anticipatory assignment of income." The Court reasoned that "income should be taxed to the party who earns the income and enjoys the consequent benefits."<sup>26</sup> State property laws do not change the fundamental principal-agent nature of the attorney-client relationship, and are thus irrelevant.<sup>27</sup>

The Supreme Court decision in *Banks* requires that if the settlement or judgment constitutes income, i.e. the award does not fall under the exclusion under IRC § 104(a)(2) for

<sup>20</sup> *Comm'r v. Banks*, 543 U.S. 426, 125 S. Ct. 826 (2005).

<sup>21</sup> *Id.* at 830-31.

<sup>22</sup> *Biehl v. Comm'r*, 351 F.3d 982, 984 (9th Cir. 2003).

<sup>23</sup> IRC § 56(b)(1)(A)(i).

<sup>24</sup> See National Taxpayer Advocate's 2004 Annual Report to Congress 517, footnote 47, citing David G. Savage, *A Win-Lose Situation*, 90 A.B.A.J., 18 (Nov. 2004), discussing *Spina v. Forest Preserve District of Cook County*, 207 F.Supp.2d 764 (N.D. Ill. 2002) where the taxpayer received a \$300,000 award and her attorneys received \$1 million in fees, all of which was taxed to the taxpayer, resulting in a tax liability that exceeded her award by \$99,000.

<sup>25</sup> *Comm'r v. Banks*, 125 S. Ct. at 829-30; *Banaitis v. Comm'r*, 340 F.3d 1074 (9th Cir. 2003). In *Banaitis v. Commissioner*, an Oregon case, the court ruled that the state law afforded a property interest in the settlement and therefore portion of the settlement paid directly for attorney fees was excluded from income.

<sup>26</sup> *Comm'r v. Banks*, 125 S. Ct. at 830.

<sup>27</sup> *Id.*

personal physical injury or physical sickness or the exclusion under IRC § 62(a)(19) for claims involving unlawful discrimination paid after October 22, 2004, taxpayers report as gross income the contingent attorney fee portion of these awards, even in cases in which the taxpayer never actually receives that amount or is legally entitled to receive it.<sup>28</sup> The Tax Court relied on the *Banks* decision in deciding two subsequent contingent fee cases.<sup>29</sup>

### DISABILITY AND SOCIAL SECURITY BENEFITS

As workers age and retire, wage income is often replaced by other forms of income, such as disability benefits, Social Security, and tax-advantaged retirement income. Because these forms of income can be wholly or partially excludible from gross income, taxpayers and the IRS frequently litigate the characterization of certain of these payments. This year, courts issued 26 opinions, compared with 11 last year.<sup>30</sup>

#### Disability Income

We reviewed six cases in which taxpayers claimed that some sort of disability benefits were excludible from income under IRC §§ 104 or 105.<sup>31</sup> Two cases involving military pension income illustrate how narrowly courts interpret the statutory exclusions for disability payments.<sup>32</sup> In *Hintz v. Commissioner*, the taxpayer, a retired U.S. Army infantryman, claimed he should be able to exclude his disability pension income from the Department of Defense. The Tax Court held for the IRS, as there was no evidence the taxpayer's disability stemmed from combat, a requirement for the exclusion under IRC § 104(b)(2)(C).<sup>33</sup>

<sup>28</sup> In response to the pending litigation, the American Jobs Creation Act of 2004, § 703, Pub. L. No. 108-357, 118 Stat. 1418, 1546 (2004), enacted IRC § 62(a)(19) to allow an "above-the line" deduction for attorney fees in awards or settlements of certain claims of "unlawful discrimination." As a result, the deduction is taken before adjusted gross income is computed and is not subject to either IRC § 67 or AMT. However, contingent attorney fee portions of other judgments or settlements of cases not specified in the statute are subject to the *Banks* rule.

<sup>29</sup> The Tax Court cited *Banks* in *Williams v. Comm'r*, T.C. Memo. 2005-29 (taxpayers must include in gross income 40 percent attorneys' fee from employment discrimination settlement), and *Vincent v. Comm'r*, T.C. Memo. 2005-95 (attorney fee portion of the settlement includible in gross income).

<sup>30</sup> *Barkley v. Comm'r*, T.C. Memo. 2004-287; *Buras v. Comm'r*, T.C. Summ. Op. 2004-161; *Cawvey v. Comm'r*, T.C. Summ. Op. 2005-63; *Cohen v. Comm'r*, T.C. Memo. 2004-227; *Dirks v. Comm'r*, T.C. Memo. 2004-138; *Dotson v. Comm'r*, T.C. Summ. Op. 2004-164; *Davis v. Comm'r*, T.C. Summ. Op. 2005-61; *Flores v. Comm'r*, T.C. Summ. Op. 2005-57; *Hayden v. Comm'r*, 95 A.F.T.R.2d 1918 (9th Cir. 2005); *Headen v. Comm'r*, T.C. Summ. Op. 2005-33; *Hintz v. Comm'r*, T.C. Summ. Op. 2005-43; *Kellum v. Comm'r*, T.C. Summ. Op. 2005-29; *Klingaman v. Comm'r*, T.C. Summ. Op. 2005-36; *Mitchell v. Comm'r*, T.C. Summ. Op. 2004-160; *Molina v. Comm'r*, T.C. Memo. 2004-258; *Olson v. Comm'r*, T.C. Memo. 2004-197; *Peters v. Comm'r*, T.C. Summ. Op. 2005-42; *Reimels v. Comm'r*, 123 T.C. 245 (2004); *Seidel v. Comm'r*, T.C. Memo. 2005-67; *Seidel v. Comm'r*, T.C. Summ. Op. 2005-51; *Sternberg v. I.R.S.*, 95 A.F.T.R.2d 402 (2nd Cir. 2005); *Werts v. Comm'r*, T.C. Summ. Op. 2005-34; *White v. Comm'r*, T.C. Summ. Op. 2005-62; *Widemon v. Comm'r*, T.C. Memo. 2004-162; *Wright v. Comm'r*, T.C. Memo. 2005-5; *Youngblood v. Comm'r*, T.C. Memo. 2005-43; National Taxpayer Advocate 2004 Annual Report to Congress 599-600.

<sup>31</sup> *Hayden v. Comm'r*, 95 A.F.T.R.2d 1918 (9th Cir. 2005); *Hintz v. Comm'r*, T.C. Summ. Op. 2005-43; *Kellum v. Comm'r*, T.C. Summ. Op. 2005-29; *Reimels v. Comm'r*, 123 T.C. 245 (2004); *Wright v. Comm'r*, T.C. Memo. 2005-5; *Youngblood v. Comm'r*, T.C. Memo. 2005-43.

<sup>32</sup> *Hintz v. Comm'r*, T.C. Summ. Op. 2005-43; *Reimels v. Comm'r*, 123 T.C. 245 (2004).

<sup>33</sup> *Hintz v. Comm'r*, T.C. Summ. Op. 2005-43.

In *Reimels v. Commissioner*, the taxpayer, disabled by Agent Orange exposure in Vietnam, claimed that his Social Security disability insurance benefits were excluded from gross income under § 104(a)(4), which excludes payments received for personal injury or sickness resulting from active military service. The Tax Court held his Social Security disability income was not excludible because the taxpayer received it because he was disabled, and it did not matter to Social Security that the disability resulted from his military service.<sup>34</sup>

### Social Security Benefits

The IRS prevailed in six cases dealing directly with the taxation of Social Security benefits under IRC § 86.<sup>35</sup> Depending on the taxpayer's adjusted gross income and filing status, Social Security may be treated in one of three ways: excluded entirely from gross income, 50 percent included in gross income, or 85 percent included in gross income.<sup>36</sup> This is not the only complexity taxpayers face when dealing with the taxation of their Social Security benefits.<sup>37</sup> For example, when a person receives both worker's compensation and Social Security, the Social Security Administration pays the recipient less due to his or her receiving worker's compensation.<sup>38</sup> This reduction is known as the "worker's compensation offset."<sup>39</sup> Treating the offset as Social Security converts otherwise tax-free worker's compensation into potentially taxable income.<sup>40</sup> In both *Cawvey v. Commissioner* and *Flores v. Commissioner*, the Tax Court agreed with the IRS that the worker's compensation offset was includible in gross income under IRC § 86(d)(3).<sup>41</sup> The court expressed sympathy for the taxpayer in *Flores* but was bound by the law as written by Congress.<sup>42</sup>

### Tax-Advantaged Retirement Accounts

We reviewed 14 cases dealing with tax-advantaged retirement income and accounts, such

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<sup>34</sup> *Reimels v. Comm'r*, 123 T.C. 245 (2004).

<sup>35</sup> *Cawvey v. Comm'r*, T.C. Summ. Op. 2005-63; *Davis v. Comm'r*, T.C. Summ. Op. 2005-61; *Flores v. Comm'r*, T.C. Summ. Op. 2005-57; *Headen v. Comm'r*, T.C. Summ. Op. 2005-33; *Klingaman v. Comm'r*, T.C. Summ. Op. 2005-36; *Werts v. Comm'r*, T.C. Summ. Op. 2005-24.

<sup>36</sup> IRC § 86.

<sup>37</sup> See Richard M. Colombik, *Social Security Benefits: How Much is Taxable*, 14-SUM Experience 44 (Summer 2004), discussing the complexity of Social Security taxation, which can vary based on the taxpayer's "other sources and amounts of income" and concluding that most taxpayers receiving Social Security will need either a computer or a tax preparer to determine the amount of taxable benefits.

<sup>38</sup> IRC § 86(d)(3); See *Cawvey v. Comm'r*, T.C. Summ. Op. 2005-63; *Flores v. Comm'r*, T.C. Summ. Op. 2005-57.

<sup>39</sup> *Cawvey v. Comm'r*, T.C. Summ. Op. 2005-63.

<sup>40</sup> IRC § 86(d)(3). Worker's compensation is generally excludible from gross income under IRC § 104(a)(1). Treating the offset as Social Security under IRC § 86 makes the offset amount, which is worker's compensation, potentially fifty or eight-five percent includible in gross income, depending on the taxpayer's adjusted gross income.

<sup>41</sup> *Cawvey v. Comm'r*, T.C. Summ. Op. 2005-63; *Flores v. Comm'r*, T.C. Summ. Op. 2005-57.

<sup>42</sup> *Flores v. Comm'r*, T.C. Summ. Op. 2005-57.

as pensions, Individual Retirement Accounts (IRAs), and 401(k)s.<sup>43</sup> These cases presented an array of issues, including: premature distributions from a Roth IRA that exceeded contributions;<sup>44</sup> unpaid loans from a 401(k) account;<sup>45</sup> cashing out an inherited IRA;<sup>46</sup> and a premature distribution from an IRA.<sup>47</sup> The IRS won 10 of these 14 cases, taxpayers prevailed in two, and the court rendered split decisions in the two others.<sup>48</sup>

Two cases dealt with the 60-day rollover rule for liquidated IRAs.<sup>49</sup> Amounts distributed from a traditional IRA to a taxpayer are not taxable if the taxpayer puts the money into another traditional IRA within 60 days.<sup>50</sup> In both cases, the Tax Court applied the rule and held that the taxpayers who failed to rollover IRA distributions within 60 days must include those amounts in gross income.<sup>51</sup>

### CONSTRUCTIVE DIVIDENDS

A constructive dividend occurs when a corporation confers an economic benefit upon a shareholder without any expectation that the shareholder will reimburse the corporation.<sup>52</sup> The corporation need not formally declare a dividend for a constructive dividend to exist.<sup>53</sup> Like a cash dividend, a constructive dividend is not deductible by the corporation and is taxable to the shareholder.<sup>54</sup> Constructive dividends generally occur in three ways:

- ◆ When the corporation pays the personal expenses of the shareholder;<sup>55</sup>

<sup>43</sup> *Barkley v. Comm'r*, T.C. Memo. 2004-287; *Buras v. Comm'r*, T.C. Summ. Op. 2004-161; *Cohen v. Comm'r*, T.C. Memo. 2004-227; *Dirks v. Comm'r*, T.C. Memo. 2004-138; *Dotson v. Comm'r*, T.C. Summ. Op. 2004-164; *Mitchell v. Comm'r*, T.C. Summ. Op. 2004-160; *Molina v. Comm'r*, T.C. Memo. 2004-258; *Olson v. Comm'r*, T.C. Memo. 2004-197; *Peters v. Comm'r*, T.C. Summ. Op. 2005-42; *Seidel v. Comm'r*, T.C. Summ. Op. 2005-51; *Seidel v. Comm'r*, T.C. Memo. 2005-67; *Sternberg v. Comm'r*, 95 A.F.T.R.2d 402 (2d Cir. 2005); *White v. Comm'r*, T.C. Summ. Op. 2005-62; *Widemon v. Comm'r*, T.C. Memo. 2004-162.

<sup>44</sup> *Widemon v. Comm'r*, T.C. Memo. 2004-162.

<sup>45</sup> *White v. Comm'r*, T.C. Summ. Op. 2005-62.

<sup>46</sup> *Olson v. Comm'r*, T.C. Memo. 2004-197.

<sup>47</sup> *Cohen v. Comm'r*, T.C. Memo. 2004-227.

<sup>48</sup> *Barkley v. Comm'r*, T.C. Memo. 2004-287; *Buras v. Comm'r*, T.C. Summ. Op. 2004-161; *Cohen v. Comm'r*, T.C. Memo. 2004-227; *Dirks v. Comm'r*, T.C. Memo. 2004-138; *Dotson v. Comm'r*, T.C. Summ. Op. 2004-164; *Mitchell v. Comm'r*, T.C. Summ. Op. 2004-160; *Molina v. Comm'r*, T.C. Memo. 2004-258; *Olson v. Comm'r*, T.C. Memo. 2004-197; *Peters v. Comm'r*, T.C. Summ. Op. 2005-42; *Seidel v. Comm'r*, T.C. Summ. Op. 2005-51; *Seidel v. Comm'r*, T.C. Memo. 2005-67; *Sternberg v. Comm'r*, 95 A.F.T.R.2d 402 (2d Cir. 2005); *White v. Comm'r*, T.C. Summ. Op. 2005-62; *Widemon v. Comm'r*, T.C. Memo. 2004-162.

<sup>49</sup> *Dirks v. Comm'r*, T.C. Memo. 2004-138; *Peters v. Comm'r*, T.C. Summ. Op. 2005-42.

<sup>50</sup> IRC § 408(d)(3)(A).

<sup>51</sup> *Dirks v. Comm'r*, T.C. Memo. 2004-138; *Peters v. Comm'r*, T.C. Summ. Op. 2005-42.

<sup>52</sup> *Mubich v. Comm'r*, 238 F.3d 860, 863 (7th Cir. 2001).

<sup>53</sup> *Noble v. Comm'r*, 368 F.2d 439, 442 (9th Cir. 1966).

<sup>54</sup> *Mubich v. Comm'r*, 238 F.3d at 863.

<sup>55</sup> *Ali v. Comm'r*, T.C. Memo. 2004-284; *Benson v. Comm'r*, T.C. Memo. 2004-272; *Bruecher v. Comm'r*, T.C. Summ. Op. 2005-52; *Delaware Corp. v. Comm'r*, T.C. Memo. 2004-280; *Lenzen v. Comm'r*, T.C. Memo. 2005-120; *Noble v. Comm'r*, 368 F.2d 439; *Strong v. Comm'r*, T.C. Memo. 2005-125.



- ◆ When the shareholder directs one corporation to distribute assets or transfer funds to another corporation the shareholder owns;<sup>56</sup> and,
- ◆ When the shareholder receives money as a tax free transaction (such as a loan) from the corporation and has no intention of paying it back.<sup>57</sup>

Taxpayers who receive unreported income or whose personal expenses are paid by the controlled corporation sometimes claim that the payment of personal expenses is a loan to the shareholder, but courts usually reject the argument.<sup>58</sup>

We reviewed 12 opinions issued this year.<sup>59</sup> The IRS won ten cases and taxpayers prevailed twice.

### UNREPORTED INCOME

We reviewed 32 cases involving unreported income this year.<sup>60</sup> Fifteen cases dealt with unreported business income;<sup>61</sup> while 14 others dealt with unreported wage and investment income reported to taxpayers and the IRS by third parties on information returns

<sup>56</sup> *Benson v. Comm’r*, T.C. Memo. 2004-272; *Menard, Inc. v. Comm’r*, T.C. Memo. 2004-207.

<sup>57</sup> In situations where the shareholder does not intend to pay the money back or the money is not for a tax-free transaction such as a loan. See *Bussell v. Comm’r*, T.C. Memo. 2005-77; *Gowni v. Comm’r*, T.C. Memo. 2004-154; and *Moran v. Comm’r*, T.C. Memo. 2005-66.

<sup>58</sup> See *Bruecher v. Comm’r*, T.C. Summ. Op. 2005-52; *Gowni v. Comm’r*, T.C. Memo. 2004-154; and, *Lenzen v. Comm’r*, T.C. Memo. 2005-120. But see *Morrison v. Comm’r*, T.C. Memo. 2005-53 (company’s payment of shareholder personal expenses did not constitute a constructive dividend and was a legitimate loan when the taxpayer repaid the corporation for some of the personal expenses and paid some interest on the outstanding amount).

<sup>59</sup> *Ali v. Comm’r*, T.C. Memo. 2004-284; *Benson v. Comm’r*, T.C. Memo. 2004-272; *Bruecher v. Comm’r*, T.C. Summ. Op. 2005-52; *Bussell v. Comm’r*, T.C. Memo. 2005-77; *Delaware Corp. v. Comm’r*, T.C. Memo. 2004-280; *Gowni v. Comm’r*, T.C. Memo. 2004-154; *Lenzen v. Comm’r*, T.C. Memo. 2005-120; *Menard, Inc. v. Comm’r*, T.C. Memo. 2004-207; *Moran v. Comm’r*, T.C. Memo. 2005-66; *Morrison v. Comm’r*, T.C. Memo. 2005-53; *PK Ventures, Inc. v. Comm’r*, T.C. Memo. 2005-56; *Strong v. Comm’r*, T.C. Memo. 2005-125.

<sup>60</sup> *Ade v. Comm’r*, T.C. Summ. Op. 2004-82; *Arvin v. Comm’r*, T.C. Summ. Op. 2004-108; *Bien-Aime v. Comm’r*, T.C. Summ. Op. 2004-175; *Blanning v. Comm’r*, T.C. Memo. 2004-201; *Brenner v. Comm’r*, T.C. Memo. 2004-202; *Castleton v. Comm’r*, T.C. Memo. 2005-58; *Chin v. Comm’r*, T.C. Memo. 2004-189; *Coccia v. Comm’r*, T.C. Summ. Op. 2004-159; *Coomes v. Comm’r*, T.C. Summ. Op. 2004-182; *Corrigan v. Comm’r*, T.C. Memo. 2005-119; *Doxtator v. Comm’r*, T.C. Memo. 2005-113; *Edwards v. Comm’r*, T.C. Memo. 2005-52; *Ford v. Comm’r*, T.C. Memo. 2005-18; *Gouveia v. Comm’r*, T.C. Memo. 2004-256; *Gowni v. Comm’r*, T.C. Memo. 2004-154; *Graham v. Comm’r*, T.C. Memo. 2005-68; *Jondabl v. Comm’r*, T.C. Memo. 2005-55; *Kikalos v. U.S.*, 408 F.3d 900 (7th Cir. 2005); *Knauss v. Comm’r*, T.C. Memo. 2005-6; *Lewis v. Comm’r*, T.C. Memo. 2005-111; *Malfatti v. Comm’r*, T.C. Memo. 2005-19; *Nanyist v. Comm’r*, T.C. Memo. 2004-263; *Ogu v. Comm’r*, T.C. Summ. Op. 2004-87; *Payne v. Comm’r*, T.C. Memo. 2005-130; *Pickering v. Comm’r*, T.C. Summ. Op. 2004-136; *Polonczyk v. Comm’r*, T.C. Summ. Op. 2005-66; *Rinn v. Comm’r*, T.C. Memo. 2004-256; *Rodriguez v. Comm’r*, 95 A.F.T.R.2d 1723 (9th Cir. 2005); *Rodriguez v. Comm’r*, T.C. Memo. 2005-12; *Starkovich v. Comm’r*, T.C. Summ. Op. 2004-173; *Strong v. Comm’r*, T.C. Memo. 2005-125; *Westby v. Comm’r*, T.C. Memo. 2004-179.

<sup>61</sup> *Ade v. Comm’r*, T.C. Summ. Op. 2004-82; *Blanning v. Comm’r*, T.C. Memo. 2004-201; *Chin v. Comm’r*, T.C. Memo. 2004-189; *Coomes v. Comm’r*, T.C. Memo. 2004-182; *Edwards v. Comm’r*, T.C. Memo. 2005-52; *Gouveia v. Comm’r*, T.C. Memo. 2004-256; *Gowni v. Comm’r*, T.C. Memo. 2004-154; *Graham v. Comm’r*, T.C. Memo. 2005-68; *Kikalos v. U.S.*, 408 F.3d 900 (7th Cir. 2005); *Knauss v. Comm’r*, T.C. Memo. 2005-6; *Payne v. Comm’r*, T.C. Memo. 2005-130; *Rinn v. Comm’r*, T.C. Memo. 2004-256; *Starkovich v. Comm’r*, T.C. Summ. Op. 2004-173; *Strong v. Comm’r*, T.C. Memo. 2005-125; *Westby v. Comm’r*, T.C. Memo. 2004-179.

such as Form W-2, Form 1099-INT, Form 1099-DIV and Form 1099-MISC.<sup>62</sup> Three cases dealt with both kinds of unreported income.<sup>63</sup> Unreported business income cases often concern taxpayers receiving payments from customers and not reporting the income on their tax returns.<sup>64</sup> Of the 18 cases dealing with unreported business income, taxpayers won three, the IRS won 11, and four cases had split decisions in which part but not all of the IRS determination was upheld.<sup>65</sup> There were 17 cases in which third parties reported income on Form W-2 or Form 1099, but the taxpayer either did not file a tax return<sup>66</sup> or filed and did not fully report the Form W-2 or Form 1099 income.<sup>67</sup> The IRS won 15 cases involving unreported third party reported income, while a taxpayer won one and the final case had a split outcome.<sup>68</sup>

### PRO SE AND REPRESENTED TAXPAYERS

Sixty of these cases, or 56 percent, were litigated without counsel, *pro se*.<sup>69</sup> While *pro se* litigants fared slightly better than represented litigants in cases not involving business income, represented litigants fared much better than their *pro se* counterparts in cases involving business income.

<sup>62</sup> *Arvin v. Comm'r*, T.C. Summ. Op. 2004-108; *Bien-Aime v. Comm'r*, T.C. Summ. Op. 2004-175; *Castleton v. Comm'r*, T.C. Memo. 2005-58; *Corrigan v. Comm'r*, T.C. Memo. 2005-119; *Doxtator v. Comm'r*, T.C. Memo. 2005-113; *Ford v. Comm'r*, T.C. Memo. 2005-18; *Lewis v. Comm'r*, T.C. Memo. 2005-111; *Malfatti v. Comm'r*, T.C. Memo. 2005-19; *Namyst v. Comm'r*, T.C. Memo. 2004-263; *Ogu v. Comm'r*, T.C. Summ. Op. 2004-87; *Pickering v. Comm'r*, T.C. Summ. Op. 2004-136; *Polonczyk v. Comm'r*, T.C. Summ. Op. 2005-66; *Rodriguez v. Comm'r*, 95 A.F.T.R.2d 1723 (9th Cir. 2005); *Rodriguez v. Comm'r*, T.C. Memo. 2005-12.

<sup>63</sup> *Brenner v. Comm'r*, T.C. Memo. 2004-202; *Coccia v. Comm'r*, T.C. Summ. Op. 2004-159; *Jondabl v. Comm'r*, T.C. Memo. 2005-55.

<sup>64</sup> See e.g., *Payne v. Comm'r*, T.C. Memo. 2005-130, where the taxpayer, a roofer, deposited smaller customer payments directly into his personal bank account without reporting the payments as income.

<sup>65</sup> *Acle v. Comm'r*, T.C. Summ. Op. 2004-82; *Blanning v. Comm'r*, T.C. Memo. 2004-201; *Brenner v. Comm'r*, T.C. Memo. 2004-202; *Chin v. Comm'r*, T.C. Memo. 2004-189; *Coccia v. Comm'r*, T.C. Summ. Op. 2004-159; *Coomes v. Comm'r*, T.C. Memo. 2004-182; *Edwards v. Comm'r*, T.C. Memo. 2005-52; *Gouveia v. Comm'r*, T.C. Memo. 2004-256; *Gowri v. Comm'r*, T.C. Memo. 2004-154; *Graham v. Comm'r*, T.C. Memo. 2005-68; *Jondabl v. Comm'r*, T.C. Memo. 2005-55; *Kikalos v. U.S.*, 408 F.3d 900 (7th Cir. 2005); *Knauss v. Comm'r*, T.C. Memo. 2005-6; *Payne v. Comm'r*, T.C. Memo. 2005-130; *Rinn v. Comm'r*, T.C. Memo. 2004-256; *Starkovich v. Comm'r*, T.C. Summ. Op. 2004-173; *Strong v. Comm'r*, T.C. Memo. 2005-125; *Westby v. Comm'r*, T.C. Memo. 2004-179.

<sup>66</sup> See e.g., *Malfatti v. Comm'r*, T.C. Memo. 2005-19.

<sup>67</sup> See e.g., *Bien-Aime v. Comm'r*, T.C. Summ. Op. 2004-175.

<sup>68</sup> *Arvin v. Comm'r*, T.C. Summ. Op. 2004-108; *Bien-Aime v. Comm'r*, T.C. Summ. Op. 2004-175; *Brenner v. Comm'r*, T.C. Memo. 2004-202; *Castleton v. Comm'r*, T.C. Memo. 2005-58; *Coccia v. Comm'r*, T.C. Summ. Op. 2004-159; *Corrigan v. Comm'r*, T.C. Memo. 2005-119; *Doxtator v. Comm'r*, T.C. Memo. 2005-113; *Ford v. Comm'r*, T.C. Memo. 2005-18; *Jondabl v. Comm'r*, T.C. Memo. 2005-55; *Lewis v. Comm'r*, T.C. Memo. 2005-111; *Malfatti v. Comm'r*, T.C. Memo. 2005-19; *Namyst v. Comm'r*, T.C. Memo. 2004-263; *Ogu v. Comm'r*, T.C. Summ. Op. 2004-87; *Pickering v. Comm'r*, T.C. Summ. Op. 2004-136; *Polonczyk v. Comm'r*, T.C. Summ. Op. 2005-66; *Rodriguez v. Comm'r*, 95 A.F.T.R.2d 1723 (9th Cir. 2005); *Rodriguez v. Comm'r*, T.C. Memo. 2005-12.

<sup>69</sup> Four of the 60 cases had a split outcome and these four split outcome cases are not included in the count of *pro se* cases in Table 3.2.1.

TABLE 3.2.1, ANALYSIS OF PRO SE INCOME CASES

Type of Taxpayer	Number of Cases	<i>Pro Se</i>		<i>Represented</i>		Split Decision
		Decision for Taxpayer	Decision for IRS	Decision for Taxpayer	Decision for IRS	
Individual	83	6	41	3	27	6
Business	25 <sup>70</sup>	1	8	6	7	3
<b>Total</b>	<b>108</b>	<b>7</b>	<b>49</b>	<b>9</b>	<b>34</b>	<b>9</b>

### CONCLUSION

While no clear patterns emerge from the analysis of litigated cases, gross income is clearly an area of confusion and contention between taxpayers and the IRS. This year, taxpayers prevailed in whole or in part in 25 of 108 cases, or 23 percent of the total.

With the Supreme Court's ruling in *Banks* and the enactment of IRC § 62(a)(1), the area of contingent attorney's fees in litigation is clearer and likely to be litigated less often. Litigation on whether the award was received for "physical" injuries and if so, not subject to tax, continues to be an issue for the courts.

The increase in retirement and disability income cases and the variety and complexity of pension benefit tax law suggest this issue will continue to confuse taxpayers and create contention with the IRS. Other issues, such as constructive dividends and unreported income, show that some taxpayers will search out ways to avoid taxable income, and the IRS will need to be vigilant to ensure adherence to the law and proper tax collection.<sup>71</sup>

<sup>70</sup> One case involving an estate is included in the business category.

<sup>71</sup> Unreported income is the single largest component of the "tax gap," accounting for eighty percent of the tax gap or \$251 billion to \$291 billion per year. See Most Serious Problem: *The Cash Economy*, *supra*; Key Legislative Recommendation: *Measures to Reduce Noncompliance in the Cash Economy*, *supra*.

## LITIGATED

ISSUE #3

FAILURE TO FILE PENALTY UNDER INTERNAL REVENUE CODE SECTION 6651(a)(1)

## SUMMARY

The federal court system issued published decisions in 75 cases involving the penalty for failure to file a timely tax return under IRC § 6651(a)(2) during the 12 months from June 1, 2004 to May 31, 2005, which this report covers.<sup>1</sup> The IRS prevailed in all but five cases. The failure to file penalty is mandatory unless the taxpayer can demonstrate that the failure is due to reasonable cause and not willful neglect.<sup>2</sup> Among the cases analyzed, it was often very difficult for the taxpayer to meet this standard.<sup>3</sup>

## PRESENT LAW

A taxpayer who fails to file a tax return on or before its due date will be subject to a five percent penalty for each month or partial month that the return is late.<sup>4</sup> This penalty generally accumulates for each month the return is not filed up to a maximum of 25 percent.<sup>5</sup> If the taxpayer's failure to file is fraudulent, the penalty is 15 percent per month or partial month up to a maximum of 75 percent.<sup>6</sup> The penalty is based on the amount of tax due, minus any credit the taxpayer is entitled to receive or payment made by the due date.<sup>7</sup>

The IRS has the burden of production in any court proceeding with respect to the liability of any individual for an addition to tax under IRC § 6651(a).<sup>8</sup> To meet this burden, the IRS must produce sufficient evidence indicating that it is appropriate to impose the relevant penalty or addition to tax.<sup>9</sup> Once the IRS meets this burden, the taxpayer must come forward with evidence sufficient to persuade a court that the IRS's determination is incorrect.<sup>10</sup> The taxpayer also bears the burden of proof with regard to issues of reasonable cause.<sup>11</sup> To prove reasonable cause, a taxpayer must show that he or she exercised ordinary business care and prudence, but was still unable to file by the due date.<sup>12</sup>

<sup>1</sup> IRC § § 6651(a)(2) and (a)(3) also imposes failure to pay penalties as well, however, only a small number of cases involved these penalties, and therefore, the failure to pay penalty cases are not addressed here.

<sup>2</sup> IRC § 6651(a)(1).

<sup>3</sup> In the 2001 Annual Report to Congress, the National Taxpayer Advocate recommended a legislative change that would broaden the reasonable cause standard to include taxpayers who make one-time, inadvertent errors on their returns. National Taxpayer Advocate 2001 Annual Report to Congress 188.

<sup>4</sup> IRC § 6651(a)(1).

<sup>5</sup> *Id.*

<sup>6</sup> IRC § 6651(f).

<sup>7</sup> IRC § 6651(b).

<sup>8</sup> IRC § 7491(c). An exception to this rule alleviates the IRS from this initial burden where the taxpayer's petition fails to state a claim for relief from the addition to tax, such as where the taxpayer only makes frivolous arguments. *Funk v. Comm'r*, 123 T.C. 213 (2004).

<sup>9</sup> *Higbee v. Comm'r*, 116 T.C. 438, 446 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Treas. Reg. § 301.6651-1(c)(1).

The failure to file penalty applies to income, estate, gift, and certain excise tax returns.<sup>13</sup> IRC § 6698 provides for a penalty for failure to file partnership returns, which is based on different criteria but also carries a reasonable cause component.<sup>14</sup>

### ANALYSIS OF LITIGATED CASES

We analyzed 75 opinions issued between June 1, 2004 and May 31, 2005, where the failure to file penalty was in dispute. All but seven of these cases were litigated in the United States Tax Court. A detailed listing of these cases appears in Table 3 in Appendix 3. Fifty-five cases involved individual taxpayers, 19 involved businesses (including individuals engaged in self-employment or partnerships) and one case involved an estate. Taxpayers were represented by attorneys in only 17 cases. Of the 58 cases in which taxpayers appeared *pro se*, only one case was resolved in the taxpayer's favor and one other resulted in a split decision. Thus, taxpayers were unrepresented in the vast majority of cases decided in the IRS's favor.

A common basis for the courts ruling against taxpayers in these cases was the lack of any evidence offered to show that the failure to file was due to reasonable cause.<sup>15</sup> The arguments taxpayers put forth in defense of their failures to file timely (or at all) include the following:

- ◆ **Medical Illness:** Depending on the facts and circumstances, a medical illness can constitute reasonable cause for failing to file a tax return on time.<sup>16</sup> However, courts will reject medical illness as a basis for reasonable cause where the illness did not keep the taxpayer from functioning in other aspects of life, such as work.<sup>17</sup> In the context of a joint return, medical conditions afflicting one spouse do not generally excuse the failure to file.<sup>18</sup> In one case, however, a husband's condition was severe enough to require the wife to abandon her work-related responsibilities to care for him, and impaired her ability to exercise ordinary business care and prudence.<sup>19</sup>

<sup>13</sup> IRC § 6651(a)(1).

<sup>14</sup> IRC § 6698.

<sup>15</sup> See, e.g., *Brunner v. Comm'r*, T.C. Memo. 2004-187, *Desauguste v. Comm'r*, T.C. Summ. Op. 2005-60, *Franklin v. Comm'r*, T.C. Summ. Op. 2004-126; *Greendyk v. Comm'r*, T.C. Memo. 2005-108, *Malfatti v. Comm'r*, T.C. Memo. 2005-19, *Rinn v. Comm'r*, T.C. Memo. 2004-246, *Rosa v. Comm'r*, T.C. Summ. Op. 2005-53, *Widemon v. Comm'r*, T.C. 2004-162.

<sup>16</sup> *Harbour v. Comm'r*, T.C. Memo. 1991-532. In *Harbour*, the taxpayer was in a coma during the month before his tax return was due. Clearly, he was not able to work during this time or participate in any other life activities. Therefore, the Tax Court determined that this medical condition was a reasonable cause for failure to timely file his tax return.

<sup>17</sup> *O'Laughlin v. Comm'r*, T.C. Summ. Op. 2004-79 (holding that although taxpayer was in a serious automobile injury, taxpayer did not prove that the injury was severe enough to prevent taxpayer from filing her returns); see also *Barkley v. Comm'r*, T.C. Memo. 2004-287; *Appel v. Comm'r*, T.C. Summ. Op. 2004-90.

<sup>18</sup> *Appel v. Comm'r*, T.C. Summ. Op. 2004-90 (holding that illness of spouse was not so substantial as to prevent taxpayer from working or engaging in other activities).

<sup>19</sup> *Wesley v. United States*, 95 A.F.T.R.2d (RIA) 1832 (N.D. Fla. 2005).

- ◆ **Unavailability of Records:** Taxpayers also asserted the unavailability of records as a basis for the reasonable cause defense.<sup>20</sup> The general rule is that unavailability of records does not constitute reasonable cause.<sup>21</sup> If, however, the taxpayer used ordinary business care and prudence to obtain the records, the taxpayer may be able to establish reasonable cause for not timely filing.<sup>22</sup>
- ◆ **Reliance Upon a Tax Professional:** Some taxpayers argued that reliance upon a professional was a defense to the failure to file penalty.<sup>23</sup> However, the Supreme Court has made clear in *United States v. Boyle* that taxpayers have a non-delegable duty to file a return on time, and the taxpayer's reliance on an agent does not excuse failure.<sup>24</sup> There are exceptions to this general rule, such as where a person suffers from a disability and must rely on third parties to fulfill his or her filing obligations.<sup>25</sup> In one case, a U.S. district court found that reliance upon a professional, coupled with the taxpayer's illness, was reasonable cause for one tax year but not for other years in question.<sup>26</sup>
- ◆ **Reliance Upon Spouse or Other Agent:** The *Boyle* rule against reliance on third parties to file tax returns also applies to reliance on family members such as spouses to file, where the taxpayer knew or had reason to know that the returns were not timely filed.<sup>27</sup>
- ◆ **Ignorance of the Law:** Taxpayers also argued that they believed there was no obligation to file a tax return.<sup>28</sup> Ignorance of the law is not a reasonable cause for not timely filing, unless the taxpayer has made a reasonable good faith effort to comply with the law, or could not reasonably be expected to be aware of the requirement.<sup>29</sup>

<sup>20</sup> *Chu v. Comm'r*, T.C. Memo. 2005-110.

<sup>21</sup> *Crocker v. Comm'r*, 92 T.C. 899, 913 (1989).

<sup>22</sup> *Haley v. Comm'r*, T.C. Memo. 1977-348.

<sup>23</sup> *Bruecher v. Comm'r*, T.C. Summ. Op. 2005-52 (holding belief that professional filed extension is not reasonable cause).

<sup>24</sup> *United States v. Boyle*, 469 U.S. 241, 252(1985) (holding, "It requires no special training or effort to ascertain a deadline and make sure that it is met. The failure to make a timely filing of a tax return is not excused by the taxpayer's reliance on an agent, and such reliance is not 'reasonable cause' for a late filing under § 6651(a)(1).").

<sup>25</sup> *Id.* at 249.

<sup>26</sup> *Wesley v. U.S.*, 95 A.F.T.R. 2d (RIA) 1832 (N.D. Fla. 2005).

<sup>27</sup> *Quarterman v. Comm'r*, T.C. Memo. 2004-241 (holding that reliance upon spouse does not excuse obligation to file); *Westby v. Comm'r*, T.C. Memo. 2004-179 (holding spouse knew that returns were not filed and did not take any corrective steps which were available to her).

<sup>28</sup> *Rollins v. Comm'r*, T.C. Memo. 2004-260 (holding that taxpayer was required to file excise tax returns for IRC § 401(k) plans and taxpayer's belief that returns were not required does not constitute reasonable cause).

<sup>29</sup> IRM § 20.1.1.3.1.2.1 provides that a taxpayer may establish reasonable cause based on ignorance of the law if: (1) a reasonable and good faith effort was made to comply with the law, or (2) the taxpayer was unaware of a requirement and could not reasonably be expected to know of the requirement.

- ◆ **“Zero Return” Filers:** Some taxpayers protested their obligation to pay taxes by filing tax returns with zeroes on every line of the tax return.<sup>30</sup> These taxpayers argued that they should not be assessed a failure to file penalty when a return was filed. This defense was unsuccessful as the courts hold that frivolous returns do not constitute a tax return for purposes of the IRC § 6651 penalty.

In 14 of the IRC § 6651(a)(1) cases, taxpayers asserted arguments that the courts considered frivolous.<sup>31</sup> In all but four of those cases, the court assessed the frivolous litigation penalty under IRC § 6673 against taxpayers.<sup>32</sup> The U.S. Tax Court also rendered an important decision with respect to the burden of proof in failure to file cases where the taxpayer asserts only frivolous arguments. In *Funk v. Commissioner*, the Tax Court held that while the IRS has the initial burden of production in cases involving additions to tax (such as additions under IRC § 6651), that burden is shifted if the taxpayer advances only frivolous arguments.<sup>33</sup>

The existence of reasonable cause in any given case depends on all the facts and circumstances of the case,<sup>34</sup> and what one court may find reasonable, another court may not.

## CONCLUSION

The failure to file penalty was enacted to encourage voluntary compliance and make it clear that noncompliance would not be tolerated.<sup>35</sup> Further, the penalty seeks to establish fairness by penalizing those taxpayers who do not comply with the filing deadline. Notwithstanding that the due date for individual tax returns is common knowledge and routinely publicized by the IRS and the media, the failure to file penalty remains the subject of frequent litigation.<sup>36</sup>

<sup>30</sup> *Arvin v. Comm’r*, T.C. Summ. Op. 2004-108; *Benedetti v. Comm’r*, T.C. Summ. Op. 2005-6; *Halcott v. Comm’r*, T.C. Memo. 2004-214; *Turner v. Comm’r*, T.C. Memo. 2004-251.

<sup>31</sup> *Brenner v. Comm’r*, T.C. Memo. 2004-202; *Brunner v. Comm’r*, T.C. Memo. 2004-187; *Buras v. Comm’r*, T.C. Summ. Op. 2004-161; *Currier v. Comm’r*, T.C. Memo. 2005-21; *Florance v. Comm’r*, T.C. Memo. 2005-60; *Malfatti v. Comm’r*, T.C. Memo. 2005-19; *Milby v. Comm’r*, T.C. Memo. 2005-15; *Rodriguez v. Comm’r*, T.C. Memo. 2005-12; *Storaasli v. Comm’r*, T.C. Memo. 2005-59; *Benedetti v. Comm’r*, T.C. Summ. Op. 2005-6; *Funk v. Comm’r*, 123 T.C. 213 (2004); *Arvin v. Comm’r*, T.C. Summ. Op. 2004-108; *Greendyk v. Comm’r*, T.C. Memo. 2005-108; *Rinn v. Comm’r*, T.C. Memo. 2004-108.

<sup>32</sup> While the courts did not assess the frivolous argument penalty in these cases, litigants were given stern warnings about advancing any such arguments in the future; *Funk v. Comm’r*, 123 T.C. 213 (2004); *Arvin v. Comm’r*, T.C. Summ. Op. 2004-108; *Greendyk v. Comm’r*, T.C. Memo. 2005-108; *Rinn v. Comm’r*, T.C. Memo. 2004-108.

<sup>33</sup> *Funk v. Comm’r*, 123 T.C. 213 (2004).

<sup>34</sup> IRM § 20.1.1.3.1(1).

<sup>35</sup> See Policy Statement P-1-18 dated April 27, 1992, IRM 1.2.1.2.3.

The United States tax system relies on taxpayers’ willingness to voluntarily and accurately report their income, file returns, and pay taxes. Penalties encourage this type of compliance and deter noncompliance, while also attempting to establish fairness in the system by imposing an additional cost on the noncompliant taxpayer.

<sup>36</sup> The failure to file penalty has appeared as a most litigated issue in the 2000, 2001, 2003, and 2004 Annual Report to Congress. The 2000 report groups all penalties together. The 2001 report combines the failure to file and the failure to pay penalties.

## MOST LITIGATED

SECTION  
THREE

The IRS should determine whether this penalty positively influences compliance as intended. Congress should again consider the National Taxpayer Advocate's recommendation of a one-time abatement of the penalty for taxpayers who comply with their filing obligations, but in an untimely manner.<sup>37</sup> This proposal would broaden the definition of reasonable cause and give the IRS the authority to abate a late filing penalty for inadvertent taxpayer mistakes, while still supporting the IRS's goal of voluntary compliance.

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<sup>37</sup> National Taxpayer Advocate 2001 Annual Report to Congress 188. This provision was included in the House-passed Taxpayer Protection and IRS Accountability Act of 2003. *See* H.R. 1528, 108th Cong. § 106 (2003).



LITIGATED  
ISSUE #4TRADE OR BUSINESS EXPENSES UNDER INTERNAL REVENUE CODE SECTION 162  
AND RELATED SECTIONS

## SUMMARY

Trade or business expense is perennially one of the 10 most litigated tax issues in the federal courts. We identified 67 cases that included a trade or business expense issue and were litigated between June 1, 2004, and May 31, 2005. The courts affirmed the IRS position in over three-fourths of the cases, while taxpayers prevailed less than 10 percent of the time.<sup>1</sup> The remaining cases resulted in split decisions.

## PRESENT LAW

Internal Revenue Code (IRC) section 162 is one of the Code's most fundamental provisions, allowing deductions for ordinary and necessary trade or business expenses paid or incurred during the taxable year. Rules regarding the practical application of IRC § 162 have evolved largely from case law and administrative guidance. The IRS, Department of Treasury, Congress, and the courts continue to provide legal guidelines about whether a taxpayer is entitled to certain trade or business deductions. The litigated cases analyzed for this report reveal that this process is ongoing. When a taxpayer seeks judicial review of the IRS's determination of tax liability, the courts must often address a series of questions, including those discussed below, before issuing decisions.

**What constitutes a trade or business for purposes of IRC § 162?**

Although "trade or business" is one of the most widely used terms in the IRC, neither the Code nor the Treasury Regulations provide a definition.<sup>2</sup> The definition of "trade or business" comes from the common law of federal income tax, where concepts have been developed and refined by court decisions.<sup>3</sup> The Supreme Court has interpreted "trade or business" for purposes of IRC § 162 to mean an activity conducted "with continuity and regularity" and with the primary purpose of making income or a profit.<sup>4</sup>

**What is an ordinary and necessary expense?**

Ordinary and necessary expenses are current business expenses that are paid or incurred during the taxable year. A current business expense must be both ordinary and necessary in relation to the taxpayer's trade or business.<sup>5</sup> In *Welch v. Helvering*,<sup>6</sup> the Supreme Court stated that the words "ordinary" and "necessary" have difference in meaning, and both

<sup>1</sup> The IRS prevailed in 51 of 67 cases, while taxpayers prevailed in six cases.

<sup>2</sup> In 1986, the term "trade or business" appeared in at least 492 subsections of the Code and 664 provisions of the Treasury Regulations. F. Ladson Boyle, *What Is a Trade or Business?* 39 Tax Law. 737 (Summer 1986).

<sup>3</sup> Carol Duane Olson, *Toward a Neutral Definition of "Trade or Business" in the Internal Revenue Code*, 54 U. Cin. L. Rev. 1199 (1986).

<sup>4</sup> *Comm'r v. Groetzinger*, 480 U.S. 23, 35 (1987).

<sup>5</sup> IRC § 162(a).

<sup>6</sup> 290 U.S. 111 (1933).

must be satisfied for a taxpayer to benefit from the deduction. In *Deputy v. Du Pont*,<sup>7</sup> the Supreme Court described an “ordinary” expense as customary or usual and of common occurrence in the taxpayer’s business. A “necessary” expense is described as appropriate and helpful for development of the business.<sup>8</sup>

The courts have held that the amount of the expense must be reasonable as well as ordinary and necessary. In *Commissioner v. Lincoln Elec. Co.*,<sup>9</sup> the Court of Appeals for the Sixth Circuit held that “...the element of reasonableness is inherent in the phrase ‘ordinary and necessary.’ Clearly, it was not the intention of Congress to automatically allow as deductions operating expenses incurred or paid by the taxpayer in an unlimited amount.”<sup>10</sup>

#### Can the taxpayer substantiate that the expense was paid or incurred during the taxable year?

Present law requires a taxpayer to maintain books and records that substantiate income, deductions, and credits, including adequate records to substantiate deductions claimed as trade or business expenses.<sup>11</sup> If a taxpayer is unable to substantiate deductions by documentary evidence (e.g., invoice, paid bill, or canceled check) but can establish that he or she had some deductible business expenditures, the courts may opt to employ the *Cohan* rule to grant the taxpayer a reasonable amount of deductions.

The *Cohan* rule is a rule of “indulgence” established by the Court of Appeals for the Second Circuit in its decision in *Cohan v. Commissioner*.<sup>12</sup> The Court of Appeals held “...the Board should make as close an approximation as it can, bearing heavily if it chooses upon the taxpayer whose inexactitude is of his own making. But to allow nothing at all appears to us inconsistent with saying that something was spent.”<sup>13</sup>

The *Cohan* rule may not be utilized in situations where IRC § 274(d) applies. Code section 274(d) provides that unless a taxpayer complies with strict substantiation rules, no deduction is allowable for (1) traveling expenses, (2) entertainment expenses, (3) gifts, or (4) certain “listed property.”<sup>14</sup> A taxpayer is required to substantiate a claimed IRC § 274(d) expense with adequate records or sufficient evidence corroborating the taxpayer’s statement establishing the amount, time, place, and business purpose of the expense.<sup>15</sup>

<sup>7</sup> 308 U.S. 488, 495 (1940).

<sup>8</sup> *Comm’r v. Tellier*, 383 U.S. 687, 679 (1996) (citations omitted).

<sup>9</sup> 176 F.2d 815 (6th Cir. 1949).

<sup>10</sup> *Comm’r v. Lincoln Elec. Co.*, 176 F.2d 815, 817 (6th Cir. 1949) (citation omitted).

<sup>11</sup> IRC § 6001; Treas. Reg. § 1.6001-1; Treas. Reg. § 1.446-1(a)(4).

<sup>12</sup> 39 F.2d 540 (2nd Cir. 1930).

<sup>13</sup> *Cohan v. Comm’r*, 39 F.2d 540, 544 (2nd Cir. 1930).

<sup>14</sup> “Listed property” means any property that can be used for personal purposes, including any property used as a means of transportation, any property of a type generally used for purposes of entertainment, recreation, or amusement, any computer or peripheral equipment, etc. IRC § 280F(d)(4)(A)(ii), (iii), and (iv).

<sup>15</sup> Treas. Reg. § 1.274-5T(b).

### Who has the burden of proof in a substantiation case?

Generally, a taxpayer bears the burden of proving entitlement to the business expense deductions and that the proposed determination made by the Commissioner of Internal Revenue is incorrect.<sup>16</sup> IRC § 7491(a) provides that the burden of proof shifts to the Commissioner under certain specified conditions.<sup>17</sup>

In order to shift the burden to the Commissioner, a taxpayer must: (1) introduce credible evidence with respect to any factual issue relevant to ascertaining the taxpayer's liability; (2) comply with the requirements to substantiate deductions; (3) maintain all records required under the IRC; and (4) cooperate with reasonable requests by the IRS for witnesses, information, documents, meetings, and interviews.<sup>18</sup>

### ANALYSIS OF LITIGATED CASES

Trade or business expenses have been one of the 10 most litigated issues by taxpayers since the first edition of the National Taxpayer Advocate's Annual Report to Congress in 1998.<sup>19</sup> We reviewed 67 cases involving various trade or business expense issues that were litigated in the federal court system during the period June 1, 2004, through May 31, 2005. Table 4 in Appendix 3 contains a detailed listing of the cases.

Table 3.4.1 categorizes the significant trade or business expense issues raised by taxpayers. Cases involving multiple issues are included in more than one category. In *Doxtator v. Commissioner*,<sup>20</sup> for example, three distinct trade or business expense issues were raised, so the case can be found in three categories in Table 3.4.1.

<sup>16</sup> See Tax Court Rule 142(a) and *Welch v. Helvering*, 290 U.S. 111, 115 (1933).

<sup>17</sup> IRC § 7491(a)(1) applies to a court proceeding in which the examination started after July 22, 1998, and if there is no examination, to the taxable period or events which started or occurred after July 22, 1998.

<sup>18</sup> IRC § 7491(a)(1), (2).

<sup>19</sup> National Taxpayer Advocate 1998-2004 Annual Report to Congress.

<sup>20</sup> T.C. Memo. 2005-113.

**TABLE 3.4.1, TRADE OR BUSINESS EXPENSE CASES & ISSUES**

Issue	Type of Taxpayer	
	Sole Proprietor	Business Entity
Ordinary and Necessary Trade or Business Expenses <sup>21</sup>	44	12
Casualty Loss <sup>22</sup>	5	2
Depreciation <sup>23</sup>	6	1
Expense Election under IRC § 179 <sup>24</sup>	1	1
Profit Objective <sup>25</sup>	10	0
Substantiation of Expenses <sup>26</sup>	25	2
Material Participation in Passive Activity <sup>27</sup>	1	0

**TABLE 3.4.2, PREVAILING PARTY IN TRADE OR BUSINESS EXPENSE COURT DECISIONS, PRO SE TAXPAYER VERSUS TAXPAYERS WITH REPRESENTATION**

Type Of Taxpayer	IRS	Taxpayer	Split	Total
<i>Pro Se</i>	39	2	5	46
Represented by Counsel	12	4	5	21
<b>Totals</b>	<b>51</b>	<b>6</b>	<b>10</b>	<b>67</b>

Over two-thirds of the taxpayers litigating trade or business issues represented themselves *pro se*. Table 3.4.2 shows that represented taxpayers fared better than their *pro se* counterparts. Taxpayers with representation received full or partial relief in 43 percent of the cases litigated (nine of 21), while *pro se* taxpayers received relief only 15 percent of the time (seven of 46).

<sup>21</sup> IRC § 162(a) allows deductions for ordinary and necessary trade or business expenses paid or incurred during the taxable year.

<sup>22</sup> IRC § 165(a) allows a deduction for any loss sustained during the taxable year that is not compensated for by insurance or otherwise.

<sup>23</sup> IRC § 167(a) provides for a depreciation deduction for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) of property used in the trade or business or held for the production of income.

<sup>24</sup> Under IRC § 179, a taxpayer may make an election to expense certain depreciable business assets.

<sup>25</sup> IRC § 183(a) provides that no deduction attributable to an activity shall be allowed if such activity is not engaged in for profit.

<sup>26</sup> IRC § 6001 requires a taxpayer to maintain books and records that substantiate income, deductions, and credits, including adequate records to substantiate deductions claimed as trade or business expenses. For certain expenses, IRC 274(d) requires taxpayers substantiate by adequate records (1) the amount of such expense or other item; (2) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift; (3) the business purpose of the expense or other item; and (4) the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift.

<sup>27</sup> IRC § 469 disallows a deduction for taxpayers engaged in a “passive activity” unless the taxpayer materially participates in that activity. IRC § 469(c)(2) includes any rental activity in the definition of “passive activity.”

### COURT DECISIONS

Table 3.4.3 reflects the disposition of court decisions in each category of cases.

**TABLE 3.4.3, PREVAILING PARTY IN TRADE OR BUSINESS EXPENSE COURT DECISIONS, SOLE PROPRIETORS VERSUS BUSINESS ENTITIES**

Type Of Taxpayer	IRS	Taxpayer	Split	Total
Sole Proprietors	42	3	7	52
Business Entities	9	3	3	15
<b>Totals</b>	<b>51</b>	<b>6</b>	<b>10</b>	<b>67</b>

#### Sole Proprietors

Fifty-two of the 67 cases analyzed were litigated by taxpayers in their capacity as sole proprietors. In many instances, sole proprietors claimed trade or business deductions without adequately documenting those expenses with contemporaneous record-keeping.

For example, in *Blanning v. Commissioner*,<sup>28</sup> a taxpayer who was convicted of illegal business practices failed to file federal tax returns for the years in question. The IRS denied trade or business expense deductions for those years, as the taxpayer could not provide records of expenses. Generally, a taxpayer must show that he or she is entitled to deductions with respect to business activity. Taxpayers are required to maintain books and records in support of the items reported on a return. In this case, the *pro se* taxpayer attempted to meet his burden by reconstructing his expenditures through secondary and incomplete documentation, such as credit card statements. The Tax Court held that under the *Cohan* rule, inadequately substantiated expenses may be estimated where it is shown that a taxpayer is unquestionably entitled to some deductions. Accordingly, the court held that the taxpayer was entitled to business deductions of \$15,123 and \$5,492 for the years in question.

Another common trade or business issue litigated by sole proprietors relates to whether an activity had a profit objective. To be considered a bona fide trade or business, an activity must be conducted with continuity and regularity, and the taxpayer's primary purpose for engaging in the activity must be for income or profit. The test for whether a taxpayer conducted an activity for profit is whether he or she entered into or continued the activity with an actual or honest objective of making a profit.<sup>29</sup>

In *Lopez v. Commissioner*,<sup>30</sup> the *pro se* taxpayers appealed the Tax Court's determination that the taxpayers did not have a sufficient profit motive in their Amway activities to be entitled to trade or business expense deductions. The taxpayers were distributors for

<sup>28</sup> T.C. Memo. 2004-2001.

<sup>29</sup> IRC § 183; Treas. Reg. § 1.183-2(a).

<sup>30</sup> 94 A.F.T.R.2d (RIA) 7075 (5th Cir. 2004).

Amway, a marketer of various personal and household products. In their Amway activities, the taxpayers sold products at cost to both their downline distributors and their customers, many of whom were friends of the taxpayers. Although the taxpayers had no prior business experience, they did not seek advice from unbiased, independent business sources. The Court of Appeals for the Fifth Circuit affirmed the Tax Court's decision, noting that the taxpayers spent much of their Amway-related time socializing with the family and friends they had recruited as downline distributors.

### Business Entities

Fifteen of the 67 trade or business expense cases tried in federal courts involved business entities, which had slightly greater success than sole proprietors in receiving a favorable outcome. Taxpayers received full or partial relief from the courts in 40 percent of the business entity cases (six of 15), compared to less than 20 percent in sole proprietor cases (10 of 52). This success rate may be explained in part by the fact that most business entities were represented in court by attorneys, whereas most sole proprietors represented themselves.

Congress enacted IRC § 179 to provide an incentive for businesses to invest in new tangible personal property. Section 179(a) allows a business a deduction for property used in a trade or business that it must otherwise add to its capital account and depreciate. However, certain kinds of property are excluded from the definition of "section 179 property," including "property which is used predominantly to furnish lodging or in connection with the furnishing of lodging."<sup>31</sup> An exception to the exclusion is "property used by a hotel or motel in connection with the trade or business of furnishing lodging where the predominant portion of the accommodations is used by transients."<sup>32</sup>

In *Shirley v. Commissioner*,<sup>33</sup> the Tax Court considered whether a taxpayer in the business of renting and selling motor homes qualified for the § 179 deduction for the cost of a motor home. The IRS argued that motor homes generally are property used predominantly to furnish lodging. The taxpayer contended that motor homes are primarily for transportation. In the alternative, the taxpayer also argued that even if a motor home is predominantly used for lodging, it qualifies for the exception to the exclusion because it is lodging used by transients, and most of the taxpayer's customers were short-term renters (less than 30 days). The Tax Court, while recognizing the difficulty in making an "all or nothing" classification of mixed-use assets, concluded that the purchase of a motor home rented primarily to transients qualified for the deduction under § 179.

<sup>31</sup> See IRC § 179(d)(1); IRC § 50(b)(2).

<sup>32</sup> IRC § 50(b)(2)(B).

<sup>33</sup> T.C. Memo 2004-188.

### CONCLUSION

Taxpayers continue to challenge the IRS with regard to trade or business expense deductions, and represented taxpayers fare better than their *pro se* counterparts. While the IRS generally prevails, the courts do not always favor the IRS's application of the law to the taxpayer's facts and circumstances. This is an indication that the definition of an allowable trade or business expense is open to interpretation.

Many of the cases analyzed demonstrate taxpayer confusion over legal requirements. The IRS can assist these taxpayers and minimize litigation by continuing to provide clear guidance on the deductibility of trade or business expenses. Through education, outreach, and partnering with stakeholders, the IRS can help taxpayers understand what trade or business deductions are allowable and how to substantiate those expenses. The IRS should continue to reach out proactively to taxpayers about this issue, particularly sole proprietors. By helping them understand the legal requirements, the IRS will encourage taxpayers to comply with their tax obligations and minimize the risk of litigation.

## LITIGATED

ISSUE #5

## FRIVOLOUS ISSUES PENALTY UNDER INTERNAL REVENUE CODE SECTION 6673

## SUMMARY

During the 12 months between June 1, 2004, and May 31, 2005, the federal court system issued decisions in at least 67 cases involving the IRC § 6673 penalty. This penalty is assessed against taxpayers for maintaining a case primarily for delay, raising frivolous arguments, or unreasonably failing to pursue administrative remedies.<sup>1</sup> In 18 of these cases, the United States Tax Court decided not to impose the penalty but did warn taxpayers that sanctions may be appropriate in the future if they engaged in similar conduct.<sup>2</sup> Nonetheless, we include these cases in our analysis to help illustrate what conduct the courts will and will not tolerate.

## PRESENT LAW

The United States Tax Court is authorized to impose a penalty against a taxpayer if he or she institutes or maintains a proceeding primarily for delay, takes a frivolous position in a proceeding, or unreasonably fails to pursue available administrative remedies.<sup>3</sup> The maximum penalty is \$25,000.<sup>4</sup> In some cases, the IRS requests that the Tax Court impose the penalty; in other cases, however, the Tax Court may exercise its discretion *sua sponte*,<sup>5</sup> in imposing the penalty.

Any attorney or other person admitted to practice before the Tax Court who unreasonably and vexatiously multiplies the proceedings in any case could have to personally pay the excess costs, expenses, and attorneys' fees incurred because of such conduct.<sup>6</sup>

<sup>1</sup> IRC § 6673(a)(1).

<sup>2</sup> *Arevalo v. Comm'r*, 124 T.C. 244 (2005); *Arvin v. Comm'r*, T.C. Summ. Op. 2004-108; *Cozzens v. Comm'r*, T.C. Memo. 2005-98; *Dalton v. Comm'r*, T.C. Memo. 2005-7; *Dashiell v. Comm'r*, T.C. Memo. 2004-210; *Dues v. Comm'r*, T.C. Memo. 2005-109; *Funk v. Comm'r*, 123 T.C. 213 (2004); *Greendyk v. Comm'r*, T.C. Memo. 2005-108; *Mathews v. Comm'r*, T.C. Memo. 2005-84; *McBride v. Comm'r*, T.C. Memo. 2004-178; *Olson v. Comm'r*, T.C. Memo. 2004-234; *Rewerts v. Comm'r*, T.C. Memo. 2004-248; *Rinn v. Comm'r*, T.C. Memo. 2004-246; *Sides v. Comm'r*, T.C. Memo. 2004-141; *Shireman v. Comm'r*, T.C. Memo. 2004-155; *Smith v. Comm'r*, T.C. Memo. 2004-198; *Snyder v. Comm'r*, T.C. Memo. 2005-89; *Thompson v. Comm'r*, T.C. Memo. 2004-204. In each of these cases, the taxpayers were spared the IRC § 6673 penalty by the Tax Court's good graces.

<sup>3</sup> IRC § 6673(a)(1)(A),(B),(C).

<sup>4</sup> IRC § 6673(a)(1).

<sup>5</sup> "Sua sponte" is a term that means without prompting or suggestion. Thus, for conduct that the Tax Court finds particularly offensive, the Tax Court can choose to impose a penalty under IRC § 6673 even if the IRS has not requested that the penalty be imposed. See, e.g., *Brunner v. Comm'r*, T.C. Memo. 2004-187 (Tax Court imposed the penalty without being asked to do so when the taxpayer made numerous frivolous constitutional arguments regarding the requirement to file an income tax return).

<sup>6</sup> IRC § 6673(a)(2).



Taxpayers who institute an action pursuant to IRC § 7433<sup>7</sup> in a United States district court for damages against the United States could be subject to a maximum penalty of \$10,000 if the court determines that the taxpayer's position in the proceedings is frivolous or groundless.<sup>8</sup> In addition, federal laws and rules of procedure permit other federal courts to apply penalties for raising frivolous arguments or using litigation tactics only to delay the collection process.<sup>9</sup> However, this report covers only IRC § 6673 due to the number of cases involving this Code section.

### ANALYSIS OF LITIGATED CASES

We analyzed 67 opinions issued between June 1, 2004 and May 31, 2005 that addressed the IRC § 6673 penalty. All but ten of these cases were decided in the United States Tax Court.<sup>10</sup> A detailed listing of these cases appears in Table 5 in Appendix 3. Sixty-four of these cases involved individual taxpayers and the other three involved business taxpayers. Only three taxpayers were represented by attorneys. Taxpayers appeared *pro se* in the remaining 64 cases. Taxpayers were spared the penalty in 18 cases. Therefore, taxpayers were unrepresented in nearly all cases, and a majority of the cases were decided in the IRS's favor.

Taxpayers repeatedly raised the following arguments that the Tax Court has deemed frivolous and groundless, and consequently were subject to a penalty under IRC § 6673(a)(1):

- ◆ **Invalid notice of deficiency:** Taxpayers argued that a notice of deficiency was invalid because the person sending it lacked sufficient authority to sign the notice. For instance, in one case a taxpayer argued that the notice was invalid because it was not signed by the Secretary of the Treasury, and his request for a delegation order was not met.<sup>11</sup> In rejecting the taxpayer's argument, the Tax Court explained that the Secretary's authority to issue a notice of deficiency was delegated to IRS service

<sup>7</sup> IRC § 7433(a) allows taxpayers a cause of action against the IRS, as follows:

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

<sup>8</sup> IRC § 6673(b)(1).

<sup>9</sup> 28 U.S.C.A § 1927 (providing Federal courts can sanction an attorney or any other person admitted to practice before any court of the United States or any Territory thereof for unreasonably and vexatiously multiplying proceedings).

<sup>10</sup> In nine cases, the Tax Court awarded a penalty under IRC § 6673(a)(1) and the taxpayers appealed to the applicable United States Court of Appeals. The judgment of the Tax Court regarding the penalty was affirmed in each of those cases. We also identified one case involving IRC § 6673(b)(1), where the taxpayers instituted an action under IRC § 7433. See *Mathis v. U.S.*, 94 A.F.T.R.2d (RIA) 6340 (D. S.D. 2004) (court required taxpayers to pay a penalty of \$3,000 under IRC § 6673(b)(1) because taxpayers knew at the time they instituted their action that their claims had been rejected in previous cases).

<sup>11</sup> *Henderson v. Comm'r, T.C.* Memo. 2004-157 (holding that the Memphis Service Center Director had the authority to sign the notice of deficiency; therefore, taxpayer failed to raise any legitimate arguments and the proceeding was instituted and maintained primarily for delay). Compare *Thompson v. Comm'r, T.C.* Memo. 2004-204 (Tax Court declined to impose the penalty even though the taxpayer argued the notice of deficiency was invalid because it wasn't signed by the Secretary or his delegate).

center directors, and the Code does not require the IRS to provide the taxpayer with a copy of the delegation order.<sup>12</sup> In a different case, a taxpayer attempted to argue that he did not receive a notice of deficiency. In rejecting the taxpayer's argument, the Tax Court relied on the testimony given at trial to conclude that the taxpayer may have intentionally provided the IRS with the wrong mailing address.<sup>13</sup> Moreover, the Tax Court noted that the taxpayer ignored the Court's explicit previous warning that any further proceedings would be subject to an IRC § 6673 penalty if frivolous issues were raised.<sup>14</sup> Contrast these cases with *Rewerts v. Commissioner*, T.C. Memo. 2004-248, in which the Tax Court declined to impose the penalty when the taxpayer argued the notice of deficiency was invalid. In its analysis, the Tax Court noted that there was no evidence the taxpayer had previously been a litigant in the Tax Court, and no evidence the taxpayer had been given a warning of the possible imposition of the penalty if he continued making his arguments.

- ◆ **Income is not taxable:** In one case, a taxpayer argued that he should not be subject to an income tax because he was a minister and his income was remuneration directly to his church to be used for charitable purposes. The taxpayer also contended his pension plan payments and Social Security payments were exempt from federal income tax because he donated the majority of his income to his church and was an agent of the tax exempt religious order.<sup>15</sup> In rejecting the taxpayer's arguments, the Tax Court noted that the taxpayer did not receive the pension or social security benefits in his capacity as a minister, but rather received them from his former job with the motion picture industry. Moreover, the taxpayer paid rent and other expenses before distributing the remainder of his income to the church. Therefore, the taxpayer was not relieved of his obligation to pay federal income tax and did not enjoy the same tax-exempt status as the church.<sup>16</sup>
- ◆ **IRS failed to notify taxpayer of its authority to collect taxes provided in the Internal Revenue Code:** Taxpayers also asserted the frivolous argument that the IRS had no authority to collect income tax.<sup>17</sup> In rejecting the taxpayers' arguments, the Tax Court emphasized that it has consistently imposed § 6673 penalties in lien and levy cases where the taxpayer raised frivolous arguments as to the validity of the Federal income tax.

<sup>12</sup> *Henderson v. Comm'r*, T.C. Memo. 2004-157.

<sup>13</sup> *Lehmann v. Comm'r*, T.C. Memo. 2005-90 (holding that the taxpayer cannot deliberately refuse the delivery of a statutory notice and then claim to have defeated actual receipt, and therefore, the taxpayer's failure to inform the IRS of his new address was a frivolous argument).

<sup>14</sup> *Id.*

<sup>15</sup> *Buras v. Comm'r*, T.C. Summ. Op. 2004-161. For more discussion of common taxpayer arguments regarding whether wages are taxable, see *Howard v. Comm'r*, T.C. Memo. 2005-144; *Krueger v. Comm'r*, T.C. Memo. 2005-105; *Howard v. Comm'r*, T.C. Memo. 2005-100. In each of these cases, the arguments were rejected as frivolous and without merit and the Tax Court imposed a penalty.

<sup>16</sup> *Id.*

<sup>17</sup> *Kolker v. Comm'r*, T.C. Memo. 2004-288; *Gilligan v. Comm'r*, T.C. Memo. 2004-194; *Gavigan v. Comm'r*, T.C. Summ. Op. 2004-155.

- ◆ **Raising frivolous issues in Collection Due Process hearings for the purpose of delay:** The taxpayer always has a right to a Collection Due Process hearing with the IRS Appeals function when the IRS is proposing its first levy action or after it files a notice of federal tax lien with respect to any tax periods.<sup>18</sup> Taxpayers must be informed in writing of their right to a hearing. Some taxpayers abuse this right to a hearing to delay the collection process.<sup>19</sup> During the hearings, when the taxpayer continues to raise frivolous arguments, Appeals officers provide the taxpayer with a copy of cases that illustrate the consequence (i.e., the IRC § 6673 penalty) for raising such frivolous issues.<sup>20</sup> Moreover, in many of these lien and levy cases, the Tax Court gave explicit warning regarding the possibility of a sanction under IRC § 6673 but taxpayers nonetheless continued making frivolous arguments in further proceedings.<sup>21</sup>

In only one case in our review did the taxpayer ask the Tax Court to sanction the IRS's attorney.<sup>22</sup> In concluding that the taxpayer's motion for sanctions was without merit, the Tax Court found that the taxpayer had been uncooperative and strongly cautioned the taxpayer against proceeding in bad faith in future Tax Court litigation.<sup>23</sup>

### CONCLUSION

Taxpayers did not raise any genuine issues in the cases we analyzed. These taxpayers raised frivolous arguments, which have been repeatedly litigated and rejected in the past. The courts have consistently stated that these boilerplate arguments are frivolous and without merit. These cases best serve as a warning to taxpayers and their representatives – the IRS will ask the Tax Court to impose the IRC § 6673 penalty on taxpayers who raise frivolous or groundless issues or institute proceedings for the purpose of delay. Moreover, even if the IRS does not request a penalty, taxpayers may not escape sanctions if the Tax Court finds their conduct to fall within the activities Congress made subject to IRC § 6673.

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<sup>18</sup> IRC §§ 6320 and 6330.

<sup>19</sup> *Williams v. Comm'r*, T.C. Memo. 2005-94 (holding that taxpayers who abuse the protections provided to them under IRC § 6330 by bringing dilatory or frivolous actions will be subject to a penalty under IRC § 6673).

<sup>20</sup> *Poe v. Comm'r*, T.C. Memo. 2005-107. In that case, the Tax Court quoted from language in the attachment to the notice of determination where the taxpayer was clearly warned about the possibility of a penalty. In addition, IRS provided taxpayer with a copy of prior cases where the same arguments had been deemed frivolous.

<sup>21</sup> See *Burke v. Comm'r*, 124 T.C. 189 (2005) (penalty of \$2500 awarded when taxpayer did not raise any legitimate issues at trial and frivolous issues that had previously been addressed by the Tax Court in taxpayer's earlier proceeding for other tax years were perpetrated).

<sup>22</sup> *Casey v. Comm'r*, T.C. Memo. 2004-288.

<sup>23</sup> *Id.*

## LITIGATED

ISSUE #6

## NEGLIGENCE PENALTY UNDER INTERNAL REVENUE CODE SECTION 6662(b)(1)

## SUMMARY

We reviewed 57 cases involving the accuracy related penalty under Internal Revenue Code section 6662(b)(1) issued by federal courts during the 12 months from June 1, 2004 to May 31, 2005.<sup>1</sup> This penalty is assessed against taxpayers for underpayment of tax due to the taxpayer's negligence or disregard of tax rules or regulations and was generally decided in conjunction with other issues in the cases analyzed. While IRC § 6662 provides an accuracy-related penalty for other conduct as well,<sup>2</sup> this report covers only the negligence penalty because of the number of cases litigated on this issue. Taxpayers can avoid the accuracy-related penalty only if they are able to demonstrate that the negligence was due to "reasonable cause" and that they "acted in good faith."<sup>3</sup> As the cases analyzed here indicate, it is often difficult for the taxpayer to satisfy the reasonable cause and good faith standard.

## PRESENT LAW

The federal income tax system relies on the willingness of taxpayers to voluntarily and accurately report their income, file returns, and pay taxes. Civil penalties have been incorporated into the system to encourage voluntary compliance and deter noncompliance. The assessment of penalties can also promote fairness by subjecting noncompliant taxpayers to an additional cost.<sup>4</sup>

Underpayment of taxes occasioned by taxpayers' negligence or disregard of the rules and regulations will generally be subject to a 20 percent penalty of the underpaid tax.<sup>5</sup> For purposes of this provision, the term "negligence" means any failure to make a reasonable attempt to comply with the Internal Revenue Code and the term "disregard" includes careless, reckless or intentional disregard of the law.<sup>6</sup> The 20 percent penalty for negligence will be applied when a taxpayer fails to:

<sup>1</sup> These cases are identified by researching opinions published through online legal research services.

<sup>2</sup> IRC § 6662(b) sets forth the causes for underpayments of tax for which the accuracy-related penalty can be assessed;

(b) Portion of underpayment to which section applies. This section shall apply to the portion of any underpayment which is attributable to one or more of the following:

- (1) Negligence or disregard of rules or regulations.
- (2) Any substantial understatement of income tax.
- (3) Any substantial valuation misstatement under chapter 1.
- (4) Any substantial overstatement of pension liabilities.
- (5) Any substantial estate or gift tax valuation understatement.

<sup>3</sup> IRC § 6664(c).

<sup>4</sup> Policy Statement P-1-18, dated April 27, 1992, IRM § 1.2.1.2.3.

<sup>5</sup> IRC § 6662(a). Additionally, taxpayers will be subjected to a 40 percent penalty if an underpayment for a taxable year is attributable to a substantial valuation overstatement. IRC § 6662(e).

<sup>6</sup> IRC § 6662(c); *see also* Treas. Reg. § 1.6662-3(b)(1), (2).

- ◆ Make a reasonable attempt to comply with the tax code;
- ◆ Exercise ordinary and reasonable care when preparing a tax return;
- ◆ Keep adequate books and records; and
- ◆ Substantiate items properly.<sup>7</sup>

The IRS has identified other indicators of negligence, including:

- ◆ Failure to report income included on an information return;<sup>8</sup>
- ◆ Failure to make a reasonable inquiry into the correctness of a deduction, credit, or exclusion on the tax return that seems too good to be true under the circumstances;<sup>9</sup> and
- ◆ Items on individual returns of partners or S corporation shareholders that are clearly inconsistent with the treatment of those items on the returns of the partnership or S Corporation.<sup>10</sup>

The Internal Revenue Manual also provides guidelines for IRS examiners to consider when assessing the negligence penalty.<sup>11</sup>

The IRS bears the burden of production in court with regard to whether the negligence penalty is appropriate.<sup>12</sup> The burden of production requires the IRS to come forward with sufficient evidence to indicate that it is appropriate to impose the penalty.<sup>13</sup> Once the IRS meets this burden, the penalty is mandatory unless the taxpayer can demonstrate that he or she acted with reasonable cause and in good faith. The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all the pertinent facts and circumstances.<sup>14</sup>

To prove reasonable cause and good faith, taxpayers must primarily show that they made a reasonable attempt to assess their correct tax liabilities, and that any error was the result of an honest misunderstanding of fact or law that is reasonable considering all facts and circumstances.<sup>15</sup> When analyzing the circumstances of the case, the courts can consider the taxpayer's experience, knowledge, and education level.<sup>16</sup>

<sup>7</sup> Treas. Reg. § 1.6662-3(b)(1).

<sup>8</sup> Treas. Reg. § 1.6662-3(b)(1)(i).

<sup>9</sup> Treas. Reg. § 1.6662-3(b)(1)(ii).

<sup>10</sup> Treas. Reg. § 1.6662-3(b)(1)(iii) and (iv).

<sup>11</sup> IRM 20.1.5.7.1(3) provides that the following are indicators of negligence:

Unreported or understated income; significantly overstated deductions or credits; careless, improper, or exaggerated deduction; misrepresenting or miscategorizing deductions in such a way as to conceal their true nature; unexplainable items; inadequately kept books or records; cooperative state programs and state reports showing a negligence penalty (taking into account other factors and not relying entirely on the findings of another taxing agency); substantial errors on an issue (*e.g.*, Earned Income Tax Credit) that had been adjusted in a prior year; and providing one's return preparer with incorrect or incomplete information.

<sup>12</sup> IRC § 7491(c).

<sup>13</sup> *Id.*

<sup>14</sup> Treas. Reg. § 1.6664-4(b)(1).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

**ANALYSIS OF LITIGATED CASES**

Of the 57 published opinions reviewed, 17 cases involved individual income taxpayers and 40 involved business taxpayers. The accuracy-related penalty was not the primary issue in the majority of the cases analyzed, but was considered in conjunction with underlying tax deficiencies. The IRS prevailed in 39 cases (68 percent), while taxpayers prevailed in 13 cases (23 percent), and five cases ended in split decisions. Taxpayers were represented by counsel in 24 cases and were *pro se* in the 33 others. A detailed listing of these cases appears in Table 6 in Appendix 3.

A common reason for courts ruling against taxpayers was the lack of any evidence offered by taxpayers to demonstrate that there was reasonable cause and that the taxpayers acted in good faith with respect to the underpayments of tax.<sup>17</sup> In other cases, taxpayers advanced cogent explanations, but had varying degrees of success, as demonstrated by a summary of the arguments set out below:

- ◆ **Taxpayer Did Not Receive Information Returns:** This argument is rarely successful in defeating the IRC § 6662(b)(1) penalty because there are other methods taxpayers could use to compute their income, and the burden of reporting the proper amounts of income and paying the proper amount of tax is not contingent upon a third party supplying information returns. Moreover, the IRS views the failure to include on an income tax return an amount of income shown on an information return as a strong indication of negligence.<sup>18</sup> If, however, taxpayers do not receive an information return, such as a Form W-2 (*Wage and Tax Statement*), but nonetheless still attempt to comply with the tax laws, then they may be able to demonstrate reasonable cause and avoid the accuracy-related penalty.<sup>19</sup>
- ◆ **Information Provided on Information Return Was Incorrect:** One taxpayer asserted the reasonable cause defense based on reliance on inaccurate information on a Form W-2 Wage and Tax Statement, which failed to include the taxpayer's bonus amount. The Tax Court upheld the negligence penalty on the basis that the taxpayer failed to make a reasonable attempt to comply with the provisions of the Internal Revenue Code.<sup>20</sup> The taxpayer appealed, and the Tenth Circuit Court of Appeals determined that the Tax Court's conclusion as to the reasonableness of the taxpayer's conduct was not erroneous and affirmed the penalties.<sup>21</sup>
- ◆ **Unsubstantiated Arguments by Taxpayers:** A number of taxpayers tried to make the argument that the positions taken on their returns were reasonable, however,

<sup>17</sup> *Rahimi v. Comm'r*, T.C. Summ. Op. 2004-156 (holding that there was nothing in the record indicating that the taxpayers acted with reasonable cause); *Montagne v. Comm'r*, T.C. Memo. 2004-252.

<sup>18</sup> Treas. Reg. § 1.6662-3(b)(i).

<sup>19</sup> *Namyst v. Comm'r*, T.C. Memo. 2004-263 (holding that taxpayers must make an effort to comply with the tax law based on the information that they have).

<sup>20</sup> *Williams v. Comm'r*, T.C. Memo. 2003-97.

<sup>21</sup> *Williams v. Comm'r*, 95 A.F.T.R. 2d (RIA) 764 (10th Cir. 2005)(taxpayer's employer later issued corrected W-2s to taxpayer but taxpayer made no effort to file amended returns for the years in question).

they failed to provide any documentation to substantiate their claims.<sup>22</sup> Maintaining accurate and complete books and records is crucial because it demonstrates that taxpayers are trying to be responsible, notwithstanding the fact that unintentional errors were committed.

- ◆ **Reliance on a Tax Professional:** Reliance on a tax professional is a defense to the negligence penalty if the reliance is reasonable based upon all of the facts and circumstances of the taxpayer's situation.<sup>23</sup> This defense was a recurring issue in the cases reviewed, and a number of taxpayers prevailed against the IRS by making the necessary showing of proof that:
  - ◆ The tax adviser was a competent professional who had sufficient expertise to justify reliance;
  - ◆ The taxpayer provided all necessary information to the preparer; and
  - ◆ The taxpayer relied in good faith on the adviser's judgment.<sup>24</sup>

Taxpayers were not granted relief from the penalty where:

- ◆ The taxpayer did not review the tax return before signing;<sup>25</sup>
- ◆ Reliance on tax professional was not reasonable;<sup>26</sup> and
- ◆ The taxpayer did not provide the tax professional with accurate and complete information.<sup>27</sup>

<sup>22</sup> *Dumond v. Comm'r*, T.C. Summ.Op. 2005-11 (holding that taxpayer could not substantiate deductions reported on Schedule C); *Biazar v. Comm'r*, T.C. Memo. 2004-270 (taxpayers failed to establish reasonable cause or good faith in failing to maintain records for Schedule C expenses); *Starkovich v. Comm'r*, T.C. Summ. Op. 2004-173 (taxpayer failed to keep adequate books and records).

<sup>23</sup> Treas. Reg. § 1.6664-4(c).

<sup>24</sup> *Caspian Consulting Group, Inc. v. Comm'r*, T.C. Memo. 2005-54; *Bernardo v. Comm'r*, T.C. Memo. 2004-199. *Compare Mediaworks, Inc. v. Comm'r*, T.C. Memo. 2004-177 (citations omitted) (concluding that none of the three requirements were met: (1) the mere fact that someone is a certified public accountant does not make him a competent advisor; (2) taxpayer didn't provide advisor with all necessary information and actually gave advisor misinformation; and (3) taxpayer did not rely in good faith on advisor's judgment when taxpayer had the same deduction disallowed in an earlier year).

<sup>25</sup> *Bien-Aime v. Comm'r*, T.C. Memo. 2004-281 (failure to carefully review return before signing is not reasonable). See also *McNair v. Comm'r*, T.C. Summ. Op. 2004-115.

<sup>26</sup> *Kooyers v. Comm'r*, T.C. Memo. 2004-281 (holding that relying on tax professional was unreasonable when the tax scheme was without economic substance has repeatedly been rejected by courts and taxpayers offered no evidence that adviser was competent); *Van Scoten v. Comm'r*, T.C. Memo. 2004-275 (reliance on another investor in the same partnership was unreasonable); *Hansen v. Comm'r*, T.C. Memo. 2004-269 (advice from general partner or partner's counsel was not reasonable, as such advice was not free from an inherent conflict of interest); *Barnes v. Comm'r*, T.C. Memo. 2004-266 (involving IRC § 6653, the predecessor to today's negligence penalty, holding that reliance on tax matters partner was not objectively reasonable, as the partner was also the promoter of the shelter); *Hitchen v. Comm'r*, T.C. Memo. 2004-265 (reliance on promoters of investment unreasonable).

<sup>27</sup> *Benson v. Comm'r*, T.C. Memo. 2004-272 (holding that taxpayer is ultimately responsible for the correctness of the tax return and must furnish the return preparer with the information necessary for preparing the return). See also *CMA Consolidated, Inc. v. Comm'r*, T.C. Memo. 2005-16; *Delaware Corp. v. Comm'r*, T.C. Memo. 2004-280.

## MOST LITIGATED

SECTION  
THREE

When courts are making fact and circumstance determinations in cases where the taxpayer raises the reasonable cause defense, courts take a number of factors into consideration, including the taxpayer's education, knowledge, and experience.<sup>28</sup> These factors allow the courts to exercise discretion in upholding the penalty in some cases while disallowing the penalty in others, even though the underlying facts are similar. For example, the court will factor into its analysis the taxpayer's ability to understand the tax issue and the issue's level of complexity.<sup>29</sup> Thus, the more sophisticated or educated the taxpayer, the less likely it is that the reasonable cause defense will prevail. The existence of reasonable cause in any given case depends on all the facts and circumstances of the case,<sup>30</sup> and what constitutes reasonable for one taxpayer may not be reasonable for another.

**CONCLUSION**

Courts overturned the IRS's imposition of the IRC § 6662(b)(1) penalty in whole or in part in 32 percent of the opinions reviewed, an increase of 13 percent over last year's percentage of taxpayer victories.<sup>31</sup> Taxpayers continued to experience problems that are largely of their own making (*e.g.*, failure to keep adequate and complete records, not independently reviewing tax returns prepared by professionals, and not providing any evidence or argument to demonstrate reasonable cause) in litigating this issue. Taxpayer victories in a percentage of the cases do, however, raise the question of whether the IRS always exercises proper oversight on the imposition of the negligence penalty.

The accuracy-related penalty has appeared in the Most Litigated Issues section of the National Taxpayer Advocate's Annual Report to Congress for four of the past six years.<sup>32</sup> As discussed elsewhere in this report, the IRS abates a large percentage of other types of penalties. This fact, and the significant number of taxpayers who prevailed on reasonable cause in this year's litigated cases, indicate that the IRS should study if the accuracy-related penalty is achieving its original goal of promoting voluntary compliance by encouraging accurate tax returns. At some point, the penalty should be applied less frequently if it is achieving its intended goal.

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<sup>28</sup> Treas. Reg. § 1.6664-4(b)(1).

<sup>29</sup> *Malone v. Comm'r*, T.C. Memo. 2005-69 (although taxpayer was a practicing attorney, tax was not his area of expertise and reasonable minds could differ as to the tax implications of his business transactions).

<sup>30</sup> IRM 20.1.1.3.1(1).

<sup>31</sup> National Taxpayer Advocate 2004 Annual Report to Congress 536.

<sup>32</sup> National Taxpayer Advocate 1999 Annual Report to Congress, vol. III-2; National Taxpayer Advocate 2000 Annual Report to Congress 67; National Taxpayer Advocate 2001 Annual Report to Congress 261; and National Taxpayer Advocate 2003 Annual Report to Congress 364.



**LITIGATED  
ISSUE #7**

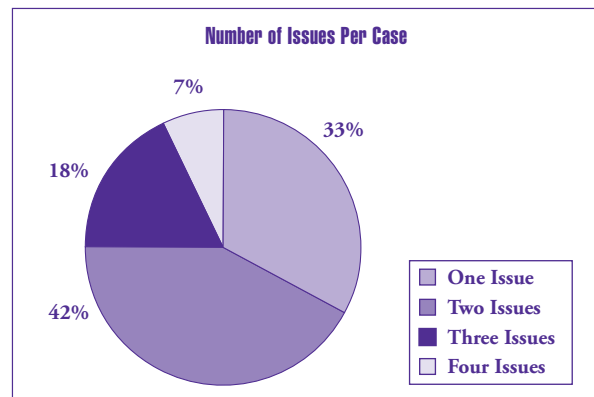
**FAMILY STATUS ISSUES UNDER INTERNAL REVENUE CODE  
SECTIONS 2, 21, 24, 32, AND 151**

**SUMMARY**

The Earned Income Tax Credit (EITC),<sup>1</sup> dependency exemption,<sup>2</sup> head of household filing status,<sup>3</sup> child tax credit,<sup>4</sup> and child and dependent care credit<sup>5</sup> are issues that frequently arise in the same cases and involve similar factual determinations. Therefore, this report combines these issues into a single “family status” category. Family status issues involve exemptions, credits, and filing status claimed by taxpayers when they prepare their federal tax returns.

During our review period (June 1, 2004 through May 31, 2005), the federal courts decided 45 cases concerning these issues. Two-thirds of these cases dealt with multiple family status credits and deductions, with the determination of one issue often affecting others. For example, a denial of the dependency exemption will result in the summary denial of the child tax credit, and may jeopardize eligibility for head of household filing status and the child and dependent care credit. The chart below illustrates the extent to which these claims were litigated together.

**TABLE 3.7.1, FAMILY STATUS ISSUES PER CASE**



<sup>1</sup> IRC § 32.

<sup>2</sup> IRC § 151.

<sup>3</sup> IRC § 2(b).

<sup>4</sup> IRC § 24.

<sup>5</sup> IRC § 21.

**PRESENT LAW**<sup>6</sup>**Earned Income Tax Credit – IRC § 32**

The Earned Income Tax Credit (EITC), a refundable credit for low income working taxpayers, is the nation's largest need-based anti-poverty program.<sup>7</sup> For the 2004 tax year, 22 million taxpayers claimed over \$38 billion in credits.<sup>8</sup> Taxpayers may qualify for the credit with a “qualifying child”<sup>9</sup> or with “income-only.”<sup>10</sup> For tax year 2005, the maximum EITC for a taxpayer with two or more qualifying children is \$4,400, while a taxpayer satisfying the income-only requirements may claim up to \$399.<sup>11</sup>

All taxpayers claiming the EITC must meet several general eligibility requirements.<sup>12</sup> Eligibility for the qualifying child credit requires that the child satisfy additional tests.<sup>13</sup> Special tiebreaker rules apply where more than one taxpayer is eligible to claim a qualifying child for the EITC.<sup>14</sup> A taxpayer qualifying under the income-only rules must meet residency<sup>15</sup> and age<sup>16</sup> requirements, and must not be claimed as a dependent by another taxpayer.<sup>17</sup> The maximum earned income for a taxpayer claiming the EITC with a qualifying child is significantly higher than for a taxpayer claiming the income-only EITC.<sup>18</sup>

<sup>6</sup> The Working Families Tax Relief Act, Pub. L. No. 108-311 (2004) (WFTRA) made changes to family status definitions that affect all Code sections discussed here, effective starting in 2005. Discussion in this section reflects Code provisions for 2004 and earlier.

<sup>7</sup> IRS, *IRS Earned Income Tax Credit (EITC) Initiative: Final Report to Congress*, October 2005 1-2 (Oct. 2005); see also Frank Sammartino, Eric Toder and Elaine Maag, *Providing Federal Assistance for Low Income Families Through the Tax System: A Primer*, The Urban-Brookings Tax Policy Center, 8 (July 2002) at <http://www.urban.org/uploadedpdf/410526.pdf>.

<sup>8</sup> IRS, *Data Book 2004*, Publication 55B, Table 5, 9. The Data Book 2004 pertains to Fiscal Year 2004, from October 1, 2003 through September 30, 2004.

<sup>9</sup> IRC § 32(c)(1)(A)(i).

<sup>10</sup> IRC § 32(c)(1)(A)(ii).

<sup>11</sup> Rev. Proc. 2004-71.

<sup>12</sup> Taxpayers must meet requirements with respect to earned income, (IRC § 32(a)(2)(A)) adjusted gross income (IRC § 32(a)(2)(B)), citizenship or residency (IRC § 32(c)(1)(D)), taxpayer identification number (IRC § 32(c)(1)(F)), filing status (IRC § 32(d)), and maximum investment income (IRC § 32(i)).

<sup>13</sup> These include residency (IRC § 32(c)(3)(A)(ii)), relationship (IRC § 32(c)(3)(B)), and age (IRC § 32(c)(3)(C)) tests.

<sup>14</sup> IRC § 32(c)(1)(C). If only one of the taxpayers claiming the qualifying child for the EITC is the child's parent, only the parent may treat the child as a qualifying child. If two of the taxpayers are the child's parents, and they do not file a joint return, only the parent with whom the child lived the longest during the taxable year may claim the qualifying child. If the child spent the same amount of time with each parent, only the parent with the higher adjusted gross income will be eligible to claim the qualifying child. Finally, if none of the taxpayers who claim the EITC with respect to the same child is a parent of the child, only the taxpayer with the highest adjusted gross income may treat the child as a qualifying child.

<sup>15</sup> IRC § 32(c)(1)(A)(ii)(I).

<sup>16</sup> IRC § 32(c)(1)(A)(ii)(II).

<sup>17</sup> IRC § 32(c)(1)(A)(ii)(III).

<sup>18</sup> To claim the EITC for tax year 2005, the taxpayer's AGI must be less than \$35,263 (\$37,263 for married taxpayers filing jointly) if the taxpayer has more than one qualifying child, \$31,030 (\$33,030 for married filing jointly) if the taxpayer has one qualifying child, or \$11,750 (\$13,750 for married filing jointly) if the taxpayer does not have any qualifying children. (Rev. Proc. 2004-71).

### Dependency Exemption – IRC § 151

IRC § 151 governs dependency and personal exemptions. A taxpayer may claim a dependency exemption for each individual who qualifies as a dependent under IRC §152<sup>19</sup> and either (1) is a child of the taxpayer who has not attained the age of 19 by the end of the taxable year (24 for full-time students or any age if permanently and totally disabled), or (2) has gross income for the calendar year that is less than the exemption amount.<sup>20</sup>

### Head of Household – IRC § 2(b)

The head of household filing status under IRC § 2(b) entitles a taxpayer to a larger standard deduction and a more favorable tax rate than a single taxpayer or a married taxpayer filing separately.<sup>21</sup> A taxpayer must meet two main requirements to qualify as a head of household. First, he or she must be unmarried or “considered unmarried” at the end of the taxable year.<sup>22</sup> Second, the taxpayer must maintain a household that is the principal place of abode of an individual for whom the taxpayer is entitled to a dependency exemption under IRC §151, with one exception: where a taxpayer provides over half the cost of maintaining a household that is the principal place of abode for a son or daughter, the taxpayer may file as head of household notwithstanding his inability to claim the dependency exemption.<sup>23</sup>

<sup>19</sup>IRC § 152 defines a dependent as follows: A dependent is an individual who is a U.S. citizen and receives more than half of his or her support from the taxpayer and is either: (1) A son or daughter of the taxpayer, or a descendant of either, (2) A stepson or stepdaughter of the taxpayer, (3) A brother, sister, stepbrother, or stepsister of the taxpayer, (4) The father or mother of the taxpayer, or an ancestor of either, (5) A stepfather or stepmother of the taxpayer, (6) A son or daughter of a brother or sister of the taxpayer, (7) A brother or sister of the father or mother of the taxpayer, (8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer, or (9) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to § 7703, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer’s household. IRC § 152(a). Additionally, a child meets the definition of a dependent if that child: (a) is the legally adopted child of the taxpayer; (b) is a member of the individual’s household through placement by an authorized placement agency for legal adoption by the taxpayer; and (c) is the foster child of the individual and, for the taxable year of that taxpayer, resides with the taxpayer and is a member of that household. IRC § 152(b)(2).

<sup>20</sup>IRC § 151(c)(1). For tax year 2005, the exemption amount is \$3,200 (Rev. Proc. 2004-71).

<sup>21</sup>For tax year 2005, the standard deduction for head of household is \$7,300 (Rev. Proc. 2004-71).

<sup>22</sup>IRC § 2(b)(1). Under IRC § 2(b)(2), a taxpayer is not considered married if he is legally separated from his spouse under a decree of divorce or separate maintenance, or if his spouse is a nonresident alien. A taxpayer is also considered unmarried if he meets the requirements set forth in IRC § 7703(b), which requires, among other things, that the taxpayer has lived apart from his spouse during the last six months of the taxable year, and furnished over one-half the cost of maintaining his household as the principal home of a child as defined in IRC § 151(c)(3). A taxpayer whose spouse died during the taxable year is considered married for that year. IRC § 2(b)(2)(D).

<sup>23</sup>A taxpayer may qualify as head of household if the taxpayer is not eligible for the dependency exemption provided the taxpayer maintains a household for a son or daughter and is unmarried at the end of the year. To maintain a household, the taxpayer must pay more than fifty percent of the cost of maintaining the home. Treas. Reg. § 1.2-2(b)(3)(i).

**Child Tax Credit – IRC § 24**

Eligibility to claim the child tax credit, as codified in IRC § 24, is based on a three-part test. A taxpayer must be able to claim a dependency exemption for the child, the child must be under 17 years of age, and the child must bear a relationship to the taxpayer described in IRC § 32(c)(3)(B).<sup>24</sup> The child tax credit is applied to any taxes due and is refundable for some taxpayers.<sup>25</sup>

**Child and Dependent Care Credit - IRC § 21**

The child and dependent care credit under IRC § 21 is intended to help offset the child and dependent care expenses a taxpayer incurs so that the taxpayer may pursue employment. To claim the credit, the taxpayer must have contributed over half the cost of maintaining a household in which one or more “qualifying individuals” reside.<sup>26</sup> Taxpayers must also meet requirements with respect to filing status<sup>27</sup> and earned income.<sup>28</sup> A taxpayer may claim a credit of up to 35 percent<sup>29</sup> of child and dependent care expenses paid, up to a maximum of \$3,000 for a taxpayer with one qualifying individual or \$6,000 with two or more qualifying individuals.<sup>30</sup> A taxpayer may not claim this credit based on household or care expenses paid to a relative unless the relative is age 19 or older and not a dependent of the taxpayer.<sup>31</sup>

**ANALYSIS OF LITIGATED CASES****Pro Se Analysis**

Taxpayers were represented by counsel in only six of 45 cases litigated this year.<sup>32</sup> Many of the cases were highly fact-specific and involved a complicated web of statutory provisions. It appeared that many of the taxpayers did not understand either the law or how to

<sup>24</sup> IRC § 24(c). The child tax credit adopts the EITC relationship test, in which a qualifying child may be (1) a son, daughter, stepson, stepdaughter, or descendant of any such individual, (2) a brother, sister, stepbrother, stepsister, or a descendant of any such individual, or (3) a foster child placed with the taxpayer by an authorized placement agency. For tax year 2004 and earlier, the relationship test includes a requirement that the taxpayer care for individuals in the latter two categories as the taxpayer's own child.

<sup>25</sup> IRC § 24(d).

<sup>26</sup> IRC §§ 21(a)(1), 21(e)(1). A “qualifying individual” is (1) a dependent of the taxpayer under the age of 13 and with respect to whom the taxpayer is entitled to a dependency exemption, or (2) a dependent or a spouse who is physically or mentally unable to care for himself. IRC § 21(b)(1).

<sup>27</sup> IRC § 21(e)(2).

<sup>28</sup> IRC § 21(d)(1). Special rules with respect to the calculation of earned income apply for a spouse of a taxpayer who is a student or who is incapable of caring for himself. IRC § 21(d)(2).

<sup>29</sup> This percentage is reduced one percentage point for every \$2,000 the taxpayer's adjusted gross income exceeds \$15,000, but not below 20 percent. IRC § 21(a)(2).

<sup>30</sup> IRC § 21(c).

<sup>31</sup> IRC §21(e)(6).

<sup>32</sup> *Brettin v. Comm'r*, T. C. Summ. Op. 2004-95, *Hutchinson v. Comm'r*, T.C. Summ. Op. 2005-58, *In re Adkins*, 2004 WL 2334716 (Bankr. D. Kan. 2004), *In re James*, 406 F.3d 1340 (11th Cir. 2005), *In re Schwarz*, 314 B.R. 433 (D. Neb. 2004), *Jondabl v. Comm'r*, T.C. Memo 2005-55.

present relevant evidence. The assistance of counsel might have made a difference in the outcome of these cases. A detailed listing of all family status cases analyzed appears in Table 7 in Appendix 3.

## Earned Income Tax Credit - IRC § 32

### Introduction

Twenty cases involving the EITC were litigated during the reporting period,<sup>33</sup> down from 28 in the previous year.<sup>34</sup> The cases essentially fell into three general categories: (1) Qualifying Child, (2) Income Related, and (3) Married Person Filing Status.

### Qualifying Child

Eleven cases involved the issue of whether a taxpayer had a “qualifying child” for claiming the EITC,<sup>35</sup> with all cases decided against the taxpayer. As previously noted, a qualifying child must meet age, residency, and relationship requirements<sup>36</sup> and may only be claimed for EITC purposes by one taxpayer.<sup>37</sup>

In six cases, taxpayers were not able to show that the children lived with them for more than half of the taxable year.<sup>38</sup> Two cases were decided against the taxpayers because they failed to demonstrate that they cared for the children as their own.<sup>39</sup> One case involved the age test, in which the court determined the taxpayer’s stepson was not a qualifying child because he was 21 years old and not a full-time student.<sup>40</sup>

<sup>33</sup> *Booker v. Comm’r*, T.C. Summ. Op. 2004-92, *Colstock v. Comm’r*, T.C. Summ. Op. 2005-54, *Diaz v. Comm’r*, T.C. Memo. 2004-145, *In re Adkins*, 2004 WL 2334716 (Bankr. D. Kan. 2004), *In re James*, 406 F.3d 1340 (11th Cir. 2005), *Jones v. Comm’r*, T.C. Summ. Op. 2004-133, *Joseph v. Comm’r*, T.C. Summ. Op. 2004-137, *Lear v. Comm’r*, T.C. Memo 2004-253, *Mbachu v. Comm’r*, T.C. Summ. Op. 2004-168, *Mbanu v. Comm’r*, T.C. Summ. Op. 2005-56, *Muncy v. Comm’r*, T.C. Summ. Op. 2005-20, *Myers v. Comm’r*, T.C. Summ. Op. 2005-15, *Ogu v. Comm’r*, T.C. Summ. Op. 2004-87, *Petty v. Comm’r*, T.C. Memo 2004-144, *Rogers v. Comm’r*, T.C. Memo. 2004-245, *Sampson v. Comm’r*, T.C. Summ. Op. 2005-30, *Somsukcharean v. Comm’r*, T.C. Summ. Op. 2005-49, *Toney v. Comm’r*, T.C. Memo. 2004-165, *Urena v. Comm’r*, T.C. Summ. Op. 2004-138, *Varner v. Comm’r*, T.C. Summ. Op. 2004-111.

<sup>34</sup> National Taxpayer Advocate 2004 Annual Report to Congress 560.

<sup>35</sup> *Booker v. Comm’r*, T.C. Summ. Op. 2004-92, *Colstock v. Comm’r*, T.C. Summ. Op. 2005-54, *Jones v. Comm’r*, T.C. Summ. Op. 2004-133, *Joseph v. Comm’r*, T.C. Summ. Op. 2004-137, *Lear v. Comm’r*, T.C. Memo 2004-253, *Mbachu v. Comm’r*, T.C. Summ. Op. 2004-168, *Muncy v. Comm’r*, T.C. Summ. Op. 2005-20, *Ogu v. Comm’r*, T.C. Summ. Op. 2004-87, *Somsukcharean v. Comm’r*, T.C. Summ. Op. 2005-49, *Urena v. Comm’r*, T.C. Summ. Op. 2004-138, *Varner v. Comm’r*, T.C. Summ. Op. 2004-111.

<sup>36</sup> IRC § 32(c)(3).

<sup>37</sup> IRC § 32(c)(1)(C).

<sup>38</sup> *Jones v. Comm’r*, T.C. Summ. Op. 2004-133, *Mbachu v. Comm’r*, T.C. Summ. Op. 2004-168, *Muncy v. Comm’r*, T.C. Summ. Op. 2005-20, *Ogu v. Comm’r*, T.C. Summ. Op. 2004-87, *Urena v. Comm’r*, T.C. Summ. Op. 2004-138, *Varner v. Comm’r*, T.C. Summ. Op. 2004-111.

<sup>39</sup> *Booker v. Comm’r*, T.C. Summ. Op. 2004-92, *Somsukcharean v. Comm’r*, T.C. Summ. Op. 2005-49. The WFTRA eliminated the requirement to care for children as one’s own, which would have changed the outcome in *Somsukcharean*. In *Booker*, however, because the child claimed by the taxpayer did not meet the relationship test, the EITC would still have been denied.

<sup>40</sup> *Jones v. Comm’r*, T.C. Summ. Op. 2004-133.

Two cases involved qualifying children who could be claimed by more than one taxpayer.<sup>41</sup> Because only one taxpayer may claim a qualifying child for the EITC, the Tax Court applied the tiebreaker rules of IRC § 31(c)(1)(C) in each case and determined that only the taxpayer with the higher adjusted gross income (AGI) was entitled to claim the child.

#### *Income-Related*

Four taxpayers were denied the EITC due to income qualification issues.<sup>42</sup> One taxpayer did not meet the central requirement of the earned income tax credit – that is, he did not have any earned income.<sup>43</sup> In the other three cases, taxpayers disputed whether certain items of income should be considered “earned income” for the purposes of calculating the EITC:<sup>44</sup> *Rogers v. Commissioner* (wages earned in a penal institution), *Myers v. Commissioner* (trust income), and *Petty v. Commissioner* (gambling winnings). In all three cases, the court found the items in dispute were includible as earned income, thus rendering the taxpayers in *Myers* and *Sampson* ineligible to claim the EITC and reducing the credit for the taxpayer in *Petty*.

#### *Married Taxpayer Filing Status*

Four cases involved taxpayers whose filing statuses were in dispute.<sup>45</sup> Under IRC § 32(d), a married taxpayer must file a joint tax return to claim the EITC. One taxpayer conceded that he was married and had not filed a joint return.<sup>46</sup> The other three cases involved determinations under IRC § 7703(b). Two taxpayers were unable to provide evidence that their spouses did not live with them during the last six months of the taxable year.<sup>47</sup> In the remaining case, the taxpayer did not qualify as unmarried because he did not provide over half the cost of maintaining a household that was the principal home for more than one-half of the taxable year of a child for whom he was entitled to claim a dependency exemption.<sup>48</sup>

<sup>41</sup> *Joseph v. Comm’r*, T.C. Summ. Op. 2004-137, *Lear v. Comm’r*, T.C. Memo 2004-253.

<sup>42</sup> *Myers v. Comm’r*, T.C. Summ. Op. 2005-15, *Petty v. Comm’r*, T.C. Memo 2004-144, *Rogers v. Comm’r*, T.C. Memo. 2004-245, *Sampson v. Comm’r*, T.C. Summ. Op. 2005-30.

<sup>43</sup> *Sampson v. Comm’r*, T.C. Summ. Op. 2005-30.

<sup>44</sup> *Petty v. Comm’r*, T.C. Memo 2004-144, *Rogers v. Comm’r*, T.C. Memo. 2004-245, *Myers v. Comm’r*, T.C. Summ. Op. 2005-15.

<sup>45</sup> *Colstock v. Comm’r*, T.C. Summ. Op. 2005-54, *Diaz v. Comm’r*, T.C. Memo. 2004-145, *Mbanu v. Comm’r*, T.C. Summ. Op. 2005-56, *Toney v. Comm’r*, T.C. Memo. 2004-165.

<sup>46</sup> *Mbanu v. Comm’r*, T.C. Summ. Op. 2005-56.

<sup>47</sup> *Colstock v. Comm’r*, T.C. Summ. Op. 2005-54, *Diaz v. Comm’r*, T.C. Memo. 2004-145.

<sup>48</sup> *Toney v. Comm’r*, T.C. Memo. 2004-165.

### Dependency Exemption – IRC § 151

The dependency exemption was litigated in 31 family status cases,<sup>49</sup> with taxpayers prevailing in two of them.<sup>50</sup>

Eighteen dependency exemption cases involved the application of IRC § 152(e), the support test for a child of divorced parents.<sup>51</sup> Under IRC § 152(e), the exemption goes to the custodial parent unless that parent signs a written declaration releasing the exemption.<sup>52</sup> Taxpayers in eight divorced parent cases were noncustodial parents claiming the dependency exemption based on provisions in their divorce decrees.<sup>53</sup> Although the language in the decrees appeared to grant the noncustodial parents the exemptions, the decrees did not conform to the statutory requirements of IRC § 152(e).<sup>54</sup> Thus, all claims were denied, as “it is well settled that state courts, by their decisions, cannot determine issues of federal tax law.”<sup>55</sup>

<sup>49</sup> *Allsopp v. Comm’r*, T.C. Summ. Op. 2004-154, *Bernardo v. Comm’r*, T.C. Memo. 2004-199, *Booker v. Comm’r*, T.C. Summ. Op. 2004-92, *Bouch v. Comm’r*, T.C. Summ. Op. 2004-167, *Boulden v. Comm’r*, T.C. Summ. Op. 2004-124, *Brettin v. Comm’r*, T.C. Summ. Op. 2004-95, *Brunner v. Comm’r*, T.C. Memo. 2004-187, *aff’d* 2005 U.S. App. LEXIS 14885 (3rd Cir., July 8, 2005), *Caputi v. Comm’r*, T.C. Memo. 2004-283, *Colstock v. Comm’r*, T.C. Summ. Op. 2005-54, *Corrigan v. Comm’r*, T.C. Memo. 2005-119, *Curello v. Comm’r*, T.C. Summ. Op. 2005-23, *Elkins v. Comm’r*, T.C. Summ. Op. 2004-84, *Emanie v. Comm’r*, T.C. Summ. Op. 2004-78, *Howard-Crowley v. Comm’r*, T.C. Summ. Op. 2004-150, *Hubbard v. Comm’r*, T.C. Summ. Op. 2004-148, *Hutchinson v. Comm’r*, T.C. Summ. Op. 2005-58, *Jones v. Comm’r*, T.C. Summ. Op. 2004-133, *Joseph v. Comm’r*, T.C. Summ. Op. 2004-137, *Lear v. Comm’r*, T.C. Memo. 2004-253, *McNair v. Comm’r*, T.C. Summ. Op. 2004-115, *Montwillo v. Comm’r*, T.C. Summ. Op. 2004-123, *Sampson v. Comm’r*, T.C. Summ. Op. 2005-30, *Scott v. Comm’r*, T.C. Summ. Op. 2004-129, *Somsukcharean v. Comm’r*, T.C. Summ. Op. 2005-49, *Spanier v. Comm’r*, T.C. Summ. Op. 2004-106, *Szasz v. Comm’r*, T.C. Summ. Op. 2004-169, *Toney v. Comm’r*, T.C. Memo. 2004-165, *Varner v. Comm’r*, T.C. Summ. Op. 2004-111, *Wells v. Comm’r*, T.C. Summ. Op. 2004-153, *Wentland v. Comm’r*, T.C. Summ. Op. 2004-134, *Werther v. Comm’r*, T.C. Summ. Op. 2005-28.

<sup>50</sup> *Corrigan v. Comm’r*, T.C. Memo. 2005-119, *Elkins v. Comm’r*, T.C. Summ. Op. 2004-84.

<sup>51</sup> *Allsopp v. Comm’r*, T.C. Summ. Op. 2004-154, *Bouch v. Comm’r*, T.C. Summ. Op. 2004-167, *Boulden v. Comm’r*, T.C. Summ. Op. 2004-124, *Caputi v. Comm’r*, T.C. Memo. 2004-283, *Corrigan v. Comm’r*, T.C. Memo. 2005-119, *Curello v. Comm’r*, T.C. Summ. Op. 2005-23, *Elkins v. Comm’r*, T.C. Summ. Op. 2004-84, *Emanie v. Comm’r*, T.C. Summ. Op. 2004-78, *Howard-Crowley v. Comm’r*, T.C. Summ. Op. 2004-150, *Hutchinson v. Comm’r*, T.C. Summ. Op. 2005-58, *Montwillo v. Comm’r*, T.C. Summ. Op. 2004-123, *Muncy v. Comm’r*, T.C. Summ. Op. 2005-20, *Scott v. Comm’r*, T.C. Summ. Op. 2004-129, *Spanier v. Comm’r*, T.C. Summ. Op. 2004-106, *Varner v. Comm’r*, T.C. Summ. Op. 2004-111, *Wells v. Comm’r*, T.C. Summ. Op. 2004-153, *Werther v. Comm’r*, T.C. Summ. Op. 2005-28. IRC § 152(e) also applies in the case of parents that have never been married. 121 T.C. 245, 251 (2003).

<sup>52</sup> IRC § 152(e)(2).

<sup>53</sup> *Allsopp v. Comm’r*, T.C. Summ. Op. 2004-154, *Curello v. Comm’r*, T.C. Summ. Op. 2005-23, *Emanie v. Comm’r*, T.C. Summ. Op. 2004-78, *Howard-Crowley v. Comm’r*, T.C. Summ. Op. 2004-150, *Muncy v. Comm’r*, T.C. Summ. Op. 2005-20, *Scott v. Comm’r*, T.C. Summ. Op. 2004-129, *Spanier v. Comm’r*, T.C. Summ. Op. 2004-106, *Werther v. Comm’r*, T.C. Summ. Op. 2005-28.

<sup>54</sup> To meet the requirements of IRC § 152(e), a parent may complete an IRS Form 8332 or submit a declaration that conforms to the substance of Form 8332. Treas. Reg. § 1.152-4T(a) A-3. Form 8332 requires a taxpayer to provide (1) the name of the noncustodial parent claiming the exemption (2) the noncustodial parent’s social security number, (3) the name of the child or children for whom the exemption is released, (4) the years for which the exemption is released, (5) the signature of the custodial parent and the date of the signature, and (6) the custodial parent’s social security number. IRS Form 8332, *Release of Claim to Exemption for Child of Divorced or Separated Parents* (December 2003).

<sup>55</sup> *Allsopp v. Comm’r*, T.C. Summ. Op. 2004-154.

In addition to the divorced parent cases, 11 cases involved the issue of whether the individual for whom the exemption was claimed qualified as a “dependent.”<sup>56</sup> To be classified as the dependent of a taxpayer for the years in question, an individual must receive over half of his or her support from the taxpayer and meet either a relationship or a residence test.<sup>57</sup> Ten taxpayers were denied the dependency exemption because they were unable to provide sufficient evidence that they had provided over half of the individual’s support.<sup>58</sup> The taxpayer in *McNair v. Commissioner* was denied the exemption because none of the children for whom she tried to claim it lived with her during the taxable years in question.<sup>59</sup>

One noncustodial parent who was denied the dependency exemption challenged the constitutionality of IRC § 152(e) on equal protection grounds. However, the Tax Court upheld the constitutionality of the provision under the rational basis standard, as it had a “legitimate congressional purpose.”<sup>60</sup> In two other cases, the issue of whether the taxpayer was entitled to the dependency exemption became moot because of determinations regarding other issues.<sup>61</sup>

### Head of Household Filing Status – IRC § 2(b)

Eighteen cases involving head of household status were litigated during the reporting period,<sup>62</sup> with a single taxpayer prevailing on his claim.<sup>63</sup>

Nine taxpayers were denied head of household filing status because they failed to demonstrate that they maintained a household that was the primary place of abode for a

<sup>56</sup> *Bernardo v. Comm’r*, T.C. Memo. 2004-199, *Booker v. Comm’r*, T.C. Summ. Op. 2004-92, *Brunner v. Comm’r*, T.C. Memo. 2004-187, *Colstock v. Comm’r*, T.C. Summ. Op. 2005-54, *Joseph v. Comm’r*, T.C. Summ. Op. 2004-137, *Lear v. Comm’r*, T.C. Memo 2004-253, *McNair v. Comm’r*, T.C. Summ. Op. 2004-115, *Somsukcharean v. Comm’r*, T.C. Summ. Op. 2005-49, *Szasz v. Comm’r*, T.C. Summ. Op. 2004-169, *Toney v. Comm’r*, T.C. Memo. 2004-165, *Wentland v. Comm’r*, T.C. Summ. Op. 2004-134.

<sup>57</sup> IRC § 152(a).

<sup>58</sup> *Bernardo v. Comm’r*, T.C. Memo. 2004-199, *Booker v. Comm’r*, T.C. Summ. Op. 2004-92, *Brunner v. Comm’r*, T.C. Memo. 2004-187, *Colstock v. Comm’r*, T.C. Summ. Op. 2005-54, *Joseph v. Comm’r*, T.C. Summ. Op. 2004-137, *Lear v. Comm’r*, T.C. Memo 2004-253, *Somsukcharean v. Comm’r*, T.C. Summ. Op. 2005-49, *Szasz v. Comm’r*, T.C. Summ. Op. 2004-169, *Toney v. Comm’r*, T.C. Memo. 2004-165, *Wentland v. Comm’r*, T.C. Summ. Op. 2004-134. It seems likely that some of these cases would have had different results under WFTRA.

<sup>59</sup> *McNair v. Comm’r*, T.C. Summ. Op. 2004-115.

<sup>60</sup> *Caputi v. Comm’r*, T.C. Memo. 2004-283.

<sup>61</sup> In *Jones v. Comm’r*, the court found the dependency exemption would not reduce the taxpayer’s taxable income. T.C. Summ. Op. 2004-133. In *Sampson v. Comm’r*, the court determined the taxpayer did not have earned income for the year. T.C. Summ. Op. 2005-30.

<sup>62</sup> *Bernardo v. Comm’r*, T.C. Memo. 2004-199, *Booker v. Comm’r*, T.C. Summ. Op. 2004-92, *Caputi v. Comm’r*, T.C. Memo. 2004-283, *Castleton v. Comm’r*, T.C. Memo 2005-58, *Colstock v. Comm’r*, T.C. Summ. Op. 2005-54, *Elkins v. Comm’r*, T.C. Summ. Op. 2004-84, *Emanie v. Comm’r*, T.C. Summ. Op. 2004-78, *Hubbard v. Comm’r*, T.C. Summ. Op. 2004-148, *Jondahl v. Comm’r*, T.C. Memo 2005-55, *Mbachu v. Comm’r*, T.C. Summ. Op. 2004-168, *Mbanu v. Comm’r*, T.C. Summ. Op. 2005-56, *Montwillo v. Comm’r*, T.C. Summ. Op. 2004-123, *Muncy v. Comm’r*, T.C. Summ. Op. 2005-20, *Ogu v. Comm’r*, T.C. Summ. Op. 2004-87, *Sampson v. Comm’r*, T.C. Summ. Op. 2005-30, *Szasz v. Comm’r*, T.C. Summ. Op. 2004-169, *Toney v. Comm’r*, T.C. Memo. 2004-165, *Varner v. Comm’r*, T.C. Summ. Op. 2004-111.

<sup>63</sup> *Hubbard v. Comm’r*, T.C. Summ. Op. 2004-148.



dependent.<sup>64</sup> In *Bernardo v. Commissioner*, a mother tried to file as head of household, claiming her home was her daughter's principal place of abode during the taxable year, though the daughter was frequently away pursuing her singing career. An individual may have "temporary absences from the household due to special circumstances" and still be considered a member of the taxpayer's household,<sup>65</sup> but the evidence implied that had the daughter found paid work elsewhere, she would probably have stayed there. The court found this inconsistent with the daughter having the same principal place of abode as the taxpayer, and denied the taxpayer head of household status.

Marital status was an issue in five filing status cases.<sup>66</sup> In two of these cases, the taxpayers admitted they were married,<sup>67</sup> one case involved an IRC § 7703(b) determination,<sup>68</sup> and the other two were based on sufficiency of evidence.<sup>69</sup>

Courts denied head of household filing status in two cases because the taxpayers had been denied exemptions for their dependents.<sup>70</sup> One taxpayer's claim was rendered moot by another determination.<sup>71</sup>

Finally, one taxpayer was denied head of household filing status solely because he could not show that he had contributed over half of the cost of maintaining a household.<sup>72</sup> We note here that the definition of "head of household" was modified by the Working Families Tax Relief Act.<sup>73</sup>

<sup>64</sup> *Bernardo v. Comm'r*, T.C. Memo. 2004-199, *Caputi v. Comm'r*, T.C. Memo. 2004-283, *Castleton v. Comm'r*, T.C. Memo 2005-58, *Emanie v. Comm'r*, T.C. Summ. Op. 2004-78, *Montwillo v. Comm'r*, T.C. Summ. Op. 2004-123, *Muncy v. Comm'r*, T.C. Summ. Op. 2005-20, *Ogu v. Comm'r*, T.C. Summ. Op. 2004-87, *Toney v. Comm'r*, T.C. Memo. 2004-165, *Varner v. Comm'r*, T.C. Summ. Op. 2004-111.

<sup>65</sup> Treas. Reg. § 1.2-2(c)(1).

<sup>66</sup> *Colstock v. Comm'r*, T.C. Summ. Op. 2005-54, *Hubbard v. Comm'r*, T.C. Summ. Op. 2004-148, *Jondabl v. Comm'r*, T.C. Memo 2005-55, *Mbachu v. Comm'r*, T.C. Summ. Op. 2004-168, *Mbanu v. Comm'r*, T.C. Summ. Op. 2005-56.

<sup>67</sup> *Colstock v. Comm'r*, T.C. Summ. Op. 2005-54, *Mbanu v. Comm'r*, T.C. Summ. Op. 2005-56.

<sup>68</sup> *Mbachu v. Comm'r*, T.C. Summ. Op. 2004-168.

<sup>69</sup> *Hubbard v. Comm'r*, T.C. Summ. Op. 2004-148, *Jondabl v. Comm'r*, T.C. Memo 2005-55.

<sup>70</sup> *Booker v. Comm'r*, T.C. Summ. Op. 2004-92, *Szasz v. Comm'r*, T.C. Summ. Op. 2004-169. The taxpayer can claim head of household filing status for maintaining a household that is considered the principal place of abode for the taxpayer's unmarried son, daughter, stepson, stepdaughter, or unmarried descendant of the taxpayer's son or daughter. For all other qualifying individuals, including the taxpayer's mother or father, the taxpayer must be able to claim the qualifying individual as a dependent in order to qualify for head of household filing status. IRC § 2(b)(1)(B).

<sup>71</sup> *Sampson v. Comm'r*, T.C. Summ. Op. 2005-30.

<sup>72</sup> *Elkins v. Comm'r*, T.C. Summ. Op. 2004-84.

<sup>73</sup> Pub. L. No. 108-311, Working Families Tax Relief Act of 2004 (WFTRA). WFTRA set a uniform definition of a "qualifying child" for tax benefits such as head of household filing status, dependency exemptions, child tax credit, child and dependent care credit, and earned income tax credit. For the child and dependent care credit, the taxpayer is no longer required to pay over half the cost of maintaining a household for the qualifying child. The taxpayer is still required to pay over half the cost of maintaining a household which is the primary residence for the qualifying child or qualifying relative in order to qualify for head of household filing status.

**Child Tax Credit – IRC § 24**

Sixteen cases involving the child tax credit were litigated during the reporting period.<sup>74</sup> In addition to the child's age and residency requirements, a taxpayer must also be able to claim a dependency exemption for the child.<sup>75</sup> Because qualifying for the dependency exemption is required to claim the child tax credit, the child tax credit will be summarily denied where the dependency exemption is denied, as it was in 15 cases.<sup>76</sup> In *Castleton v. Commissioner*, the IRS conceded the taxpayer was entitled to the dependency exemption, and the child met the age and residency requirements, so the credit was granted.<sup>77</sup>

**Child and Dependent Care Credit – IRC § 21**

The Child and Dependent Care Credit was litigated in three cases,<sup>78</sup> with a taxpayer prevailing in one. Two cases turned on the question of whether there was “sufficient evidence” to claim the credit. In both *Elkins v. Commissioner* and *Hubbard v. Commissioner*, the issue of whether the taxpayers had qualifying children was not in dispute. However, the IRS challenged both claims based on what it asserted was insufficient substantiation for the credit. In *Hubbard*, the Tax Court found that the respondent's disallowance of the child and dependent care credit was unwarranted.<sup>79</sup> In *Elkins*, however, the court found significant evidence that the dependent care center the taxpayer claimed to have used was not in operation during the year in issue, and sustained the IRS's disallowance of the credit.<sup>80</sup>

<sup>74</sup> *Allsopp v. Comm'r*, T.C. Summ. Op. 2004-154, *Bouch v. Comm'r*, T.C. Summ. Op. 2004-167, *Boulden v. Comm'r*, T.C. Summ. Op. 2004-124, *Brettin v. Comm'r*, T. C. Summ. Op. 2004-95, *Caputi v. Comm'r*, T.C. Memo. 2004-283, *Castleton v. Comm'r*, T.C. Memo 2005-58, *Colstock v. Comm'r*, T.C. Summ. Op. 2005-54, *Curello v. Comm'r*, T.C. Summ. Op. 2005-23, *Elkins v. Comm'r*, T.C. Summ. Op. 2004-84, *McNair v. Comm'r*, T.C. Summ. Op. 2004-115, *Montwillo v. Comm'r*, T.C. Summ. Op. 2004-123, *Muncy v. Comm'r*, T.C. Summ. Op. 2005-20, *Somsukcharean v. Comm'r*, T.C. Summ. Op. 2005-49, *Wells v. Comm'r*, T.C. Summ. Op. 2004-153, *Werther v. Comm'r*, T.C. Summ. Op. 2005-28, *Scott v. Comm'r*, T.C. Summ. Op. 2004-129.

<sup>75</sup> IRC § 24(c)(1)(A)-(C).

<sup>76</sup> *Allsopp v. Comm'r*, T.C. Summ. Op. 2004-154, *Bouch v. Comm'r*, T.C. Summ. Op. 2004-167, *Boulden v. Comm'r*, T.C. Summ. Op. 2004-124, *Brettin v. Comm'r*, T. C. Summ. Op. 2004-95, *Caputi v. Comm'r*, T.C. Memo. 2004-283, *Colstock v. Comm'r*, T.C. Summ. Op. 2005-54, *Curello v. Comm'r*, T.C. Summ. Op. 2005-23, *Elkins v. Comm'r*, T.C. Summ. Op. 2004-84, *McNair v. Comm'r*, T.C. Summ. Op. 2004-115, *Montwillo v. Comm'r*, T.C. Summ. Op. 2004-123, *Muncy v. Comm'r*, T.C. Summ. Op. 2005-20, *Somsukcharean v. Comm'r*, T.C. Summ. Op. 2005-49, *Wells v. Comm'r*, T.C. Summ. Op. 2004-153, *Werther v. Comm'r*, T.C. Summ. Op. 2005-28, *Scott v. Comm'r*, T.C. Summ. Op. 2004-129.

<sup>77</sup> *Castleton v. Comm'r*, T.C. Memo 2005-58.

<sup>78</sup> *Elkins v. Comm'r*, T.C. Summ. Op. 2004-84, *Hubbard v. Comm'r*, T.C. Summ. Op. 2004-148, *McNair v. Comm'r*, T.C. Summ. Op. 2004-115.

<sup>79</sup> *Hubbard v. Comm'r*, T.C. Summ. Op. 2004-148.

<sup>80</sup> *Elkins v. Comm'r*, T.C. Summ. Op. 2004-84.

### CONCLUSION

Family status provisions are fundamental components of the tax code, yet they have complicated and sometimes conflicting eligibility standards. Because of this, tax filing has become an increasingly difficult exercise for low income to middle income families. As the above analysis shows, taxpayers who wish to claim the family status credits and deductions often do not understand the qualification requirements or how to properly satisfy them. Further, such taxpayers often lack legal representation when they go before the courts. The changes to family status provisions made by the Working Families Tax Relief Act, effective in 2005, may ease the burden somewhat through the uniform definition of a qualifying child, though the changes would not have affected the outcome of the majority of the cases here.

**LITIGATED  
ISSUE #8****RELIEF FROM JOINT AND SEVERAL LIABILITY UNDER INTERNAL REVENUE  
CODE SECTION 6015****SUMMARY**

Married persons may elect to file their income tax returns jointly or separately. Spouses filing joint federal tax returns are jointly and severally liable for any deficiency or tax due.<sup>1</sup> Joint and several liability enables the IRS to collect the entire amount owed from either taxpayer.

IRC § 6015 provides three avenues for relief from joint and several liability. Section 6015(b) provides relief for deficiencies and is similar to the innocent spouse relief formerly provided in the repealed section 6013(e). Section 6015(c) also provides relief for deficiencies and allocates the liability to each spouse. Section 6015(f) provides equitable relief from deficiencies and underpayments if a taxpayer is not eligible for relief under 6015(b) or (c). A taxpayer generally files Form 8857, *Request for Innocent Spouse Relief*, to elect relief. We reviewed 45 federal court opinions involving relief under IRC § 6015 that were issued between June 1, 2004, and May 31, 2005.

**PRESENT LAW****Traditional Innocent Spouse Relief Under IRC § 6015(b)**

IRC § 6015(b)(1) provides full or partial relief from joint and several liability if the requesting taxpayer can demonstrate that:

1. A joint return was filed;
2. There was an understatement of tax attributable to erroneous items of the nonrequesting taxpayer;
3. Upon signing the return, the requesting taxpayer did not know or have reason to know of the understatement;
4. Taking into account all the facts and circumstances, it is inequitable to hold the requesting taxpayer liable; and
5. Requesting spouse made the election within two years after the IRS began collection activities with respect to the requesting taxpayer.

**Allocation of Liability Under IRC § 6015(c)**

IRC § 6015(c) relieves the requesting taxpayer of liability for deficiencies allocable solely to the nonrequesting taxpayer. To obtain relief under this section, the requesting taxpayer must demonstrate that:

1. A joint return was filed;
2. At the time the election is made, the taxpayers are unmarried, legally separated, or have not lived in the same household for the 12 months immediately preced-

<sup>1</sup> IRC § 6013(d)(3).

- ing the election; and
3. The election was made within two years after the IRS began collection activities with respect to the requesting taxpayer.

This election separates or allocates the deficiency arising under the joint return and allocates to each joint filer that portion of the deficiency attributable to each joint filer as calculated under the allocation provisions of § 6015(d).

A taxpayer is ineligible to make an election under IRC § 6015(c) if the IRS demonstrates that, at the time the return was signed, the requesting taxpayer had “actual knowledge” of any item giving rise to the deficiency. Additionally, relief is denied for amounts attributable to fraud, fraudulent schemes, or the certain transfers of disqualified assets.

#### Equitable Relief Under IRC § 6015(f)

IRC § 6015(f) provides equitable relief from deficiencies and underpayments for taxpayers who can demonstrate that:

1. Relief under IRC § 6015(b) or (c) is unavailable; and
2. Taking into account all the facts and circumstances, it would be inequitable to hold the taxpayer liable for the underpayment or deficiency.

IRC § 6015(f) directed the Secretary to issue procedures governing equitable relief. Rev. Proc. 2003-61 lists some of the factors considered by the IRS in determining whether equitable relief is appropriate.<sup>2</sup> These factors include marital status, economic hardship, knowledge or reason to know, legal obligations of the nonrequesting spouse, significant benefit to the requesting spouse, compliance with income tax laws, and abuse.

Unlike IRC § 6015(b) and (c), which relieve taxpayers from understatements of tax, equitable relief under IRC § 6015(f) is available for both understatements and underpayments.

<sup>2</sup> Rev. Proc. 2003-61, 2003-2 C.B. 296, superseding Rev. Proc. 2000-15, 2000-1 C.B. 447. Section 4.01 of this revenue procedure sets out seven threshold conditions that must be met by the taxpayer to be eligible for relief under IRC § 6015(f). The seven threshold conditions are: the requesting spouse filed a joint return for the taxable year for which he or she seeks relief; the relief is not available to the requesting spouse under IRC § 6015(b) or (c); the requesting spouse applies for relief no later than two years after the date of the IRS’s first collection activity; no assets were transferred between the spouses as part of a fraudulent scheme; the nonrequesting spouse did not transfer disqualified assets to the requesting spouse; the requesting spouse did not file, or fail to file, with a fraudulent intent; and the income tax liability from which the relief is sought is attributable to the nonrequesting spouse. Section 4.02 establishes three elements the taxpayer can prove to qualify for relief of an underpayment: spouses are no longer married, are legally separated, or not members of the same household for the last 12 months; the requesting spouse had no knowledge, or reason to know, that the nonrequesting spouse would not pay the income tax liability; and the requesting spouse will suffer economic hardship if the IRS does not provide relief. Finally, if the taxpayer satisfies the threshold conditions, but fails to prove the section 4.02 elements, section 4.03 sets out nonexclusive factors the IRS considers in determining whether equitable relief is appropriate.

### Judicial Review

Taxpayers seeking relief under IRC § 6015 generally file Form 8857, *Request for Innocent Spouse Relief*, to make the election. After reviewing the request, the IRS issues a notice of determination granting or denying relief. The taxpayer has 90 days from the date the IRS mails the notice to file a petition with the United States Tax Court.<sup>3</sup> If the taxpayer does not receive a determination within six months of filing Form 8857, he or she may petition the Tax Court any time after the six month period.<sup>4</sup> A taxpayer may also raise relief from joint and several liability in a Collection Due Process proceeding,<sup>5</sup> a deficiency proceeding,<sup>6</sup> or a refund suit.

### ANALYSIS OF LITIGATED CASES

We analyzed 45 opinions issued between June 1, 2004, and May 31, 2005. Forty-two cases were decided in the Tax Court, two were decided in United States Courts of Appeals,<sup>7</sup> and one was decided in United States district court.<sup>8</sup> Of the 45 cases, 33 were decided in favor of the IRS, 11 in favor of the taxpayer, and one was a split decision.<sup>9</sup> See Table 8 in Appendix 3 for a detailed breakdown of the decided cases.

While the courts considered many factors in determining the appropriateness of relief under IRC § 6015, the most significant was whether the requesting taxpayer had actual or constructive knowledge of the tax deficiency. All three avenues for relief contain a knowledge element making it the linchpin in most of the courts' analyses.<sup>10</sup> As such, taxpayers generally were not successful if they could not show a lack of actual or constructive knowledge in § 6015(b) or (f) cases.<sup>11</sup> In § 6015(c) cases, the IRS has the burden of prov-

<sup>3</sup> IRC § 6015(e)(1)(A)(ii).

<sup>4</sup> IRC § 6015(e)(1)(A)(i)(II).

<sup>5</sup> IRC § 6320(c); § 6330(c)(2)(A)(i).

<sup>6</sup> *Corson v. Comm'r*, 114 T.C. 354, 363 (2000).

<sup>7</sup> *Alt v. Comm'r*, 93 A.F.T.R.2d (RIA) 2561 (6th Cir. 2004), cert. denied, 125 S. Ct. 606 (Nov. 29, 2004) (affirming Tax Court's decision not to grant relief under IRC §§ 6015(b) and 6015(f) because petitioner failed to show it would be inequitable to hold her liable for the tax deficiency); *Pless v. Comm'r*, 111 Fed. Appx. 178 (4th Cir. 2004) (affirming Tax Court's decision not to grant relief under IRC § 6015(f) because petitioner failed to present evidence supporting her claim despite several opportunities to do so).

<sup>8</sup> *U.S. v. Haag*, 94 A.F.T.R.2d (RIA) 6665 (D. Mass. 2004) (granting the IRS's motion for partial summary judgment on the grounds that petitioner failed to meet two year filing requirement).

<sup>9</sup> The phrase "split decision" refers to cases where the IRS and the taxpayer prevailed in one or more aspects of the disputed issues. The split decision was *Levy v. Comm'r*, T.C. Memo. 2005-92 (granting relief for petitioner's 1979, 1991–1995 tax deficiencies, and denying relief for petitioner's 1996–1999 tax deficiencies).

<sup>10</sup> Taxpayer must establish he or she did not know, or have reason to know, of the deficiency. IRC § 6015(b)(1)(C); election not valid if the IRS can show the taxpayer had actual knowledge of the item giving rise to the deficiency. IRC § 6015(c)(3)(C); IRS will grant relief if the requesting taxpayer had no knowledge or reason to know nonrequesting taxpayer would not pay tax liability. Rev. Proc. 2003-61 § 4.02(1)(b). Knowledge or reason to know of the deficiency weighs against the requesting taxpayer in the "facts and circumstances test." Rev. Proc. 2003-61, § 4.03(2)(a)(iii).

<sup>11</sup> Rev. Proc. 2003-61 modifies Rev. Proc. 2000-15 to reduce the weight given to the knowledge or reason to know factor in section 6015(f) determinations. Rev. Proc. 2003-61, § 3.02.

ing actual knowledge. The IRS lost in four of 14 cases where the government failed to carry its burden of proof as to “actual knowledge” under IRC § 6015(c)(3)(C).

Taxpayers were often unrepresented in joint and several liability cases. Sixty percent (27 of 45) of the taxpayers litigated cases without the assistance of legal representation, *i.e.*, *pro se*. IRC § 6015(e)(4) directs the Tax Court to establish rules providing the nonrequesting spouse with adequate notice and an opportunity to intervene in the case.<sup>12</sup> The nonrequesting spouse intervened in approximately 18 percent of the cases (eight out of 45). Intervention may lead to longer and more expensive litigation, especially when IRS has conceded the issue of relief.<sup>13</sup>

Most of the decided cases were resolved on factual determinations involving knowledge, economic hardship, or whether it would be inequitable to hold the requesting spouse liable for the tax. Over one-half of the cases turned on the factor analysis in Rev. Proc. 2003-61 or its predecessor, Rev. Proc. 2000-15. The Tax Court issued four precedential opinions involving procedural legal issues.

#### *McGee v. Commissioner*

To be timely, a requesting spouse must elect relief from joint and several liability no later than two years from the date of the IRS’s first collection activity against the requesting spouse.<sup>14</sup> The IRS’s offset of a refund against an existing tax assessment under § 6402 is a collection activity that triggers the two-year period.<sup>15</sup> In *McGee v. Commissioner*, the IRS denied the requesting spouse’s claim for relief under IRC § 6015(f) solely on the basis that the claim was filed more than two years after the refund offset. The Tax Court concluded that the refund offset notice was a “collection-related” notice and that the IRS’s failure to provide the requesting spouse with adequate notice of the right to file a claim for relief under § 6015 violated § 3501(b)<sup>16</sup> of the Internal Revenue Service Restructuring and Reform Act of 1998, resulting in prejudice to the spouse. The Tax Court held that the two-year rule did not start to run and that the requesting spouse’s claim was timely.<sup>17</sup> In response, to the opinion, the IRS added language in 2005 to Publication 1, *Your Rights As A Taxpayer*, informing taxpayers that a refund offset could start the two-year period and revised the refund offset notices to inform taxpayers of the two-year rule and the taxpayer’s right to file an innocent spouse claim.<sup>18</sup> The IRS also issued a notice directing

<sup>12</sup> Tax Ct. R. 325.

<sup>13</sup> *Coleman v. Comm’r*, T.C. Summ. Op. 2004-165 (IRS had conceded relief; Tax Court sustained relief despite intervenor’s objection).

<sup>14</sup> IRC § 6015(b)(1)(E); IRC § 6015(c)(3)(B); Rev. Proc. 2003-61, §§ 4.01(3) and (5); Treas. Reg. § 1.6015-5(b)(1).

<sup>15</sup> *Campbell v. Comm’r*, 121 T.C. 290 (2003).

<sup>16</sup> Section 3501(b) provides that the Secretary must provide notice of an individual’s right to elect relief from joint and several liability in Publication 1 and in any “collection-related notices.”

<sup>17</sup> *McGee v. Comm’r*, 123 T.C. 314 (2004).

<sup>18</sup> IRS Pub. 1, *Your Rights As A Taxpayer* (May 2005).

counsel and IRS employees to no longer raise the timeliness issue unless the facts are distinguishable from *McGee*.<sup>19</sup>

#### *Van Arsdalen v. Commissioner*

Tax Court Rule 325 provides procedures for nonrequesting spouses to intervene in a § 6015 Tax Court proceeding. Pursuant to those rules, the IRS served notice on Ms. Van Arsdalen's former spouse, Mr. Murray, of his right to intervene in the case for the sole purpose of challenging Ms. Van Arsdalen's right to § 6015 relief. Mr. Murray filed a notice of intervention and expressed his intent to intervene for the sole purpose of supporting his former wife's right to relief. The Tax Court granted Ms. Van Arsdalen's motion to strike the notice because it unnecessarily restricted Mr. Murray's right to intervene. The Tax Court explained that neither the statute nor the Tax Court rules restricted the right of intervention.<sup>20</sup> The IRS revised the notice of filing that it serves on intervenors to be consistent with the court's holding by deleting the restrictive language.<sup>21</sup>

#### *Drake v. Commissioner*

The taxpayer filed a bankruptcy petition in September 2003. In January 2004, the IRS issued a notice of determination to the taxpayer denying her claim for relief under § 6015, and she timely filed a petition in Tax Court to challenge the determination. The Tax Court granted the IRS's motion to dismiss for lack of jurisdiction because the taxpayer filed her petition in violation of the automatic stay imposed by the Bankruptcy Code. The Tax Court noted that Congress did not include a tolling provision in § 6015 comparable to IRC § 6213(f), which would permit a taxpayer to file a petition for redetermination with the Tax Court after the automatic stay is no longer in effect.<sup>22</sup> The National Taxpayer Advocate recommended a legislative change in the 2004 Annual Report<sup>23</sup> to fix this unintended result.

#### *Friday v. Commissioner*

The IRS issued a notice of determination denying the taxpayer's claim for relief under § 6015 because it was untimely, and the taxpayer filed a petition in Tax Court to challenge the determination. Following the *McGee* opinion, the IRS filed a motion to remand the case back to IRS for a determination on the merits with respect to the taxpayer's claim for relief. The Tax Court denied the IRS's motion providing that if more time is needed to make a determination, the IRS should request a continuance. The Tax Court stated that it does remand CDP cases because the Commissioner retains jurisdiction under IRC § 6330(d)(2), but pointed out that § 6015 does not contain a parallel provision.<sup>24</sup> The

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<sup>19</sup> CC Notice, 2005-010 (May 20, 2005).

<sup>20</sup> *Van Arsdalen v. Comm'r*, 123 T.C. 135 (2004).

<sup>21</sup> CC Notice 2005-011, Q&A 6 (May 20, 2005).

<sup>22</sup> *Drake v. Comm'r*, 123 T.C. 320 (2004).

<sup>23</sup> National Taxpayer Advocate 2004 Annual Report to Congress 490.

<sup>24</sup> *Friday v. Comm'r*, 124 T.C. 220 (2005).



Commissioner no longer files motions to remand.<sup>25</sup>

### CONCLUSION

Joint and several liability under IRC § 6015 remains a highly litigated issue. Most of the cases are resolved on factual determinations of knowledge, reason to know, and hardship. Taxpayers' success or failure often turns on their willingness and ability to provide documentation. The Tax Court continues to resolve procedural issues requiring the IRS to modify its procedures in response to the court's rulings.

<sup>25</sup> CC Notice 2005-011, Q&A 30 (May 20, 2005)

## LITIGATED

ISSUE #9

## SUMMONS ENFORCEMENT UNDER INTERNAL REVENUE CODE SECTION 7604

## SUMMARY

We reviewed 44 federal court opinions on issues related to IRS summons enforcement during the 12 months from June 1, 2004, through May 31, 2005.<sup>1</sup> The IRS has the authority to summon the production of books, records or testimony from witnesses when investigating either a civil or criminal tax liability.<sup>2</sup> This information can be obtained from the person who is the subject of the investigation by serving a summons directly on that person.<sup>3</sup> The IRS can also obtain this information from third-party record keepers who are holding records relating to that person by serving summonses upon those record keepers and providing notice of the summons to the person identified in the summons.<sup>4</sup>

When a summons is served upon the person who is the subject of the investigation, that person may contest the legality of the summons by waiting until the IRS brings a proceeding to enforce the summons and raising appropriate arguments at that time.<sup>5</sup> When a summons is served upon a third-party record keeper, a person identified in the summons can challenge the legality of a summons by intervening in a proceeding or by bringing a proceeding to quash the summons.<sup>6</sup> Generally, the burden on the IRS to demonstrate the validity of the summons is minimal and the burden upon the taxpayer to demonstrate the illegality of the summons is formidable.<sup>7</sup> The taxpayer prevailed in whole or in part in only two of the 44 cases.<sup>8</sup>

<sup>1</sup> A summons is a document notifying the person to whom it is directed that he must appear on the day designated and answer claims or give testimony or produce certain books, papers or other data. *Albachten v. Corbett*, 156 F. Supp. 863 (S.D. Cal. 1957).

<sup>2</sup> IRC § 7602; Treas. Reg. § 301.7602-1.

<sup>3</sup> IRC §§ 7602(a) and 7603(a).

<sup>4</sup> IRC §§ 7603(b) and 7609(a).

<sup>5</sup> *Schulz v. IRS*, 395 F.3d 463 (2nd Cir. 2005), clarified by *Schulz v. IRS*, 413 F.3d 297 (2nd Cir. 2005 (clarifying that the initial second circuit opinion did not prohibit pre-hearing attachments).

<sup>6</sup> IRC § 7609(a) requires that anyone identified in a third-party summons (other than the person summoned) must be given notice of the summons. IRC § 7609(b) provides that those persons who are entitled to notice can intervene in a proceeding regarding the summons and can initiate a proceeding to quash the summons.

<sup>7</sup> The burden upon the government is slight for the statute must be read broadly in order to ensure that the enforcement powers of the IRS are not unduly restricted. *U.S. v. Judicial Watch, Inc.*, 371 F.3d 824 (D.C. Cir. 2004).

<sup>8</sup> *Doe v. U.S.*, 398 F.3d 686 (5th Cir. 2005), *rev'g Doe v. KPMG, L.L.P.*, 93 A.F.T.R.2d (RIA) 1808 (N.D. Tex. 2004) (reversing U.S. district court ruling that applied equitable tolling doctrine to extend statute of limitations for assessment while summons was litigated); *U.S. v. BDO Seidman, LLP*, 94 A.F.T.R.2d (RIA) 5066 (N.D. Ill. 2004); *U.S. v. BDO Seidman, LLP*, 95 A.F.T.R.2d (RIA) 1725 (N.D. Ill. 2005); *U.S. v. BDO Seidman*, 368 F.Supp.2d 858 (N.D. Ill. 2005) (one case, three opinions issued involving the attorney-client privilege and exceptions to that privilege.).

### PRESENT LAW

The IRS has broad authority under IRC § 7602 to issue summonses for the examination of a taxpayer's books and records or to direct testimony under oath.<sup>9</sup> The IRS has the authority to enforce a summons under IRC § 7604 by bringing suit in the appropriate United States district court. The IRS also has the authority to obtain information related to an investigation from third-party record keepers pursuant to IRC § 7609, provided that notice is given to those identified in the summons so that they have the opportunity to contest the summons. A summons can be contested on the grounds that the IRS has failed to satisfy the threshold requirements for issuing a summons, as set forth by the Supreme Court in *United States v. Powell*:

- ◆ The investigation must be conducted for a legitimate purpose;
- ◆ The inquiry must be relevant to that purpose;
- ◆ The IRS must not already possess the information; and
- ◆ All required administrative steps must have been taken.<sup>10</sup>

The IRS initially has the burden in a summons enforcement proceeding to show that the *Powell* requirements are satisfied. The burden shifts to the person attempting to quash the summons to demonstrate the *Powell* requirements were not met or that enforcement of the summons would be an abuse of process.<sup>11</sup> The IRS's burden in satisfying the *Powell* requirements is minimal, while the taxpayer's burden to demonstrate that one of the factors has not been satisfied is heavy.<sup>12</sup>

There are other limitations on the issuance of a summons, including the restriction against issuing summons *after* an IRS recommendation to the Department of Justice for criminal prosecution.<sup>13</sup> Additionally, the IRS may not obtain information protected by a statutory or common law privilege, such as:

- ◆ Attorney-client privilege;<sup>14</sup>
- ◆ Work product privilege;<sup>15</sup> or

<sup>9</sup> *U.S. v. Arthur Young & Co.*, 465 U.S. 805, 816 (1984) (stating, "In order to encourage effective tax investigations, Congress has endowed the IRS with expansive information-gathering authority . . .")

<sup>10</sup> *United States v. Powell*, 379 U.S. 48, 58-59 (1964).

<sup>11</sup> *La Mura v. U.S.*, 765 F.2d 974, 979 (11th Cir. 1985).

<sup>12</sup> The IRS burden can generally be satisfied by presenting the sworn affidavit of the agent who issued the summons attesting to the necessary facts. *Id.*

<sup>13</sup> IRC § 7602(d)(1).

<sup>14</sup> The attorney-client privilege generally provides protection from discovery of information where: (1) legal advice of any kind is sought, (2) from a professional legal advisor in his or her capacity as such, (3) the communication is related to this purpose, (4) made in confidence, (5) by the client, (6) and at the client's insistence protected, (7) from disclosure by the client or the legal advisor, (8) except where the privilege is waived. *U.S. v. Evans*, 113 F.3d 1457 (7th Cir. 1997), citing John Henry Wigmore, Evidence in Trials at Common Law § 2292 (John T. McNaughten rev. 1961).

<sup>15</sup> The work product doctrine protects against the discovery of documents and other tangible things prepared in anticipation of litigation. *U.S. v. BDO Seidman, LLP*, 95 A.F.T.R.2d (RIA) 1725 (N.D. Ill. 2005).

◆ Tax practitioner privilege.<sup>16</sup>

There are limitations to these privileges. For example, these privileges extend to “tax advice” but not to tax return preparation materials.<sup>17</sup> Additionally, the identities of clients are not generally considered privileged information, except in rare cases where so much of the actual confidential communication has been disclosed such that merely identifying the client would effectively disclose that communication.<sup>18</sup> Another limitation is the so-called “crime-fraud” exception that permits discovery of communications between an attorney and client that are in furtherance or perpetration of a fraud.<sup>19</sup>

When the IRS serves a summons on a third-party record keeper, the IRS is required to give notice of the summons to any person who is identified in the description of the books and records contained in the summons in order that such person can contest the summons.<sup>20</sup> Notice must be provided to the person within three days of the day on which the summons is served to the record keeper, but no later than the 23rd day before the day fixed on the summons on which the records will be reviewed.<sup>21</sup> Persons entitled to notice under IRC § 7609(a)(2) may bring a proceeding to quash a third-party record keeper summons in the appropriate federal district court. These proceedings must be brought within 20 days after notice of the summons is served.<sup>22</sup> Summonses issued “in aid of collection” of an assessed liability or judgment rendered against a person whose liability is at issue are generally exempt from IRC § 7609 notice procedures.<sup>23</sup> In other words, the IRS is not required to give notice to persons identified in the summons where the purpose of the summons is to aid the collection of a liability. However, the courts have interpreted the “aid of collection” exception to apply only where the taxpayer, upon whose liability the summons is issued, owns a legally identifiable interest in the account or other property for which records are summoned.<sup>24</sup>

### ANALYSIS OF LITIGATED CASES

This is the first year that summons enforcement appears in the National Taxpayer Advocate’s Annual Report to Congress as a Most Litigated Issue. A detailed listing of this

<sup>16</sup> IRC § 7525 extends the protection of the common law attorney-client privilege to tax practitioners. Criminal tax matters and communications regarding tax shelters are exceptions to the privilege. IRC § 7525 (a)(2) and (b). The tax practitioner privilege is interpreted based on the common law rules of the attorney-client privilege. *U.S. v. BDO Seidman, LLP*, 337 F.3d 802, 810-812 (7th Cir. 2003).

<sup>17</sup> *U.S. v. Frederick*, 182 F.3d 496 (7th Cir. 1999).

<sup>18</sup> *BDO Seidman* at 811.

<sup>19</sup> *U.S. v. Zolin*, 491 U.S. 554 (1989).

<sup>20</sup> IRC § 7609(a); Treas. Reg. § 301.7609-3(a); *see also Ip v. U.S.*, 205 F.3d 1168,1172 (9th Cir. 2000) (stating “The purpose of the notice provision is to allow people to assert defenses, such as attorney-client privilege or relevancy objects, that would be unavailable to them in the absence of notice.”)

<sup>21</sup> IRC § 7609(a)(1).

<sup>22</sup> IRC § 7609(b)(2)(A).

<sup>23</sup> IRC §7609(c)(2)(D); Treas. Reg. § 301.7609-4(a).

<sup>24</sup> *Ip v. U.S.*, 205 F.3d 1168,1172-1176 (9th Cir. 2000).

year's cases can be found in Table 9 in Appendix 3. Summons enforcement is the primary issue in all of these cases. The court ruled in favor of the IRS in 42 of the 44 cases, while a taxpayer prevailed in one case and another ended in a split decision. Attorneys represented taxpayers in 24 cases, while 20 taxpayers were *pro se* (i.e., without counsel). Arguments raised by litigants against the IRS summons generally fell into the following categories:

- ◆ **Powell Requirements:** None of the litigants prevailed when attacking IRS summonses based on satisfaction of the *Powell* requirements. The burden on the IRS is “slight” while the burden on those challenging the summons is significant.<sup>25</sup> Courts found that revenue agents’ questionable comments were not sufficient to prove improper purpose by the agency or those with authority to initiate the audit.<sup>26</sup> Likewise, the IRS defeated a taxpayer’s claim that the IRS already possessed the information by providing an affidavit to the contrary from the agent who issued the summons.<sup>27</sup> Taxpayers were also unsuccessful when disputing the relevance of the documents to the investigation.<sup>28</sup>
- ◆ **Notice:** The issue of insufficient notice was raised by taxpayers in several cases in an attempt to invalidate summonses.<sup>29</sup> Additionally, because entitlement to notice confers standing to challenge a summons under IRC § 7609(b), the IRS also raised entitlement to notice as a means to argue that litigants did not have standing to contest the summons.<sup>30</sup> The notice requirements for a summons issued in aid of collection of a tax liability were addressed in *Cranford v. U.S.*<sup>31</sup> Generally, the IRS is not required to give notice of a summons in aid of collection, provided that the taxpayer who is the subject of the investigation has a legally significant interest in the account or other property for which records are sought.<sup>32</sup> The United States district court ruled in *Cranford* that the IRS was not required to give the taxpayer’s spouse notice of the summons because the summons was in aid of the collection of her husband’s tax liability and her husband had a legally identifiable interest in the credit card account.<sup>33</sup>

<sup>25</sup> *U.S. v. Kis*, 658 F.2d 526 (7th Cir. 1981)

<sup>26</sup> *U.S. v. Judicial Watch, Inc.*, 371 F.3d 824, 829-830 (D.C. Cir. 2004).

<sup>27</sup> *Xelan v. U.S.*, 361 F.Supp.2d 459, 465-466 (D. Md. 2005).

<sup>28</sup> *U.S. v. Monumental Life Insurance Co.*, 345 F.Supp.2d 712 (W.D. Ky. 2004); *Grenier v. U.S.*, 94 A.F.T.R.2d (RIA) 7116 (D. N.D. 2004);

<sup>29</sup> *Conner v. U.S.*, 94 A.F.T.R.2d (RIA) 5794 (W.D. Va. 2004) (holding that although the date of the notice was in dispute, even if the notice was one day late, the taxpayer was not prejudiced); *Xelan, Inc. v. U.S.*, 94 A.F.T.R.2d (RIA) 6755 (E.D. Pa. 2004) (holding that IRS is not required to give notice to all people who might be referenced on summoned records).

<sup>30</sup> *Thompson-Perry v. U.S.*, 94 A.F.T.R.2d (RIA) 6862 (N.D. Ohio 2004) (holding that taxpayer did not have standing to file suit because the summons was issued in “aid of collection” and was exempt from IRC § 7609 notice requirements).

<sup>31</sup> *Cranford v. U.S.*, 359 F.Supp.2d 981.

<sup>32</sup> *Ip v. U.S.*, 205 F.3d 1168,1176 (9th Cir. 2000).

<sup>33</sup> *Cranford v. U.S.*, 359 F.Supp.2d at 988.

- ◆ **Criminal Referral:** Taxpayers also raised IRC § 7602(d) in order to invalidate summonses where taxpayers perceived an impending referral to the Department of Justice for criminal prosecution.<sup>34</sup> The IRS is prohibited from issuing a summons or beginning an enforcement proceeding on a summons if a referral to the Department of Justice is in effect.<sup>35</sup> Courts generally accept the testimony of the IRS agent who issued the summons that no criminal referral has been made, unless the person contesting the summons can provide direct evidence to the contrary.<sup>36</sup>
- ◆ **Constitutional Arguments:** Taxpayers also unsuccessfully raised constitutional arguments.<sup>37</sup> Courts noted that First Amendment rights can be implicated by IRS summonses if it can be demonstrated that the IRS will subsequently take action with the information that may “chill” free speech rights. Taxpayers also claimed that summonses were too broad in violation of the Fourth Amendment’s restrictions against unreasonable searches and seizures; however, the courts ruled a summons is not overly broad for constitutional purposes if it is reasonably relevant to the IRS’s inquiry.<sup>38</sup> Additionally, taxpayers raised Fifth Amendment protections. Although the Fifth Amendment privilege may be applicable in summons cases, it is inapplicable where the summons seeks only non-testimonial data.<sup>39</sup>
- ◆ **Privilege and Equitable Estoppel:** The only two arguments to prevail against the IRS in the summons litigation cases was the assertion of privilege as a bar to disclo-

<sup>34</sup> *U.S. v. Xelan, Inc.*, 96 A.F.T.R.2d (RIA) 5217 (S.D. Iowa 2005) (holding that agent’s affidavit that no referral had been made to the Department of Justice is sufficient to override plaintiff’s concerns that a grand jury subpoena was issued to one of the plaintiff’s entities); *U.S. v. Pate*, 94 A.F.T.R.2d (RIA) 5480 (5th Cir. 2004) (holding that summons is enforceable unless taxpayer can demonstrate that the sole purpose in issuing the subpoena is related to the criminal investigation); *U.S. v. Hayden*, 358 F.Supp.2d 951 (S.D. CA 2004) (holding IRC § 7602(b) allows IRS to investigate for “any offense” and matter was not referred to Department of Justice); *Ryerson v. IRS*, 371 F.Supp.2d 1130 (D. AZ 2005) (holding that testimony of agent that no referral had been made is sufficient).

<sup>35</sup> IRC § 7602(d).

<sup>36</sup> *Ryerson v. IRS*, 371 F.Supp.2d 1130 (D. Ariz. 2005) (holding that testimony of agent that no referral had been made is sufficient where plaintiff offered no evidence to the contrary). *U.S. v. Norwood*, 343 F.Supp.2d 869 (D. N.D. 2004) (holding mere suspicion of future criminal prosecution is insufficient to invalidate summons).

<sup>37</sup> *U.S. v. Heubusch*, 95 A.F.T.R.2d (RIA) 1066 (2nd Cir. 2005) (holding documents suppressed in criminal case can be summonsed in civil case without violating the Fourth Amendment’s prohibition against unreasonable searches and seizures if there was an independent source for discovering the information, as there was in this case); *U.S. v. Judicial Watch*, 371 F.3d 824 (D.C. Cir. 2004) (holding (1) there was no evidence that audit and summons were retaliatory or that the request for names of donors contributing more than \$3,000 would chill donors’ rights to free speech under the first amendment; (2) summons was not so overbroad as to violate the Fourth Amendment; and (3) neither the audit or summons was a selective “prosecution” or retaliatory, therefore, the Fifth Amendment was not violated) *U.S. v. B & D Vending, Inc.*, 398 F.3d 728 (6th Cir. 2004) (holding that discovery of corporate documents does not raise Fifth Amendment issues of owner of the corporation); *Ryerson v. IRS*, 371 F.Supp.2d 1130 (D. AZ 2005) (holding that while discovery of documentary evidence may be unpleasant for taxpayer, such discovery does not raise Fifth Amendment issues).

<sup>38</sup> *Judicial Watch*, 371 F.3d at 831-32.

<sup>39</sup> *U.S. v. Olmer*, 94 A.F.T.R.2d (RIA) 6482 (D. Neb. 2004) (stating that the fifth amendment privilege is inapplicable to summonses seeking non-testimonial data, such as copyrighted names).

sure of the summoned information and a lower court's improper use of the doctrine of equitable estoppel to extend the statute of limitations.<sup>40</sup> In the case where the taxpayer prevailed and the split decision, there was a history of prolonged litigation in other cases between the same parties (*i.e.* the IRS, various tax consultants and their clients) over the marketing and use of tax shelters, involving thousands of contested documents.<sup>41</sup> The IRS prevailed in much of this litigation, particularly where the taxpayers or their consultants asserted that the identities of taxpayers were within the attorney-client or tax practitioner privilege.<sup>42</sup> However, courts continued to restrict IRS summons enforcement where the documents sought evidenced an intent to seek legal advice from counsel or other tax practitioners, provided that the privilege had not been waived.<sup>43</sup> The Fifth Circuit refused to apply the doctrine of equitable estoppel to extend the statute of limitations on assessment during summons litigation, reversing the district court's application of that doctrine.<sup>44</sup>

## CONCLUSION

The IRS may issue a summons to obtain information needed to determine the correctness of a return, determine if a tax return should have been filed, determine a taxpayer's tax liability, or to collect a taxpayer's liability.<sup>45</sup> For these purposes, the IRS may summons documentation from taxpayers who have failed to voluntarily provide that information to the IRS. As the cases demonstrate, the summons authority is also useful in uncovering the identities of taxpayers who participate in fraudulent schemes. In at least nine of the cases reviewed, the summons in question was issued to third-parties who the IRS believed were marketing unlawful tax shelters to taxpayers, reflecting the IRS's increased attention

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<sup>40</sup> *U.S. v. BDO Seidman, LLP*, 95 A.F.T.R.2d (RIA) 1725 (N.D. Ill. 2005) (holding after *in camera* review that all but one of the documents reviewed were privileged attorney-client communications); *U.S. v. BDO Seidman*, 368 F.Supp.2d 858 (N.D. Ill. 2005) (holding attorney-client communications were not waived when counsel memorandum was allegedly faxed to a law firm experiencing similar legal issues with the IRS.); *Doe v. U.S.*, 398 F.3d 686 (5th Cir. 2005) (reversing a district court's holding that the statute of limitations on assessment is equitably tolled during summons litigation).

<sup>41</sup> *U.S. v. BDO Seidman, LLP*, 337 F.3d 802, 810-812 (7th Cir. 2003); *U.S. v. BDO Seidman, LLP*, 95 A.F.T.R.2d (RIA) 1725 (N.D. Ill. 2005); *U.S. v. BDO Seidman*, 368 F.Supp.2d 858 (N.D. Ill. 2005); *Doe v. KPMG, LLP*, 398 F.3d 686 (5th Cir. 2005); see also *U.S. v. Arthur Andersen, LLP*, 273 F.Supp.2d 955 (N.D. Ill. 2003), amended on reconsideration, *U.S. v. Arthur Anderson, LLP*, 92 A.F.T.R.2d (RIA) 5800 (N.D. Ill. 2003).

<sup>42</sup> *U.S. v. BDO Seidman, LLP*, 337 F.3d 802 (7th Cir. 2003).

<sup>43</sup> *BDO Seidman, LLP*, 95 A.F.T.R.2d (RIA) 1725 (N.D. Ill. 2005) (holding that "no warranty" language in consulting agreement did not result in a waiver of attorney-client privilege).

<sup>44</sup> *Doe v. U.S.*, 398 F.3d 686 (5th Cir. 2005) equitable tolling, assessed against the taxpayer, suspends the statute of limitations because the taxpayer acted with unclean hands; for example, taxpayer intentionally shielding their identity from the IRS until the statute of limitations expires.

<sup>45</sup> IRC § 7602(a).

to shelter activity.<sup>46</sup> As the IRS becomes more aggressive in its enforcement initiatives, it is likely it will make increased use of the summons enforcement tool, and the courts will continue to see increased numbers of these cases.

## MOST LITIGATED

SECTION  
THREE

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<sup>46</sup> *Doe v. U.S.*, 398 F.3d 686 (5th Cir. 2005); *U.S. v. BDO Seidman*, 95 A.F.T.R.2d (RIA) 2090 (E.D. Ill. 2005); *U.S. v. BDO Seidman*, 95 A.F.T.R.2d (RIA) 1725 (N.D. Ill. 2005); *Xelan, Inc v. U.S.*, 94 A.F.T.R.2d (RIA) 6755 (E.D. Pa. 2004); *Xelan, Inc v. U.S.*, 361 F.Supp.2d 459 (D. Md. 2005); *Xelan, Inc v. U.S.*, 94 A.F.T.R.2d (RIA) 5217 (S.D. Iowa 2004); *Estate of Reiserer v. U.S.*, 95 A.F.T.R.2d (RIA) 2660 (W.D. Wash 2005); *Domestic Executive Leasing Services, LLC, v. U.S.*, 95 A.F.T.R.2d (RIA) 1966 (D. Nev. 2005); *U.S. v. Kaiser*, 397 F.3d 641 (8th Cir. 2005).



## LITIGATED

## ISSUE #10

## TRUST FUND RECOVERY PENALTY UNDER INTERNAL REVENUE CODE SECTION 6672

## SUMMARY

The Trust Fund Recovery Penalty under Internal Revenue Code § 6672 is a means by which the government holds certain persons responsible for willfully failing to withhold or remit the trust fund portion of payroll taxes.<sup>1</sup> When a person is deemed a “responsible person” under the statute, the IRS assesses a civil penalty equal to 100 percent of the trust fund portion of the payroll taxes that were not remitted.<sup>2</sup> Whether a person actually had the responsibility to withhold payroll taxes and whether he or she willfully failed to do so are mixed questions of law and fact that are frequently litigated in United States district courts, bankruptcy courts, and the Court of Federal Claims.

## PRESENT LAW

To be liable for the Trust Fund Recovery Penalty (TFRP), a person must be responsible for withholding and remitting taxes and have willfully avoided paying those taxes.<sup>3</sup> Thus, to obtain relief from the TFRP, a taxpayer must either demonstrate that he or she was not a “responsible person” or did not act “willfully” within the meaning of IRC § 6672.

## Responsible Person

The determination of whether one is a responsible person within the meaning of IRC § 6672 is a matter of status, duty, and authority, as evidenced by:

- ◆ Holding of a corporate office;
- ◆ Control over financial affairs;
- ◆ The authority to disburse corporate funds; or
- ◆ The ability to hire and fire employees.<sup>4</sup>

A “responsible person” is someone with significant (not necessarily exclusive) control over the company’s finances.<sup>5</sup> In general, the IRS will not seek to assess the penalty against non-owner employees of the business entity who act solely under the control of others and are not in a position to act independently of others.<sup>6</sup> On the other hand, instructions from a superior to not pay taxes do not immunize a person otherwise responsible under

<sup>1</sup> IRC §§ 3102 and 3402(a) require employers to withhold certain Social Security and income taxes from employees’ wages. IRC § 7501 provides that taxes withheld from others, which are to be paid to the United States, are held in a special fund in trust for the United States. Thus, these amounts are referred to as the “trust fund” portion of payroll taxes. The IRS is required to credit the employees for the withheld taxes even if the employer fails to remit them. *Slodov v. United States*, 436 U.S. 238 (1978).

<sup>2</sup> IRC § 6672.

<sup>3</sup> *United States v. Carrigan*, 31 F.3d 130, 133-34 (3rd Cir. 1994).

<sup>4</sup> *Thibodeau v. U.S.*, 828 F.2d 1499, 1503 (11th Cir. 1987). When conducting trust fund responsibility interviews with potentially responsible persons, the IRS uses Form 4180 (Report of Interview with Individual Relative to Trust Fund Recovery Penalty) in order to make a determination regarding responsibility.

<sup>5</sup> *United States v. Carrigan*, 31 F.3d 130, 133 (3rd Cir. 1994) (citation omitted).

<sup>6</sup> IRM § 1.2.1.5.14.(3).

the statute.<sup>7</sup> In addition, the term “responsible person” can include corporations and other artificial entities.<sup>8</sup>

### Willfulness

To prove willfulness, the IRS must demonstrate that the person had knowledge of the payments to other creditors after he or she was aware that withholding taxes were delinquent and made a voluntary act to prefer one creditor over the United States.<sup>9</sup> While no bad motive needs to be established to prove willfulness, the IRS must at least demonstrate that the taxpayer acted in reckless disregard of whether the taxes were being paid over.<sup>10</sup>

### Procedural Issues

The IRS conducts a investigation, including interviewing potentially responsible persons, before making an assessment.<sup>11</sup> The IRS has no obligation to attempt to collect trust fund taxes from the employer before assessing the TFRP penalty against a responsible person.<sup>12</sup> Note, however, that the period in which the IRS must assess the TFRP against a responsible person is the period in which the IRS must assess the employer for the underlying employment tax liability.<sup>13</sup> The responsible person and the IRS may agree to extend the period for assessing the TFRP by executing Form 2750, *Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty*.

Before the IRS can assess the penalty, however, it must send notice to the taxpayer informing him or her of the proposed assessment.<sup>14</sup> In the notice, the IRS encloses Form 2751, Proposed Assessment of Trust Fund Recovery Penalty, setting forth the periods and amounts of the proposed TFRP assessment, and offering the taxpayer an opportunity to appeal the proposed assessment to the Office of Appeals.<sup>15</sup> If the taxpayer and the IRS still cannot agree on the proposed assessment after the Appeals conference, the taxpayer can pay a specified portion of the liability and file a claim for refund in the appropriate

<sup>7</sup> *Brounstein v. U.S.*, 979 F.2d 952, 955 (3rd Cir. 1992) (citations omitted).

<sup>8</sup> *Pacific Nat'l Ins. Co. v. United States*, 422 F.2d 26, 30 (9th Cir. 1970).

<sup>9</sup> *In re Pugh*, 315 B.R. 889, 898 (D. Nev. 2004); *Phillips v. United States*, 73 F.3d 939, 942 (9th Cir. 1996).

<sup>10</sup> *Phillips v. United States*, 73 F.3d at 942.

<sup>11</sup> IRM § 5.7.6.

<sup>12</sup> The plain language of IRC § 6672 does not require the IRS to try to collect from the employer first.

<sup>13</sup> *Lauckner v. United States*, 68 F.3d 69 (3d Cir. 1995), acq., 1996-2 C.B. 1.

<sup>14</sup> IRC § 6672(b)(1).

<sup>15</sup> See IRS Letter 1153.

district court or the Court of Federal Claims.<sup>16</sup> When the government produces a certificate that the penalty assessments for failure to pay withholding taxes were made, the government is entitled to a presumption of correctness in district courts or the Court of Federal Claims, while the person against whom the penalty is assessed bears the burden of proving by a preponderance of the evidence that he or she is not liable.<sup>17</sup> In bankruptcy courts where TFRP issues arise when the IRS seeks to assert its TFRP claim against the debtor's assets, the burden is also on the debtor objecting to the claim to overcome the *prima facie* validity of the creditor's claim.<sup>18</sup>

### ANALYSIS OF LITIGATED CASES

We reviewed 34 opinions issued by federal courts in which the TFRP was an issue. Taxpayers prevailed in whole or in part in 13 of the 34 cases, though in three of these cases the court was denying the IRS's motion for summary judgment, thereby requiring the parties to go to trial on the contested issue.<sup>19</sup> A detailed breakdown of TFRP cases appears in Table 10 in Appendix 3.

Of the cases where taxpayers prevailed on the substantive Trust Fund Recovery Penalty issue (thereby disposing of the case in taxpayer's favor), courts relied on three arguments made by taxpayers:

- ◆ **Taxpayer Was Not a "Responsible Person":** In three cases, the courts ruled that the taxpayer was not a "responsible person" even though the taxpayer was in a position of authority. In *Dewing v. United States*, for example, the court ruled that a general manager of a casino did not have sufficient control of financial decisions to warrant a responsible person designation.<sup>20</sup> In *Salzillo v. United States*, the Court of Federal

<sup>16</sup> IRC § 6672(c) provides that if the taxpayer makes the required payment within 30 days of notice and demand for payment and files suit within 30 days of the IRS denial of refund, levy action will be stayed until the conclusion of the court proceedings. IRS Letter 1153 instructs taxpayers who wish to contest the IRS assessment that they can appeal the assessment without paying the entire trust fund recovery penalty by: (1) paying the contested payroll tax for at least one employee for each period of liability that the taxpayer wishes to contest; (2) filing a claim for refund for the amounts paid using IRS Form 843, Claim for Refund and Request for Abatement; and (3) posting a bond with the IRS for one and one-half times the amount of the penalty that is left after making the payment for the one employee. As the Trust Fund Recovery cases demonstrate, once the case is filed, the IRS typically counterclaims for the balance of the unpaid liability, thereby placing the entire TFRP liability at issue. See, e.g., *Ashworth v. U.S.*, 95 A.F.T.R.2d (RIA) 2476 (D. N.J. 2005); *Baimbridge v. United States*, 335 F.Supp.2d 1084 (S.D. Cal. 2004); *Gutherie v. United States*, 359 F.Supp.2d 693 (E.D. Tenn. 2005).

<sup>17</sup> *Fidelity Bank v. United States*, 616 F.2d 1181, 1186 (10th Cir. 1980); *Barnett v. United States*, 988 F.2d 1449, 1453 (5th Cir. 1993).

<sup>18</sup> *In re Frank*, 322 B.R. 745 (M.D. N.C. 2005).

<sup>19</sup> *Ashworth v. United States*, 95 A.F.T.R.2d (RIA) 2476 (D. N.J. 2005)(granting summary judgment as to willfulness but question of fact exists as to whether controller was responsible person); *Baimbridge v. United States*, 335 F.Supp.2d 1084 (S.D. Cal. 2004) (question of fact existed about whether installment agreement estopped government from asserting willfulness element of TFRP responsibility); *In re Pugh*, 315 B.R. 889 (D. Nev. 2004)(denying IRS's motion for summary judgment because there was a question of fact about whether corporate officer knew about the withholding taxes had not been paid).

<sup>20</sup> *Dewing v. United States*, 95 A.F.T.R.2d (RIA) 1609 (D. Nev. 2005).

Claims held that the Chief Financial Officer (CFO) was not a responsible person because the president of the company exercised complete dominion over all financial decisions of the company, thereby impairing the CFO's ability to pay the delinquent employment taxes.<sup>21</sup> Thus, the title given to a particular position within a business is not determinative as to responsible person status. In *Secret v. United States*, the IRS pursued an outside accountant for the TFRP, in large part because the accountant had signed Form 4180 *Report of Interview with Individual Relative to Trust Fund Recovery Penalty*, and answered all its questions in the affirmative, indicating he had substantial financial responsibility for the company.<sup>22</sup> The court rejected the IRS's argument that the accountant had admitted liability by virtue of Form 4180, finding:

Despite the government's unwavering reliance on Secret's Form 4180, the Court finds the document rather unhelpful. The form contains no express admission of responsibility or acknowledgement of liability. It uses vague, undefined terms.<sup>23</sup>

The court found that the preponderance of the evidence established that the accountant did not have true control or authority to take any actions and held that the accountant was not a "responsible person."<sup>24</sup>

- ◆ **Taxpayer Did Not Act Willfully.** In several cases, courts ruled that while the taxpayer was a responsible person, the taxpayer had demonstrated that there was no willfulness on his or her part. One taxpayer successfully made this argument by demonstrating he had a good faith belief that all payroll taxes were being paid and that he had instituted dedicated accounts for this purpose.<sup>25</sup> A similar argument, however, was unsuccessful for the president/chief executive officer who hired a surety company to pay the employment taxes when insufficient funds were available. In holding the president/CEO liable for the TFRP, the court concluded that even if the surety company did have some financial responsibility, that fact alone was not dispositive of the president/CEO's liability when he willfully paid other creditors while knowing that employment taxes were due.<sup>26</sup>
- ◆ **Bankruptcy Law Precludes IRS Action.** Taxpayers prevailed in two bankruptcy cases with differing arguments about the non-dischargeability of TFRP liabilities.<sup>27</sup> In *United States v. White*, the court concluded that because employment taxes (includ-

<sup>21</sup> *Salzillo v. United States*, 66 Fed. Cl. 23 (2005).

<sup>22</sup> *Secret v. United States*, 373 F.Supp.2d 619 (N.D. W.Va. 2005). Form 4180 asks: Did you: Direct the payment of bills? Make bank deposits? Authorize payroll checks? Prepare federal payroll tax returns? Authorize payment of federal tax deposits? Review federal income tax returns? Determine company financial policy?

<sup>23</sup> *Secret v. United States*, 373 F.Supp.2d at 627.

<sup>24</sup> *Id.* at 629.

<sup>25</sup> *In re Frank*, 322 B.R. 745, 760 (M.D. N.C. 2005) (holding that the taxpayer was not required to follow-up to determine whether these mechanisms were actually utilized by those responsible for making the payments).

<sup>26</sup> *Lencyk v. United States*, 384 F.Supp.2d 1028, 1035 (W.D. Tex. 2005).

<sup>27</sup> TFRP liabilities are not normally discharged in bankruptcy.

ing TFRP liabilities) were nondischargeable, the automatic stay<sup>28</sup> could only be lifted when the case was closed or dismissed. Consequently, the court held that an assessment of the TFRP liability was void when made while the case was in bankruptcy because it violated the automatic stay provisions of the Bankruptcy Code.<sup>29</sup> In contrast, the court in *In re Lowthorp* concluded that the TFRP assessment was discharged because the IRS did not file a proof of claim based on that debt.<sup>30</sup> Consequently, the court determined that the IRS's demands for payment of the TFRP liability were violations of the court's discharge injunction and held the IRS in contempt of court and imposed sanctions.<sup>31</sup>

Taxpayers also were unsuccessful in utilizing certain arguments against the willfulness component of TFRP liability test.

- ◆ **Directions of Superiors Affecting Willfulness.** Several taxpayers argued that their omission in failing to pay payroll taxes was due to a superior who instructed them not to pay on the explicit or implied threat of being terminated from employment if the payments were made.<sup>32</sup> This excuse was not successful for any of the taxpayers, with one court labeling it a type of "Nuremberg defense."<sup>33</sup>
- ◆ **Agreements with Third Parties Affecting Willfulness.** Several taxpayers argued that the willfulness element of the TFRP liability test could be rebutted by demonstrating an agreement with a third party about how the business's money would be used. In *Underberg v. United States*, the court rejected the argument by the two responsible persons that the company's arrangement with a third party financial services firm, which took control over the company's finances, made it impossible to comply with its tax obligations.<sup>34</sup> An unsympathetic court noted:

While the dilemma of choosing between losing one's job and violating the nation's tax laws may be a harsh one, corporate officers and directors who face this dilemma are not thereby absolved of responsibility for payment of withholding taxes.<sup>35</sup>

In *Baimbridge v. United States*, the potentially responsible person attempted to address the willfulness component of the TFRP liability test by arguing that the corporation had entered into an installment agreement for the repayment of the delinquent tax, and therefore, the IRS should be estopped from assessing the penalties because it was

<sup>28</sup> 11 U.S.C.A. § 362(a)(6).

<sup>29</sup> *United States v. White*, 325 B.R. 918 (N.D. Ga. 2005).

<sup>30</sup> *In re Lowthorp*, 325 B.R. 470 (M.D. Fla. 2005).

<sup>31</sup> *In re Lowthorp*, 325 B.R. 470 (M.D. Fla. 2005) at 474. See *In re Lowthorp*, 332 B.R. 656 (Bankr. Fla. 2005), for a discussion of the sanctions imposed against the IRS.

<sup>32</sup> *Ashworth v. United States*, 95 A.F.T.R.2d (RIA) 2476 (D. N.J. 2005); *In re Borman*, 94 A.F.T.R.2d (RIA) 6301 (Bankr. S.D. Fla. 2004)

<sup>33</sup> *In re Borman*, 94 A.F.T.R.2d (RIA) 6301 (Bankr. S.D. Fla. 2004).

<sup>34</sup> *Underberg v. United States*, 362 F.Supp.2d 1278, 1288 (D. N.M. 2005).

<sup>35</sup> *Id.* at 1287 (citation omitted).

fully aware that the business was going to continue operation and satisfy non-IRS creditors.<sup>36</sup> The court denied the IRS's motion for summary judgment on the issue of willfulness, thereby requiring the parties to go to trial, though the court noted that "binding the government through equitable estoppel is no easy task."<sup>37</sup>

- ◆ **Subsequent Cooperation Is Irrelevant to Determination of Willfulness.** In another decision, a district court held that an individual's cooperation after the TFRP assessment was made is irrelevant to the determination of willfulness and held the individual liable for the TFRP, consequently reversing a bankruptcy court decision.<sup>38</sup> The taxpayer was a vice president of the corporation and a shareholder who had check-signing authority, and he paid other creditors in preference to the IRS; thus, he acted willfully and cooperating fully with an IRS revenue officer after receiving a demand for full payment of the past due taxes was irrelevant.<sup>39</sup>

#### Pro Se Analysis

Only eight out of 34 (or 24 percent) of the taxpayers in these cases were *pro se*, or unrepresented by counsel, and only one unrepresented taxpayer prevailed on the issues raised in litigation. Of the taxpayers who were represented, 12 out of 26 (or 46 percent) prevailed on some or all of the issues. The cases demonstrate that issues related to IRC § 6672 are both procedurally and substantively complex and generally required competent counsel.

#### CONCLUSION

The TFRP cases reviewed often involved officers of small businesses, such as chief executive officers or chief financial officers, who had some role in determining financial expenditures. Where these officers were also shareholders or investors in the business, the courts had little difficulty in making the requisite "responsible person" and "willfulness" determinations because there appeared to be actual authority and control to make decisions about paying or not paying payroll taxes. However, where the officer was a salaried employee or an outside accountant, the courts struggled with the degree of the person's true level of authority and control. As one court noted, these cases often reflect the difficult choices for corporate officers who are faced with the dilemma in a struggling business between losing one's job or violating the nation's tax laws. Still, these choices do not excuse the responsibility of paying payroll taxes.

<sup>36</sup> *Baimbridge v. United States*, 335 F.Supp.2d 1084 (S.D. Cal. 2004).

<sup>37</sup> *Id.* at 1091.

<sup>38</sup> *United States v. Beltran*, 316 B.R. 371 (S.D. Fla. 2004), *rev'g In re Beltran*, 93 A.F.T.R.2d (RIA) 2303 (Bankr. S.D. Fla. 2003).

<sup>39</sup> *Id.* at 374.

## INTRODUCTION

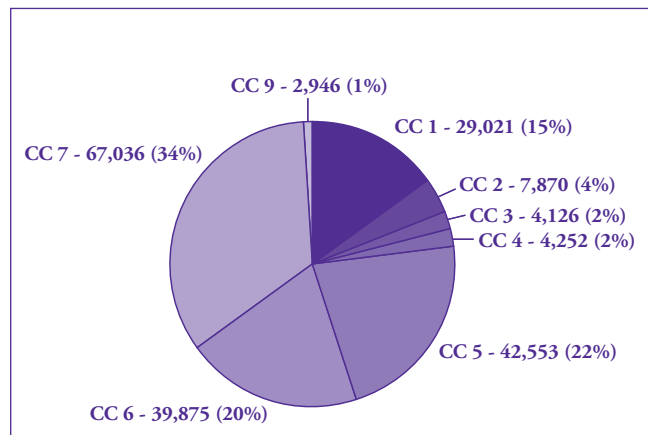
IRC § 7803 requires the National Taxpayer Advocate to report to Congress annually on the activities of the Office of the Taxpayer Advocate.<sup>1</sup> Taxpayer Advocate Service case advocacy work reflects the IRS’s operational priorities and workload. Since its “stand up” in 2000, TAS case receipts increasingly reflect the IRS’s emphasis on enforcement activities.

## CASE ADVOCACY

### Case Receipts

IRC § 7811(a) defines the types of hardships taxpayers experience which would meet the criteria for TAS intervention. Chart 4.1 illustrates these receipts by Criteria Code (CC).

**CHART 4.1, FY 2005 TAS CASE RECEIPTS BY CRITERIA CODE**



<sup>1</sup> IRC § 7803(c)(2)(B)(ii)

CHART 4.2, TAS CRITERIA CODES

Economic Burden Case Receipts			
Criteria Code	Description	Number of Cases	% of Cases
CC 1	Taxpayer is suffering or about to suffer a significant hardship (IRC §7811(a)(1)(A))	29,021	15
CC 2	Taxpayer is facing a threat of adverse action (IRC §7811(a)(2)(A))	7,870	4
CC 3	Taxpayer will incur significant costs if relief is not granted (IRC §7811(a)(2)(C))	4,126	2
CC 4	Taxpayer will suffer irreparable injury, or long term adverse impact (IRC §7811(a)(2)(D))	4,252	2
Total Economic Burden Case Receipts		45,269	23%
Systemic Burden Case Receipts			
Criteria Code	Description	Number of Cases	% of Cases
CC 5	Taxpayer has experienced a delay of more than 30 days to resolve a tax account problem (IRC §7811(a)(2)(B))	42,553	22
CC 6	Taxpayer has not received a response by the date promised	39,875	20
CC 7	A system(s) or procedure(s) has failed to operate as intended or failed to resolve the taxpayer's problem	67,036	34
CC 9	The Local Taxpayer Advocate has determined it is in the best interest of the taxpayer for TAS to be involved	2,946	1
Total Systemic Burden Case Receipts		152,410	77%
Total Case Receipts		197,679	100%

IRC § 7803 authorizes the National Taxpayer Advocate to develop guidance for all IRS officers and employees outlining the criteria for referring taxpayer inquiries to TAS.<sup>2</sup> Seven of our criteria fall into two broad taxpayer burden categories: economic burden and systemic burden. TAS also accepts cases where a Local Taxpayer Advocate determines it is in the best interest of the taxpayer for TAS to accept the case into the program. In reviewing our definitions and verification procedures for criteria, we found that in some cases, a few of our requirements for the taxpayer to prove economic harm prior to case acceptance were counterintuitive and caused additional burden. TAS subsequently clarified its case acceptance definitions to include situations:

- ◆ Where, due to considerations of equity or protection of taxpayer rights, it is in the best interest of the taxpayer to accept his or her case, and
- ◆ Where the National Taxpayer Advocate determines that compelling public policy warrants assistance to an individual or group of taxpayers.

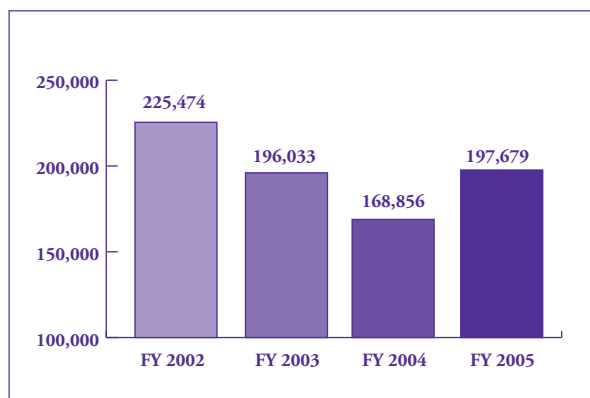
Moreover, TAS simplified the verification procedures for economic burden cases. We will implement these clarifications in January 2006.

<sup>2</sup> IRC § 7803(e)(2)(C)(ii).



TAS receipts rose 17 percent in FY 2005 compared to FY 2004. Chart 4.3 illustrates TAS receipts for the last four fiscal years.

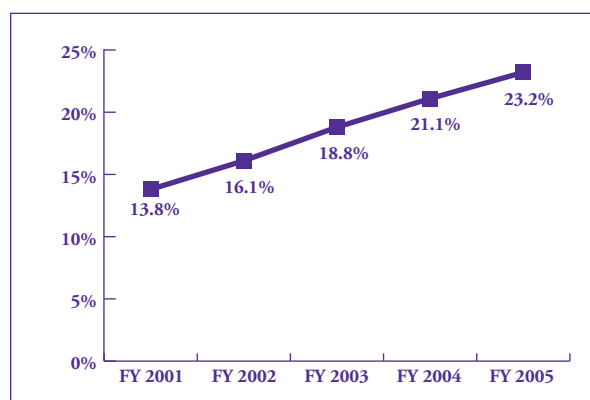
**CHART 4.3, TAS RECEIPTS**



While TAS receipts rose in the last fiscal year, our staffing has steadily declined over the past several years, from 2,198 staff years in FY 2002 to 1,943 staff years in FY 2005.

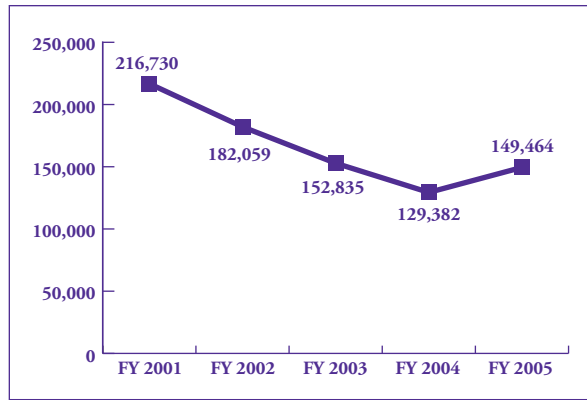
The majority of taxpayers contact TAS because they are experiencing a systemic burden caused by a process, procedure, or system within the IRS that either failed to operate as intended or failed to resolve the taxpayer’s problem. In FY 2005, 77 percent of our case receipts met this category, while the remaining 23 percent were the result of taxpayers experiencing some sort of economic burden. The percentage of economic burden cases continues to grow as the IRS increases enforcement and compliance activities and TAS conducts outreach to specific taxpayer populations. Chart 4.4 illustrates the trend of economic burden case receipts over the last four fiscal years.

**CHART 4.4, TAS ECONOMIC BURDEN CASE RECEIPTS AS A PERCENTAGE OF TOTAL RECEIPTS**



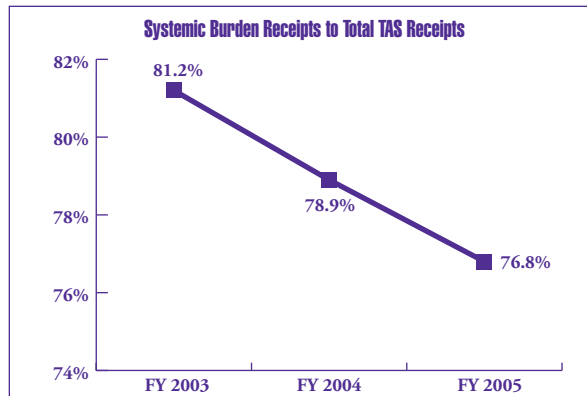
As the chart below illustrates, TAS systemic burden receipts increased 15.5 percent in FY 2005 compared to FY 2004. These cases involve taxpayers experiencing delays of more than 30 days to resolve tax account problems, not receiving responses by the date promised, and systems or procedures failing to operate as intended or failing to resolve the taxpayer’s problem. This increase in receipts corresponds to the overall increase in regular case receipts (17 percent) over FY 2004. Increased Criminal Investigation (CI) receipts continue to impact overall TAS receipts. Of the CI receipts, 86.5 percent were attributed to systemic burden.<sup>3</sup>

**CHART 4.5, SYSTEMIC BURDEN CASE RECEIPTS**



Although TAS systemic burden case receipts increased 15.5 percent over the FY 2004 figure (149,464 versus 129,382), the percentage of systemic burden receipts has steadily declined from 81.2 percent in FY 2003 to 76.8 percent in FY 2005 as illustrated in Chart 4.6.

**CHART 4.6, SYSTEMIC BURDEN AND TOTAL TAS CASE RECEIPTS**



<sup>3</sup> See Most Serious Problem: *Criminal Investigation Refund Freezes*, *supra*.

**Sources of TAS Casework**

TAS uses primary and secondary issue codes to identify the issues that lead taxpayers to seek TAS assistance. Table 4.7 illustrates the top 15 case issues received in TAS in FY 2005 based on the taxpayer’s primary and secondary issue codes.

**TABLE 4.7, TOP 15 ISSUES RECEIVED IN TAS IN FY 2005**

Rank	Description of Issue	Number of Cases
1	Criminal Investigation (CI) / Return Preparer Program	31,627
2	Expedite Refund Request	17,775
3	EITC - Revenue Protection Strategy Claims	17,180
4	Processing Amended Return	16,960
5	Levy/Federal Payment Levy Program Levies	13,529
6	Processing Original Return	12,692
7	Audit Reconsideration	9,898
8	Other Refund Inquiries/Issues	7,958
9	Injured Spouse Claim	7,432
10	Closed Underreporter Program	7,205
11	Open Examinations (Non EITC)	6,776
12	Requests for Copies of Returns/Transcripts/Reports or FOIA	6,413
13	Liens	6,199
14	Returned/Stopped Refunds	5,560
15	Failure to File and Failure to Pay Penalties	5,131

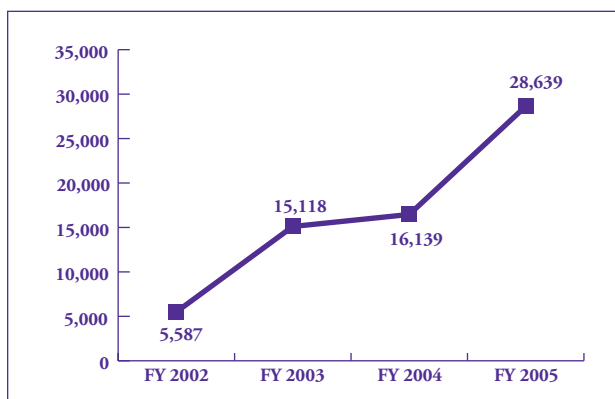
**Trends in TAS Case Receipts**

TAS case receipts reflect the cause and effect of IRS operational priorities and workload. Increased law enforcement and compliance activities, shifts in the availability and delivery of services to taxpayers, and consolidation and centralization of IRS work processes are apparent in the types of issues that caused taxpayers to seek our assistance in FY 2005.

**Criminal Investigation Cases**

Since FY 2002, TAS case receipts involving Criminal Investigation (CI) issues have steadily increased as reflected in Chart 4.8.

**CHART 4.8, CI RECEIPTS FOR FY 2002 – FY 2005**



In both FY 2004 and FY 2005, CI cases comprised the largest portion of TAS receipts.<sup>4</sup> In FY 2005, 28,639 taxpayers contacted TAS because, as a result of CI actions, the IRS failed to issue their refunds or process their returns. This represents a 77.5 percent increase compared to 16,139 cases in FY 2004. The primary programs CI uses to detect and investigate refund fraud are the Questionable Refund Program (QRP) and the Return Preparer Program (RPP).<sup>5</sup> TAS closed 26,206 QRP cases in FY 2005. As illustrated in Table 4.9, TAS obtained full or partial relief for taxpayers in 60 percent of those cases.

**TABLE 4.9, DISPOSITION OF CI CASES FOR FY 2005**

TYPE OF RELIEF	FY 2005	% TOTAL
<b>RELIEF GIVEN</b>	<b>15,708</b>	<b>60%</b>
Full relief	14,658	56%
Partial relief	1,050	4%
<b>NO RELIEF</b>	<b>10,498</b>	<b>40%</b>
<b>TOTAL</b>	<b>26,206</b>	<b>100%</b>

**Lien Issues**

In FY 2005, TAS received 6,199 cases where the primary or secondary issue involved a Notice of Federal Tax Lien, compared to 4,329 in FY 2004 and 3,501 in FY 2003. The IRS has centralized routine lien filing and release operations at one campus and reduced the number of field offices that handle the more complex, technical lien issues.

**Levy Issues**

As the IRS continues to step up its compliance activities, TAS has seen an increase in the number of taxpayers who need our assistance to resolve issues involving lev-

<sup>4</sup> National Taxpayer Advocate 2004 Annual Report to Congress 578.

<sup>5</sup> In May 2005, TAS established a new primary issue code to track RPP cases. As of the end of FY 2005, TAS received 357 RPP cases.

ies, including Federal Payment Levy Program (FPLP) issues. In FY 2005, TAS received 13,529 cases where a levy was the primary or secondary issue compared to 9,019 in FY 2004, representing a 27 percent increase. FPLP levies on Social Security benefits increased 335 percent, from 345 cases in FY 04 to 1,502 in FY 05.<sup>6</sup>

### Taxpayer Assistance Center Cases

TAS continues to see an influx of cases related to the level of service available at IRS Taxpayer Assistance Centers (TACs). As these offices eliminate services and reduce hours of operation and staffing, taxpayers are turning to TAS for assistance. To illustrate, we received 6,413 cases in FY 2005 where taxpayers requested copies of returns, forms, or transcripts, which are no longer available through the TACs. This represents an increase of 58 percent from FY 2004, when we received 4,053 such cases. TAS established a special use code in FY 2005 to track the number and nature of cases related to the reduction in services at TACs, and we are closely monitoring this issue.<sup>7</sup>

### Case Closures

In FY 2005, TAS closed 190,153 cases received in the past fiscal year or prior years and provided full or partial relief to the taxpayer in 68.14 percent of these cases. FY 2005 case closures increased 11.4 percent over FY 2004, an increase largely attributable to the 17 percent growth in case receipts. Table 4.10 details the disposition of cases closed in FY 2005.

**TABLE 4.10, APPLICATION FOR TAXPAYER ASSISTANCE ORDER CASE DISPOSITION**

Type of Relief	Number	%
<b>Total Applications for Taxpayer Assistance Closed</b>	<b>190,153</b>	<b>100.00%</b>
Taxpayer Assistance Orders (TAO) Issued	20	0.01%
<b>Relief provided to taxpayer</b>	<b>129,560</b>	<b>68.14%</b>
Full relief	119,237	62.71%
Partial relief	10,309	5.42%
TAO issued-BOD (Business Operating Division) /Function complied	12	0.01%
TAO issued-BOD/Function appealed; TAO sustained	1	0.00%
TAO issued-BOD/Function appealed; TAO modified	1	0.00%
<b>No relief provided to taxpayer</b>	<b>57,133</b>	<b>30.05%</b>
No relief - no response	23,388	12.30%
No relief - Advocate does not deem relief appropriate	18,114	9.53%
No relief - BOD/Function already provided relief	8,584	4.51%
No relief - TP withdraws relief request	2,789	1.47%
No relief - Hardship not substantiated	1,611	0.85%
No relief - no internal revenue law issue	1,391	0.73%
No relief - relief appropriate but law prevents change	1,252	0.66%
TAO issued-BOD/Function appealed; TAO rescinded	4	0.00%
<b>Relief Not Identified</b>	<b>3,460</b>	<b>1.82%</b>

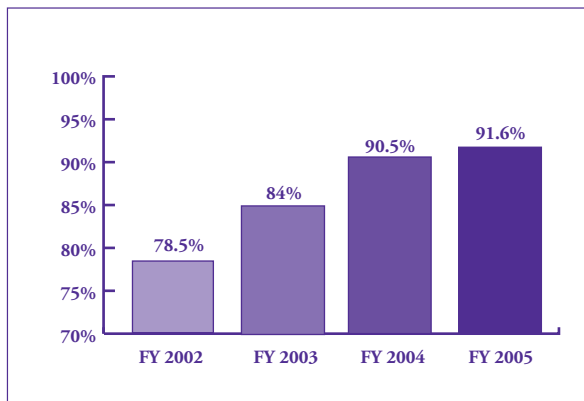
<sup>6</sup> See Most Serious Problem: *Levies On Social Security Payments, supra.*

<sup>7</sup> See Most Serious Problem: *Taxpayer Services, supra.*

**Case Quality and Timeliness**

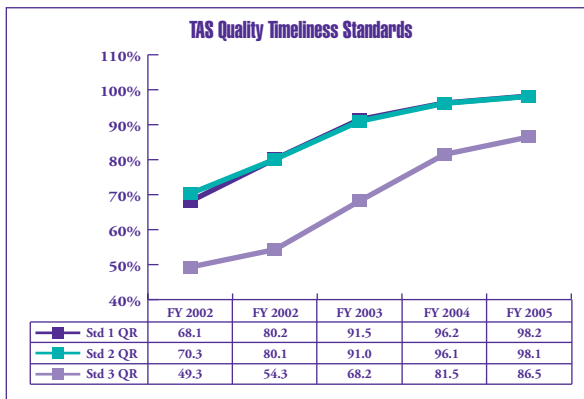
TAS continues to focus on improving case quality, including accuracy, timeliness, and effective communication. The business results, measured by TAS case quality standards, demonstrate continued progress over the last four years, as illustrated in Chart 4.11.<sup>8</sup> At the end of FY 2005, quality stands at 91.6 percent. The goal was 91 percent for FY 2005 and is 91.5 percent for FY 2006.

**CHART 4.11, TAS CASE QUALITY FY 2002 THROUGH FY 2005**



Timely case action as measured by Quality Standards 1, 2, and 3 continues to improve, as noted in Chart 4.12. During FY 2005, TAS implemented a number of improvement initiatives. Offices now have procedures to monitor critical customer contact dates and have adopted back-up plans for situations when advocates are away from the office. Timely actions positively impact case cycle time and customer satisfaction.

**CHART 4.12, TAS QUALITY TIMELINESS STANDARDS**



<sup>8</sup> TAS quality standards are: 1). Did TAS make timely contact with the taxpayer? 2). Did TAS take initial action/request information within the specified period? 3).Did TAS take all subsequent actions timely from the time action could have been taken? 4). Did TAS resolve all taxpayer issues? 5). Did TAS address all related issues? 6). Were all actions taken by TAS and the IRS operations/functional divisions technical-ly and procedurally correct? 7). Did TAS give the taxpayer a clear, complete, correct explanation at closing?

In FY 2005, TAS created specific objectives in support of our strategies and operational priorities, including the ability to identify and respond to taxpayer concerns.

One such objective established standard procedures for reviewing all TAS cases open 100 days or longer.<sup>9</sup> These reviews allow us to gauge compliance with TAS case processing requirements and to ensure case actions are taken at the right time and in the correct manner. The reviews assess whether cases are progressing in a timely and effective way and whether TAS is pursuing appropriate remedies, including issuance of a Taxpayer Assistance Order.

As an adjunct to the 100-Day Case Review Procedures, and in response to findings by the Treasury Inspector General For Tax Administration (TIGTA) in September 2004<sup>10</sup> regarding the timeliness of TAS case processing, we established Early Intervention Guidelines to ensure taxpayer problems are resolved in the most effective and efficient manner. The guidelines require managerial review early on in the case processing cycle to determine whether TAS is pursuing the best approach and taking timely actions. The reviews serve to ensure that the taxpayer’s problem is clearly defined and an appropriate plan of action is developed.

**Operations Assistance Requests (OARs)**

TAS uses Operations Assistance Requests (OARs) to request assistance from an IRS operating division or function to complete an action on a TAS case. An OAR is needed when TAS does not have the statutory or delegated authority to take the action(s) required to resolve the taxpayer’s problem. Table 4.13 highlights the OARs issued and closed during FY 2005 and the average number of days it took the IRS to complete the requested action(s).

**TABLE 4.13, OAR ACTIVITY FOR FY 2005**

Operating Division/Function	OARs Issued	OARs Closed <sup>11</sup>	Average Age (Days)
Appeals	1,879	1,620	69.5
Criminal Investigation	36,341	34,825	23.8
Large/Mid-Size Business	119	89	38.9
Small Business/Self-Employed	61,824	50,805	20.5
Tax Exempt/Government Entities	691	544	31.8
Wage & Investment	61,242	52,680	19.7
<b>Total</b>	<b>162,096</b>	<b>140,563</b>	<b>21.6</b>

<sup>9</sup> TAS established 100-Day Case reviews in FY 2003. The objectives and procedures for conducting the reviews were standardized in the FY 2005 TAS Program Letter.

<sup>10</sup> Treasury Inspector General For Tax Administration, Ref. No. 2004-10-166, *The Taxpayer Advocate Service Needs to Improve Case Management to Ensure Taxpayer Problems are Resolved Timely* (September 2004).

<sup>11</sup> Does not include OARs rejected by the Operating Divisions/Functions due to incomplete or missing information or because they were routed to the wrong area.

**Taxpayer Assistance Orders**

Internal Revenue Code § 7811 authorizes Local Taxpayer Advocates to issue a Taxpayer Assistance Order (TAO) when a taxpayer is suffering or about to suffer a significant hardship as a result of the IRS’ administration of tax laws. Upon receipt of a TAO, the responsible IRS official can either agree to take the action requested or appeal the request.

During FY 2005, TAS issued 20 TAOs, compared to 30 in FY 2004. Eleven were Direct TAOs and nine were Review TAOs. The IRS complied with the requested action on twelve TAOs. Three TAOs were rescinded after discussion and negotiation between TAS and the IRS resolved the taxpayers’ issues. One TAO was rescinded after new information revealed the taxpayer was not entitled to the requested relief. The IRS appealed two of the TAOs, of which one was sustained and one was modified.

**TABLE 4.14, TAXPAYER ASSISTANCE ORDERS ISSUED BY BUSINESS OPERATING DIVISION (BOD)/FUNCTION**

Small Business/Self-employed	11
Wage and Investment	7
Appeals	2

IRC § 7811(b) further provides that a TAO may require the action(s) to be taken within a specified timeframe. All of the TAOs had specified timeframes, of which ten were completed on or before the date specified. Two were completed within four days of the specified timeframe, one within 14 days, and one within 19 days. Two remain open pending resolution of all issues related to the TAO. Table 4.15 summarizes the actions requested.

**TABLE 4.15, TAO REQUESTED ACTIONS**

Compliance Issues	
Levy Issues	Partial release of levy to allow taxpayer to meet payroll
	Partial release of levy on partnership income
	Release of levy pending processing of corrected returns, to adjust tax liability assessed as a result of Substitute for Return assessments
Lien Issues	Review decision to not withdraw a Notice of Federal Tax lien under IRC § 6323(j)(1)(D)(3)
Appeals Issues	Provide taxpayer with Appeals hearing
Offer in Compromise Issues	Accept taxpayer’s Offer in Compromise or provide explanation for rejection
	Reopen taxpayer’s request for Offer in Compromise
	Reconsider rejection of Offer in Compromise based on classification of an Individual Retirement Account as a dissipated asset



**Processing Issues**

Refund Issues	Issue manual refund of Earned Income Tax Credit to relieve a taxpayer's hardship
	Issue a Direct Deposit manual refund
	Waive requirement to provide verification of bank account information and issue Direct Deposit manual refund to FEMA worker in hurricane disaster area
Earned Income Tax Credit Issues	Acknowledge and assign TAS Operations Assistance. Request to make a determination regarding a taxpayer's entitlement to the Earned Income Tax Credit
Penalty Issues	Abate Trust Fund Recovery Penalty
Account Adjustment Issues	Reconsider abatement of Substitute for Return assessments

**Congressional Casework**

TAS is responsible for independently reviewing all tax account related inquiries sent to the IRS by members of Congress. During FY 2005, TAS received 11,509 inquiries, of which 440 were duplicates.<sup>12</sup> Table 4.16 highlights the top ten issues identified in Congressional inquiries.

**TABLE 4.16, TOP TEN ISSUES IDENTIFIED IN CONGRESSIONAL INQUIRIES**

Issue	Number
Levies (including the Federal Payment Levy Program)	634
Application for Exempt Status (Form1023/1024)	483
Copies of Returns/Transcripts/Reports/FOIA	419
Account/Notice Inquiry	416
Failure to File Penalty (FTF)/ Failure to Pay Penalty (FTP)	406
Offer in Compromise - Doubt as to Collectibility	405
Open Audit (Non RPS, EITC)	404
Reconsideration/SFR/6020B/Audit	404
Other Refund Inquiries/Issues	308
Open Unreported Income Program	294

**TAS DISASTER RELIEF EFFORTS**

TAS played an active role in disaster relief this past year. Even though Hurricanes Katrina, Rita, and Wilma temporarily closed offices and forced some of our employees to relocate, TAS continually sought to help victims at both the national and local levels. For example, immediately after Hurricane Katrina evacuees moved to the Houston convention center, the Houston TAS office helped those who had no documents to establish their identities. TAS employees provided transcripts to establish names and

<sup>12</sup> Duplicate Congressional inquiries are cases with inquiries from more than one Congressional office on the same taxpayer and the same issue. Currently, these cases are not reflected in TAS overall receipts and closure statistics.

addresses, which assisted the victims in obtaining relief benefits. TAS also participated in a four-part strategy to address disaster relief.

### **TAS Disaster Policy Group**

The IRS's Disaster Policy Group includes representatives from TAS and each operating division and function. The group reviews the scope of each event and makes recommendations for relief, including up-to-date policy and procedural guidance to help IRS employees respond to disaster or emergency situations. Two sub-teams of the council address technical, tax related issues and personnel issues, and TAS participates on both. TAS also established its own internal Disaster Policy Group, which is comprised of the Deputy National Taxpayer Advocate and senior leaders from TAS program areas impacted by disaster efforts. The group sets policy, addresses TAS issues relating to disaster relief, and elevates service-wide or legislative issues to the IRS Disaster Relief Council. The areas addressed include finance, systems issues, communications, education, program guidance, employee issues, legal issues, and case advocacy.

### **Question and Answer Mechanism**

TAS established a special e-mail address that TAS employees use to elevate issues or questions relating to disasters. TAS subject matter experts review, research, and answer the questions, with the analysis and answers posted to TAS' internal website and distributed through all-employee email publications. Members of the TAS Disaster Policy Group approve the responses provided through this forum for consistency and policy purposes. The group also sends a personalized response to every employee who submits a question to the e-mail address.

### **TAS Special Editions**

TAS publishes an electronic newsletter, *Special Edition*, to convey urgent information to all TAS employees when necessary. TAS issued *Special Editions* almost daily immediately after Hurricanes Katrina and Rita to provide employees with the latest information needed to assist hurricane victims, including important intranet links, and answers to questions posed through the special e-mail address mentioned above. The *Special Edition* newsletters are also available on the TAS internal web site for employees to use as a reference tool in dealing with disasters.

### **Disaster Guidance**

TAS developed a reference guide to use in conducting outreach to taxpayers and practitioners. The guide addressed the following activities:

#### *FEMA Volunteers – Joint Field Office*

FEMA requested 2,000 volunteers for deployment to the Gulf States area to assist with recovery efforts related to Hurricane Katrina. The IRS put in place an application process by which employees volunteered to work directly with FEMA, with concurrence

from their managers and IRS business units. TAS employees' applications were reviewed for business concurrence at the Deputy National Taxpayer Advocate level. FEMA ultimately selected eight TAS employees for this effort.

#### *Local Disaster Cadres*

As part of a Strategic Relationship Management Local Council (SRMLC) initiative, or other local initiatives, TAS nominated an individual(s) to serve on teams ready to respond to local disaster issues. Participation of TAS employees on these teams varies across the country. These teams take part in a number of activities, but predominately staff FEMA Disaster Recovery Centers (DRCs) and are activated early in the disaster response process.

#### *FEMA Disaster Recovery Centers*

A Disaster Recovery Center (DRC) is a readily accessible facility or mobile office where applicants can go for information about FEMA or other disaster assistance programs. A number of agencies provide assistance at these centers. The IRS is typically present handing out disaster kits, providing transcript information, educating taxpayers on tax law provisions and changes relating to the disaster, answering taxpayer questions, referring hardship situations to TAS, and assisting taxpayers in filing claims related to disaster losses. TAS' primary function in this endeavor is an off-site support role in which the organization provides transcripts for taxpayers to use in preparing disaster claims.

#### *FEMA Call Sites*

Thousands of IRS employees in Buffalo, Dallas, Philadelphia, and Atlanta met the challenge when FEMA requested their assistance in answering FEMA's toll-free lines. TAS was prepared to provide assistance after hours, if needed. However, this need for additional support did not materialize.

#### *Small Business Development Center (SBDC) Support*

The IRS has signed a Memorandum of Understanding with the SBDC to assist in setting up joint outreach sites to help businesses affected by the disaster reestablish themselves. TAS supports this initiative by providing expedited tax return transcripts, which are useful in reconstructing financial records and completing loan applications.

#### *Low Income Taxpayer Clinic (LITC)/American Bar Association (ABA) Support*

TAS will pair ABA volunteers with LITCs to offer disaster relief assistance, which will include:

- ◆ The ABA selecting LITCs to receive disaster-related calls coming into the ABA's disaster toll-free number, with implementation planned for the 2005 filing season;
- ◆ Training and encouraging ABA volunteers to work with LITCs to pair the volunteer with the most convenient LITC site offering disaster relief assistance;
- ◆

- ◆ TAS training LITCs and ABA volunteers on disaster casualty losses, transcripts, and related disaster issues through a phone forum; and
- ◆ TAS providing expedited transcript support to taxpayers seeking disaster relief assistance through the LITC/ABA partnership.

#### *Red Cross /Other Site Assistance*

The Red Cross refers some disaster victims to other agencies, including the IRS, for additional services, including transcript information or the filing of claims. TAS does not anticipate a large need for outreach in conjunction with the Red Cross, however, local events and special Red Cross assistance sites at the local level may dictate otherwise.

#### **SYSTEMIC ADVOCACY**

Effective systemic advocacy improves tax administration and taxpayer compliance, benefiting the IRS as well as taxpayers. The TAS Office of Systemic Advocacy works directly with the IRS on problems caused by administrative practices and helps to develop legislative recommendations, when warranted.

In the past year, TAS received notice of more than 600 potential systemic problems from TAS and IRS employees and external stakeholders, including taxpayers, practitioners, and research and academic institutions. To heighten awareness of these pressing issues and facilitate rapid responses, the National Taxpayer Advocate recently revised the Systemic Advocacy structure to include a Director of Advocacy Projects and a Director of Immediate Interventions.

#### **OFFICE OF ADVOCACY PROJECTS**

The Office of Advocacy Projects addresses systemic issues having impact and complexity that demand strategic, long-term analysis. These issues, which affect specific segments of the taxpayer population, may pertain to businesses, individuals, or non-profit entities. Systemic Advocacy and field analysts, attorney advisors, and Local Taxpayer Advocates (LTAs) wrote throughout the year on these advocacy projects, which may be designated Most Serious Problems in the Annual Report to Congress if they are not resolved timely. The Office of Advocacy Projects also supports the LTAs with their Advocacy Portfolios.<sup>13</sup>

#### **ADVOCACY PORTFOLIOS**

Each Local Taxpayer Advocate (LTA) maintains an Advocacy Portfolio to bring the field perspective to advocacy issues and thereby integrate case and systemic advocacy. Portfolio assignments are issues of national importance. The LTAs leverage their expertise and field contacts to promote awareness and rapid correction of systemic problems in IRS offices and campuses. LTAs identify local systemic issues; bring an experienced perspective to pending IRS program modifications, and network with peers throughout

<sup>13</sup> See Appendix II for a complete listing of these Portfolio assignments.

TAS and the operating divisions. As Portfolio Advisors, they maintain a current understanding of their topics, initiate proposals, assist in resolving problems, and monitor the progress of their Portfolios.

### IMMEDIATE INTERVENTIONS

The National Taxpayer Advocate gives high priority to issues that meet “Immediate Intervention” criteria. An issue rises to the status of an Immediate Intervention when IRS actions, published or unpublished guidance, inequitable treatment, or other unusual circumstances result in an action against a taxpayer or group of taxpayers that requires immediate relief. TAS pursued the following Immediate Interventions in 2005:

- ◆ *Electronic Filing in Puerto Rico.* The IRS planned to discontinue Form 1040 electronic filing in Puerto Rico due to concerns about inappropriate Additional Child Tax Credit (ACTC) claims. The proposal could have caused inequitable treatment of approximately 79,000 low-income taxpayers and their practitioners. The IRS did not timely inform them of the change and they could not make the necessary adjustments for the filing season. After TAS raised this issue, the IRS decided to continue accepting electronic Forms 1040 from Puerto Rico, and have the IRS Philadelphia Campus screen these returns for ACTC eligibility.
- ◆ *Direct Debit Installment Agreement (DDIA) Payments in Disaster Areas.* Many issues relating to the hurricanes of 2005 rose to the level of an Immediate Intervention. Of particular importance were those hurricane victims who had existing Direct Debit Installment Agreements (DDIAs) with the IRS and whose automatic payments toward their tax liabilities were still being processed, even though many had no job or wages. The Tax Policy Board for disaster relief accepted a TAS recommendation to allow relief to taxpayers, return the payments, and suspend the DDIAs.
- ◆ *Centralized Lien Processing.* Several taxpayers and IRS employees raised hardship situations resulting from delays in providing payoff balances and lien releases by the Centralized Case Processing (CCP) Lien Unit. TAS, working with CCP management and staff, identified and implemented solutions.
- ◆ *Estimated Average Preparation Times and Out-of-Pocket Expenses included in the Instructions to Form 1040.* The year 2005 concluded with a barrage of inquiries from tax practitioners and software providers regarding instructions for individual tax returns, which the IRS issued in November. These instructions included a chart outlining the estimated average preparation times and out-of-pocket expenses for each return preparation method. The chart stratifies this information by hours and costs in three categories:
  - ◆ Self-Prepared Without Tax Software;
  - ◆ Self-Prepared With Tax Software; and
  - ◆ Prepared by Paid Professional.

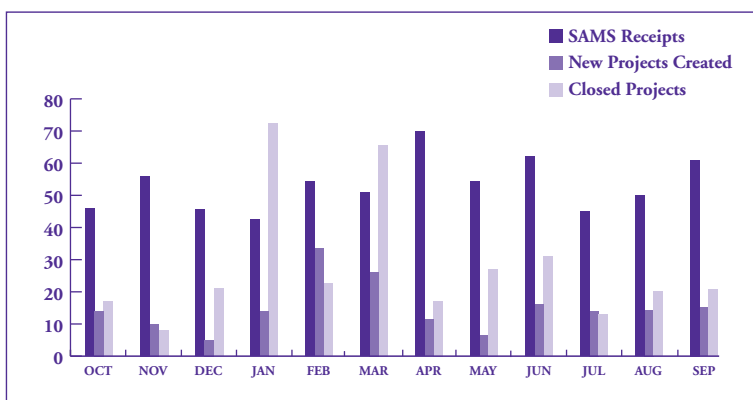
The information caused a great deal of concern for practitioners, who felt it gave the impression of dictating a reasonable price for their services. The software community also expressed concerns because the chart indicated it is more cost effective and time efficient to prepare a paper return rather than file a return electronically.

**SYSTEMIC ADVOCACY RECEIPTS AND PROJECTS**

The TAS Office of Systemic Advocacy reviews and assigns advocacy work through the Systemic Advocacy Management System (SAMS). The Office of Systemic Advocacy tracks its work on SAMS, a web-based application available to IRS employees and the public.<sup>14</sup> Systemic Advocacy employees review all issue submissions and apply criteria that categorize and develop the issues into projects when appropriate, or assimilate new issues into existing projects.

Table 4.17 illustrates monthly issue receipts, new advocacy projects created from receipts and project closures for fiscal year 2005.

**TABLE 4-17, FY 2005 SAMS RECEIPTS, NEW PROJECTS, AND CLOSURES**



During fiscal year 2005, the Office of Systemic Advocacy received 635 advocacy issues, with the majority coming via SAMS.<sup>15</sup> The public (taxpayers, academics, and tax professionals) submitted approximately 17 percent of SAMS issues via the Internet. TAS and other IRS employees delivered the remaining issues directly into SAMS using the IRS intranet.

The number of submissions declined by 34 percent from FY2004, a trend attributed to IRS and TAS employees growing more familiar with SAMS and the criteria for a systemic issue. Thus, Systemic Advocacy received a larger number of appropriate submissions

<sup>14</sup> SAMS is a database of advocacy issues submitted to TAS by employees and the public and the projects created from these issues. The Internet version of SAMS is available through the Systemic Advocacy pages of the TAS website at <http://www.irs.gov/advocate>.

<sup>15</sup> A limited number of advocacy issues come into the Office of Systemic Advocacy through outreach and emails directly to the National Taxpayer Advocate and the Executive Director of Systemic Advocacy. These are input and tracked on SAMS along with issues sent directly through the system.

and accepted fewer that required transfer to other IRS units. These transfers fell almost 200 percent from FY 2004, with the largest decrease involving questions and suggestions for improving TAS case processing procedures and policy. TAS brought a new database online to track and respond to these types of questions in April 2005.<sup>16</sup>

Systemic Advocacy reviews all issue submissions using established criteria to prioritize inventory and develop advocacy projects.<sup>17</sup> If an issue meets criteria and all facts are present, Systemic Advocacy ranks the issue to assess its general scope, visibility and sensitivity, and the interest it generates among members of Congress, the media, and stakeholders. The ranking process also considers the impact on taxpayer burden and taxpayer rights as well as TAS’s ability to effect change by working the issue. Systemic Advocacy developed approximately 28 percent of submissions into new projects during FY 2005, creating 175 projects in all. Meanwhile, the number of closed (completed) projects rose almost 20 percent over FY 2004.

As the above statistics depict, most submissions do not become projects. Some (*e.g.*, local issues, tax law questions) may not truly represent systemic problems, while others, such as requests for IRS system changes, can be better handled through existing IRS processes. However, Systemic Advocacy staff continually assesses all submissions to identify trends and gain a comprehensive understanding of problems.

**CHART 4-18, TOP SYSTEMIC ADVOCACY PROJECT CATEGORIES**

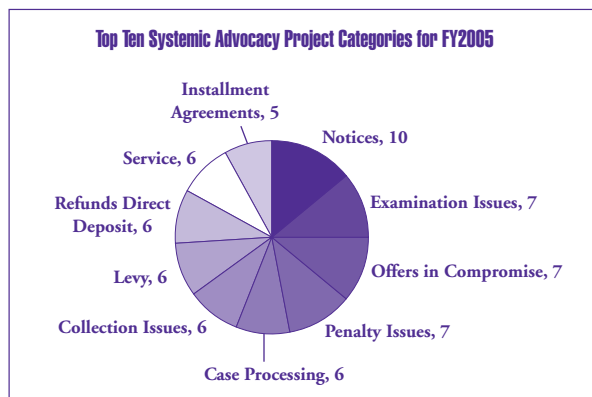


Table 4.19 outlines the top 25 systemic issue topics in SAMS by major issue (MI) codes that correspond to tracking on TAMIS, the TAS database of individual taxpayer cases. Some of the advocacy issues do not directly match with TAMIS MI Codes because cases usually relate to service and account problems. For example, Earned Income Tax Credit

<sup>16</sup> The CAPER (Cases and Correspondence - Analysis - Policy and Procedure - Evaluative - Review) system, a forum for TAS field and campus offices to submit questions, issues, and suggestions to the TAS Taxpayer Accounts Operations (TAO) office, became operational in FY 2005.

<sup>17</sup> Submissions identifying issues that are so highly visible, sensitive, or urgent that there is no time for normal corrective steps to occur are elevated as Immediate Intervention projects and assigned immediately.

is listed under Exam MI Codes and does not have a separate code for problems with the related EITC law. Systemic advocacy issues often address problems with either a lack of or inadequate guidance, or difficulty applying tax law.

**TABLE 4-19, TOP 25 ISSUES RECEIVED IN SAMS FOR FY 2005**

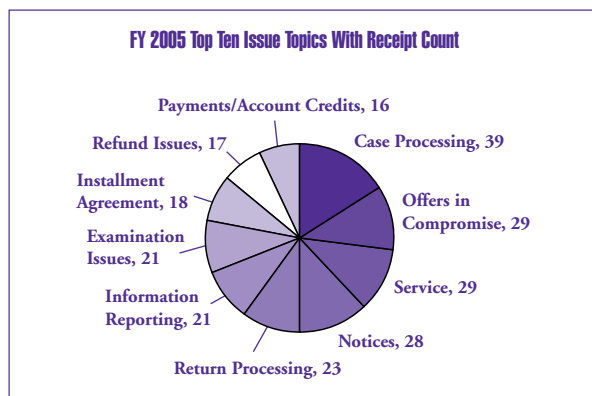
MI Code	Description	FY05 Advocacy Receipts
N/A	Case Processing	39
780	Offers in Compromise (OIC)	29
100	Service	29
111	Notices	28
301	Return Processing	23
390	Information Reporting	21
600	Examination Issues	21
751	Installment Agreements	18
000	Refund Issues	17
200	Payments/Account Credits	16
701	Collection Issues	15
410	Multiple/Mixed ID Numbers	15
100	Form or Publication Issue	14
105	Determinations	14
500	Penalty Issues	14
N/A	Income Issues	13
710	Levy	13
720	Lien	13
N/A	Extension to File	11
400	Entity Issues	11
330	Amended Return	10
990	Access to IRS	9
630-640	Earned Income Tax Credit (EITC)	9
830	Interest Calculation	9
340	Injured Spouse (Form 8379)	8

Ongoing SAMS enhancements include the addition of a project history screen for analysts to facilitate project management and another screen to allow SAMS issue reviewers to make notations during the ranking process.

Chart 4.20 illustrates the top ten SAMS issues in fiscal year 2005. The following topics from FY 2004 are no longer among the top ten receipts: Earned Income Tax Credit (EITC), Individual Taxpayer Identification Number (Form W-7), Penalty Issues, and Form/Publication Issue. These were replaced by Examination Issues, Refund Issues, Payments/Account Credits, and Case Processing.



**CHART 4-20, TOP TEN ISSUE TOPICS RECEIVED IN SAMS IN FY 05  
INTERNAL REVENUE MANUAL AND INTERNAL MANAGEMENT DOCUMENT (IMD) REVIEW**



In addition to addressing matters of priority concern, the Office of Immediate Interventions is the Single Point of Contact (SPOC) for review of all internal management documents (such as interim guidance, policy statements, or delegations order) including the Internal Revenue Manual (IRM) that affects taxpayers. Review of these documents not only focuses on taxpayer rights and burden, but also on tracking these documents to ensure that, the IRM properly incorporates the recommendations of each Annual Report to Congress.

TAS received 346 Internal Revenue Manual and Internal Management Documents (IMDs) for review and provided feedback on 113, placing particular importance on Collection IRMs relating to liens, levies, and managerial involvement and oversight in these processes. TAS also provided a response on guidance relating to time frames for receiving and processing Collection Due Process (CDP) hearing requests to ensure taxpayers were allowed adequate time to respond before IRS took collection action.

**OTHER INITIATIVES**

The following table lists some of the initiatives and projects pursued by Systemic Advocacy in fiscal year 2005.

TABLE 4-21, SYSTEMIC ADVOCACY INITIATIVES 2005

Systemic Initiative	Actions Taken
Private Debt Collection Initiative	The NTA has identified seven areas for particular attention: contractor training, policies and procedures, taxpayer privacy, notices, complaint processes, case selection criteria and exclusion codes, and contractor monitoring and case research of the PDC initiative scheduled for July 2006. The IRS should establish procedures for taxpayers treated unfairly by debt collectors could get TAS assistance. <sup>18</sup>
Taxpayer Assistance Centers (TACs)	Assess the effects of IRS decreases in service by monitoring their impact on TAS inventory, using a special TAMIS code to track workload results. <sup>19</sup>
Taxpayer Rights Training	Reviewed the IRS course material developed for newly hired Compliance employees and Appeals officers and determined that it did not systematically address taxpayer rights.
Uniform Definition of a Qualifying Child (UDOQC)	Address the implementation of UDQOC and its impact on tax provisions and processes. The IRS is training employees servicewide and TAS will deliver an Interactive Video Training (IVT).
Collections Statute Expiration Dates (CSEDs)	Identify methods to correct accounts with erroneous or miscalculated CSEDs areas such as installment agreements, offer in compromise and substitute for return accounts. The IRS has corrected over one million accounts where taxpayer requests for installment agreements had caused an incorrect extension of the statute. The IRS is running extracts to identify monies that may have been incorrectly withheld from taxpayers.
Federal Payment Levy Program (FPLP)	Work is underway with the Wage and Investment Operating Division to develop an effective income exclusion model to protect taxpayers with limited incomes from being levied upon. IRS's proposal provides specific due dates on notices for payment instead of the generic 30 days. <sup>20</sup>
Appeals-SB/SE Fast Track Settlement Initiative Team	TAS participated in a team that developed a more efficient Alternative Dispute Resolution (ADR) strategy for SB/SE cases.
IRS SB/SE Audit Reconsideration Task Force	Analyzed the entire audit reconsideration process and reviewed the TAS EITC Audit Reconsideration study to substantially modify changes to the process, include a revised policy statement and IRM. Future training is planned for campus employees.
IRS SB/SE Innocent Spouse Task Force	Advocacy Projects joined a cross-functional team charged with redesigning Form 8857, Request for Innocent Spouse Relief. The new form is to allow for earlier determinations and eliminate additional correspondence to the taxpayer. TAS' goal is to ensure that taxpayer rights and burden issues are considered. <sup>21</sup>
Notice Strategy Planning	This initiative includes a five-year, servicewide notice improvement plan. The group envisions creating a list of all notices by type and function, intended purpose, mailing costs, volumes, and content to determine which notices to change, add, or eliminate.

<sup>18</sup> See Most Serious Problem: *Private Debt Collection Initiative*, *supra*.<sup>19</sup> See Most Serious Problem: *Taxpayer Service*, *supra*.<sup>20</sup> See Most Serious Problem: *Levies On Social Security Payments*, *supra*.<sup>21</sup> See Most Serious Problem: *Innocent Spouse Claims*, *supra*.

**TAXPAYER ADVOCATE SERVICE**  
**TOP 25 CASE ADVOCACY ISSUES**

**TOP 25 CASE ADVOCACY ISSUES FOR FY 2005 IDENTIFIED BY TAMIS RECEIPTS**

<b>Core Issue Code</b>	<b>Description</b>	<b>Total</b>
95x	Criminal Investigation	26,505
63x-640	EITC Certification/Recertification/ Reconsideration/ Revenue Protection Strategy	14,180
330	Processing Amended Returns	11,919
71x	Levies	10,131
310	Processing Original Returns	8,866
620	Reconsideration/Substitute For Return/6020b/Audit	7,425
020	Expedite Refund Requests	6,931
340	Injured Spouse Claim	6,283
670	Closed Underreporter	5,816
150	Copies of Returns/Transcripts/Reports/FOIA	5,449
610	Open Audit (non-RPS,EITC)	5,215
72x	Liens	5,045
210	Missing/Incorrect Payments	3,807
520	Failure To File / Failure To Pay Penalties	3,603
090	Other Refund Issues	3,225
390	Other Document Processing Issues	2,966
450	Form W-7/ITIN/ATIN	2,744
660	Open Automated Underreporter	2,731
060	IRS Offset	2,628
675	CAWR/FUTA	2,572
75x	Installment Agreements	2,572
010	Lost or Stolen Refunds	2,514
110	Account/Notice Inquiries	2,367
78x	Offers In Compromise	2,279
040	Returned/Stopped Refunds	2,221
	<b>Total</b>	<b>149,994</b>
	<b>Grand Total - All TAS Cases FY 2005</b>	<b>190,153</b>

**ADVOCACY PORTFOLIOS**

Portfolio	LTA Name	State/Office	Phone Number
Abusive Schemes	Zelle, J	MO	314-612-4610
Appeals: ADR	McMurray, T	IL Springfield	217-862-6382
Appeals: CDP Hearings	Gorga, P	NY Manhattan	212-436-1011
Appeals: Nondocketed Inventory	Logan, A	WY	307-633-0800
Appeals: Nondocketed Inventory (Campus)	Safrey, E	BSC	631-654-6686
Appeals: Nondocketed Inventory (Field)	Trudeau, M	ID	208-387-2927
Audit Reconsiderations	Keleman, L	CA Los Angeles	213-576-3140
Audit Reconsiderations (Audit Recon/ASFR/6020B)	Carey, W	ATSC	770-936-4500
AUR Exam	Boucher, D	ME	207-622-8528
Backup Withholding	Adams, M	KS	316-352-7506
Bankruptcy Processing Issues	Metlen, A	PA Pittsburgh	412-395-5987
Campus Consistency	Wess, D	MSC	901-395-1900
Carryback/Carryforward Claims	Blair, C	OSC	801-620-7168
CAWR/FUTA	Keating-Jones, J	OR	503-326-7816
Centralized Lien Filing and Releases	Diehl, M	CSC	859-669-5316
Criminal Investigation Cases (CI) & Criminal Investigation Freezes	Sawyer, M	FSC	559-442-6400
Collection Contract Support	Kleckley, F	SC	803-253-3029
CSEDs	Sherwood, T	CO	303-446-1012
EITC: Certification/Precertification	Mings, L	KCC	816-926-2493
EITC: Exam Re-engineering (Math Error)	Martinez, L	NM	505-837-5505
EITC: Notice Redesign	Taylor, S	IL Chicago	312-566-3800
EITC: Outreach and Education, Financial Literacy	Mapp, T	PA Philadelphia	215-861-1304
EITC: Outreach and Education, Rural	Allen, B	GA	404-338-8099
EITC: Recertification	Lewis, C	LA	504-558-3001
EO Applications, Penalties, Education, and Outreach	Finnesand, M	SD	605-226-7248
ETA/Electronic Filing	Martin, B	TN	615-250-5000
ETA/Electronic Return Originators	Scott, C	OK	405-297-4055
Examination Strategy	Revel-Addis, B	FL Jacksonville	904-665-1000
Excise Tax	Diehl, M	CSC	859-669-5316
Federal Payment Levy Program (FPLP)	Morris, R	WI	414-297-3046
FPLP Communication	O'Shaughnessy, M	NH	603-433-0571
Filing Season Readiness/SPEC	Douts, K	AK	907-271-6877
Frontline Leader Readiness Program (FLRP)	Kitson, A	NY Brooklyn	718-488-2080
Health Care Tax Credit (HCTC)	Cummings, L	TX Dallas	214-413-6500
Identity Theft	Safrey, E	BSC	631-654-6686
Injured Spouse	Post, T	WV	304-420-6616
Innocent Spouse Relief: IRC § 6015	Adams, C	CA Laguna Nigel	949-389-4804
Installment Agreements: Allowable Expenses (High Cost)	Moore, L	FL Ft. Lauderdale	954-423-7677
Installment Agreements: Allowable Expenses (Low Cost)	Washington, J	MS	601-292-4800
Installment Agreements: Processing	Tam, T	CA Oakland	510-637-2703
Interest Computations, Abatement of Interest	Romano, F	CT	860-756-4555

ADVOCACY PORTFOLIOS (CONT.)

Portfolio	LTA Name	State/Office	Phone Number
International Taxpayers	Puig, JC	PR	787-622-8930 (S) 787-622-8940 (E)
IRS Training on Taxpayers Rights	Hickey, M	NE	402-221-4181
ITIN Outreach	Blount, P	MI	313-628-3670
ITIN Processing	Dowd, L	PSC	215-516-2499
Levy (710) [Hardship determination linked to release of levy]	Polson, R	IA	515-284-4780
Lien Release, Lien Withdrawal, Lien Subordination, Lien Discharge	Lauterbach, L	NJ	973-921-4043
LITC	Lewis, C	LA	504-558-3001
Manual Refunds	Strayer, C	OH Cleveland	216-522-7134
Mentoring	Coss, V	ANC	978-474-5549
Mixed and Scrambled TINs (Multiple/Mixed TINS (410))	Murphy, M	AZ	602-207-8240
Multilingual Initiative	Glass, D	TX Austin	512-499-5875
Navigating the IRS	Gray, P	AR	501-324-6269
Nonfiler Strategy	Bjornson, B	MN	651-312-7999
Notice Clarity	Smith, G	NY Albany	518-427-5413
Notice Clarity (Account/Notice Inquiry Transfer Criteria (110))	Egan, C	RI	401-525-4200
OIC (Field, COIC)	Burns, L	KY	502-582-6030
OIC (Field, ETA, COIC)	Sonnack, B	TX Houston	713-209-3660
Outreach to ESL Taxpayers (including ITINs)	Puig, JC	PR	787-622-8930 (S) 787-622-8940 (E)
Outreach and Marketing to Low Income TPs (Marketing too)	Grant, D	NV	702-455-1241
Penalties: e.g. failure to pay, abatements, adjustments, estimated	Sherwood, T	CO	303-446-1012
Position Management	Wirth, B	NY Buffalo	716-686-4850
Practitioner Priority Services	Beck, J	WA	206-220-6037
Preparer Penalties	Votta, P	MD	410-962-2082
Returned/Stopped Refunds	Gilchrist, M	AL	205-912-5631
Schedule K-1 Matching	Sheely, K	IN	317-226-6332
Seizure and Sale	Beck, J	WA	206-220-6037
TACs-Rural	Foard, L	ND	701-239-5141
TACs-Urban and Communications	VanHorn, C	OH Cincinnati	513-263-3260
TAS Confidentiality/IRC 6103	Bjornson, B	MN	651-312-7999
Tax Exempt Entities: EP Penalties	Blair, C	OSC	801-620-7168
Tax Exempt Entities: EP returns (Forms 5500)	Blair, C	OSC	801-620-7168
Tax Exempt Entities: Tribal Government Issues	Wirth, B	NY Buffalo	716-686-4850
Tax Forums	Allen, B	GA	404-338-8099
TIGTA/GAO	Thompson, T	MT	406-441-1022
Tip Reporting	Grant, D	NV	702-455-1241
Transcript Delivery System (Copies of returns, transcripts, reports, FOI)	Cooper-Aquilar, S	UT	801-799-6958
Transition of SB Work	Keleman, L	CA Los Angeles	213-576-3140
Trust Fund Recovery Penalty	Campbell, M	VA	804-916-3501

## MOST LITIGATED TAX ISSUES: TABLES OF LITIGATED CASES

**TABLE 1**  
**APPEALS FROM COLLECTION DUE PROCESS HEARINGS UNDER IRC §§ 6320 AND 6330**

Case Cite	Issue(s)	Pro Se	Decision
<b>Individual Taxpayers (Issues Other Than Business)</b>			
<i>Adams v. Comm'r</i> , 95 A.F.T.R.2d (RIA) 1862 (9th Cir. 2005)	Frivolous issues	Yes	IRS
<i>Alaniz v. Comm'r</i> , T.C. Memo. 2005-4	Rejection of OIC as abuse	No	IRS
<i>Ali v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1319 (S.D. Ohio 2005)	Tax Court jurisdiction on slavery reparations refund issue	Yes	IRS
<i>Anderson v. Comm'r</i> , T.C. Dckt. No. 8869-04S (March 21, 2005)	Financial hardship	Yes	IRS
<i>Antloer v. U.S.</i> , 94 A.F.T.R.2d (RIA) 5141 (9th Cir. 2004)	Equivalent hearing, no jurisdiction	Yes	IRS
<i>Asemani v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 6628 (M.D. Pa. 2004)	Jurisdiction where no CDP notice issued	Yes	IRS
<i>Austin v. Comm'r</i> , 95 A.F.T.R.2d (RIA)2304 (E.D. Cal. 2005)	Late filing of petition, no jurisdiction	Yes	IRS
<i>Avula v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 5267 (8th Cir. 2004)	Inability to argue liability	Yes	IRS
<i>Balice v. Comm'r</i> , T.C. Memo. 2005-35	Late filing of petition, no jurisdiction	No	IRS
<i>Banis v. Comm'r</i> , T.C. Memo. 2004-237	Liability not discharged	Yes	IRS
<i>Barnett v. U.S.</i> , 366 F.3d 1243 (11th Cir. 2004)	Validity of assessment	Yes	IRS
<i>Bartley v. U.S.</i> , 343 F.Supp.2d 649 (N.D. Ohio 2004)	Frivolous issues	Yes	IRS
<i>Berger v. Comm'r</i> , T.C. Dckt. No. 19535 (March 21, 2005)	Ability to argue liability	Yes	TP
<i>Beverly v. Comm'r</i> , T.C. Memo. 2005-41	Automatic stay in bankruptcy	Yes	TP
<i>Black v. Comm'r</i> , T.C. Memo. 2005-46	Rejection of OIC as abuse	Yes	IRS
<i>Blankenship v. U.S.</i> , 94 A.F.T.R.2d (RIA) 5947 (S.D. Tex. 2004)	Verification requirements satisfied	Yes	IRS
<i>Boyd v. U.S.</i> , 95 A.F.T.R.2d (RIA) 847 (10th Cir. 2005)	Frivolous issues	Yes	IRS
<i>Borchardt v. Comm'r</i> , 338 F.Supp.2d 1040 (D. Minn. 2004)	Right to make recording of hearing	Yes	IRS
<i>Broderick v. Comm'r</i> , 95 A.F.T.R.2d (RIA) 1004 (9th Cir. 2004)	Propriety of motion for summary judgment and sanctions	Yes	IRS
<i>Brookbank v. Comm'r</i> , T.C. Dckt. No. 19226-02L (Feb. 28, 2005)	Frivolous issues	Yes	IRS
<i>Brown v. Comm'r</i> , T.C. Summ. Op. 2004-130.	Reliance on IRS to abate of interest	Yes	IRS
<i>Brown v. Comm'r</i> , T.C. Summ. Op. 2005-37	Inability to argue liability	Yes	IRS
<i>Brozgal v. Comm'r</i> , T.C. Dckt. No.8159-04S (March 21, 2005)	TP could not prove liability issue	Yes	IRS
<i>Burke v. Comm'r</i> , 124 T.C. 189 (2005)	Frivolous issues	Yes	IRS
<i>Burns v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1160 (M.D. Tenn. 2005)	Filed appeal in wrong court	Yes	IRS
<i>Burns v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1599 (M.D. Tenn. 2005)	Right to face-to-face hearing	Yes	IRS
<i>Calderone v. Comm'r</i> , T.C. Memo. 2004-240	Ability to argue liability	No	TP
<i>Canaday v. U.S.</i> , 94 A.F.T.R.2d (RIA) 6311 (S.D. W.Va. 2004)	Filed appeal in wrong court	Yes	IRS
<i>Cansino v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 7256 (9th Cir. 2004)	Jurisdiction for Tax Court	Yes	IRS
<i>Cardona v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 7148 (2nd Cir. 2004)	Frivolous issues	Yes	IRS
<i>Casey v. Comm'r</i> , T.C. Memo. 2004-228	Failure to offer face-to-face as abuse	Yes	IRS
<i>Castillo v. Comm'r</i> , T.C. Memo. 2004-238	Rejection of IA not abuse	No	IRS
<i>Cena v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 2927 (W.D. Tex. 2005)	Failure to state a claim	Yes	IRS
<i>Chandler v. Comm'r</i> , T.C. Memo. 2005-99	Refusal to grant face-to-face and rejection of OIC	Yes	IRS
<i>Chocallo v. Comm'r</i> , T.C. Memo. 2004-152	Jurisdiction to grant relief requested	Yes	IRS
<i>Christofferson v. Comm'r</i> , T.C. Dckt. No. 5730-04S (March 3, 2005)	Inability to argue liability	Yes	IRS
<i>Cianflone v. IRS</i> , 95 A.F.T.R.2d (RIA) 1601 (D. Md. 2005)	Failure to state a claim	Yes	IRS
<i>Collier v. Comm'r</i> , T.C. Memo. 2004-171	Not processing OIC as abuse	Yes	IRS
<i>Cobin v. Comm'r</i> , 95 A.F.T.R.2d (RIA) 717 (D. S.C. 2005)	Filed Appeal in wrong court	Yes	IRS
<i>Conner v. Comm'r</i> , T.C. Summ. Op. 2005-27	No IRS delay to abate interest	Yes	IRS
<i>Crass v. Comm'r</i> , T.C. Dckt. No. 9616-04S (2005)	Inability to argue liability	Yes	IRS
<i>Currie v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1961 (N.D. Ga. 2005)	Inability to argue liability	Yes	IRS
<i>Dalton v. Comm'r</i> , T.C. Memo. 2005-7	Inability to argue liability	Yes	IRS
<i>Dasbiell v. Comm'r</i> , T.C. Memo. 2004-210	Frivolous issues	Yes	IRS

**TABLE 1: APPEALS FROM COLLECTION DUE PROCESS HEARINGS UNDER IRC §§ 6320 AND 6330 (CONT.)**

Case Cite	Issue(s)	Pro Se	Decision
<i>Deaton v. Comm’r</i> , T.C. Memo. 2005-1	Underlying liability, claim of credit	No	IRS
<i>Del Vecchio v. Comm’r</i> , T.C. Memo. 2004-218	Validity of assessment	Yes	IRS
<i>Demus v. Comm’r</i> , T.C. Dckt. No. 6636-04L (Jan. 31, 2005)	Adequacy of Notice of Determination	Yes	TP
<i>Desalvo v. Comm’r</i> , T.C. Summ. Op. 2004-166	Inability to argue liability and rejection of OIC as abuse	Yes	IRS
<i>Devries v. Comm’r</i> , 359 F.Supp.2d 988 (E.D. Cal. 2005)	Anti-Injunction Act as bar to relief	Yes	IRS
<i>Dick v. Comm’r</i> , T.C. Dckt. No. 13102-04L (April 27, 2005)	Inability to argue liability	Yes	IRS
<i>Doing v. Comm’r</i> , 95 A.F.T.R.2d (RIA) 1867 (9th Cir. 2005)	Inability to argue liability	Yes	IRS
<i>Dysle v. Comm’r</i> , T.C. Memo. 2004-285	IRS application of payments	Yes	IRS
<i>Eberhardt v. Comm’r</i> , T.C. Summ. Op. 2004-147	Inability to argue liability, rejection of OIC, abatement of interest	Yes	IRS
<i>Eckert v. Comm’r</i> , T.C. Memo. 235	Misapplication of payments	Yes	IRS
<i>Edwards v. U.S.</i> , T.C. Summ. Op. 2004-158	Leaving NFTL in place as abuse	Yes	IRS
<i>Elkins v. U.S.</i> , 95 A.F.T.R.2d (RIA) 597 (M.D. Ga. 2004)	TP provides no alternatives	Yes	IRS
<i>Farley v. Comm’r</i> , T.C. Memo. 2004-168	Inability to argue liability	Yes	IRS
<i>Fishbach v. Comm’r</i> , T.C. Memo. 2005-38	Inability to argue liability	Yes	IRS
<i>Florance v. Comm’r</i> , T.C. Memo. 2005-61	Frivolous issues	Yes	IRS
<i>Forman v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1633 (N.D. Ill. 2005)	Lack of standing for husband and wife	No	IRS
<i>Fowler v. Comm’r</i> , T.C. Memo. 2004-163	Use of national expense standards	Yes	TP
<i>Frate v. Comm’r</i> , T.C. Summ. Op. 2004-91	Whether levied wages embezzled	Yes	IRS
<i>Gardner v. Comm’r</i> , 95 A.F.T.R.2d (RIA) 2032 (D. N.J. 2005)	Face-to-face hearing and validity of hearing	Yes	IRS
<i>Gatlos v. Comm’r</i> , T.C. Memo. 2004-192	Frivolous issues	Yes	IRS
<i>Gavigan v. Comm’r</i> , T.C. Summ. Op. 2004-155	Frivolous issues	Yes	IRS
<i>Geary v. Comm’r</i> , T.C. Summ. Op. 2005-16	Inability to argue liability	Yes	IRS
<i>Gerakios v. Comm’r</i> , T.C. Memo. 2004-203	Moot issues, liability paid	Yes	IRS
<i>Gibson v. Comm’r</i> , T.C. Dckt. No. 19577-04S (May 12, 2005)	Inability to argue liability	Yes	IRS
<i>Gilligan v. Comm’r</i> , T.C. Memo. 2004-194	Frivolous issues	Yes	IRS
<i>Goblirsch v. Comm’r</i> , T.C. Memo. Op. 2005-78	Liability for capital gains tax	Yes	IRS
<i>Griffith v. Comm’r</i> , T.C. Memo. 2004-267	Expiration of collection statute	Yes	IRS
<i>Hamzik v. Comm’r</i> , T.C. Memo. 2004-223	Frivolous issues	Yes	IRS
<i>Harris v. Comm’r</i> , T.C. Summ. Op. 2005-25	No evidence presented as to liability, rejecting OIC as abuse of discretion	Yes	IRS
<i>Hayes v. Comm’r</i> , T.C. Memo. 2005-57	Whether TP had paid liability	Yes	TP
<i>Henderson v. Comm’r</i> , T.C. Memo. 2004-157	Frivolous issues	Yes	IRS
<i>Hendricks v. Comm’r</i> , T.C. Memo. 2005-72	Innocent spouse	No	TP
<i>Herip v. U.S.</i> , 95 A.F.T.R.2d (RIA) 537 (6th Cir. 2004)	Whether all procedures were followed	No	IRS
<i>Hibben v. U.S.</i> , 95 A.F.T.R.2d (RIA) 2063 (E.D. Ky. 2005)	Raising CDP in summons case	Yes	IRS
<i>Hiland v. Comm’r</i> , T.C. Memo. 2004-225	Frivolous issues	Yes	IRS
<i>Holquin v. Comm’r</i> , 94 A.F.T.R.2d (RIA) 5803 (9th Cir. 2004)	Frivolous issues	Yes	IRS
<i>Hobbs v. Comm’r</i> , 95 A.F.T.R.2d (RIA) 6194 (9th Cir. 2004)	Frivolous issues	Yes	IRS
<i>Holliday v. Comm’r</i> , T.C. Memo. 2004-172	Whether all procedures were followed	Yes	IRS
<i>Holmes v. Comm’r</i> , 351 F.Supp.2d 526 (W.D. La. 2004)	Failure to appear at CDP hearing	Yes	IRS
<i>Howard v. Comm’r</i> , T.C. Memo. 2005-100	Frivolous issues	Yes	IRS
<i>Hudspath v. Comm’r</i> , T.C. Memo. 2005-83	Inability to raise liability	Yes	IRS
<i>Israel v. U.S.</i> , 93 A.F.T.R.2d (RIA) 2044 (S.D. Iowa 2005)	Filed appeal in wrong court	Yes	IRS
<i>Jackling v. Comm’r</i> , 352 F.Supp.129 (D. N.H. 2004)	Inability to argue liability	Yes	IRS
<i>Jackson v. Comm’r</i> , T.C. Summ. Op. 2005-12	Abatement of interest and penalties	Yes	Split
<i>Johnson v. Comm’r</i> , T.C. Summ. Op. 2005-47	Ignoring TP’s poverty as abuse	Yes	TP
<i>Johnston v. Comm’r</i> , T.C. Memo. 2004-224	Frivolous issues	Yes	IRS
<i>Johnston v. U.S.</i> , 95 A.F.T.R.2d (RIA) 699 (9th Cir. 2005)	Filed appeal in wrong court	Yes	IRS

TABLE 1: APPEALS FROM COLLECTION DUE PROCESS HEARINGS UNDER IRC §§ 6320 AND 6330 (CONT.)

Case Cite	Issue(s)	Pro Se	Decision
<i>Judd v. Comm'r</i> , T.C. Summ. Op.. 2005-59	Application of payments	Yes	IRS
<i>Kaplowitz v. Comm'r</i> , T.C. Memo. 2005-62	Frivolous issues	Yes	IRS
<i>Kara v. Comm'r</i> , T.C. Dckt. No. 7748-02L (Jan. 25 2005)	Sufficiency of CDP notice	Yes	TP
<i>Karns v. Dix</i> , 95 A.F.T.R.2d (RIA) 1593 (D. S.D. 2005)	Jurisdiction to sue IRS employees	Yes	IRS
<i>Kelby v. Comm'r</i> , T.C. Memo. 2005-25	Whether all procedures followed	No	IRS
<i>Kendricks v. Comm'r</i> , 124 T.C. 69 (2005)	Rejection of OICs as abuse	No	IRS
<i>Khalid v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1860 (E.D. Pa. 2005)	Prerequisite of CDP hearing request	Yes	IRS
<i>Kilgore v. Comm'r</i> , T.C. Memo. 2005-24	Frivolous issues	Yes	IRS
<i>Kim v. Comm'r</i> , T.C. Memo. 2005-96	Erroneous notice of determination	Yes	IRS
<i>Klet v. Comm'r</i> , T.C. Summ. Op. 2004-172	Discharge of liability in bankruptcy	Yes	Split
<i>Kolker v. Comm'r</i> , T.C. Memo. 2004-288	Frivolous issues	Yes	IRS
<i>Kone v. U.S.</i> , 94 A.F.T.R.2d (RIA) 6924 (D. Md. 2004)	Jurisdiction when appeal filed late	Yes	IRS
<i>Krueger v. Comm'r</i> , T.C. Memo. 2005-105	Frivolous issues	Yes	IRS
<i>Kubon v. Comm'r</i> , T.C. Memo. 2005-71	Frivolous issues	Yes	IRS
<i>Kun v. U.S.</i> , T.C. Memo. 2004-209	Ability to argue liability, rejection of OIC as abuse of discretion	Yes	IRS
<i>Kupcho v. Comm'r</i> , 95 A.F.T.R.2d (RIA) 1439 (D. N.J. 2005)	Filed appeal in wrong court	Yes	IRS
<i>Kyles v. Comm'r</i> , T.C. Dckt. No. 9213-04S (March 15, 2005)	Lack of notice as abuse of discretion	Yes	IRS
<i>Laing v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 7225 (W.D. Tex. 2004)	Lack of notice as abuse of discretion	No	IRS
<i>Langer v. U.S.</i> , 95 A.F.T.R.2d (RIA) 894 (8th Cir. 2005)	FICA taxes incorrectly assessed	No	TP
<i>LeDoux v. U.S.</i> , 375 F.Supp.2d 1242 (D. NM 2005)	Whether all procedures followed	Yes	IRS
<i>Lee v. Comm'r</i> , T.C. Memo. 2004-264	IRS refusal to record as abuse	Yes	IRS
<i>Lehman v. Comm'r</i> , T.C. Memo. 2005-90	Frivolous issues	Yes	IRS
<i>Lister v. U.S.</i> , 94 A.F.T.R.2d (RIA) 5342 (10th Cir. 2004)	Frivolous issues	Yes	IRS
<i>Litriello v. Comm'r</i> , 2005 WL 1173277 (W.D. Ky. 2005)	Validity of IRS regulations	No	IRS
<i>Lozon v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 5234 (E.D. Mich. 2004)	Right to record hearing and notice as constitutional issues	Yes	IRS
<i>Lykes v. Comm'r</i> , T.C. Memo. 2004-159	Reasonable cause to abate penalties	Yes	IRS
<i>Mackinnon v. Fredrickson</i> , 95 A.F.T.R.2d (RIA) 1973 (D. Or. 2005)	Filed appeal in wrong court	Yes	IRS
<i>Malis v. Comm'r</i> , 95 A.F.T.R.2d (RIA) 1002 (9th Cir. 2005)	IRS refusal to record as abuse	Yes	IRS
<i>McBride v. Comm'r</i> , T.C. Memo. 2004-178	Frivolous issues	Yes	IRS
<i>McCauley v. U.S.</i> , 2004 WL 2106544 (E.D. Pa. 200)	Whether all procedures followed	Yes	IRS
<i>McCorckle v. Comm'r</i> , 124 T.C. 56	Equitable estoppel against IRS	Yes	IRS
<i>McCurdy v. Comm'r</i> , 95 A.F.T.R.2d (RIA) 2776 (D. Mass. 2005)	IRS refusal to record	Yes	IRS
<i>McElroy v. Comm'r</i> , T.C. Memo. 2004-254	Refusal to abate interest as abuse	Yes	IRS
<i>McNamara v. U.S.</i> , T.C. Summ. Op. 2005-22	Abuse to proceed with collection	Yes	IRS
<i>Meadows v. Comm'r</i> , 405 F.3d 949 (11th Cir. 2005)	Application of payment as violation of bankruptcy stay	No	IRS
<i>Meehan v. Comm'r</i> , 122 T.C. 396 (2004)	Severance as "wages" within meaning of CDP regulations	Yes	IRS
<i>Meyer v. Comm'r</i> , 95 A.F.T.R.2d (RIA) 2471 (W.D. Wis. 2005)	Frivolous issues	Yes	IRS
<i>Meyer v. Comm'r</i> , T.C. Summ. Op. 2005-82	Frivolous issues	Yes	IRS
<i>Molina v. Comm'r</i> , T.C. Memo. 2004-258	Distribution from plan as taxable	Yes	TP
<i>Moore v. Comm'r</i> , T.C. Memo. 2005-93	Inability to argue liability	Yes	IRS
<i>Moran v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 5840 (N.D. Ill. 2004)	Whether payments made	No	IRS
<i>Mosby v. U.S.</i> , 94 A.F.T.R.2d (RIA) 5598 (9th Cir. 2004)	No review in equivalent hearing	Yes	IRS
<i>Nguyen v. Comm'r</i> , T.C. Summ. Op. 2004-144	Inability to argue liability	Yes	IRS
<i>Norton v. Comm'r</i> , T.C. Memo. 2005-44	Interest and penalties as paid from seized funds	Yes	IRS
<i>Olsen v. Comm'r</i> , 326 F.Supp.2d 184 (D. Mass. 2004)	Rejection of OIC as abuse	No	IRS
<i>Orum v. Comm'r</i> , 123 T.C. 1, aff'd, 412 F.3d 819 (7th Cir. 2005)	Jurisdiction to order IA acceptance	Yes	IRS
<i>Parker v. Comm'r</i> , T.C. Memo. 2004-226	Hearing at closest Appeals office	Yes	TP



**TABLE 1: APPEALS FROM COLLECTION DUE PROCESS HEARINGS UNDER IRC §§ 6320 AND 6330 (CONT.)**

Case Cite	Issue(s)	Pro Se	Decision
<i>Peterson v. Kreidich</i> , 95 A.F.T.R.2d (RIA) 2416 (11th Cir. 2005)	Filed appeal in wrong court	Yes	IRS
<i>Picchiottino v. Comm’r</i> , 2004-231	Collection statute of limitations	Yes	IRS
<i>Picchiottino v. Comm’r</i> , 2004-232	Collection statute of limitations	Yes	IRS
<i>Pixely v. Comm’r</i> , 123 T.C. 269 (2004)	Rejection of tithe expense as abuse	No	IRS
<i>Poe v. Comm’r</i> , T.C. Memo. 2005-107	Frivolous issues	Yes	IRS
<i>Pollack v. U.S.</i> , , 327 F.Supp.2d 907 (W.D. Tenn. 2004)	Inability to argue TFRP liability, but procedure not followed	No	Split
<i>Popky v. U.S.</i> , 326 F.Supp.2d 594 (E.D. Pa. 2004)	Request from third party not levy	No	IRS
<i>Powers v. Comm’r</i> , T.C. Summ. Op. 2005-21	Rejection of OIC as abuse	Yes	IRS
<i>Prevo v. Comm’r</i> , 123 T.C. 326 (2004)	Jurisdiction to hear case in bankruptcy	Yes	IRS
<i>Quigley v. Comm’r</i> , 358 F.Supp.2d 427 (E.D. Pa. 2004)	Face-to-face hearing requirement	Yes	IRS
<i>Ramos v. U.S.</i> , 351 F.Supp.2d 5 (N.D. NY 2004)	Rejection of OIC as abuse	Yes	IRS
<i>Ray v. Smith</i> , 94 A.F.T.R.2d (RIA) 5925 (W.D. Mo. 2003)	Whether all procedures followed	Yes	IRS
<i>Rewerts v. Comm’r</i> , T.C. Memo. 2004-248	Frivolous issues	Yes	IRS
<i>Roberts v. Comm’r</i> , T.C. Summ. Op. 2005-40	Whether all payments made	Yes	IRS
<i>Roberts v. Comm’r</i> , T.C. Summ. Op. 2005-31	COD income belonged to TP, rejecting OIC as abuse	Yes	IRS
<i>Robinette v. Comm’r</i> , 123 T.C. 85 (2004), appeal docketed, No. 04-4081 (8th Cir. Dec. 16, 2004)	Default of OIC as abuse, review of new evidence	No	TP
<i>Rustam v. Comm’r</i> , T.C. Memo. 2005-42	Filed TFRP appeal in wrong court	No	IRS
<i>Salza v. U.S.</i> , 2005 WL 149813 (E.D. Wis. 2005)	Lack of jurisdiction	Yes	IRS
<i>Schroeder v. Comm’r</i> , T.C. Memo. 2005-48	Appellate review as stay	Yes	IRS
<i>Schultz v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1977 (W.D. Mich. 2005)	Frivolous issues	Yes	IRS
<i>Scibilia v. Comm’r</i> , T.C. Memo. 2005-79	Inability to argue liability	Yes	IRS
<i>Seavey v. Comm’r</i> , T.C. Summ. Op. 2005-8	Reasonable cause on 6651 penalty	Yes	IRS
<i>Sergio v. Comm’r</i> , 95 A.F.T.R.2d (RIA) 1174 (N.D. Ga. 2005)	Proceeding with collection as abuse	Yes	IRS
<i>Shireman v. Comm’r</i> , T.C. Memo. 2004-155	Whether all procedures followed	Yes	IRS
<i>Siqueros v. U.S.</i> , 94 A.F.T.R.2d (RIA) 5518 (W.D. Tex. 2004)	Rejection of OIC as abuse	Yes	IRS
<i>Simmons v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1981 (N.D. Ga. 2005)	Lack of CDP notice	Yes	IRS
<i>Skrizowski v. Comm’r</i> , T.C. Memo. 2004-229	Abuse to reject OIC	No	TP
<i>Smith v. Comm’r</i> , 124 T.C. 36 (2005)	Jurisdiction when case in bankruptcy	No	TP
<i>Snyder v. Comm’r</i> , T.C. Memo. 2005-89	Frivolous issues	Yes	IRS
<i>Speltz v. Comm’r</i> , 124 T.C. 165 (2005)	Rejection of OIC as abuse	No	IRS
<i>Splawn v. U.S.</i> , 95 A.F.T.R.2d (RIA) 5628 (E.D. Tenn. 2004)	Rejection of OIC as abuse	No	IRS
<i>Stevens v. Comm’r</i> , T.C. Dckt. No. 16710-04S (Feb. 8, 2005)	Jurisdiction no determination issued	Yes	IRS
<i>Talen v. Comm’r</i> , 355 F.Supp.2d 22 (D. D.C. 2004)	Inability to argue liability in TFRP case	No	IRS
<i>Tate v. Comm’r</i> , T.C. Dckt. No. 11923-04S (March 16, 2005)	Proceeding with collection as abuse	Yes	IRS
<i>Taylor v. Comm’r</i> , T.C. Memo. 2005-74	Frivolous issues	Yes	IRS
<i>Taylor v. Comm’r</i> , 95 A.F.T.R.2d (RIA) 2413 (9th Cir. 2005)	Failure to appear at CDP hearing	No	IRS
<i>Thompson v. Comm’r</i> , T.C. Memo. 2004-204	IRS failure to record as abuse	Yes	IRS
<i>Thorpe v. Comm’r</i> , T.C. Summ. Op. 2004-98	Strict adherence to Form 8857 as abuse, rejection of CNC as abuse	Yes	Split
<i>Tinnerman v. Comm’r</i> , 95 A.F.T.R.2d (RIA) 2401 (M.D. Fla. 2005)	Failure to provide face-to-face as abuse	No	IRS
<i>Torczon v. Lucas</i> , 95 A.F.T.R.2d (RIA) 681 (9th Cir. 2005)	Filed appeal in wrong court	Yes	IRS
<i>Turner v. U.S.</i> , 372 F.Supp.2d 1053 (S.D. Ohio 2005)	Failure to provide face-to-face as abuse	Yes	IRS
<i>Updegrave v. U.S.</i> , 94 A.F.T.R.2d (RIA) 6155 (D. Or. 2005)	Filed appeal in wrong court	Yes	IRS
<i>Van Dyke v. Comm’r</i> , T.C. Summ. Op. 2005-5	Collection statute of limitations	Yes	IRS
<i>Vierow v. Comm’r</i> , T.C. Memo. 2004-255	Location of hearing as abuse	Yes	IRS
<i>Whiting v. Comm’r</i> , T.C. Memo. 2004-136	Phone conversations as CDP hearing	No	IRS
<i>Williams v. Comm’r</i> , T.C. Memo. 2005-94	Frivolous issues	Yes	IRS
<i>Yazzie v. Comm’r</i> , T.C. Memo. 2004-233	Frivolous issues	Yes	IRS

**TABLE 1: APPEALS FROM COLLECTION DUE PROCESS HEARINGS UNDER IRC §§ 6320 AND 6330 (CONT.)**

Case Cite	Issue(s)	Pro Se	Decision
<i>Zachry v. Comm'r</i> , T.C. Summ. Op. 2005-55	Innocent spouse relief	Yes	IRS
<i>Zapara v. Comm'r</i> , 124 T.C. 223 (2005)	Failure to sell stock as directed	Yes	Split
<i>Zarcone v. U.S.</i> , 94 A.F.T.R.2d (RIA) 5470 (N.D. Cal. 2004)	Jurisdiction to compel accepting OIC	Yes	IRS
<i>Zarcone v. U.S.</i> , 94 A.F.T.R.2d (RIA) 6210 (N.D. Cal. 2004)	Reconsideration of opinion	Yes	IRS
<i>Zelaya v. Comm'r</i> , T.C. Summ. Op. 20040-163	Liability attributable to duplicate refund	Yes	TP
<b>Business Taxpayers (Sole Proprietorships including Schedule C and/or F, Schedule E, Corporations, Partnerships and Trusts)</b>			
<i>Allglass Systems Inc. v. U.S.</i> , 330 F.Supp.2d 540 (E.D. Pa. 2004)	Failure to inform of CDP hearing, rejection of OIC as abuse	No	IRS
<i>Alliance Services, Inc. v. U.S.</i> , 363 F.Supp.2d 1367 (N.D. Ga. 2005)	Rejection of OIC as abuse, RCP	No	IRS
<i>American Bethel Corp. v. U.S.</i> , 94 A.F.T.R.2d (RIA) 5994 (W.D. Va. 2004)	Refusal to suspend collection as abuse	No	IRS
<i>Barrett v. Comm'r</i> , T.C. Summ. Op. 2004-128	Inability to raise liability per agreement	Yes	IRS
<i>Christopher Cross, Inc. v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1970 (E.D. La. 2005)	Non-processable OIC as abuse	No	IRS
<i>Christopher Cross, Inc. v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1322(E.D. La. 2004)	Returning OIC as abuse	No	IRS
<i>Comfort Health Care, Inc. v. Comm'r</i> , 2005 WL 1656914 (D. Minn. 2005)	Inability to argue liability, impartiality of Appeals officer	No	IRS
<i>Cox v. U.S.</i> , 345 F.Supp.2d 1215 (W.D. Okla. 2004)	Inadequate notice of hearing, rejection of OIC	No	TP
<i>Electro, Inc. v. Comm'r</i> , 95 A.F.T.R.2d (RIA) 700 (D. Or. 2005)	Late service of complaint	No	TP
<i>Enos v. Comm'r</i> , 123 T.C. 284 (2004)	33 year old liability not extinguished due to 3rd party levy	No	IRS
<i>Francis Harvey &amp; Sons, Inc. v. U.S.</i> , 94 A.F.T.R.2d (RIA) 7258 (D. Mass. 2004)	Inability to challenge liability, evidence as to reasonable cause	No	IRS
<i>Keesh Construction Co., Inc. v. U.S.</i> , 94 A.F.T.R.2d (RIA) 6477 (S.D. Ohio 2004)	Moot-bankruptcy	No	IRS
<i>Landel Corp. v. U.S.</i> , 95 A.F.T.R.2d (RIA) 2001 (W.D. Wash. 2005)	Failure to consider IA as abuse	No	IRS
<i>Living Care Alternatives of UTICA, Inc. v. U.S.</i> , 411 F.3d 621 (6th Cir. 2004)	Not considering OIC as abuse	No	IRS
<i>Munguia Printers, Inc. v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1355 (W.D. Tex. 2005)	Inability to argue liability	No	IRS
<i>Newstat v. Comm'r</i> , T.C. Memo. 2004-208	Inability to argue liability, no record addressing 1999 liability	Yes	Split
<i>Perry v. U.S.</i> , 94 A.F.T.R.2d (RIA) 5623 (E.D. N.C. 2004)	Adequate CDP notice	Yes	IRS
<i>Reid &amp; Reid, Inc. v. U.S.</i> , 366 F.Supp.2d 284 (D. Md. 2005)	Rejecting IA as abuse	No	IRS
<i>Winters v. Comm'r</i> , T.C. Memo. 2005-3	Substantiating liability argument	Yes	IRS

**TABLE 2**  
**GROSS INCOME UNDER IRC § 61 AND RELATED SECTIONS**

Case Cite	Issue(s)	Pro Se	Decision
<b>Individual TPs (Issues Other Than Business)</b>			
<i>Abeid v. Comm'r</i> , 122 T.C. No. 24	Lottery winnings of nonresident aliens	No	IRS
<i>Abeyta v. Comm'r</i> , T.C. Summ. Op. 2005-44	Lodging exclusion IRC § 119	Yes	IRS
<i>Ali v. Comm'r</i> , T.C. Memo. 2004-284	Constructive dividends	No	IRS
<i>Arvin v. Comm'r</i> , T.C. Summ. Op. 2004-108	Unreported income/frivolous argument	Yes	IRS
<i>Barkley v. Comm'r</i> , T.C. Memo. 2004-287	Retirement income	Yes	IRS
<i>Bien-Aime v. Comm'r</i> , T.C. Summ. Op. 2004-175	Unreported income	Yes	IRS
<i>Bolden v. Comm'r</i> , T.C. Summ. Op. 2004-114	Settlement income IRC § 104(a)(2)	Yes	IRS
<i>Brooks v. US</i> , 383 F.3d 521 (6th Cir. 2004)	Settlement income IRC § 104(a)(2)	No	IRS
<i>Bruecher v. Comm'r</i> , T.C. Summ. Op. 2005-52	Constructive dividends	No	IRS
<i>Bunker v. Comm'r</i> , T.C. Summ. Op. 2005-35	Insurance proceeds paying credit card debts are income	Yes	IRS
<i>Buras v. Comm'r</i> , T.C. Summ. Op. 2004-161	Retirement income	Yes	IRS
<i>Bussell v. Comm'r</i> , T.C. Memo. 2005-77	Constructive dividends	Yes	IRS
<i>Castleton v. Comm'r</i> , T.C. Memo. 2005-58	Unreported income	Yes	TP
<i>Cawvey v. Comm'r</i> , T.C. Summ. Op. 2005-63	Social Security versus Workers' Compensation IRC § 86(d)(3)	Yes	IRS
<i>Chamberlain v. Comm'r</i> , 401 F.3d 335 (5th Cir. 2005)	Prejudgment interest is not excluded from income under IRC § 104(a)(2)	No	IRS
<i>Cohen v. Comm'r</i> , T.C. Memo. 2004-227	Retirement income	No	IRS
<i>Comm'r v. Banks</i> , 125 S.Ct. 826	Settlement income under IRC § 104(a)(2) — Contingent attorney fee awards not excluded	No	IRS
<i>Corrigan v. Comm'r</i> , T.C. Memo. 2005-119	Unreported income/Discharge of indebtedness	Yes	Split
<i>Davis v. Comm'r</i> , T.C. Summ. Op. 2005-61	Social Security income	Yes	IRS
<i>Delaware Corp. v. Comm'r</i> , T.C. Memo. 2004-280	Constructive dividends	No	IRS
<i>Dirks v. Comm'r</i> , T.C. Memo. 2004-138	Retirement income (60-day rollover requirement not waived)	No	IRS
<i>Dotson v. Comm'r</i> , T.C. Summ. Op. 2004-164	Retirement income/Alimony IRC § 71	Yes	TP
<i>Doxtator v. Comm'r</i> , T.C. Memo. 2005-113	Compensation from Indian tribe/Unreported income	Yes	IRS
<i>Dunkin v. Comm'r</i> , 124 T.C. No. 10	Exclusion for community property divorce payments	Yes	TP
<i>Filer v. Comm'r</i> , T.C. Summ. Op. 2005-39	Annuity income/Oral trust	Yes	TP
<i>Flores v. Comm'r</i> , T.C. Summ. Op. 2005-57	Social Security versus Workers' Compensation IRC § 86(d)(3)	Yes	IRS
<i>Ford v. Comm'r</i> , T.C. Memo. 2005-18	Unreported income	No	IRS
<i>Francisco v. Comm'r</i> , 370 F.3d 1228 (D.C. Cir. 2004)	International Waters income	No	IRS
<i>Hamilton v. Comm'r</i> , T.C. Memo. 2004-161	Lottery winnings	Yes	IRS
<i>Hayden v. Comm'r</i> , 95 A.F.T.R.2d 1918 (9th Cir. 2005)	Disability income IRC § 105	No	IRS
<i>Headen v. Comm'r</i> , T.C. Summ. Op. 2005-33	Social Security income	Yes	IRS
<i>Henderson v. Comm'r</i> , 94 A.F.T.R.2d 5246 (9th Cir. 2004)	Settlement income IRC § 104(a)(2)	Yes	IRS
<i>Hintz v. Comm'r</i> , T.C. Summ. Op. 2005-43	Disability pension income IRC § 104(b)(3)	Yes	IRS
<i>Hurst v. Comm'r</i> , 124 T.C. No. 2	Sale of S Corporation/Health insurance premiums	No	Split
<i>Jombo v. Comm'r</i> , 398 F.3d 661 (D.C. Cir. 2005)	Constructive receipt of lottery winnings under IRC § 451	Yes	IRS
<i>Jondahl v. Comm'r</i> , T.C. Memo. 2005-55	Unreported income	No	Split
<i>Jones v. U.S.</i> , 355 F.Supp.2d 1292 (S.D. Ala. 2004)	Ordinary Income versus capital gain	No	IRS
<i>Kean v. Comm'r</i> , 407 F.3d 186 (3d. Cir. 2005)	Alimony IRC § 71	No	IRS
<i>Kellum v. Comm'r</i> , T.C. Summ. Op. 2005-29	Worker's Compensation versus wages	Yes	IRS

**TABLE 2**  
**GROSS INCOME UNDER IRC § 61 AND RELATED SECTIONS (CONT.)**

Case Cite	Issue(s)	Pro Se	Decision
<i>Kidd v. Comm'r</i> , T.C. Memo. 2004-135	Settlement Income IRC § 104(a)(2)	Yes	IRS
<i>Klingaman v. Comm'r</i> , T.C. Summ. Op. 2005-36	Gambling income/Social Security	Yes	IRS
<i>Kooyers v. Comm'r</i> , T.C. Memo. 2004-281	Ponzi scheme victims income	Yes	TP
<i>Lenzen v. Comm'r</i> , T.C. Memo. 2005-120	Constructive Dividends	No	IRS
<i>Lewis v. Comm'r</i> , T.C. Memo. 2005-111	Unreported Income	Yes	IRS
<i>Malfatti v. Comm'r</i> , T.C. Memo. 2005-19	Unreported Income	Yes	IRS
<i>Menard, Inc. v. Comm'r</i> , T.C. Memo. 2004-207	Constructive Dividends/Constructive Receipt of Interest	No	IRS
<i>Mitchell v. Comm'r</i> , T.C. Summ. Op. 2004-160	Retirement Income	Yes	IRS
<i>Molina v. Comm'r</i> , T.C. Memo. 2004-258	Income from 401(k) Loan IRC § 72(p)	Yes	TP
<i>Moran v. Comm'r</i> , T.C. Memo. 2005-66	Constructive Dividends	Yes	IRS
<i>Morrison v. Comm'r</i> , T.C. Memo. 2005-53	Constructive Dividends	No	TP
<i>Murphy v. I.R.S.</i> , 362 F.Supp. 2d 206 (D.D.C. 2005)	Settlement Income IRC § 104(a)(2)	No	IRS
<i>Namyst v. Comm'r</i> , T.C. Memo. 2004-263	Unreported Income	No	IRS
<i>Ndirika v. Comm'r</i> , T.C. Memo. 2004-250	Settlement Income IRC § 104(a)(2)	Yes	IRS
<i>Ngatuvai v. Comm'r</i> , T.C. Summ. Op. 2004-143	Discharge of Indebtedness IRC § 108	Yes	IRS
<i>Ogu v. Comm'r</i> , T.C. Summ. Op. 2004-87	Unreported Stock Sale Proceeds	Yes	IRS
<i>Olson v. Comm'r</i> , T.C. Memo. 2004-197	Retirement Income	No	IRS
<i>Owens v. Comm'r</i> , T.C. Summ. Op. 2004-102	Gifts versus Taxable Compensation	Yes	IRS
<i>Peters v. Comm'r</i> , T.C. Summ. Op. 2005-42	Retirement Income	Yes	IRS
<i>Petty v. Comm'r</i> , T.C. Memo. 2004-144	Gambling Income	Yes	IRS
<i>Pickering v. Comm'r</i> , T.C. Summ. Op. 2004-136	Unreported Income	Yes	IRS
<i>PK Ventures, Inc. v. Comm'r</i> , T.C. Memo. 2005-56	Constructive Dividends	No	TP
<i>Polonczyk v. Comm'r</i> , T.C. Summ. Op. 2005-66	Unreported Income	Yes	Split
<i>Quarterman v. Comm'r</i> , T.C. Memo. 2004-241	Interest Income	No	IRS
<i>Reimels v. Comm'r</i> , 123 T.C. No. 13	Disability/retirement income not excluded under IRC § 104(a)(4)	Yes	IRS
<i>Revolinski v. Comm'r</i> , T.C. Summ. Op. 2005-26	Life insurance surrender proceeds	Yes	IRS
<i>Rodriguez v. Comm'r</i> , 95 A.F.T.R.2d 1723 (9th Cir. 2005)	Unreported income	Yes	IRS
<i>Rodriguez v. Comm'r</i> , T.C. Memo. 2005-12	Unreported income/Frivolous argument	Yes	IRS
<i>Seidel v. Comm'r</i> , T.C. Memo. 2005-67	Taxation of Distribution of 401(k) in a divorce settlement	Yes	Split
<i>Seidel v. Comm'r</i> , T.C. Summ. Op. 2005-51	Taxation of distribution of 401(k) in a divorce settlement	Yes	Split
<i>Sternberg v. I.R.S.</i> , 95 A.F.T.R.2d 402 (2d Cir. 2005)	Retirement income	Yes	IRS
<i>Strong v. Comm'r</i> , T.C. Memo. 2005-125	Unreported income/Constructive dividends	No	IRS
<i>Taibo v. Comm'r</i> , T.C. Memo. 2004-196	Johnston island	No	TP
<i>Trent v. U.S.</i> , 372 F.Supp.2d (S.D.W.Va. 2005)	Settlement income IRC § 104(a)(2)	No	IRS
<i>Valia v. Comm'r</i> , T.C. Summ. Op. 2005-17	Settlement income IRC § 104(a)(2)	Yes	IRS
<i>Vincent v. Comm'r</i> , T.C. Memo. 2005-95	Settlement income IRC § 104(a)(2)	No	IRS
<i>Werts v. Comm'r</i> , T.C. Summ. Op. 2005-24	Social Security income	Yes	IRS
<i>White v. Comm'r</i> , T.C. Summ. Op. 2005-62	Retirement income	Yes	IRS
<i>Widemon v. Comm'r</i> , T.C. Memo. 2004-162	Retirement income	Yes	IRS
<i>Williams v. Comm'r</i> , 95 A.F.T.R.2d 764 (10th Cir. 2005)	Gifts versus taxable compensation	No	IRS
<i>Williams v. Comm'r</i> , T.C. Memo. 2005-29	Settlement income (Attorney's fees) IRC § 104(a)(2)	No	IRS

**TABLE 2**  
**GROSS INCOME UNDER IRC § 61 AND RELATED SECTIONS (CONT.)**

Case Cite	Issue(s)	Pro Se	Decision
<i>Wolman v. Comm'r</i> , T.C. Memo. 2004-262	Sale of lottery winnings is ordinary income, not a capital gain	Yes	IRS
<i>Wright v. Comm'r</i> , T.C. Memo. 2005-5	Disability income IRC § 105	No	IRS
<i>Youngblood v. Comm'r</i> , T.C. Memo. 2005-43	Disability/Retirement income not excluded under IRC § 104(a)(1)	No	IRS
<b>Business TPs (Sole Proprietorships including Schedule C and/or F, Schedule E, Corporations, Partnerships and Business Trusts)</b>			
<i>Acle v. Comm'r</i> , T.C. Summ. Op. 2004-82	Unreported income	Yes	IRS
<i>Benson v. Comm'r</i> , T.C. Memo. 2004-272	Constructive dividends/Discharge of Indebtedness income	No	IRS
<i>Blanning v. Comm'r</i> , T.C. Memo. 2004-201	Unreported income	Yes	IRS
<i>Brenner v. Comm'r</i> , T.C. Memo. 2004-202	Unreported income/Frivolous argument	Yes	IRS
<i>Chin v. Comm'r</i> , T.C. Memo. 2004-189	Unreported income	No	TP
<i>CMA Consolidated, Inc. v. Comm'r</i> , T.C. Memo. 2005-16	Assignment of income	No	IRS
<i>Coccia v. Comm'r</i> , T.C. Summ. Op. 2004-159	Unreported income	Yes	IRS
<i>Coomes v. Comm'r</i> , T.C. Memo. 2004-182	Unreported income	Yes	IRS
<i>Edwards v. Comm'r</i> , T.C. Memo. 2005-52	Unreported income	Yes	IRS
<i>Gouveia v. Comm'r</i> , T.C. Memo. 2004-256	Unreported income/Sham trusts	No	IRS
<i>Gowni v. Comm'r</i> , T.C. Memo. 2004-154	Unreported Income, constructive dividends, capital gain basis	No	Split
<i>Gracia v. Comm'r</i> , T.C. Memo. 2004-147	Discharge of indebtedness IRC § 108	No	TP
<i>Graham v. Comm'r</i> , T.C. Memo. 2005-68	Unreported income	No	Split
<i>Greene v. U.S.</i> , 62 Fed.Cl. 418	Taxation of insurance company's policyholders surplus account	No	IRS
<i>Kikalos v. U.S.</i> , 408 F.3d 900 (7th Cir. 2005)	Unreported income	No	TP
<i>Knauss v. Comm'r</i> , T.C. Memo. 2005-6	Settlement income/unreported income	No	Split
<i>Mas One Limited Partnership v. Comm'r</i> , 390 F.3d 427 (6th Cir. 2004)	Partnership income/Discharge of debt	No	IRS
<i>McGraw v. Comm'r</i> , 384 F.3d 965 (8th Cir. 2004)	Reconstructing Income IRC § 446(b)	No	IRS
<i>Mirarchi v. Comm'r</i> , T.C. Memo. 2004-148	Discharge of indebtedness IRC § 108	No	TP
<i>Payne v. Comm'r</i> , T.C. Memo. 2005-130	Unreported income	No	IRS
<i>Price v. Comm'r</i> , T.C. Memo. 2004-149	Discharge of indebtedness IRC § 108	No	TP
<i>Rinn v. Comm'r</i> , T.C. Memo. 2004-256	Unreported income/Frivolous argument	Yes	IRS
<i>Starkovich v. Comm'r</i> , T.C. Summ. Op. 2004-173	Unreported income	Yes	IRS
<i>Westby v. Comm'r</i> , T.C. Memo. 2004-179	Unreported income	Yes	TP
<b>Estates and Trusts</b>			
<i>Estate of Martinez v. Comm'r</i> , T.C. Memo. 2004-150	Discharge of indebtedness IRC § 108	No	TP

**TABLE 3**  
**FAILURE TO FILE PENALTY UNDER IRC § 6651(A)(1)**

Case Cite	Issue(s)	Pro Se	Decision
<b>Individual TPs (Issues Other Than Business)</b>			
<i>Appel v. Comm'r</i> , T.C. Summ. Op. 2004-90	Medical problems not reasonable cause	Yes	IRS
<i>Arvin v. Comm'r</i> , T.C. Summ.Op. 2004-108	Zero income return not a tax return for purposes of penalty	Yes	IRS
<i>Barkley v. Comm'r</i> , T.C. Memo. 2004-287	Job stress and medical problems of family member not reasonable cause	Yes	IRS
<i>Basile v. Comm'r</i> , T.C. Memo. 2005-51	TPs failed to appear at trial	Yes	IRS
<i>Benedetti v. Comm'r</i> , T.C. Summ. Op. 2005-6	“Zero income” return not a tax return for purposes of penalty	Yes	IRS
<i>Berry v. Comm'r</i> , T.C. Memo. 2005-91	Inability to assemble necessary documentation in time to file	No	IRS
<i>Bowen v. Comm'r</i> , 95 A.F.T.R. 2d (RIA) 2009 (9th Cir. 2005)	There is a legal obligation to file & pay federal income taxes	Yes	IRS
<i>Brenner v. Comm'r</i> , T.C. Memo. 2004-202	There is legal obligation to file & pay federal income taxes/ no evidence presented to show reasonable cause	Yes	IRS
<i>Brunner v. Comm'r</i> , T.C. Memo. 2004-187	No evidence as to reasonable cause	Yes	IRS
<i>Buras v. Comm'r</i> , T.C. Summ. Op. 2004-161	No legal obligation to file or pay federal income taxes	Yes	IRS
<i>Chu v. Comm'r</i> , T.C. Memo. 2005-110	Unavailability of records as reasonable cause	Yes	IRS
<i>Conner v. Comm'r</i> , T.C. Summ. Op. 2005-27	No evidence to show reasonable cause	Yes	IRS
<i>Currier v. Comm'r</i> , T.C. Memo. 2005-21	Claim of no tax liability under the law	Yes	IRS
<i>Desauguste v. Comm'r</i> , T.C. Summ. Op. 2005-60	No evidence to show reasonable cause	Yes	IRS
<i>DiFlora v. Comm'r</i> , T.C. Summ. Op. 2004-101	No evidence as to reasonable cause	Yes	IRS
<i>Dysle v. Comm'r</i> , T.C. Memo. 2004-285	No evidence presented to show tax returns were filed	Yes	IRS
<i>Florance v. Comm'r</i> , T.C. Memo. 2005-60	No evidence as to reasonable cause	Yes	IRS
<i>Franklin v. Comm'r</i> , T.C. Summ. Op. 2004-126	No evidence presented to substantiate claim that tax return timely filed	Yes	IRS
<i>Funk v. Comm'r</i> , 123 T.C. 213 (2004)	IRS does not have initial burden of proof on solely frivolous claims	Yes	IRS
<i>Golshani v. Comm'r</i> , T.C. Summ. Op. 2004-174	No evidence as to reasonable cause	No	IRS
<i>Gowni v. Comm'r</i> , T.C. Memo. 2004-154	No evidence as to reasonable cause	No	IRS
<i>Graham v. Comm'r</i> , T.C. Memo. 2005-68	Reliance on automatic extension as reasonable cause when estimate of liability not made with extension request	No	IRS
<i>Graves v. Comm'r</i> , T.C. Memo. 2004-140	Unavailability of information because of pending bankruptcy proceeding as reasonable cause	Yes	IRS
<i>Greendyk v. Comm'r</i> , T.C. Memo. 2005-108	No evidence as to reasonable cause	No	IRS
<i>Gropper v. United States</i> , 95 A.F.T.R.2d (RIA) 1926 (E.D. Pa. 2005)	Genuine issue of material fact as to whether the TP's medical condition constituted reasonable cause	No	TP
<i>Halcott v. Comm'r</i> , T.C. Memo. 2004-214	Zero income return not a tax return for purposes of penalty	Yes	IRS
<i>Harris v. Comm'r</i> , T.C. Summ. Op. 2004-85	TP was able to meet her burden of proof and show that her tax return was filed timely.	Yes	TP
<i>Jaroff v. Comm'r</i> , T.C. Memo. 2004-276	Extensions of time to file invalid/no evidence presented as to reasonable cause	No	IRS
<i>Kellum v. Comm'r</i> , T.C. Summ. Op. 2005-29	No evidence as to reasonable cause	Yes	IRS
<i>Lawless v. Comm'r</i> , T.C. Summ. Op. 2005-18	Self-serving testimony as to filing return deemed insufficient	Yes	IRS
<i>Lewis v. Comm'r</i> , T.C. Memo. 2005-111	No evidence as to reasonable cause	Yes	IRS
<i>Lykes v. Comm'r</i> , T.C. Memo. 2004-159	Marital difficulty/illness of spouse/military duty as reasonable cause	Yes	IRS
<i>Malfatti v. Comm'r</i> , T.C. Memo. 2005-19	No evidence as to reasonable cause	Yes	IRS
<i>Maloney v. Comm'r</i> , T.C. Memo. 2005-27	Self-serving testimony about filing return insufficient	No	IRS
<i>Mason v. Comm'r</i> , T.C. Memo. 2004-247	Failure to file was fraudulent	Yes	IRS
<i>Milby v. Comm'r</i> , T.C. Memo. 2005-15	TP's obligation to file return	Yes	IRS
<i>Ndirika v. Comm'r</i> , T.C. Memo. 2004-250	No evidence as to reasonable cause	Yes	IRS

TABLE 3: FAILURE TO FILE PENALTY UNDER IRC § 6651(A)(1) (CONT.)

Case Cite	Issue(s)	Pro Se	Decision
<i>O'Laughlin v. Comm'r</i> , T.C. Summ. Op. 2004-79	Physical injuries from car accident as reasonable cause	Yes	IRS
<i>Olson v. Comm'r</i> , T.C. Memo. 2004-234	No evidence as to reasonable cause	Yes	IRS
<i>Pickering v. Comm'r</i> , T.C. Summ. Op. 2004-136	No evidence as to reasonable cause	Yes	IRS
<i>Preston v. Comm'r</i> , T.C. Summ. Op. 2005-64	Neglecting/forgetting to file as reasonable cause	Yes	IRS
<i>Quarterman v. Comm'r</i> , T.C. Memo. 2004-241	Reliance on Spouse to file	No	IRS
<i>Robinson v. Comm'r</i> , T.C. Memo. 2005-70	No evidence presented as to reasonable cause	Yes	IRS
<i>Rodriguez v. Comm'r</i> , T.C. Memo. 2005-12	No evidence as to reasonable cause	Yes	IRS
<i>Rodriguez v. Comm'r</i> , 95 A.F.T.R. 2d (RIA) 1723 (9th Cir. 2005), aff'g T.C. Memo. 2003-105	No evidence as to reasonable cause	Yes	IRS
<i>Rollins v. Comm'r</i> , T.C. Memo. 2004-260	Belief that excise returns were not required to be filed	Yes	IRS
<i>Sauukaytis v. Comm'r</i> , 93 A.F.T.R.D.2d (RIA) 2847 (6th Cir. 2004), aff'g T.C. Memo. 2002-156	No evidence presented as to reasonable cause	Yes	IRS
<i>Seavey v. Comm'r</i> , T.C. Summ. Op. 2005-8	No evidence as to reasonable cause	Yes	IRS
<i>Spanier v. Comm'r</i> , T.C. Summ. Op. 2004-106	Protesting obligation to file	Yes	IRS
<i>Storaasli v. Comm'r</i> , T.C. Memo. 2005-59	No evidence as to reasonable cause	Yes	IRS
<i>Srong v. Comm'r</i> , T.C. Memo. 2005-125	No evidence as to reasonable cause	No	IRS
<i>Turner v. Comm'r</i> , T.C. Memo. 2004-251	Zero income return not a return for purposes of penalty	Yes	IRS
<i>Wesley v. United States</i> , 95 A.F.T.R. 2d (RIA) 1832 (N.D. Fla. 2005)	Reliance on professional plus illness as reasonable cause	No	Split
<i>Westby v. Comm'r</i> , T.C. Memo. 2004-179	Reliance on spouse unreasonable	Yes	IRS
<i>Widemon v. Comm'r</i> , T.C. Memo. 2004-162	No evidence on reasonable cause	Yes	IRS
<b>Business TPs (Sole Proprietorships including Schedule C and/or F, Schedule E, Corporations, Partnerships, Estates and Trusts)</b>			
<i>Allnutt v. Comm'r</i> , T.C. Memo. 2004-239	TP engaged in taxable activity/had obligation to file	Yes	IRS
<i>Benson v. Comm'r</i> , T.C. Memo. 2004-272	Reliance on guardian to file return as reasonable cause	No	IRS
<i>Biazar v. Comm'r</i> , T.C. Memo. 2004-270	As to some years, TP provides no evidence, as to others IRS cannot prove when return was received	Yes	Split
<i>Bijlani v. Comm'r</i> , T.C. Summ. Op. 2004-96	Medical illness not reasonable cause	Yes	IRS
<i>Bruecher v. Comm'r</i> , T.C. Summ. Op. 2005-52	Reliance on tax professional to file an extension as reasonable cause	No	IRS
<i>Donald's Electric &amp; Refrigeration Service, Inc. v. United States</i> , 95 A.F.T.R. 2d (RIA) 1398 (W.D. Va. 2005)	Mental illness of employee in charge of tax matters as reasonable cause	No	IRS
<i>Dworshak v. Comm'r</i> , T.C. Memo. 2004-249	Busy with business activities as reasonable cause	Yes	IRS
<i>Estate of Korby v. Comm'r</i> , T.C. Memo. 2005-102	No argument for reasonable cause made	No	IRS
<i>Edwards v. Comm'r</i> , T.C. Memo. 2005-52	Amount of income as reasonable cause	Yes	IRS
<i>Ellis v. Comm'r</i> , T.C. Summ. Op. 2004-170	No evidence presented as to reasonable cause	Yes	IRS
<i>Ferrada v. Comm'r</i> , T.C. Summ. Op. 2004-93	No evidence presented as to reasonable cause	Yes	IRS
<i>Howard-Crowley v. Comm'r</i> , T.C. Summ. Op. 2004-150	No evidence as to reasonable cause presented	Yes	IRS
<i>Landers v. Comm'r</i> , T.C. Summ. Op. 2004-105	No evidence presented as to reasonable cause	Yes	IRS
<i>Matthews v. Comm'r</i> , T.C. Summ. Op. 2004-89	No evidence presented as to reasonable cause	No	IRS
<i>McGrath v. United States</i> , 94 A.F.T.R.2d (RIA) 6138 (D. Ore. 2004)	Reliance on agent insufficient	Yes	IRS
<i>Montague v. Comm'r</i> , T.C. Memo. 2004-252	No evidence presented as to reasonable cause	Yes	IRS
<i>Moran v. Comm'r</i> , T.C. Memo. 2005-66	No evidence presented as to reasonable cause	Yes	IRS
<i>Rinn v. Comm'r</i> , T.C. Memo. 2004-246	No evidence presented as to reasonable cause	Yes	IRS
<i>Rosa v. Comm'r</i> , T.C. Summ. Op. 2005-53	No evidence presented	Yes	IRS
<i>Walz v. Comm'r</i> , T.C. Summ. Op. 2005-1	No evidence presented as to reasonable cause	No	TP

**TABLE 4**  
**TRADE OR BUSINESS EXPENSES UNDER IRC § 162 AND RELATED SECTIONS**

Case Cite	Issue(s)	Pro Se	Decision
<b>Sole Proprietors</b>			
<i>Alacan v. Comm'r</i> , T.C. Memo. 2005-63	TPs failed to substantiate expenses	Yes	IRS
<i>Applegate v. Comm'r</i> , T.C. Summ. Op. 2004-113	Unreimbursed expense incurred in capacity as corporate officer denied	Yes	IRS
<i>Aregoni v. Comm'r</i> , T.C. Summ. Op. 2005-65	TP failed to substantiate expenses	Yes	IRS
<i>Arevalo v. Comm'r</i> , 124 T.C. 244 (2005)	TPs denied depreciation deduction for pay phones	Yes	IRS
<i>Barton v. Comm'r</i> , T.C. Memo. 2005-97	TP denied deduction for auto expenses for failure to substantiate	No	IRS
<i>Bernardo v. Comm'r</i> , T.C. Memo. 2004-199	TP failed to substantiate tax preparation fees and music performance activity not done for profit	Yes	IRS
<i>Blanning v. Comm'r</i> , T.C. Memo. 2004-201	TP failed to substantiate deductions, but court employed Cohan rule	Yes	TP
<i>Brody v. Comm'r</i> , T.C. Summ. Op. 2004-149	TP failed to substantiate vehicle expense and failed to prove he operated a trade or business	Yes	IRS
<i>Calarco v. Comm'r</i> , T.C. Summ. Op. 2004-94	Playwright engaged in playwriting for profit, but failed to properly substantiate many of his business expenses	Yes	Split
<i>Chu v. Comm'r</i> , T.C. Memo. 2005-110	Unreimbursed employee expenses denied	Yes	IRS
<i>Coccia v. Comm'r</i> , T.C. Summ. Op. 2004-159	TP denied expenses for operating newsstand for failure to substantiate	Yes	IRS
<i>Corrigan v. Comm'r</i> , T.C. Memo. 2005-119	Stock commission rebates allowable deduction, but casualty loss denied and deduction for horse breeding activity denied b/c TP was not a joint venturer	Yes	Split
<i>Doxtator v. Comm'r</i> , T.C. Memo. 2005-113	TP did not conduct business activity w/ continuity and regularity, did not have profit motive, and failed to substantiate casualty losses	Yes	IRS
<i>Dumond v. Comm'r</i> , T.C. Summ. Op. 2005-11	TP denied deduction for wages paid to minor children as not reasonable compensation and lack of substantiation	Yes	IRS
<i>Ellis v. Comm'r</i> , T.C. Summ. Op. 2004-170	TP denied deductions for failure to substantiate	Yes	IRS
<i>Evan v. Comm'r</i> , T.C. Memo. 2004-180	TPs not in trade/business w/ continuity and regularity and failed to substantiate expenses	Yes	IRS
<i>Ferrada v. Comm'r</i> , T.C. Summ. Op. 2004-93	TPs failed to substantiate deductions and failed to prove expenses were ordinary and necessary	Yes	IRS
<i>Franklin v. Comm'r</i> , T.C. Summ. Op. 2004-126	TP could not substantiate job search expenses and was unemployed for more than a reasonable temporary period	Yes	IRS
<i>Garcia v. Comm'r</i> , T.C. Supp. Op. 2005-2	TPs denied expenses relating to employment as high school teachers that were not ordinary & necessary	Yes	IRS
<i>Giles v. Comm'r</i> , T.C. Memo. 2005-28	Horse breeding not done for profit	No	IRS
<i>Hopkins v. Comm'r</i> , T.C. Memo. 2005-49	TPs denied advertising expenses that were not reasonable	No	IRS
<i>Horwath v. Comm'r</i> , T.C. Memo. 2004-213	TPs improperly depreciated property owned by a corporation that TP was shareholder in and TP denied travel expense deduction because entitled to reimbursement by employer but chose not to be reimbursed	Yes	IRS
<i>Howard-Crowley v. Comm'r</i> , T.C. Summ. Op. 2004-150	TP denied deductions for failure to substantiate	Yes	IRS
<i>Hubbard v. Comm'r</i> , T.C. Summ. Op. 2004-148	TP denied bad debt deduction in connection with his personal security activity and denied business meeting and telephone expenses for lack of substantiation	Yes	IRS
<i>Kellum v. Comm'r</i> , T.C. Summ. Op. 2005-29	TP denied casualty loss deduction because insurance claim had reasonable prospect of recovery and denied expenses for insurance activity for failure to substantiate	Yes	IRS
<i>Lapid v. Comm'r</i> , T.C. Memo. 2004-222	TPs were not material participants in hotel business	No	IRS



TABLE 4 TRADE OR BUSINESS EXPENSES UNDER IRC § 162 AND RELATED SECTIONS (CONT.)

Case Cite	Issue(s)	Pro Se	Decision
<i>Lopez v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 7075 (5th Cir. 2004)	Amway distributors did not have profit motive	Yes	IRS
<i>Malone v. Comm'r</i> , T.C. Memo. 2005-69	TPs not in trade or business of giving music lessons	Yes	IRS
<i>Matthews v. Comm'r</i> , T.C. Summ. Op. 2004-89	Rodeo and horse training activity not done for profit	Yes	IRS
<i>McEuen v. Comm'r</i> , T.C. Summ. Op. 2004-107	Education qualified TP for a new trade or business and expense therefore not deductible	Yes	IRS
<i>McNair v. Comm'r</i> , T.C. Summ. Op. 2004-115	TP failed to substantiate business travel expenses and some tax preparation fees, cell phone charges, and postage	Yes	Split
<i>Missouri v. Comm'r</i> , T.C. Summ. Op. 2004-118	TP failed to substantiate employee business expenses	Yes	IRS
<i>Montagne v. Comm'r</i> , T.C. Memo. 2004-252	Horse breeding not done for profit	Yes	IRS
<i>Moran v. Comm'r</i> , T.C. Memo. 2005-66	Beauty shop owner fraudulently deducted alleged expenses	Yes	IRS
<i>Mullins v. U.S.</i> , 334 F. Supp. 2d 1042	Cattle farm operated with profit objective	No	TP
<i>Oatman v. Comm'r</i> , T.C. Memo. 2004-236	TP improperly calculated depreciation deduction for rental property	Yes	Split
<i>Ollett v. Comm'r</i> , T.C. Summ. Op. 2004-103	Amway activity not done for profit	Yes	IRS
<i>Panages v. Comm'r</i> , T.C. Summ. Op. 2005-3	TP denied gambling losses because she didn't pursue gambling full-time	Yes	IRS
<i>Rivera v. Comm'r</i> , T.C. Summ. Op. 2004-81	Rental of real estate not done for profit	Yes	IRS
<i>Rosa v. Comm'r</i> , T.C. Summ. Op. 2005-53	TP failed to substantiate expenses	Yes	IRS
<i>Saffran v. Comm'r</i> , T.C. Summ. Op. 2004-152	TP denied deductions for failure to substantiate	Yes	IRS
<i>Sax v. Comm'r</i> , T.C. Summ. Op. 2004-171	TP denied deductions for failure to substantiate	Yes	IRS
<i>Seidel v. Comm'r</i> , T.C. Memo. 2005-67	TP failed to substantiate expenses	Yes	IRS
<i>Setyono v. Comm'r</i> , T.C. Summ. Op. 2004-127	TP failed to substantiate expenses	Yes	IRS
<i>Sundby v. Comm'r</i> , T.C. Summ. Op. 2004-104	TPs failed to substantiate deductions and some trade or business expenses should have been claimed by corporation rather than individuals	Yes	IRS
<i>Tigrett v. U.S.</i> , 358 F. Supp. 2d 672	Court denied both parties' request for summary judgment	No	Split
<i>Walz v. Comm'r</i> , T.C. Summ. Op. 2005-1	TP denied some deductions for failure to substantiate	No	Split
<i>Westby v. Comm'r</i> , T.C. Memo. 2004-179	Disallowance of law practice deductions was arbitrary and unreasonable	Yes	TP
<i>Whalen v. Comm'r</i> , T.C. Summ. Op. 2005-45	TP denied deductions for expenses that could have been reimbursed by employer and for failure to substantiate	Yes	IRS
<i>Wheir v. Comm'r</i> , T.C. Summ. Op. 2004-117	TP entitled to deduct travel and transportation expenses but not entitled to deduct certain expenses for body building activity that were not useful only in body building business	Yes	Split
<i>Wilkerson v. Comm'r</i> , T.C. Summ. Op. 2004-99	TP could not substantiate deductions and forfeiture of rights under collective bargaining agreement is not a deductible loss	Yes	IRS
<i>Wood v. Comm'r</i> , T.C. Memo. 2004-200	TPs held not to be carrying on a real estate developing business	Yes	IRS
<b>Business Entities</b>			
<i>Beiner, Inc. v. Comm'r</i> , T.C. Memo. 2004-219	Employee compensation was reasonable	No	TP
<i>Edwards v. Comm'r</i> , T.C. Memo. 2005-52	TP denied deduction for rent because expense was not ordinary and necessary	Yes	IRS
<i>Hackworth v. Comm'r</i> , T.C. Memo. 2004-173	TP denied loss deduction for money forfeited to state during raid of illicit gambling operation	No	IRS
<i>Knaus v. Comm'r</i> , T.C. Memo. 2005-6	S Corp's deductions denied when expenses were for personal benefit of shareholders	No	IRS
<i>Lenzen v. Comm'r</i> , T.C. Memo. 2005-120	TP was denied gambling losses	No	IRS

TABLE 4 TRADE OR BUSINESS EXPENSES UNDER IRC § 162 AND RELATED SECTIONS (CONT.)

Case Cite	Issue(s)	Pro Se	Decision
<i>Maguire/Thomas Partners v. Comm'r</i> , T.C. Memo. 2005-34	TP allowed depreciation deduction for variance associated with building, but not for zoning change expenses in general	No	Split
<i>Mediaworks v. Comm'r</i> , T.C. Memo. 2004-177	Deduction for yacht-related expenses denied because they were not ordinary and necessary	No	IRS
<i>Menard, Inc. v. Comm'r</i> , T.C. Memo. 2004-207, motion for reconsideration denied, T.C. Memo. 2005-3	TP denied deduction for portion of employee compensation that was unreasonable	No	IRS
<i>Metro Leasing v. Comm'r</i> , 376 F.3d 1015 (9th Cir. 2004)	Excessive employee compensation	No	IRS
<i>Miller &amp; Sons Drywall, Inc. v. Comm'r</i> , T.C. Memo. 2005-114	TP's compensation to employee-shareholders held to be reasonable, and thus fully deductible	No	TP
<i>Mires v. U.S.</i> , 372 F. Supp. 2d 1265	TP failed to substantiate legal expenses	No	IRS
<i>Payne v. Comm'r</i> , T.C. Memo. 2005-130	S corporation denied deduction for check-cashing expenses because they were not ordinary and necessary business expenses	No	IRS
<i>PK Ventures v. Comm'r</i> , T.C. Memo. 2005-56	Employee comp deduction limited to reasonable comp, which was higher than IRS previously allowed, but lower than what TP claimed	No	Split
<i>Shirley v. Comm'r</i> , T.C. Memo. 2004-188	TP allowed § 179 deduction for purchase of a motor home to be added to a rental fleet	No	TP
<i>Strong v. Comm'r</i> , T.C. Memo. 2005-125	TP allowed deductions for advertising, but denied all other deductions for lack of substantiation	No	Split

**TABLE 5**  
**FRIVOLOUS ISSUES PENALTY UNDER IRC § 6673**

Case Cite	Issues	Pro Se	Decision
<b>Individual Taxpayers (Issues other than Business)</b>			
<i>Adams v. Comm'r</i> , 127 Fed. Appx. 963 (9th Cir. 2005)	TPs argued that only corporate profit constitutes income subject to federal taxes	Yes	IRS
<i>Arevalo v. Comm'r</i> , 124 T.C. 244 (2005)	TP filed a Tax Court petition as a way to delay collection process	Yes	TP
<i>Arvin v. Comm'r</i> , T.C. Summ. Op. 2004-108	TP argued that the 16th Amendment did not give the Federal government new taxing authority and that income tax is really an excise tax on those licensed or incorporated	Yes	TP
<i>Benedetti v. Comm'r</i> , T.C. Summ. Op. 2005-6	TP argued that wages are property and not gross income	Yes	IRS
<i>Boyd v. Comm'r</i> , 121 Fed. Appx. 348 (10th Cir. 2005)	IRS's refusal to allow taxpayer to audio record hearing did not require remand	Yes	IRS
<i>Brennecke v. Comm'r</i> , T.C. Memo. 2005-11	TP raised frivolous arguments as to why he wasn't required to pay tax	Yes	IRS
<i>Brunner v. Comm'r</i> , T.C. Memo. 2004-187	TP raised arguments under the 4th, 5th, 9th, 13th, and 16th Amendments as to why he wasn't required to file a return	Yes	IRS
<i>Buras v. Comm'r</i> , T.C. Summ. Op. 2004-161	TP argued that he was an agent of the church and since the church was not taxable his wages should not be either	Yes	IRS
<i>Burke v. Comm'r</i> , 124 T.C. 189 (2005)	TP argued that notice of deficiency was invalid	Yes	IRS
<i>Cardona v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 7148 (2d Cir. 2004)	TP argued the notice of lien didn't comply with procedural requirements and therefore was deprived of due process	Yes	IRS
<i>Casey v. Comm'r</i> , T.C. Memo. 2004-228	TP argued that IRS attorney's communications were vexatious and burdensome and subject to sanction under IRC § 6673(a)(2)	Yes	IRS
<i>Chase v. Comm'r</i> , T.C. Memo. 2004-142	TP claimed that the federal government had no jurisdiction over him	Yes	IRS
<i>Cozzens v. Comm'r</i> , T.C. Memo. 2005-98	IRS's refusal to allow taxpayer to audio record hearing does not require remand	Yes	TP
<i>Currier v. Comm'r</i> , T.C. Memo. 2005-21	TP offered common frivolous arguments as to why notice of deficiency was invalid and why he didn't owe tax	Yes	IRS
<i>Dalton v. Comm'r</i> , T.C. Memo. 2005-7	TP argued that notice of deficiency was invalid	Yes	TP
<i>Dashiell v. Comm'r</i> , T.C. Memo. 2004-210	TPs argued that their income was not includable in gross income	Yes	TP
<i>Dues v. Comm'r</i> , T.C. Memo. 2005-109	IRS's refusal to allow taxpayer to audio record hearing did not require remand	Yes	TP
<i>Florance v. Comm'r</i> , T.C. Memo. 2005-60	TP argued that he should not be considered a taxpayer	Yes	IRS
<i>Florance v. Comm'r</i> , T.C. Memo. 2005-61	TP argued that he should not be considered a taxpayer	Yes	IRS
<i>Funk v. Comm'r</i> , 123 T.C. 213 (2004)	TP argued that he is not considered a TP, the IRS has no jurisdiction over him, and the IRS has no statutory authority to collect taxes	Yes	TP
<i>Gatlos v. Comm'r</i> , T.C. Memo. 2004-192	TPs argued that the Commissioner had to sign the notice of intent to levy, the 16th Amendment is unconstitutional, and the Secretary has no authority to collect tax	Yes	IRS
<i>Gavigan v. Comm'r</i> , T.C. Summ. Op. 2004-155	TP argued that there was no law that required her to pay taxes and forcing people to pay them was slavery	Yes	IRS
<i>Gilligan v. Comm'r</i> , T.C. Memo. 2004-194	TP only challenged existence of law taxing earnings	Yes	IRS
<i>Greendyk v. Comm'r</i> , T.C. Memo. 2005-108	Neither TP nor his attorney submitted frivolous documents or briefs to the court	No	TP
<i>Hamzik v. Comm'r</i> , T.C. Memo. 2004-223	TP argued that he is not a taxpayer, and he has no earnings that may be taxed	Yes	IRS
<i>Henderson v. Comm'r</i> , T.C. Memo. 2004-157	TP argued that the Secretary had to sign the notice of deficiency	Yes	IRS
<i>Hiland v. Comm'r</i> , T.C. Memo. 2004-225	TP submitted lengthy communications to the court and incorrectly applied cases and the tax code	Yes	IRS
<i>Hobbs v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 6194 (9th Cir. 2004)	TPs made frivolous arguments and had been previously warned of the possibility of sanctions	Yes	IRS
<i>Holguin v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 5803 (9th Cir. 2004)	TP raised numerous frivolous issues in collection due process hearings solely for purpose of delay	Yes	IRS

TABLE 5: FRIVOLOUS ISSUES PENALTY UNDER IRC § 6673 (CONT.)

Case Cite	Issues	Pro Se	Decision
<i>Howard v. Comm'r</i> , T.C. Memo. 2005-144	TP argued that being paid is not a taxable event	Yes	IRS
<i>Howard v. Comm'r</i> , T.C. Memo. 2005-100	TP argued wages are not income	Yes	IRS
<i>Johnston v. Comm'r</i> , T.C. Memo. 2004-224	TP submitted lengthy communications to the court and misapplied the law	Yes	IRS
<i>Kaplowitz v. Comm'r</i> , T.C. Memo. 2005-62	TP argued that he was denied the opportunity to dispute the existence or amount of his tax liability	Yes	IRS
<i>Kilgore v. Comm'r</i> , T.C. Memo. 2005-24	TP argued she was not a taxpayer and the Commissioner needed to provide statute and Constitutional Amendments that allow for an income tax	Yes	IRS
<i>Kolker v. Comm'r</i> , T.C. Memo. 2004-288	TP argued that there was no law requiring him to pay income tax	Yes	IRS
<i>Krueger v. Comm'r</i> , T.C. Memo. 2005-105	TP argued that wages were not taxable income	Yes	IRS
<i>Kubon v. Comm'r</i> , T.C. Memo. 2005-71	TP argued that wages are not income and that notice of determination was insufficient	Yes	IRS
<i>Le Doux v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 5013 (10th Cir. 2004)	TP argued notice of deficiency invalid because not signed by the Secretary	Yes	IRS
<i>Lehmann v. Comm'r</i> , T.C. Memo. 2005-90	TP argued notice of deficiency was invalid because he didn't receive it	Yes	IRS
<i>Malfatti v. Comm'r</i> , T.C. Memo. 2005-19	TP argued that liabilities are excise taxes, and TP failed to meet with the IRS or provide any of the requested information	Yes	IRS
<i>Mathews v. Comm'r</i> , T.C. Memo. 2005-84	TP offered only frivolous arguments that the IRS was committing a fraud against him	Yes	TP
<i>Mathis v. United States</i> , 94 A.F.T.R.2d (RIA) 6340 (D. S.D. 2004)	TPs instituted IRC § 7433 wrongful collection action but knew their claims had been rejected in previous cases	Yes	IRS
<i>McBride v. Comm'r</i> , T.C. Memo. 2004-178	TP argued the income tax was unconstitutional	Yes	TP
<i>Meyer v. Comm'r</i> , T.C. Memo. 2005-81	TPs primarily used the administrative hearings to delay the collection process, making frivolous arguments – including that the IRC doesn't establish tax liability	Yes	IRS
<i>Meyer v. Comm'r</i> , T.C. Memo. 2005-82	TPs primarily used the administrative hearings to delay the collection process, making frivolous arguments – including that the IRC doesn't establish tax liability	Yes	IRS
<i>Milby v. Comm'r</i> , T.C. Memo. 2005-15	TP argued that the IRS had not met the burden of proof	Yes	IRS
<i>Olson v. Comm'r</i> , T.C. Memo. 2004-234	TP argued that his wages were nontaxable	Yes	TP
<i>Poe v. Comm'r</i> , T.C. Memo. 2005-107	TP raised frivolous arguments related to IRS procedure that were primarily for delay	Yes	IRS
<i>Rewerts v. Comm'r</i> , T.C. Memo. 2004-248	TP argued that the notice of deficiency must be signed by the Secretary of the Treasury	Yes	TP
<i>Rodriguez v. Comm'r</i> , T.C. Memo. 2005-12	TP argued he did not receive an opportunity to challenge the IRS's evidence presented at trial	Yes	IRS
<i>Sawukaytis v. Comm'r</i> , 93 A.F.T.R.2d (RIA) 2847 (6th Cir. 2004)	TP argued federal income tax is an excise tax	No	IRS
<i>Shireman v. Comm'r</i> , T.C. Memo. 2004-155	TP argued that the IRS had to rely on a particular document to verify that applicable laws and procedures have been met for a Collection Due Process hearing	Yes	TP
<i>Sides v. Comm'r</i> , T.C. Memo. 2004-141	TP made frivolous arguments in petition but at trial admitted arguments were inappropriate and promised not to raise these frivolous arguments again	Yes	TP
<i>Smith v. Comm'r</i> , T.C. Memo. 2004-198	TP failed to appear at trial and then offered frivolous arguments for delay of collection process	Yes	TP
<i>Snyder v. Comm'r</i> , T.C. Memo. 2005-89	IRS's refusal to allow taxpayer to audio record hearing does not require remand	Yes	TP
<i>Stearman v. Comm'r</i> , T.C. Memo. 2005-39	TP argued that there is no such thing as income tax and that the 16th Amendment is unconstitutional	Yes	IRS
<i>Stephanatos v. Comm'r</i> , T.C. Memo. 2004-151	TP made frivolous arguments concerning improper deductions and whether wages are taxable income	Yes	IRS
<i>Storaasli v. Comm'r</i> , T.C. Memo. 2005-59	TP argued that the federal government did not have the authority to enforce a federal income tax and that notice of deficiency was improper	Yes	IRS

TABLE 5: FRIVOLOUS ISSUES PENALTY UNDER IRC § 6673 (CONT.)

Case Cite	Issues	Pro Se	Decision
<i>Taylor v. Comm'r</i> , T.C. Memo. 2005-74	TP argued notice of deficiency was invalid	Yes	IRS
<i>Tello v. Comm'r</i> , 95 A.F.T.R.2d (RIA) 1916 (5th Cir. 2005), cert. denied, 126 S.Ct. 381 (Oct. 3, 2005)	TP failed to cooperate with IRS and ignored warnings to stop making frivolous arguments	Yes	IRS
<i>Thompson v. Comm'r</i> , T.C. Memo. 2004-204	TP argued that notice of deficiency was invalid because not signed by Secretary or his delegate	Yes	TP
<i>Williams v. Comm'r</i> , T.C. Memo. 2005-94	TP submitted lengthy communications to the court and mis-applied tax law, court decisions, and Constitutional provisions	Yes	IRS
<i>Wos v. Comm'r</i> , 94 A.F.T.R.2d (RIA) 6195 (7th Cir. 2004)	TP argued that profit from business is not income, no liability because he didn't receive valid assessment, and IRS didn't have authority to prepare return	Yes	IRS
<i>Yazzie v. Comm'r</i> , T.C. Memo. 2004-233	TP argued that no law established liability for income taxes or required her to file a return	Yes	IRS
<b>Business Taxpayers (Sole Proprietorships including Schedule C or F, Schedule E, Corporations, Partnerships, and Trusts)</b>			
<i>Brenner v. Comm'r</i> , T.C. Memo. 2004-202	TP raised frivolous arguments ranging from communism to separation of church and state	Yes	IRS
<i>Rinn v. Comm'r</i> , T.C. Memo. 2004-246	TPs' court filings were frivolous and were warned at trial about the penalty but filed no brief and didn't continue to pursue those arguments after trial	Yes	TP
<i>Sinele v. Comm'r</i> , T.C. Memo. 2004-137	TP offered new argument on the eve of trial for the purpose of delaying the proceedings	No	IRS

**TABLE 6**  
**NEGLIGENCE PENALTY UNDER IRC § 6662(B)1**

Case Cite	Issue(s)	Pro Se	Decision
<b>Individual Taxpayers (Issues Other Than Business)</b>			
<i>Abeyta v. Comm'r</i> , T.C. Summ. Op. 2005-44	TPs (H&W) reasonably relied on tax professional	Yes	TPs
<i>Bien-Aime v. Comm'r</i> , T.C. Memo. 2004-281	TP failed to carefully review tax return prepared by advisor	Yes	IRS
<i>Bolden v. Comm'r</i> , T.C. Summ. Op. 2004-114	TP did not inquire about the accuracy of her tax return	Yes	IRS
<i>Bosco v. Comm'r</i> , T.C. Summ. Op. 2005-14	TP intentionally disregarded information from her employer regarding payment of moving expenses/TP's reliance on adviser regarding deductibility of moving expenses was reasonable	Yes	Split
<i>Cohen v. Comm'r</i> , T.C. Memo. 2004-227	Not receiving a Form 1099-R is not reasonable cause	No	IRS
<i>DiFlora v. Comm'r</i> , T.C. Summ. Op. 2004-101	TP provided no evidence to show reasonable cause	Yes	IRS
<i>Golshani v. Comm'r</i> , T.C. Summ. Op. 2004-174	TPs (H&W) reasonably attempted to comply with the tax code	No	TPs
<i>Gowni v. Comm'r</i> , T.C. Memo. 2004-154	TPs (H&W) did not reasonably rely on the tax professional/did not keep adequate books & records	No	IRS
<i>Graves v. Comm'r</i> , T.C. Memo. 2004-140	TPs (H&W) did not keep adequate books & records/did not attempt to ascertain correctness of deduction	Yes	IRS
<i>Howard-Crowley v. Comm'r</i> , T.C. Summ. Op. 2004-150	TP provided no evidence to show reasonable cause	Yes	IRS
<i>Namyst v. Comm'r</i> , T.C. Memo. 2004-263	W-2, but H&W reasonably attempted to comply with the tax law based on information available	No	TPs
<i>Reimann v. Comm'r</i> , T.C. Summ. Op. 2005-10	TPs (H&W) did not make sufficient effort to ascertain correct tax liability/did not consult a tax professional.	Yes	IRS
<i>Spanier v. Comm'r</i> , T.C. Summ. Op. 2004-106	No reasonable basis for deductions — Court order allowing TP (H) to claim dependency exemptions not issued until after return was filed	Yes	Split
<i>Stephanatos v. Comm'r</i> , T.C. Memo. 2004-151	TP's arguments were frivolous	Yes	IRS
<i>Taibo v. Comm'r</i> , T.C. Memo. 2004-196	TP's reliance on a current income tax regulation was reasonable cause	No	TP
<i>Turner v. Comm'r</i> , T.C. Memo. 2004-251	TP's return containing zeroes was held to be invalid return	Yes	TP
<i>Williams v. Comm'r</i> , 95 A.F.T.R. 2d (RIA) 764 (10th Cir. 2005)	TP relied on incorrect W-2 when completing income tax return	No	IRS
<b>Business Taxpayers (sole proprietorships including Schedule C and/or F, Schedule E, Corporations, Partnerships, and Trust(s)).</b>			
<i>Acle v. Comm'r</i> , T.C. Summ. Op. 2004-82	TP did not keep complete or adequate records	Yes	IRS
<i>Allnutt v. Comm'r</i> , T.C. Memo. 2004-239	TP's reliance on adviser not reasonable when complete/accurate records not provided	Yes	IRS
<i>Barnes v. Comm'r</i> , T.C. Memo. 2004-266	TP did not reasonably rely on tax professional	No	IRS
<i>Beiner, Inc. v. Comm'r</i> , T.C. Memo. 2004-219	TP exercised ordinary business care and prudence in determining deduction for officer compensation	No	TP
<i>Benson v. Comm'r</i> , T.C. Memo. 2004-272	TPs did not provide complete information to their tax professionals	No	IRS
<i>Bernardo v. Comm'r</i> , T.C. Memo. 2004-199	Reasonable reliance on tax professional/lack of substantiation	Yes	Split
<i>Biazar v. Comm'r</i> , T.C. Memo. 2004-270	TPs (H&W) failed to show reasonable cause for failure to maintain records of schedule C expenses	Yes	IRS
<i>Calarco v. Comm'r</i> , T.C. Summ. Op. 2004-94	TP did not exercise reasonable diligence to determine correctness of deductions/didn't keep accurate records	Yes	Split
<i>Caspian Consulting Group, Inc. v. Comm'r</i> , T.C. Memo. 2005-54	TP's reliance on tax professional was reasonable when TP gave professional all necessary records	No	TP
<i>CMA Consolidated, Inc. v. Comm'r</i> , T.C. Memo. 2005-16	TP could not reasonably rely on the tax professional when TP did not disclose all relevant facts	No	IRS
<i>Corrigan v. Comm'r</i> , T.C. Memo. 2005-119	TP unreasonably relied on attorney and did not keep adequate records	Yes	IRS
<i>Delaware Corp. v. Comm'r</i> , T.C. Memo. 2004-280	TP's reliance on tax professional not reasonable when correct information not provided	No	IRS
<i>Doxtator v. Comm'r</i> , T.C. Memo. 2005-113	TP's position regarding self-employment tax exemption was reasonable/TP failed to keep books & records to substantiate expenses	Yes	Split

TABLE 6: NEGLIGENCE PENALTY UNDER IRC § 6662(B)1 (CONT.)

Case Cite	Issue(s)	Pro Se	Decision
<i>Dumond v. Comm'r</i> , T.C. Summ. Op. 2005-11	TP did not keep adequate records or otherwise substantiate deductions	Yes	IRS
<i>Fairey v. Comm'r</i> , T.C. Memo. 2005-129	TPs (H&W) failed to keep adequate records	Yes	ERS
<i>Firsow v. Comm'r</i> , T.C. Summ. Op. 2004-112	TPs (H&W) did not take reasonable steps to comply with the law/did not keep credible records	No	IRS
<i>Gouveia v. Comm'r</i> , T.C. Memo. 2004-252	TPs' reliance on tax avoidance scheme repeatedly rejected by the courts was not reasonable/TPs did not show that they relied on advice from a tax professional	No	IRS
<i>Graham v. Comm'r</i> , T.C. Memo. 2005-68	TP failed to show reasonable cause	No	IRS
<i>Hansen v. Comm'r</i> , T.C. Memo. 2004-269	TP did not reasonably rely on tax professional	No	IRS
<i>Hitchen v. Comm'r</i> , T.C. Memo. 2004-265	TP could not reasonably rely on the tax professional	Yes	IRS
<i>Horwath v. Comm'r</i> , T.C. Memo. 2004-213	No reasonable cause shown or good faith in computing the deductions	Yes	IRS
<i>Hurst v. Comm'r</i> , 124 T.C. 16 (2005)	TPs reasonably complied with the tax code	No	TPs
<i>Kooyers v. Comm'r</i> , T.C. Memo. 2004-281	TPs failed to prove their tax professional was competent	Yes	IRS
<i>Lenzen v. Comm'r</i> , T.C. Memo. 2005-120	TPs did not keep adequate records of their wins or losses from gambling	No	IRS
<i>Malone v. Comm'r</i> , T.C. Memo. 2005-69	TP was an educated individual but did not have tax expertise and reasonable minds could differ as to the tax treatment of complex issue	Yes	TP
<i>McNair v. Comm'r</i> , T.C. Summ. Op. 2004-115	TP did not review tax returns before filing/didn't keep adequate records	Yes	IRS
<i>Mediaworks, Inc. v. Comm'r</i> , T.C. Memo. 2004-177	TP's reliance on adviser not reasonable when adviser not competent	No	IRS
<i>Menard, Inc. v. Comm'r</i> , T.C. Memo. 2004-207	TPs did not provide their tax professional with complete and accurate records	No	IRS
<i>Montagne v. Comm'r</i> , T.C. Memo. 2004-252	TPs did not provide any evidence to show reasonable cause	Yes	IRS
<i>Morrison v. Comm'r</i> , T.C. Memo. 2005-53	Court held no underpayment of tax existed, so penalty not applicable	No	TP
<i>Mortensen v. Comm'r</i> , T.C. Memo. 2004-279	TP's reliance on promoters of the investment and other investors was not objectively reasonable	No	IRS
<i>Oatman v. Comm'r</i> , T.C. Memo. 2004-236	TPs (H&W) used improper methods to compute depreciation & didn't provide evidence to show reasonable cause	Yes	IRS
<i>Ogu v. Comm'r</i> , T.C. Summ. Op. 2004-87	TP did not keep adequate books & records/did not substantiate	Yes	IRS
<i>Panages v. Comm'r</i> , T.C. Summ. Op. 2005-3	TP had a reasonable basis for believing that she was a professional gambler/kept accurate records	Yes	TP
<i>Rabimi v. Comm'r</i> , T.C. Summ. Op. 2004-156	TPs could not show reasonable cause	Yes	IRS
<i>Starkovich v. Comm'r</i> , T.C. Summ. Op. 2004-173	TP did not keep adequate records	Yes	IRS
<i>Van Scoten v. Comm'r</i> , T.C. Memo. 2004-275	TP's reliance on another investor in same partnership not objectively reasonable	No	IRS
<i>Walz v. Comm'r</i> , T.C. Summ. Op. 2005-1	TP reasonably relied on tax professional	No	TP
<i>Westby v. Comm'r</i> , T.C. Memo. 2004-179	TP kept complete and adequate records and could show reasonable cause	Yes	TP
<i>Wood v. Comm'r</i> , T.C. Memo. 2004-200	TP's deductions were improper, and he did not consult a tax professional	Yes	IRS

**TABLE 7**  
**FAMILY STATUS ISSUES UNDER IRC §§ 2,21,24,32,AND 151**

Case Cite	Issue(s)	Pro Se	Decision
<b>Individual TPs (Issues Other Than Business)</b>			
<i>Allsopp v. Comm'r</i> ; T.C. Summ. Op. 2004-154	Dependency Exemption, Child Tax Credit	Yes	IRS
<i>Bernardo v. Comm'r</i> ; T.C. Memo. 2004-199	Dependency Exemption, Filing Status	Yes	IRS
<i>Booker v. Comm'r</i> ; T.C. Summ. Op. 2004-92	Dependency Exemption, EITC, Filing Status	Yes	IRS
<i>Bouch v. Comm'r</i> ; T.C. Summ. Op. 2004-167	Dependency Exemption, Child Tax Credit	Yes	IRS
<i>Boulden v. Comm'r</i> ; T.C. Summ. Op. 2004-124	Dependency Exemption, Child Tax Credit	Yes	IRS
<i>Brettin v. Comm'r</i> ; T. C. Summ. Op. 2004-95	Dependency Exemption, Child Tax Credit	No	IRS
<i>Brunner v. Comm'r</i> ; T.C. Memo. 2004-187	Dependency Exemption	Yes	IRS
<i>Caputi v. Comm'r</i> ; T.C. Memo. 2004-283	Dependency Exemption, Child Tax Credit, Filing Status	Yes	IRS
<i>Castleton v. Comm'r</i> ; T.C. Memo 2005-58	Child Tax Credit, Filing Status	Yes	Split
<i>Colstock v. Comm'r</i> ; T.C. Summ. Op. 2005-54	Dependency Exemption, Child Tax Credit, EITC, Filing Status	Yes	IRS
<i>Corrigan v. Comm'r</i> ; T.C. Memo. 2005-119	Dependency Exemption	Yes	TP
<i>Curello v. Comm'r</i> ; T.C. Summ. Op. 2005-23	Dependency Exemption, Child Tax Credit	Yes	IRS
<i>Diaz v. Comm'r</i> ; T.C. Memo. 2004-145	EITC	Yes	IRS
<i>Elkins v. Comm'r</i> ; T.C. Summ. Op. 2004-84	Dependency Exemption, Child Tax Credit, Filing Status, Child and Dependent Care Credit	Yes	Split
<i>Emanie v. Comm'r</i> ; T.C. Summ. Op. 2004-78	Dependency Exemption, Filing Status	Yes	IRS
<i>Howard-Crowley v. Comm'r</i> ; T.C. Summ. Op. 2004-150	Dependency Exemption	Yes	IRS
<i>Hubbard v. Comm'r</i> ; T.C. Summ. Op. 2004-148	Filing Status, Child and Dependent Care Credit	Yes	TP
<i>Hutchinson v. Comm'r</i> ; T.C. Summ. Op. 2005-58	Dependency Exemption	No	IRS
<i>In re Adkins</i> , 2004 WL 2334716 (Bankr. D. Kan. 2004)	Pro rata share of EITC is includible in bankruptcy estate	No	Trustee
<i>In re James</i> , 406 F.3d 1340 (11th Cir. 2005)	EITC is "public assistance" which debtors can claim as exemption under Alabama law.	No	TP
<i>In re Schwarz</i> , 314 B.R. 433 (D. Neb. 2004)	Portions of federal and state refunds attributable to child tax credit not included in bankruptcy estate.	No	TP
<i>Jondabl v. Comm'r</i> ; T.C. Memo 2005-55	Filing Status	No	IRS
<i>Jones v. Comm'r</i> ; T.C. Summ. Op. 2004-133	Dependency Exemption, EITC	Yes	IRS
<i>Joseph v. Comm'r</i> ; T.C. Summ. Op. 2004-137	Dependency Exemption, EITC	Yes	IRS
<i>Lear v. Comm'r</i> ; T.C. Memo 2004-253	Dependency Exemption, EITC	Yes	IRS
<i>Mbachu v. Comm'r</i> ; T.C. Summ. Op. 2004-168	EITC, Filing Status	Yes	IRS
<i>Mbanu v. Comm'r</i> ; T.C. Summ. Op. 2005-56	EITC, Filing Status	Yes	IRS
<i>McNair v. Comm'r</i> ; T.C. Summ. Op. 2004-115	Dependency Exemption, Child Tax Credit, Child and Dependent Care Credit	Yes	IRS
<i>Montwillo v. Comm'r</i> ; T.C. Summ. Op. 2004-123	Dependency Exemption, Child Tax Credit, Filing Status	Yes	IRS
<i>Muncy v. Comm'r</i> ; T.C. Summ. Op. 2005-20	Dependency Exemption, Child Tax Credit, EITC, Filing Status	Yes	IRS
<i>Myers v. Comm'r</i> ; T.C. Summ. Op. 2005-15	EITC	Yes	IRS
<i>Ogu v. Comm'r</i> ; T.C. Summ. Op. 2004-87	EITC, Filing Status	Yes	IRS
<i>Petty v. Comm'r</i> ; T.C. Memo 2004-144	EITC	Yes	IRS
<i>Rogers v. Comm'r</i> ; T.C. Memo. 2004-245	EITC	Yes	IRS
<i>Sampson v. Comm'r</i> ; T.C. Summ. Op. 2005-30	Dependency Exemption, EITC, Filing Status	Yes	IRS
<i>Scott v. Comm'r</i> ; T.C. Summ. Op. 2004-129	Dependency Exemption, Child Tax Credit	Yes	IRS
<i>Somsukcharean v. Comm'r</i> ; T.C. Summ. Op. 2005-49	Dependency Exemption, Child Tax Credit, EITC	Yes	IRS



TABLE 7: FAMILY STATUS ISSUES UNDER IRC §§ 2,21,24,32,AND 151 (CONT.)

Case Cite	Issue(s)	Pro Se	Decision
<i>Spanier v. Comm'r</i> , T.C. Summ. Op. 2004-106	Dependency Exemption	Yes	Custodial Parent
<i>Szasz v. Comm'r</i> , T.C. Summ. Op. 2004-169	Dependency Exemption, Filing Status	Yes	IRS
<i>Toney v. Comm'r</i> , T.C. Memo. 2004-165	Dependency Exemption, EITC, Filing Status	Yes	IRS
<i>Urena v. Comm'r</i> , T.C. Summ. Op. 2004-138	EITC	Yes	IRS
<i>Varner v. Comm'r</i> , T.C. Summ. Op. 2004-111	Dependency Exemption, EITC, Filing Status	Yes	IRS
<i>Wells v. Comm'r</i> , T.C. Summ. Op. 2004-153	Dependency Exemption, Child Tax Credit	Yes	IRS
<i>Wentland v. Comm'r</i> , T.C. Summ. Op. 2004-134	Dependency Exemption	Yes	Split
<i>Werther v. Comm'r</i> , T.C. Summ. Op. 2005-28	Dependency Exemption, Child Tax Credit	Yes	IRS

**TABLE 8**  
**RELIEF FROM JOINT AND SEVERAL LIABILITY UNDER IRC § 6015**

Case Cite	Issues	Pro Se	Intervenor	Decision
<i>Abelein v. Comm'r</i> , T.C. Memo. 2004-274, appeal docketed, No. 05-71672 (9th Cir. Mar. 7, 2005)	6015(b), (f); RP, §4.03	No	No	IRS
<i>Albin v. Comm'r</i> , T.C. Memo. 2004-230	6015(b),(c),(f); RP, §4.03	Yes	No	IRS
<i>Alt v. Comm'r</i> , 93 A.F.T.R.2d (RIA) 2561 (6th Cir. 2004), aff'g 119 T.C. 306 (2002)	6015(b),(c),(f); RP, §4.03	No	No	IRS
<i>Barnes v. Comm'r</i> , T.C. Memo. 2004-266	6015(b),(c),(f); RP, §4.03	No	No	IRS
<i>Baumann v. Comm'r</i> , T.C. Memo. 2005-31	TC determined H had sufficient opportunity to participate; 6015(f); RP, §4.03	No	No	IRS
<i>Becherer v. Comm'r</i> , T.C. Memo. 2004-282	6015(b), (c), (f); RP, §4.03	Yes	No	IRS
<i>Bowen v. Comm'r</i> , T.C. Summ. Op. 2005-32	6015(c) (IRS did not prove actual knowledge)	Yes	No	TP
<i>Bussell v. Comm'r</i> , T.C. Memo. 2005-77	6015(b) and (c) (knowledge);RP, §4.01 (threshold condition/fraud)	Yes	No	IRS
<i>Capehart v. Comm'r</i> , T.C. Memo. 2004-268, appeal docketed, No. 05-71306 (9th Cir. Feb. 22, 2005)	6015(b),(c),(f); RP, §4.03	No	No	IRS
<i>Coleman v. Comm'r</i> , T.C. Summ. Op. 2004-165	IRS had conceded relief; TC sustained relief despite intervenor's objection	Yes	Yes	TP*
<i>Cook v. Comm'r</i> , T.C. Memo. 2005-22	6015(c) (IRS did not prove actual knowledge)	Yes	No	TP
<i>Cullen v. Comm'r</i> , T.C. Memo. 2004-176	6015(b),(c),(f)(knowledge); RP, §4.03	Yes	No	IRS
<i>DeFore v. Comm'r</i> , T.C. Summ. Op. 2004-162	6015(c) (IRS did not prove actual knowledge)	Yes	No	TP
<i>Drake v. Comm'r</i> , 123 T.C. 320 (2004)	Tax Court granted govt's motion to dismiss; held that automatic bankruptcy stay bars the filing of a petition in a 6015 standalone proceeding	No	No	IRS
<i>Durham v. Comm'r</i> , T.C. Memo. 2004-184	6015(b),(c),(f); RP, §4.03 (underpayment)	Yes	No	IRS
<i>Ford v. Comm'r</i> , T.C. Memo. 2005-18	6015(b) (knowledge or reason to know)	No	No	IRS
<i>Friday v. Comm'r</i> , 124 T.C. 220 (2005)	Tax Court denied IRS motion to remand case back to agency to make merits determination; no 6015 analog to CDP remand under the retained jurisdiction provision of 6330(d)	No	No	TP
<i>George v. Comm'r</i> , T.C. Memo. 2004-261	6015(f) (underpayment); RP, §4.03	Yes	No	IRS
<i>Giles v. Comm'r</i> , T.C. Summ. Op. 2004-145	6015(b),(c),(f) (knowledge or reason to know); RP, §4.03	Yes	No	IRS
<i>Griffin v. Comm'r</i> , T.C. Summ. Op. 2005-41	6015(f) (underpayment); RP, §4.03	Yes	No	IRS
<i>Haag, U.S. v.</i> , 94 A.F.T.R.2d 6665 (D. Mass. 2004)	6015(b),(f) (timeliness of claim)	No	No	IRS
<i>Hall v. Comm'r</i> , T.C. Memo. 2004-170	6015(f) (timeliness of claim)	Yes	Yes	IRS
<i>Hendricks v. Comm'r</i> , T.C. Memo. 2005-72	6015(b) (no knowledge or reason to know)	No	No	TP
<i>James v. Comm'r</i> , T.C. Summ. Op. 2004-176	6015(f); RP, §4.03 (underpayment)	No	No	IRS
<i>Jones v. Comm'r</i> , T.C. Summ. Op. 2005-9	Denied relief in two years because tax fully paid prior to effective date of 6015; third year dismissed for lack of jurisdiction	Yes		IRS
<i>Knorr v. Comm'r</i> , T.C. Memo. 2004-212	6015(f); RP, §4.03 (underpayment)	No	Yes	IRS
<i>Levy v. Comm'r</i> , T.C. Memo. 2005-92	Denied 6015(b) based on reason to know; granted (c) relief based on govt's failure to prove actual knowledge; granted and denied (f) relief for various years based on factor analysis in RP, §4.03	No	No	Split
<i>Lopez v. Comm'r</i> , T.C. Memo. 2005-36	6015(f) (underpayment), RP §4.03	Yes	No	IRS
<i>McClelland v. Comm'r</i> , T.C. Memo. 2005-121	6015(b) (knowledge or reason to know)	No	No	TP
<i>McGee v. Comm'r</i> , 123 T.C. 314 (2004)	6015(f) Tax Court held that failure to notify TP of right to file claim for 6015 relief in refund offset notice as required by RRA98 § 3501 precludes any finding that the claim was untimely filed	Yes	No	TP

\* The IRS conceded the 6015 issue prior to trial; the nonrequesting spouse intervened resulting in a trial and opinion favorable to the requesting spouse.

TABLE 8: RELIEF FROM JOINT AND SEVERAL LIABILITY UNDER IRC § 6015 (CONT.)

Case Cite	Issues	Pro Se	Intervenor	Decision
<i>Monsour v. Comm'r</i> , T.C. Memo. 2004-190	6015(b), (f), and (g)(2) TC held that TP had materially participated in the prior TC proceeding and was precluded by res judicata from raising an innocent spouse claim	No	No	IRS
<i>Morello v. Comm'r</i> , T.C. Memo. 2004-181	6015(f) (underpayment); RP, §4.03	Yes	No	IRS
<i>Nelson v. Comm'r</i> , T.C. Memo. 2005-9	6015(f) Tax Court held that failure to notify TP of right to file claim for 6015 relief in refund offset notice as required by RRA98 § 3501 precludes any finding that the claim was untimely filed	Yes		TP
<i>Noons v. Comm'r</i> , T.C. Memo. 2004-243	Res judicata	No	No	IRS
<i>O'Neill v. Comm'r</i> , T.C. Memo. 2004-183	6015(f) (underpayment); RP, §4.03	Yes	Yes	IRS
<i>Payne v. Comm'r</i> , T.C. Memo. 2005-130	6015(b),(c),(f) ;Reason to know; fraud	No	No	IRS
<i>Pless v. Comm'r</i> , 111 Fed. Appx. 178 (4th Cir. 2004), affg T.C. Memo. 2004-24	6015(f); RP, §4.03	Yes	No	IRS
<i>Rivera v. Comm'r</i> , T.C. Memo. 2005-33	6015(g); statute precludes refunds for relief granted under 6015(c)	Yes	No	IRS
<i>Scarborough v. Comm'r</i> , T.C. Summ. Op. 2004-116	6015(f) (underpayment); RP, §4.03	Yes	Yes	IRS
<i>Sjodin v. Comm'r</i> , T.C. Memo. 2004-205, appeal docketed, No. 05-1110 (8th Cir. Jan. 10, 2005)	6015(f) (underpayment); RP, §4.03	Yes	No	IRS
<i>Taylor v. Comm'r</i> , T.C. Summ. Op. 2005-48	6015(f) (underpayment); RP, §4.03	Yes	Yes	IRS
<i>Thorpe v. Comm'r</i> , T.C. Summ. Op. 2004-98	Tax Court remanded CDP case to IRS to consider TP's 6015(c) claim; AO's refusal to consider claim because it was not filed on Form 8857 was an abuse of discretion	Yes	No	TP
<i>Van Arsdalen v. Comm'r</i> , 123 T.C. 135 (2004)	Tax Court held that former spouse had right to intervene in support of requesting spouse's claim for relief	No	Yes	TP
<i>Wang v. Comm'r</i> , T.C. Summ. Op. 2004-113	6015(b), (f); RP, §4.03	Yes	No	IRS
<i>Zachry v. Comm'r</i> , T.C. Summ. Op. 2005-55	6015(b),(c),(f) (actual knowledge); RP, §4.03	Yes	Yes	IRS

**TABLE 9**  
**SUMMONS ENFORCEMENT UNDER IRC § 7604**

Case Cite	Issue(s)	Pro Se	Decision
<b>Individual TPs (Issues Other Than Business)</b>			
<i>Conner v. U.S.</i> , 94 A.F.T.R.2d (RIA) 7287 (W.D. Va. 2004).	7609(a)(1) notice timely; 6531 6 year limit does not prevent discovery; IRS does not already have records	No	IRS
<i>Cranford v. U.S.</i> 359 F.Supp.2d 981 (E.D. Cal. 2005).	TP's spouse not entitled to notice and did not have standing	No	IRS
<i>Doe v. U.S.</i> , 398 F.3d 686 (5th Cir. 2005), rev'g <i>Doe v. KPMG, LLP</i> , 93 A.F.T.R.2d (RIA) 1808 (N.D. Tex. 2004).	Statute of limitations on assessment not extended by equitable tolling	No	TP
<i>Edlund v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1650 (D. Colo. 2005).	Powell requirements satisfied; e.g. summons for legitimate purpose; data relevant; IRS does not have data already; summons procedures followed	No	IRS
<i>English v. Krubsack</i> , 371 F.Supp.2d 1198 (E.D. Cal. 2005).	Powell requirements satisfied	Yes	IRS
<i>Green v. Bank One N.A.</i> , 95 A.F.T.R.2d (RIA) 2085 (E.D. Cal. 2005).	The Powell requirements were met and the arguments the plaintiff put forward were frivolous	Yes	IRS
<i>Grenier v. U.S.</i> , 94 A.F.T.R.2d (RIA) 7116 (D. N.D. 2004).	Summons sufficiently narrow	No	IRS
<i>Haydel v. U.S.</i> , 2005 WL 233805 (N.D. Tex. 2005)	Powell requirements were met	Yes	IRS
<i>Hembree v. U.S.</i> , 95 A.F.T.R.2d (RIA) 2198 (M.D. Fla. 2005).	Powell requirements were met	Yes	IRS
<i>Jewett v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1846 (N.D. Ohio. 2005).	TP offered frivolous arguments against summons	Yes	IRS
<i>Lintzenich v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1169 (S.D. Ind. 2005).	Summons issued for legitimate purpose although general 3-year period for assessment has passed	No	IRS
<i>Marks v. U.S.</i> , 94 A.F.T.R.2d (RIA) 7272 (N.D. Tex. 2004).	TP offers frivolous arguments	Yes	IRS
<i>Ryerson v. I.R.S.</i> , 95 A.F.T.R.2d (RIA) 2100 (D. Ariz. 2005).	Powell requirements satisfied; 5th Amendment rights not violated	Yes	IRS
<i>Schulz v. I.R.S.</i> , 395 F.3d 463 (2nd Cir. 2005), clarified by <i>Schulz v. I.R.S.</i> , 413 F.3d 297 (2nd Cir. 2005).	TP has no standing to contest summons served on him until IRS attempts to enforce the summons	Yes	IRS
<i>Sochia v. U.S.</i> , 94 A.F.T.R.2d 5502 (W.D. Tex. 2004).	TP offers frivolous arguments	Yes	IRS
<i>Steiniger v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1088 (E.D. Pa. 2005).	Powell requirements satisfied	Yes	IRS
<i>Thomas v. U.S.</i> , 94 A.F.T.R.2d (RIA) 5015 (D. Me. 2004).	The Powell requirements were met and the TP's arguments were frivolous	Yes	IRS
<i>Thompson-Perry v. U.S.</i> , 94 A.F.T.R.2d (RIA) 6862 (N.D. Ohio. 2004).	TP not entitled to notice, did not have standing; proceeding not timely	No	IRS
<i>Tilley v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1395 (5th Cir. 2005).	Lack of attestation does not invalidate summons	Yes	IRS
<i>Tilley v. U.S.</i> , 94 A.F.T.R.2d (RIA) 6942 (M.D.N.C. 2004).	TP failed to file petition within 20 day period	Yes	IRS
<i>U.S. v. Heubusch</i> , 95 A.F.T.R.2d (RIA) 1066 (2nd Cir. 2005).	Documents improperly seized in criminal case can be summoned in civil case if IRS has independent knowledge	No	IRS
<i>U.S. v. Hibben</i> , 95 A.F.T.R.2d (RIA) 2055 (E.D. Ky. 2005); <i>U.S. v. Hibben</i> , 95 A.F.T.R.2d (RIA) 2063 (E.D. Ky. 2005).	Powell requirements met; TP offers frivolous arguments	Yes	IRS
<i>U.S. v. Hubbard</i> , 122 Fed.Appx. 868 (8th Cir. 2005).	Affirmed district court - IRS made prima facie case for summons enforcement	Yes	IRS
<i>U.S. v. Milligan</i> , 95 A.F.T.R.2d (RIA) 1994 (D. Ariz. 2005).	No Fifth Amendment privilege; in camera hearing denied	No	IRS
<i>U.S. v. Norwood</i> , 94 A.F.T.R.2d (RIA) 5933 (D. N.D. 2004); <i>U.S. v. Norwood</i> , 94 A.F.T.R.2d (RIA) 5938 (D. N.D. 2004); <i>U.S. v. Norwood</i> , 95 A.F.T.R.2d (RIA) 2470 (D. N.D. 2005).	No violation of Fourth or Fifth Amendment, discovery request is outside scope of summons proceeding	No	IRS
<i>U.S. v. Olmer</i> , 94 A.F.T.R.2d (RIA) 6482 (D. Neb. 2004).	Fifth Amendment not applicable to summons seeking nontestimonial data	Yes	IRS
<i>U.S. v. Ott</i> , 94 A.F.T.R.2d (RIA) 6558 (D. Kan. 2004).	Failure to comply with summons	Yes	IRS

TABLE 9: SUMMONS ENFORCEMENT UNDER IRC § 7604 (CONT.)

Case Cite	Issue(s)	Pro Se	Decision
<i>U.S. v. Pate</i> , 94 A.F.T.R.2d (RIA) 5480 (5th Cir. 2004).	Affirmed district court holding that summonses were not issued solely for criminal investigation	No	IRS
<i>U.S. v. Pelayo</i> , 94 A.F.T.R.2d (RIA) 5034 (N.D. Cal. 2004).	Powell requirements were met	Yes	IRS
<b>Business TPs (Sole Proprietorships including Schedule C and/or F, Schedule E, Corporations, Partnerships, Estates and Trusts)</b>			
<i>Belsby v. Comm'r</i> , 95 A.F.T.R.2d (RIA) 400 (E.D. Wash. 2004).	Bank records relevant to determine tax liability Powell requirements met	Yes	IRS
<i>Domestic Executive Leasing Services, LLC, v. U.S.</i> , 95 A.F.T.R.2d (RIA) 1966 (D. Nev. 2005).	Summonsed records were relevant	No	IRS
<i>Estate of Reiserer v. U.S.</i> , 95 A.F.T.R.2d (RIA) 2660 (W.D. Wash. 2005).	Summons does not abate upon individual's death; client's identities are not privileged; summoned documents were relevant	No	IRS
<i>U.S. v. B &amp; D Vending, Inc.</i> , 398 F.3d 728 (6th Cir. 2004).	Affirmed district court, corporate documents not protected by the Fifth Amendment	No	IRS
<i>U.S. v. BDO Seidman, LLP</i> 337 F.3d 802, 810-812 (7th Cir. 2003); <i>U.S. v. BDO Seidman, LLP</i> , 95 A.F.T.R.2d (RIA) 1725 (N.D. Ill. 2005); <i>U.S. v. BDO Seidman</i> , 368 F.Supp.2d 858 (N.D. Ill. 2005).	Some summonsed documents protected by attorney-client privilege. Court found crime-fraud exception prevented one document from being privileged	No	Split
<i>U.S. v. Boulware</i> , 350 F.Supp.2d 837 (D. Haw. 2004).	TP not entitled to intervene, no abuse of process	No	IRS
<i>U.S. v. Brown</i> , 95 A.F.T.R.2d (RIA) 1261 (N.D. Fla. 2005).	Court rejected jurisdictional arguments	Yes	IRS
<i>U.S. v. Hayden</i> , 95 A.F.T.R.2d (RIA) 815 (S.D. Cal. 2004).	Summons enforceable if for determining civil tax liability, even if documents may relate to the criminal investigation of another party	No	IRS
<i>U.S. v. Judicial Watch</i> , 371 F.3d 824 (D.C. Cir. 2004).	Affirmed district court holding that summons issued for legitimate purpose; no violation of First, Fourth, or Fifth Amendment	No	IRS
<i>U.S. v. Kaiser</i> , 397 F.3d 641 (8th Cir. 2005).	Affirmed district court holding that summonses not for improper purpose or in retaliation	No	IRS
<i>U.S. v. Montgomery Global Advisors, LLC</i> , 95 A.F.T.R.2d (RIA) 1997 (N.D. Cal. 2005).	Failure to comply with summons	No	IRS
<i>U.S. v. Monumental Life Ins</i> , 94 A.F.T.R.2d (RIA) 6487 (W.D. Ky. 2004).	Powell requirements met	No	IRS
<i>Xelan, Inc v. U.S.</i> , 94 A.F.T.R.2d (RIA) 5217 (S.D. Iowa 2004).	Notice of summons does not need to be provided to all plan participants	No	IRS
<i>Xelan, Inc v. U.S.</i> , 361 F.Supp.2d 459 (D. Md. 2005).	Powell requirements satisfied	No	IRS
<i>Xelan, Inc v. U.S.</i> , 94 A.F.T.R.2d (RIA) 6755 (E.D. Pa. 2004).	Notice need not be provided to all plan participants; no criminal referral made	No	IRS

**TABLE 10**  
**TRUST FUND RECOVERY PENALTY (TFRP) UNDER IRC § 6672**

Case Cite	Issue(s)	Pro Se	Decision
<b>Individual TPs (Issues Other Than Business)</b>			
<i>Ashworth v. United States</i> , 95 A.F.T.R.2d (RIA) 2476 (D. N.J. 2005)	Responsibility determination for jury; willfulness found as a matter of law	No	Split
<i>Austin v. Comm'r</i> , 95 A.F.T.R.2d (RIA) 2304 (E.D. CA 2005)	TP's complaint untimely	Yes	IRS
<i>Baimbridge v. United States</i> , 335 F.Supp.2d 1084 (S.D. Cal. 2004)	Responsibility determination as matter of law; estoppel argument for trial	No	Split
<i>In re Borman</i> , 94 A.F.T.R.2d (RIA) 6301 (Bankr. S.D. Fla. 2004)	Instruction not to pay tax as defense	No	IRS
<i>Brewer v. United States</i> , 390 F.Supp.2d 1378 (S.D. Ga. 2005)	Equitable tolling principles do not apply when determining timeliness of TFRP refund suit	No	IRS
<i>Dallin v. United States</i> , 62 Fed. Cl. 589 (2004)	Whether IRS followed proper procedures when assessing TFRP	No	IRS
<i>Currie v. Comm'r</i> , 95 A.F.T.R.2d (RIA) 1961 (N.D. GA 2005)	TP cannot argue TFRP liability	Yes	IRS
<i>Dewing v. United States</i> , 95 A.F.T.R.2d (RIA) 1609 (D. Nev. 2005)	TP had no control or authority	No	TP
<i>Ferguson v. United States</i> , 94 A.F.T.R.2d (RIA) 6322 (S.D. Iowa 2004)	In action for attorneys fees, TFRP was justified against CEO but not controller	No	Split
<i>In re Fiesole Trading Corp.</i> , 315 B.R. 198 (D. Mass. 2004)	6672 as a tax or as a penalty	No	TP
<i>In re Frank</i> , 322 B.R. 745 (M.D. N.C. 2005)	Notice as invalidating assessment; designating payments for trust fund as negating willfulness	Yes	Split
<i>Glass v. United States</i> , 335 F.Supp.2d 736 (N.D. Tex. 2004)	Assessment of TFRP not justified	No	TP
<i>Gutherie v. United States</i> , 359 F.Supp.2d 693 (E.D. Tenn. 2005)	Obligation of government to liquidate assets and apply them to trust fund liability during bankruptcy	Yes	IRS
<i>Lencyk v. United States</i> , 384 F.Supp.2d 1028 (W.D. Tex. 2005)	Responsibility and willfulness determination and impact of using surety company on determination	No	IRS
<i>Lewis v. United States</i> , 95 A.F.T.R.2d (RIA) 2752 (W.D. Tenn. 2005)	Issues raised are moot	No	IRS
<i>Litriello v. United States</i> , 95 A.F.T.R.2d (RIA) 2581 (W.D. Ky. 2005)	6672 as only means to assess tax against member of a limited liability company	No	IRS
<i>In re Lowthorp</i> , 325 B.R. 470 (M.D. Fla. 2005)	Demand letters post discharge violated court order	No	TP
<i>Jackling v. IRS</i> , 352 F.Supp.2d 129 (D. NH 2004)	TP waived ability to argue TFRP liability	Yes	IRS
<i>Jean v. U.S.</i> , 396 F.3d 449 (1st Cir. 2005)	Substantial basis for TFRP assessment	Yes	IRS
<i>Killingsworth v. U.S.</i> , 94 A.F.T.R.2d (RIA) 6108 (5th Cir. 2004)	Expiration of refund statute	Yes	IRS
<i>Lubetzky v. United States</i> , 393 F.3d 76 (1st Cir. 2004)	Timing of responsible person status	No	IRS
<i>Moran v. United States</i> , 94 A.F.T.R.2d (RIA) 5840 (N.D. Ill. 2004)	Whether TFRP payments were made	No	IRS
<i>Pollack v. U.S.</i> , 327 F.Supp.2d 907 (W.D. TN 2004)	TP responsible person, but TFRP procedure not followed	No	Split
<i>In re Pugh</i> , 315 B.R. 889 (D. Nev. 2004)	Responsible person but question of fact as to willfulness	No	Split
<i>Rustam v. Comm'r</i> , T.C. Memo. 2005-42	Petition to challenge TFRP liability filed in wrong court	No	IRS
<i>Salzillo v. United States</i> , 66 Fed. Cl. 23 (2005)	Responsibility determination	No	TP
<i>Secret v. United States</i> , 373 F.Supp.2d 619 (N.D. W. Va. 2005)	Responsibility determination for CPA	No	TP
<i>Underberg v. United States</i> , 362 F.Supp.2d 1278 (D. N.M. 2005)	Financing arrangement negating willfulness	No	IRS
<i>United States v. Beltran</i> , 316 B.R. 371 (S.D. Fla. 2004)	Subsequent cooperation in assisting IRS collect past due taxes as negating willfulness	No	IRS
<i>United States v. Kraljevich</i> , 364 F.Supp.2d 655 (E.D. Mich. 2005)	Responsibility and willfulness	Yes	IRS

TABLE 10: TRUST FUND RECOVERY PENALTY (TFRP) UNDER IRC § 6672 (CONT.)

Case Cite	Issue(s)	Pro Se	Decision
<i>United States v. Scharringhausen</i> , 95 A.F.T.R.2d (RIA) 825 (S.D. Cal. 2005)	Setting aside TFRP judgment where TP did not answer complaint	No	IRS
<i>United States v. White</i> , 325 B.R. 918 (N.D. Ga. 2005)	Effect of TFRP assessment made in violation of automatic stay	No	TP
<i>Urban v. United States</i> , 392 F.Supp.2d 1018 (N.D. Ill. 2005)	Effect of IRS loss of Waiver Extending Assessment Statute	No	IRS
<i>In re Yeb</i> , 94 A.F.T.R.2d (RIA) 5800 (Bankr. N.D. Ala. 2004)	Responsibility and willfulness determination	No	IRS

## TAXPAYER ADVOCATE SERVICE ACRONYM GLOSSARY

### ACRONYM GLOSSARY - ANNUAL REPORT TO CONGRESS 2005

Acronym	Definition
ACDS	Appeals Centralized Database System
ACH	Automated Clearing House
ACS	Automated Collection System
ACTC	Advance Child Tax Credit
AEITC	Advanced Earned Income Tax Credit
AGI	Adjusted Gross Income
AICPA	American Institute of Certified Public Accountants
AIS	Automated Insolvency System
AJCA	American Jobs Creation Act of 2004
AIMS	Audit Information Management System
ALE	Allowable Living Expenses
ALS	Automated Lien System
AMT	Alternative Minimum Tax
ANMF	Automated Non Master File
AOIC	Automated Offer In Compromise
ARC	Annual Report to Congress
AQMS	Appeals Quality Measurement System
ASED	Assessment Statute Expiration Date
ASFR	Automated Substitute for Return
ATAO	Application for Taxpayer Assistance Order
AUR	Automated Underreporter
AWSS	Agency Wide Shared Services
BMF	Business Master File
CADE	Customer Account Data Engine
CARE	Customer Assistance, Relationships & Education
CAS	Customer Account Services
CAWR	Combined Annual Wage Reporting Program
CCISO	Cincinnati Centralized Innocent Spouse Operations
CCR	Central Contractor Registration
CDP	Collection Due Process
CDPTS	Collection Due Process Tracking System
CEX	Consumer Expenditure Survey
CFF	Collection Field Function
CERCA	Council for Electronic Revenue Communication Advancement
CID	Criminal Investigation Division
CIDS	Centralized Inventory Distribution System
CIP	Compliance Initiative Project
CNC	Currently Not Collectible
COIC	Centralized Offer In Compromise
COTR	Contract Officer Technical Representative
CONOPS	Concept of Operations
CPE	Continuing Professional Education
CQMS	Collection Quality Management System



## ACRONYM GLOSSARY - ANNUAL REPORT TO CONGRESS 2005 (CONT.)

Acronym	Definition
CRIS	Compliance Research Information System
CSED	Collection Statute Expiration Date
CSR	Customer Service Representative
CTC	Child Tax Credit
DA	Disclosure Authorization
DATC	Doubt As To Collectibility
DATL	Doubt As To Liability
DDP	Daily Delinquency Penalty
DI	Desktop Integration or Debt Indicator
DIF	Discriminant Inventory Function
DPT	Dynamic Project Team
EAR	Electronic Account Resolution
EBT	Electronic Benefits Transfer
EDS	Exempt Determinations System
EFIN	Electronic Filing Identification Number
EFTPS	Electronic Federal Tax Payment System
EGTRRA	Economic Growth and Tax Relief Reconciliation Act
EIN	Employer Identification Number
EITC	Earned Income Tax Credit
ELS	Electronic Lodgment Service
EO	Exempt Organization
EP	Employee Plans
EQRS	Embedded Quality Review System
ERCS	Examination Returns Control System
ERIS	Enforcement Revenue Information System
ERO	Electronic Return Originator
ERSA	Employee Retirement Savings Account
ES	Estimated Tax Payments
ESA	Educational Savings Account
ESL	English as a Second Language
ETA	Electronic Tax Administration
ETACC	Electronic Tax Administration Advisory Committee
ETLA	Electronic Tax Law Assistance
FA	Field Assistance
FDC	Fraud Detection Center
FDCPA	Fair Debt Collection Practices Act
FICA	Federal Insurance Contribution Act
FMS	Financial Management Service
FOIA	Freedom Of Information Act
FPDC	Federal Procurement Data Center
FPDS	Federal Procurement Data System
FMV	Fair Market Value
FPLP	Federal Payment Levy Program

## ACRONYM GLOSSARY - ANNUAL REPORT TO CONGRESS 2005 (CONT.)

Acronym	Definition
FTC	Federal Trade Commission
FTD	Federal Tax Deposit or Failure To Deposit
FTE	Full Time Equivalent
FTF	Failure To File
FTI	Federal Tax Information
FTP	Failure To Pay
FY	Fiscal Year
GAO	Government Accountability Office or General Accounting Office
GE	Government Entities
ICM	Intelligent Call Management
ICP	Integrated Case Processing
ICS	Integrated Collection System
IDFP	IRS Directory for Practitioners
IDRS	Integrated Data Retrieval System
IDS	Inventory Delivery System
IMF	Individual Master File
IPIA	Improper Payments Improvement Act
IRC	Internal Revenue Code
IRI	Incomplete Return Item
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
IRSAC	Internal Revenue Service Advisory Council
ISP	Industry Specialization Program
ISRP	Integrated Submission and Remittance Processing
ISTS	Innocent Spouse Tracking System
ITIN	Individual Taxpayer Identification Number
LEP	Limited English Proficiency
LITC	Low Income Taxpayer Clinic
LLC	Lifetime Learning Credit
LMSB	Large & Mid-Sized Business Operating Division
LOS	Level of Service
LRF	Last Return Filed
LSA	Lifetime Savings Account
LTA	Local Taxpayer Advocate
MAGI	Modified Adjusted Gross Income
MFT	Master File Transaction Code
MITS	Modernization and Information Technology Services
NFTL	Notice of Federal Tax Lien
NMF	Non-Master File
NPIIT	Notice Process Improvement Initiative Team
NRP	National Research Program
NSG	Notice Support Group
NTA	National Taxpayer Advocate

ACRONYM GLOSSARY - ANNUAL REPORT TO CONGRESS 2005 (CONT.)

Acronym	Definition
NUMIDENT	Number Identification Database
OAR	Operations Assistance Request
OASDI	Old-Age, Survivors, and Disability Insurance
OBRA	Omnibus Budget Reconciliation Act of 1989
OIC	Offer in Compromise
OMB	Office of Management and Budget
OPR	Office of Professional Responsibility
OPERA	Office of Program Evaluation, Risk, & Analysis
OPI	Office of Penalty and Interest Administration
PAF	Payer Account File
PDC	Private Debt Collection
POA	Power Of Attorney
PTIN	Preparer Tax Identification Number
QRP	Questionable Refund Program
RAC	Refund Anticipation Check
RACS	Revenue Accounting Control System
RAL	Refund Anticipation Loan
RCA	Reasonable Cause Assistant
RCP	Reasonable Collection Potential
RFQ	Request For Quotations
RGS	Report Generation System
ROFT	Record of Federal Tax
RRA 98	Internal Revenue Service Reform and Restructuring Act of 1998
RPS	Revenue Protection Strategy
RPP	Return Preparer Program
SAMS	Systemic Advocacy Management System
SAR	Strategic Assessment Report
SB/SE	Small Business/Self Employed Operating Division
SBJPA	Small Business Job Protection Act
SERP	Servicewide Electronic Research Program
SFR	Substitute for Return
SPEC	Stakeholder Partnerships, Education & Communication
SPOC	Single Point of Contact
SSA	Social Security Administration
SSI	Supplemental Security Income
SSN	Social Security Number
STARS	Scheme Tracking and Referral System
TAC	Taxpayer Assistance Center
TAMIS	Taxpayer Advocate Management Information System
TANF	Temporary Assistance to Needy Families
TAP	Taxpayer Advocacy Panel
TAS	Taxpayer Advocate Service
TCE	Tax Counseling for the Elderly

## ACRONYM GLOSSARY - ANNUAL REPORT TO CONGRESS 2005 (CONT.)

Acronym	Definition
TCMP	Taxpayer Compliance Measurement Program
TDA	Taxpayer Delinquent Account
TDRA	Tip Rate Determination Agreement
TDI	Taxpayer Delinquency Investigation
TDQAS	Training Development Quality Assurance System
TDS	Transcript Delivery System
TEC	Taxpayer Education and Communication
TE/GE	Tax Exempt & Government Entities Operating Division
TRFP	Trust Fund Recovery Penalty
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TOP	Treasury Offset Program
TPDS	Third Party Data Store
TPI	Total Positive Income
TPNCs	Taxpayer Notice Codes
TRA 97	Taxpayer Relief Act of 1997
TRAC	Tip Reporting Alternative Commitment
TRIS	Telephone Routing Interactive System
UCH	Universal Case History
UI-DIF	Unreported Income Discriminant Function
VITA	Volunteer Income Tax Assistance
W & I	Wage and Investment Operating Division
WFTRA	Working Families Tax Relief Act
WIC	Women, Infants and Children

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### ATLANTA/INTERNATIONAL

401 W. Peachtree St.  
Stop 101-R Room 1970  
Atlanta, GA 30308  
Phone: 404-338-8710  
FAX: 404 338-8709

### CINCINNATI

312 Elm Street, Suite 2250  
Cincinnati, OH 45202  
Phone: 859-669-5556  
FAX: 869-669-5808

### DALLAS

4050 Alpha Road  
Mail Stop 1005 MSRO, Room 1224A  
Dallas, TX 75244-4203  
Phone: 972-308-7019  
FAX: 972-308-7166

### OAKLAND

1301 Clay St. Suite 1030-N  
Oakland, CA 94612  
Phone: 510-637-2070  
FAX: 510-637-3189

### SEATTLE

915 2nd Ave. Stop W-404  
Seattle, WA 98174  
Phone: 206-220-4356  
FAX: 206-220-4930

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## SYSTEMIC ADVOCACY DIRECTORS

### DIRECTOR, ADVOCACY PROJECTS

1111 Constitution Avenue NW  
Room 3219, TA:SA:AP  
Washington, DC 20224  
Phone: 202-622-7175  
FAX: 202-622-3125

### DIRECTOR, IMMEDIATE INTERVENTIONS

1111 Constitution Avenue NW  
Room 3219, TA:SA:II  
Washington, DC 20224  
Phone: 202-622-7175  
FAX: 202-622-3125

## CAMPUS OFFICES

### ANDOVER

310 Lowell St., Stop 120  
Andover, MA 01812  
Phone: 978-474-5549  
FAX: 978-247-9034

### ATLANTA

4800 Buford Hwy, Stop 29-A  
Chamblee, GA 30341  
Phone: 770-936-4500  
FAX: 770-234-4445

### AUSTIN

3651 S. Interregional Hwy,  
Stop 1005 AUSC  
Austin, TX 78741  
Phone: 512-460-8300  
FAX: 512-460-8267

### BROOKHAVEN

1040 Waverly Avenue, Stop 02  
Holtsville, NY 11742  
Phone: 631-654-6686  
FAX: 631-447-4879

### CINCINNATI

201 Rivercenter Blvd., Stop 11-G  
Covington, KY 41011  
Phone: 859-669-5316  
FAX: 859-669-5405

### FRESNO

5045 East Butler Ave., Stop 1394  
Fresno, CA 93888  
Phone: 559-442-6400  
FAX: 559-442-6507

### KANSAS CITY

2306 East Bannister Rd.,  
Stop 1005 ROE  
Kansas City, MO 64131  
Phone: 816-926-2493  
FAX: 913-696-6390

### MEMPHIS

5333 Getwell Road, Stop 13-M  
Memphis, TN 38118  
Phone: 901-395-1900  
FAX: 901-395-1925

### OGDEN

1973 N. Rulon White Blvd.,  
Stop 1005  
Ogden, UT 84404  
Phone: 801-620-7168  
FAX: 801-620-3096

### PHILADELPHIA

11601 Roosevelt Blvd.,  
Stop SW-820  
Philadelphia, PA 19154  
Phone: 215-516-2499  
FAX: 215-516-2677

## LOCAL OFFICES BY STATE AND LOCATION

### ALABAMA

801 Tom Martin Drive, Room  
151-PR  
Birmingham, AL 35211  
Phone: 205-912-5631  
FAX: 205-912-5633

### ALASKA

949 E 36th Ave., Stop A-405  
Anchorage, AK 99508  
Phone: 907-271-6877  
FAX: 907-271-6157

### ARIZONA

210 E. Earll Dr., Stop 1005 PHX  
Phoenix, AZ 85012-2623  
Phone: 602-207-8240  
FAX: 602-207-8250

### ARKANSAS

700 West Capitol Street,  
Stop 1005 LIT  
Little Rock, AR 72201  
Phone: 501-324-6269  
FAX: 501-324-5183

### CALIFORNIA (LAGUNA NIGUEL)

24000 Avila Road, Stop 2000  
Laguna Niguel, CA 92677  
Phone: 949-389-4804  
FAX: 949-389-5038

### CALIFORNIA (LOS ANGELES)

300 N. Los Angeles St.,  
Stop 6710 LA  
Los Angeles, CA 90012  
Phone: 213-576-3140  
FAX: 213-576-3141

### CALIFORNIA (OAKLAND)

1301 Clay St., Suite 1540-S  
Oakland, CA 94612  
Phone: 510-637-2703  
FAX: 510-637-2715

### CALIFORNIA (SACRAMENTO) \*

4330 Watt Avenue, Stop SA5043  
Sacramento, CA 95821  
Phone: 916-974-5007  
FAX: 916-974-5902

### CALIFORNIA (SAN JOSE) \*

55 S. Market St., Stop 0004  
San Jose, CA 95113  
Phone: 408-817-6850  
FAX: 408-817-6851

### COLORADO

600 17th St., Stop 1005 DEN  
Denver, CO 80202-2490  
Phone: 303-446-1012  
FAX: 303-446-1011

### CONNECTICUT

135 High Street, Stop 219  
Hartford, CT 06103  
Phone: 860-756-4555  
FAX: 860-756-4559

### DELAWARE

409 Silverside Road  
Wilmington, DE 19809  
Phone: 302-792-6679  
FAX: 302-792-6648

### DISTRICT OF COLUMBIA

*Note: District of Columbia residents should contact the Baltimore Taxpayer Advocate Service at the following address, telephone, or FAX number until the D.C. office opens on May 1, 2006:*

31 Hopkins Plaza, Room 940  
Baltimore, MD 21201  
Phone: 410-962-2082  
FAX: 410-962-9340

*Beginning May 1, 2006, taxpayers may visit the D.C. office at the following location, or contact the office by mail, telephone or FAX number:*

#### Office Location

500 North Capital St. N.W.  
Suite 1301  
Washington, D.C. 20221  
Phone: 202-874-0001  
FAX: 202-874-0801

#### Mailing Address

1111 Constitution Ave. N.W.  
TAS:DC:LTA-NCA-1301  
Washington, D.C. 20224

### FLORIDA (FT. LAUDERDALE)

7850 SW 6th Court, Room 265  
Plantation, FL 33324  
Phone: 954-423-7677  
FAX: 954-423-7685

\* LTA located in Oakland, California.

**FLORIDA (JACKSONVILLE)**

841 Prudential Drive, Suite 100  
Jacksonville, FL 32207  
Phone: 904-665-1000  
FAX: 904-665-1817

**GEORGIA**

401 W. Peachtree St., NW  
Summit Bldg., Room 510,  
Stop 202-D  
Atlanta, GA 30308  
Phone: 404-338-8099  
FAX: 404-338-8096

**HAWAII**

300 Ala Moana Blvd., #50089  
Stop H-405 / Room 1-214  
Honolulu, HI 96850  
Phone: 808-539-2870  
FAX: 808-539-2859

**IDAHO**

550 W. Fort St., Box 041  
Boise, ID 83724  
Phone: 208-387-2827  
FAX: 208-387-2824

**ILLINOIS (CHICAGO)**

230 S. Dearborn St.  
Room 2860, Stop-1005 CHI  
Chicago, IL 60604  
Phone: 312-566-3800  
FAX: 312-566-3803

**ILLINOIS (SPRINGFIELD)**

3101 Constitution Drive  
Stop 1005 SPD  
Springfield, IL 62704  
Phone: 217-862-6382  
FAX: 217-862-6373

**INDIANA**

575 N. Pennsylvania St.  
Room 581 - Stop TA770  
Indianapolis, IN 46204  
Phone: 317-685-7840  
FAX: 317-685-7790

**IOWA**

210 Walnut St.  
Stop 1005 DSM, Room 483  
Des Moines, IA 50309  
Phone: 515-284-4780  
FAX: 515-284-6645

**KANSAS**

271 West 3rd St. North  
Stop 1005-WIC, Suite 2000  
Wichita, KS 67202  
Phone: 316-352-7506  
FAX: 316-352-7212

**KENTUCKY**

600 Dr. Martin Luther King Jr.  
Place, Room 325  
Louisville, KY 40202  
Phone: 502-582-6030  
FAX: 502-582-6463

**LOUISIANA**

1555 Poydras Street, Suite 220,  
Stop 2  
New Orleans, LA 70112  
Phone: 504-558-3001  
FAX: 504-558-3348

**MAINE**

68 Sewall Street, Room 313  
Augusta, ME 04330  
Phone: 207-622-8528  
FAX: 207-622-8458

**MARYLAND**

31 Hopkins Plaza, Room 940  
Baltimore, MD 21201  
Phone: 410-962-2082  
FAX: 410-962-9340

**MASSACHUSETTS**

JFK Building  
15 New Sudbury Street, Room 725  
Boston, MA 02203  
Phone: 617-316-2690  
FAX: 617-316-2700

**MICHIGAN**

McNamara Federal Bldg.  
477 Michigan Ave.  
Room 1745 - Stop 7  
Detroit, MI 48226  
Phone: 313-628-3670  
FAX: 313-628-3669

**MINNESOTA**

Wells Fargo Place  
30 E. 7th Street, Suite 817  
Stop 1005 STP,  
St Paul, MN 55101  
Phone: 651-312-7999  
FAX: 651-312-7872

**MISSISSIPPI**

100 West Capitol Street,  
Stop JK31  
Jackson, MS 39269  
Phone: 601-292-4800  
FAX: 601-292-4821

**MISSOURI**

1222 Spruce St.  
Stop 1005 STL, Room 10.314  
St Louis, MO 63103  
Phone: 314-612-4610  
FAX: 314-612-4628

**MONTANA**

10 West 15th St., Suite 2319  
Helena, MT 59626  
Phone: 406-441-1022  
FAX: 406-441-1045

**NEBRASKA**

1313 Farnam St.  
Stop 1005 OMA, Room 208  
Omaha, NE 68102  
Phone: 402-221-4181  
FAX: 402-221-3051

**NEVADA**

110 City Parkway, Stop 1005 LVG  
Las Vegas, NV 89106  
Phone: 702-868-5179  
FAX: 702-868-5445

**NEW HAMPSHIRE**

Thomas J. McIntyre Federal Bldg.  
80 Daniel Street, Room 403  
Portsmouth, NH 03801  
Phone: 603-433-0571  
FAX: 603-430-7809

**NEW JERSEY**

955 South Springfield Avenue,  
1st Floor  
Springfield, NJ 07081  
Phone: 973-921-4043  
FAX: 973-921-4355

**NEW MEXICO**

5338 Montgomery Blvd., NE  
Stop 1005 ALB  
Albuquerque, NM 87109  
Phone: 505-837-5505  
FAX: 505-837-5519

**NEW YORK (ALBANY)**

Leo O'Brien Federal Building  
1 Clinton Square, Room 354  
Albany, NY 12207  
Phone: 518-427-5413  
FAX: 518-427-5494

**NEW YORK (BROOKLYN)**

10 Metro Tech Center  
625 Fulton Street  
Brooklyn, NY 11201  
Phone: 718-488-2080  
FAX: 718-488-3100

**NEW YORK (BUFFALO)**

201 Como Park Blvd  
Buffalo, NY 14227-1416  
Phone: 716-686-4850  
FAX: 716-686-4851

**NEW YORK (MANHATTAN)**

290 Broadway - 5th Floor  
Manhattan, NY 10007  
Phone: 212-436-1011  
FAX: 212-436-1900

**NORTH CAROLINA**

320 Federal Place, Room 125  
Greensboro, NC 27401  
Phone: 336-378-2180  
FAX: 336-378-2495

**NORTH DAKOTA**

657 Second Ave, North  
Stop 1005 FAR, Room 244  
Fargo, ND 58102-4727  
Phone: 701-239-5141  
FAX: 701-239-5323

**OHIO (CINCINNATI)**

550 Main St., Room 3530  
Cincinnati, OH 45202  
Phone: 513-263-3260  
FAX: 513-263-3257

**OHIO (CLEVELAND)**

1240 E. 9th St., Room 423  
Cleveland, OH 44199  
Phone: 216-522-7134  
FAX: 216-522-2947

**OKLAHOMA**

55 North Robinson  
Stop 1005 OKC, Room 138  
Oklahoma City, OK 73102  
Phone: 405-297-4055  
FAX: 405-297-4056

**OREGON**

1220 S.W. 3rd Ave., Stop O-405  
Portland, OR 97204  
Phone: 503-326-2333  
FAX: 503-326-5453

**PENNSYLVANIA (PHILADELPHIA)**

600 Arch Street, Room 7426  
Philadelphia, PA 19106  
Phone: 215-861-1304  
FAX: 215-861-1613

**PENNSYLVANIA (PITTSBURGH)**

1000 Liberty Avenue, Room 366  
Pittsburgh, PA 15222  
Phone: 412-395-5987  
FAX: 412-395-4769

**RHODE ISLAND**

380 Westminster Street  
Providence, RI 02903  
Phone: 401-525-4200  
FAX: 401-525-4247

**SOUTH CAROLINA**

1835 Assembly Street, Room 466,  
MDP-03  
Columbia, SC 29201  
Phone: 803-253-3029  
FAX: 803-253-3910

**SOUTH DAKOTA**

115 4th Ave, Southeast  
Stop 1005 ABE, Room 114  
Aberdeen, SD 57401  
Phone: 605-226-7248  
FAX: 605-226-7246

**TENNESSEE**

801 Broadway, Stop 22  
Nashville, TN 37203  
Phone: 615-250-5000  
FAX: 615-250-5001

**TEXAS (AUSTIN)**

300 E. 8th St.  
Stop 1005-AUS, Room 136  
Austin, TX 78701  
Phone: 512-499-5875  
FAX: 512-499-5687

**TEXAS (DALLAS)**

1114 Commerce St.  
MC 1005DAL, Room 1004  
Dallas, TX 75242  
Phone: 214-413-6500  
FAX: 214-413-6594

**TEXAS (HOUSTON)**

1919 Smith St.  
Stop 1005 HOU, Room 1650  
Houston, TX 77002  
Phone: 713-209-3660  
FAX: 713-209-3708

**UTAH**

50 South 200 East, Stop 1005 SLC  
Salt Lake City, UT 84111  
Phone: 801-799-6958  
FAX: 801-799-6957

**VERMONT**

Courthouse Plaza  
199 Main Street  
Burlington, VT 05401-8309  
Phone: 802-860-2089  
FAX: 802-860-2006

**VIRGINIA**

400 N. 8th St., Room 916  
Richmond, VA 23240  
Phone: 804-916-3501  
FAX: 804-916-3535

**WASHINGTON**

915 2nd Ave., Stop W-405  
Seattle, WA 98174  
Phone: 206-220-6037  
FAX: 206-220-6047

**WEST VIRGINIA**

425 Juliana St., Room 3012  
Parkersburg, WV 26101  
Phone: 304-420-8695  
FAX: 304-420-8660

**WISCONSIN**

310 W. Wisconsin Ave.  
Suite 1298 West Tower -  
Stop 1005 MIL  
Milwaukee, WI 53203  
Phone: 414-297-3046  
FAX: 414-297-3362

**WYOMING**

5353 Yellowstone Road  
Cheyenne, WY 82009  
Phone: 307-633-0800  
FAX: 307-633-0918

**INTERNATIONAL-PUERTO RICO**

San Particio Office Bldg  
7 Tabonuco Street, Room 200  
Guaynabo, PR 00966  
Phone 787-622-8930 (Spanish)  
787-622-8940 (English)  
FAX: 787-622-8933