

Tax Collection Techniques: Money Still Talks!

*By David Lee Rice, Wayne R. Johnson and Ethan A. Cohen**

David Lee Rice, Wayne R. Johnson and Ethan A. Cohen discuss recent changes in IRS collections law and procedure in four areas: (1) installment agreements; (2) offers-in-compromise; (3) collections due process; and (4) collection financial standards.

Introduction

On filling out his tax returns, Albert Einstein stated, "This is too difficult for a mathematician. It takes a philosopher." The IRS collections process is certainly no exception. The multitude of procedural requirements and administrative obstacles adversely affect a tax practitioner's ability to effectively represent their client during the collections process. In addition to the complex nature of the IRS collections, the rules and procedures governing collections are constantly changing through legislative action, administrative regulation and judicial rulings.

This article provides a brief survey of some recent changes in tax collection procedures by focusing on four areas of collections: (1) installment agreements; (2) offers-in-compromise; (3) collections due process; and (4) collection financial standards.

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The IRS Proposes New Regulations for Installment Agreements

The IRS recently proposed an amendment to Reg. §301.6159-1, relating to "agreements for payments of tax liabilities in installments."² As discussed below, the proposed amendment may pose a threat to taxpayers' rights and requirements for seeking and maintaining an installment agreement.

An installment agreement is an enforceable contract between the IRS and the taxpayer, whereby the taxpayer agrees to fully satisfy his tax liability by making installment payments over a specified period of time. Installment agreements are beneficial to both the IRS and taxpayers; the former ensures collection, while the latter satisfies their liability in an affordable manner without the hassles of formal collection procedures.

The IRS is required to accept an installment agreement where the amount of tax liability (excluding interest, penalties, and additions to tax) is less than \$10,000, and the taxpayer cannot fully pay the liability when due.³ This is referred to as a "mandatory installment agreement." Mandatory installment agreements must provide for full payment within 36 months from the date the agreement is entered into, or prior to expiration of the 10-year statute of limitations on collection, whichever is earlier.

In some circumstances, the IRS *may* accept an installment agreement without requiring in-depth

financial information concerning the taxpayer. This “streamlined” installment agreement is available only when the unpaid balance of the taxpayer’s assessments is \$25,000 or less.⁴ Streamlined agreements must provide for full payment within the earlier of 60 months or the time remaining for expiration on the 10-year collections statute. All other installment agreements require review of the taxpayer’s financial condition, and are within the IRS’s discretion.

Proposed Reg. §301.6159-1 significantly alters the current installment agreement procedures. First, the proposed regulation sets forth new procedures for submission and consideration of installment agreements. The regulation states that a proposed installment agreement becomes “pending” when it is accepted for processing, and it remains pending until the IRS either accepts the proposal or notifies the taxpayer that the proposal is rejected, or the taxpayer withdraws the proposal.⁵ The regulation fails, however, to indicate how or when an installment agreement is “accepted for processing.” Furthermore, the regulation fails to provide a specific time frame within which a proposed agreement must be accepted or rejected by the IRS. This leaves open the possibility that an agreement could remain “pending” in perpetuity.⁶

This is particularly problematic because the 10-year statute of limitations on collection is “suspended during the period that a proposed installment agreement relating to that liability is pending with the IRS.”⁷ Thus, by not imposing a time frame for the IRS action, the government’s collection rights are significantly expanded at the taxpayer’s expense. In addition, the absence of a time restriction provides no motivation for the IRS to proceed quickly in addressing installment proposals and may ultimately result in lost revenue for the government, while the taxpayer’s desire to satisfy his or her liability will go unrealized. To facilitate the installment agreement process, protect the taxpayer’s rights and increase government revenue, the regulation should impose a specific time period during which the IRS must act with respect to a “pending” agreement. The American Bar Association, in its official comments to the proposed regulation, suggests that an installment agreement should be deemed “accepted” if the government has not acted on the application within 90 days.⁸

The proposed regulation also sets forth a new procedure allowing for resubmission of a rejected offer.⁹ After the IRS rejects a proposed installment agreement, the taxpayer has 30 days in which to

file an administrative appeal. This limitation period is suspended if the taxpayer resubmits a revised installment agreement proposal within the 30 days following rejection, but only if the IRS determines the revised proposal was made in “good faith.” If the IRS determines the revised proposal was not submitted in good faith, the appeal period “continues to run from the date of the original rejection.”¹⁰ The IRS’s decision, in this instance, appears to be not only unilateral but also subjective. No external standard or framework is provided for the IRS to work within. This is clearly problematic from the taxpayer’s perspective. Further, there is no mention of the taxpayer’s ability to appeal the IRS’s decision that a revised installment proposal was not made in good faith. Such an amorphous and unrestricted standard will likely cause many taxpayers to lose their rights for an administrative appeal. To avoid this, taxpayers who intend to resubmit their installment proposals will be well advised to contemporaneously file an administrative appeal of the IRS’s decision to reject the original proposal.

Pursuant to Code Sec. 6502 and Reg. §301.6502-1, the 10-year statute of limitations on the IRS collections may be suspended by the acceptance of an installment agreement.¹¹ Under the proposed regulation, if a taxpayer defaults on an installment agreement, or the IRS terminates such an agreement, the statute of limitations on collection remains suspended until 30 days following the termination.¹² For example, if a tax liability is assessed on January 1, 2000 (the 10-year collection statute expiration date is December 31, 2010), and the taxpayer enters into an installment agreement on January 1, 2002, which is later terminated on January 1, 2003, the statute for collections will end on January 30, 2011.

Under the current regulation, the taxpayer is entitled to request an alteration, modification or termination of an installment agreement if the “director determines that the financial condition of the taxpayer has significantly changed.”¹³ While the proposed regulation still permits the director to modify, alter or terminate an agreement where the taxpayer’s financial situation has changed, the proposed regulations suggest that the taxpayer will no longer have the ability to request such modifications.¹⁴ By divesting the taxpayers of this important right, the proposed regulation may provide a roadmap to failure—requiring taxpayers to make payments that they can no longer afford.

Finally, as noted above, a taxpayer may request a “streamlined” installment agreement for tax liabilities less than \$25,000.¹⁵ Proposed streamlined installment

plans do not require detailed financial information from the taxpayer. As such, these agreements expedite the process by which taxpayers begin to pay off their liabilities. This process is clearly beneficial to both taxpayers and the government; however, there is no mention of the streamlined process in the proposed regulations. Is the government proposing to eliminate this important process? Taxpayers need specific guidance on this point, as streamlined agreements often provide desirable solutions.

These represent some of the concerns stemming from the proposed regulations for installment agreements. If the proposed regulatory scheme is adopted, the taxpayer may be forced to sacrifice significant rights, resulting in a potential decrease of installment agreements and a subsequent decrease in government revenue.

Legislative Changes to the Offer in Compromise Program Adversely Affect Taxpayers and the IRS

Effective July 16, 2006, the Tax Increase Prevention and Reconciliation Act (TIPRA)¹⁶ altered the rules for submitting offers in compromise (OIC). The new law made the following changes: When submitting a lump-sum offer in compromise (*i.e.*, where the offered amount will be paid in one lump sum), the taxpayer must submit a nonrefundable deposit equal to 20 percent of the total amount offered.¹⁷ In other words, where, for example, a taxpayer submits an offer to compromise a liability of \$100,000 for \$60,000, and proposes to pay the offered amount in one lump sum, the taxpayer must submit a \$12,000 down payment with the offer. For installment offers in compromise (*i.e.*, offers in which the taxpayer proposes to pay the offered amount in installments), the taxpayer must submit with the offer a down payment equal to one installment.¹⁸ Perhaps of equal or superior importance is the fact that these down payments are not refundable to the taxpayer; rather, they are considered “payments on tax.”¹⁹ However, the taxpayer may (and should) direct the IRS how to apply the down payment. Otherwise, the IRS will apply the payments in the government’s best interest.²⁰

In addition to the complex nature of IRS collections, the rules and procedures governing collections are constantly changing through legislative action, administrative regulation, and judicial rulings.

Under the new OIC procedures, the IRS may return an offer as “not processable” where the taxpayer fails to submit the required down payment with his or her offer.²¹ If an insufficient down payment is submitted, the IRS will request full payment from the taxpayer. Failure to remit payment will be treated as a withdrawal of the offer by the taxpayer.²² Again, the portion of the down payment already submitted to the IRS will not be refunded, and the taxpayer cannot appeal the IRS’s decision to return an OIC to the Appeals function.²³

Finally, the new rules governing offers in compromise provide a time period within which the IRS must act with respect to a “pending” offer. An offer will be deemed accepted where it is not returned or rejected by the IRS, or withdrawn by the taxpayer, within 24 months after the offer is received by the IRS.²⁴ Although this provision provides some security to the taxpayer against the possibility that a legitimate offer will remain open in perpetuity; the period should be reduced to 12 months. As noted above, similar procedures should be implemented for proposed installment agreements with a much shorter time frame.²⁵

OICs are beneficial to both taxpayers and the government. As is the case with installment agreements, offers in compromise allow taxpayers to settle their liability for a reasonably affordable amount, while the government collects revenue it might not otherwise receive. Not surprisingly however, the changes made by TIPRA have significantly decreased the desirability and, very likely, the accessibility of the program. Through the first eight months of 2007, the number of offers submitted declined by approximately 20 percent, from 37,764 over the same period during 2006 to 30,306 in 2007.²⁶ Correspondingly, the number of accepted offers declined by 22 percent over this same period, from 10,083 in 2006 to 7,842 in 2007.²⁷ Finally, as of May 2007 (just 10 months after TIPRA became effective), the IRS had returned or rejected approximately 42 percent of all OICs either before or after accepting them for processing.

Because the OIC program is beneficial to the government and taxpayers alike, TIPRA’s negative impact on the program is cause for great concern. In its 2008 Objectives Report to Congress, the National Taxpayer Advocate Service (TAS) openly criticized the reformed program and offered suggestions for change. First, TAS

correctly notes that the down payment requirement may deter taxpayers who might otherwise submit good offers by requiring payments that taxpayers cannot likely afford.²⁸ In addition, the IRS's recent record of accepting so few offers will further discourage taxpayers from submitting nonrefundable partial payments. Finally, the IRS's broad discretion in accepting or rejecting an OIC, along with the lack of administrative review of returned offers (a taxpayer cannot appeal the IRS's decision to return an offer as nonprocessable) will further deter taxpayers from submitting good offers.²⁹ The taxpayer advocate's concerns are already evidenced by the OIC statistics above. If the OIC program is to work at all, significant change is needed.

To combat these concerns and to revive the OIC program in light of the partial payment requirements, TAS offers the following suggestions: (1) provide taxpayers with the right to appeal the return or rejection of an offer in compromise to the IRS's Appeals function; (2) provide an exception to the partial payment requirement for taxpayers who cannot access current income or liquid assets without incurring additional costs; and (3) apply a low income exception in cases where submitting a partial payment would constitute an economic hardship.³⁰

These suggestions may increase the likelihood that an offer will be accepted, while simultaneously increasing the transparency of the OIC process. Furthermore, taxpayers who legitimately cannot afford the required partial payment will be more likely to submit good offers, thereby resolving outstanding tax matters, bringing additional taxpayers into compliance (both currently and in the future) and resulting in increased revenue for the government. Finally, the Internal Revenue Code merely *permits* the IRS to reject an offer for insufficient partial payments, it does not require rejection. Unfortunately for taxpayers, the IRS has interpreted "permits" to mean "shall" and regularly rejects offers on insufficient payment grounds. Since the statute calls for a discretionary rather than a mandatory standard, the IRS should exercise its discretion and consider each taxpayer's individual circumstances before flatly rejecting such offers.³¹

Consideration of Dissipated Assets in Determining a Taxpayer's Reasonable Collection Potential

In a recent decision, the Tax Court held that a revenue officer may not consider dissipated assets in determin-

ing a taxpayer's reasonable collection potential where the assets were spent on child support, estimated tax payments, costs of a civil lawsuit or necessary attorneys fees related to the underlying tax controversy.

*D.L. Samuel*³²

The facts of this case are as follows: the IRS assessed a liability against Petitioner in excess of \$773,368 for the taxable years 1996 through 2002. Petitioner offered to compromise his liability for \$30,000, based on doubt as to collectibility.³³ In calculating Petitioner's reasonable collection potential,³⁴ the revenue officer included certain "dissipated assets" resulting from the taxpayer's sale of a business interest and the refinancing of his home, equaling \$133,158. At the time Petitioner submitted his OIC, he had already spent these funds in their entirety. Nevertheless, the revenue officer rejected Petitioner's offer and asserted that the government would not accept an offer less than \$163,158 (the original \$30,000 offer plus 100 percent of the "dissipated assets").

Petitioner did not contest the assessment of tax; rather, Petitioner contended that the revenue officer abused her discretion by including 100 percent of the "dissipated assets" as part of his reasonable collection potential. Specifically, Petitioner claimed that the funds were spent on necessary expenses, including child support payments, estimated tax payments, costs of a civil lawsuit and attorneys' fees related to the pending tax case.

The Tax Court held that the IRS revenue officer abused her discretion by including 100 percent of the dissipated assets in determining Petitioner's reasonable collection potential. First, the Court noted that the Internal Revenue Manual provides that assets which are dissipated in disregard of the outstanding tax liability, and therefore "no longer available to pay the tax liability," may be included when determining the taxpayer's reasonable collection potential.³⁵ The court notes that it is unclear how dissipated assets could ever be available for collection potential.

Next, the court held Petitioner's child support payments, estimated tax payments, costs of a civil lawsuit, and attorneys' fees related to the underlying controversy should not have been included in Respondent's calculation of Petitioner's reasonable collection potential.³⁶ Accordingly, Respondent's required offer amount of \$163,158 should have been reduced by the amount of the dissipated assets.

One can reasonably conclude from this case that a taxpayer need not account for dissipated assets in

submitting an OIC based on doubt as to collectibility, where the assets were spent on necessary expenses, including child support payments, estimated tax payments, costs of a civil lawsuit and attorneys' fees related to the underlying tax controversy.

Updates in Collection Due Process

The area of Collection Due Process ("CDP") also experienced recent change, resulting from congressional legislation, administrative regulation, and judicial rulings. Together, Congress, the IRS and the Courts significantly contributed to the recent developments in CDP.

Legislative Action

The Pension Protection Act of 2006³⁷ amended Code Sec. 6330(d)(1) to vest the U.S. Tax Court with exclusive jurisdiction over cases involving review of collection due process determinations. In so doing, Congress simultaneously divested U.S. District Courts of jurisdiction over CDP cases. The Tax Court's jurisdiction even extends to areas over which the court previously lacked jurisdiction, including for example, employment tax levies. An appeal to the Tax Court from a CDP determination must be made within 30 days of the date of determination.³⁸

Under prior law, both the Tax Court and District Courts had jurisdiction to review CDP determinations, depending on the type of tax involved. A petition to the wrong court could be re-filed with the correct court within 30 days.³⁹ The current law, as amended by the Pension Protection Act of 2006, creates a trap for the unwary, as it removes the possibility of re-filing a petition initially filed with the wrong court. Thus, practitioners and *pro se* taxpayers who are unaware of this change in law may lose their right to appeal a CDP determination if they file their petition with the District Court.

The IRS recently issued guidance on the jurisdictional change.⁴⁰ First, the IRS affirmed that the Tax Court's exclusive jurisdiction does not apply to appeals from CDP determinations made before October 17, 2006. For CDP determinations made after October 16, 2006, the IRS sends a letter to the taxpayer informing them of the change. The IRS did note one particular instance where a CDP determination made after October 16, 2006 could be appealed to the District Court. Assume the IRS makes a CDP determination in September 2006, and the taxpayer timely appeals the determination to the District Court.

The District Court finds in favor of the taxpayer, and remands the case to the IRS Appeals Office. After reconsidering the initial CDP determination, the IRS Appeals Office issues a supplemental determination in December 2006. In this instance, the District Court would retain jurisdiction over the supplemental CDP determination, even though it was made after October 16, 2006.⁴¹

Finally, the Small Business & Work Opportunity Act of 2007⁴² eliminated pre-levy CDP hearings with respect to federal employment taxes.⁴³ Under the Act, a taxpayer is still provided an opportunity for a hearing "within a reasonable period of time after the levy."⁴⁴

Administrative Action

The Treasury contributed to recent changes in CDP by amending Reg. §301.6330-1, which governs CDP hearings related to the IRS liens and levies.⁴⁵ Effective November 16, 2006, the revised regulation asserts the following:

Where practicable, a CDP hearing relating to an IRS lien will be held in conjunction with a CDP hearing related to a levy. In addition, the revised regulation establishes that a taxpayer may receive more than one pre-levy CDP hearing with respect to a tax period, where the tax involved is a different type of tax. For example, where a deficiency was assessed against a taxpayer for the 2001 taxable year, and the deficiency arises from both an employment tax liability and an individual tax liability, the taxpayer may receive two separate pre-levy CDP hearings. This marks a significant change from the prior rule, which allowed for only one pre-levy CDP hearing for each taxable period, regardless of the types of tax involved.

Similarly, under the revised regulation, a taxpayer may receive more than one pre-levy CDP hearing where the same type of tax is involved for the same period, but the amount of the tax has changed due to additional assessments (not including accrued interest or penalties).⁴⁶ Again, these modifications represent significant changes to a taxpayer's right to a CDP hearing, as well as the procedures for exercising those rights through the CDP process.

Judicial Action

Although the judiciary plays an entirely different (and increasingly important) role in developing the

area of Collection Due Process, its contributions are nonetheless significant. The following two cases exhibit some of the recent jurisprudential contributions to this area.

Industrial Investors⁴⁷

The Petitioner was issued a notice of intent to levy, and timely filed a request for a CDP hearing. The revenue officer handling the collection matter forwarded the CDP request to the Appeals division, along with a cover letter. The cover letter described, at length, both the taxpayer's past tax issues, and the officer's opinion that the government should "secure any and all interest for all assets owned by the [Petitioner]."⁴⁸

The Tax Court held that the cover letter from the revenue officer to the appeals officer constituted an improper *ex parte* communication, which unduly influenced the appeals officer. As such, the revenue officer breached the requirement that a CDP hearing provide the taxpayer with an impartial and neutral forum. This ruling suggests that revenue officers should not include any commentary when communicating with appeals officers, however benign the communication might be. Moreover, it suggests that taxpayers may want to routinely request information concerning communications between revenue and appeals officers.

C.I. Smith⁴⁹

Petitioners made a timely request for a collection-related CDP hearing. Prior to the hearing date, Petitioners entered into an installment agreement with the IRS and subsequently withdrew their request for a CDP hearing. After some time, the IRS terminated the installment agreement, which Petitioners argued was unfair and improper. Regardless, Petitioners requested a second CDP hearing relating to the underlying liability.⁵⁰

The IRS denied Petitioners' request for a second CDP hearing on the grounds that the 30-day time period, within which a CDP hearing must be requested, had expired. Petitioners argued however, that the second CDP hearing should relate back to the date of the first withdrawn hearing, since they would not have withdrawn the first request but for the installment agreement.

The Tax Court found no authority to support reinstatement of a previously withdrawn CDP hearing request. Thus, under these facts, the second hearing was untimely. The taxpayers were, however, entitled to receive an equivalent hearing.⁵¹ As a note to practitioners, if there is cause to contest a tax liability,

the taxpayer should not withdraw a pending CDP hearing, regardless of whether the IRS enters into an installment agreement. In order to preserve the taxpayer's rights to appeal, the CDP hearing should go forward as planned.

The IRS Significantly Changes Its Collection Financial Standards

Collection Financial Standards are used to help determine a taxpayer's ability to pay or compromise a delinquent tax liability. In making that determination, the IRS exempts certain "allowable expenses" from the equation. In other words, certain expenses are not factored into the determination of a taxpayer's ability to pay. These amounts are based on the "necessary expense test," which is defined as expenses that are necessary to provide for a taxpayer's health, welfare and production of income.⁵²

In the past, the expenses allowed by the IRS were generally based on an individual's income. The recent changes did away with the income distinction and established various local and national standards for the following categories of expenses: Food, Clothing and Other Items; Out-of-Pocket Health Care Expenses; Housing and Utilities; and Transportation. The former two categories are based on a national standard, while the latter vary by locale.

For example, a single taxpayer is permitted an expense of \$494 per month for food, clothing and other items. A family of two may retain \$925 per month, a family of three is allowed \$1,123 per month, and a family of four can keep \$1,331. The taxpayer may retain an extra \$246 per month for each additional person under this category.⁵³ Unlike the previous standards, these numbers apply regardless of income or location. Out-of-pocket health care expenses are also based on a national standard, and vary only by the taxpayer's age: Individuals under 65 are allowed \$54 per month, while individuals 65 or older may retain \$144 per month for health-related costs.⁵⁴

Housing and Utilities, on the other hand, are based on a local standard cost of living, and therefore vary significantly by state and county. For example, the allowable expense for a family of four in this category living in Los Angeles County is \$2,333.⁵⁵ The allowable amounts for the same size family in Orange County, Riverside County and Sacramento County are \$2,606, \$1,971 and \$1,835, respectively.⁵⁶

Finally, the IRS updated the allowable expenses for Transportation, which includes Ownership Costs and Operating Costs. Ownership Costs, based on a national standard, allow \$478 for one car and \$956 for two cars. Operating Costs however, are locally based. For example, the cost of operating one car in Los Angeles, California, is set at \$251 per month, while the cost in Portland, Oregon, is \$170.⁵⁷ Individuals who do not own a car are permitted to retain \$163 per month for public transportation, regardless of their location.

A tax practitioner should be closely familiar with the revised allowable expenses, in order to effectively make a preliminary determination with regards to the taxpayer's ability to pay a tax liability. By using the same formula as the government, the practitioner is more likely to achieve the payment structure best suited for their client.

Conclusion

When taxpayers fail to pay their taxes timely, the IRS sends the taxpayer a bill, thereby commencing the collections process. From that point, the process becomes extremely complex. To add to the complexities, Congress, the IRS and the courts are constantly altering the rules and procedures governing collections, thereby making it difficult for the uninformed practitioner to represent a client before the collections division of the IRS.

As discussed above, some of the recent changes in the IRS collections occurred in the areas of installment agreements, offers in compromise, collection due process and allowable expenses. With respect to installment agreements, the Treasury released a proposed regulation amending the procedures governing payment of liabilities in installments. As discussed

above, this proposed regulation significantly alters the current procedures for submitting and retaining an installment agreement, and poses significant risks to taxpayers' rights.

To protect taxpayers' rights and achieve some degree of equal footing with IRS, it is vital that practitioners maintain a current and complete understanding of the recent legal and procedural changes in IRS collections.

In the area of OICs, the National Taxpayer Advocate Service released statistics regarding the OIC program under the new law, which requires the submission of a significant down payment along with an OIC. The statistics indicate a significant decline in the number of submitted and accepted offers, which will adversely affect

taxpayers and the government alike. The TAS offers suggestions for change, which may serve to bolster the OIC program in light of the down payment requirements.

CDP also experienced change in the form of legislative, administrative and judicial action. On the legislative front, Congress vested the Tax Court with exclusive jurisdiction over appeals from CDP determinations, simultaneously divesting District Courts with jurisdiction. The Treasury altered the CDP process by updating Reg. §301.6330-1, which governs pre-levy and lien-related CDP hearings. Finally, recent Tax Court rulings have contributed to the recent alterations in the CDP process.

The IRS also altered the standards for allowable expenses by removing the income-based system and implementing national standards for allowable expenses. The IRS also increased amounts allowable for the categories which are based on a local standard, including expenses related to housing, utilities and transportation costs.

The changes discussed herein merely represent a small sample of the many changes occurring annually within the IRS collections. To protect taxpayers' rights and achieve some degree of equal footing with the IRS, practitioners must maintain a current and complete understanding of the recent legal and procedural changes in the IRS collections.

ENDNOTES

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² Proposed Reg. §301.6159-1, 72 FR 9712 (Mar. 5, 2007).

³ Code Sec. 6159(c).

⁴ See IRM 4.20.4.3 (Dec. 31, 2006). As with installment agreements, to qualify for a streamlined agreement the taxpayer must not be able to fully pay their tax liability within the earlier of 60 months or the period prior to the expiration of the collection statute of limitations.

⁵ Proposed Reg. §301.6159-1(b)(2).

ENDNOTES

- ⁶ See *id.*
- ⁷ *Id.*; Reg. §301.6159-1(f)(1).
- ⁸ Letter from Susan Serota, Chair, Section of Taxation, American Bar Association, to Kevin Brown, Acting Commissioner, the IRS, at 2 (July 2, 2007).
- ⁹ See Proposed Reg. §301.6159-1.
- ¹⁰ *Id.*; Reg. §301.6159-1(b)(3).
- ¹¹ See Code Sec. 6502; Reg. §301.6502-1(b)(1) (2006).
- ¹² Proposed Reg. §301.6159-1(f)(1).
- ¹³ Reg. §301.6159-1(c)(2)(i).
- ¹⁴ See generally Proposed Reg. §301.6159-1.
- ¹⁵ See IRM 4.20.4.3 (Dec. 31, 2006).
- ¹⁶ Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222).
- ¹⁷ See, e.g., the IRS Fact Sheet FS-2007-16 (Mar. 2007).
- ¹⁸ *Id.*
- ¹⁹ *Id.*
- ²⁰ *Id.*
- ²¹ E.g., IR-2007-50; the IRS Fact Sheet FS-2007-16.
- ²² *Id.*
- ²³ Nat'l Taxpayer Advocate, *Annual Report to Congress: Fiscal Year 2008 Objectives*, xvii-xviii (June 30, 2007).
- ²⁴ the IRS Fact Sheet FS-2007-16.
- ²⁵ See note 8, *supra*, at 2.
- ²⁶ Nat'l Taxpayer Advocate, *supra* note 23, at xviii.
- ²⁷ *Id.*
- ²⁸ See *id.*, at xviii and note 13 (noting that "in about 70 percent of the accepted offers, the 20 percent partial payment was not available from liquid assets").
- ²⁹ *Id.*, at xvii-xix.
- ³⁰ *Id.*, at xix.
- ³¹ *Id.*, at xx.
- ³² *D.L. Samuel*, 94 TCM 392, Dec. 57,141(M), TC Memo. 2007-312 (Oct. 15, 2007).
- ³³ An OIC based on doubt as to collectibility does not dispute that the tax is owed, however, the taxpayer believes he/she possesses insufficient assets from which the government could collect upon to satisfy the liability.
- ³⁴ The reasonable collection potential (RCP) equals the net equity of the taxpayer's assets, plus the amount the IRS could collect from future income. A taxpayer must offer an amount greater than or equal to the RCP for offers in compromise based on doubt as to collectibility. See the IRS OIC Definitions Page, available at www.irs.gov/businesses/small/article/0,,id=111979,00.html.
- ³⁵ IRM §5.8.5.4, at 16,339-6.
- ³⁶ *Samuel*, *supra* note 32. With regards to attorneys' fees for the underlying tax controversy, the Court noted that such expenses are not includible in a reasonable collection potential calculation where representation before the IRS is needed, or where such costs meet the necessary expense tests. *Id.*
- ³⁷ Pension Protection Act of 2006 (P.L. 109-280).
- ³⁸ Code Sec. 6330(d)(1).
- ³⁹ See the IRS Guidance on Tax Court's New, Exclusive Jurisdiction in Collection Due Process Cases, 105 J. TAX'N (Dec. 2006)
- ⁴⁰ Chief Counsel Notice CC-2007-001 (Oct. 13, 2006).
- ⁴¹ *Id.*
- ⁴² Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28).
- ⁴³ Joint Comm. on Taxation, *Technical Expla-*
- nation of the "Small Business And Work Opportunity Tax Act of 2007" Contained in H.R. 1591 as Reported by the Conference Committee*, JCX-24-07, at 29-30 (Apr. 24, 2007).
- ⁴⁴ *Id.*, at 30.
- ⁴⁵ Reg. §301.6330-1 (2006). While this regulation has not yet been updated with the most recent changes found in P.L. 109-432 and P.L. 109-280, any such changes do not affect this discussion.
- ⁴⁶ *Id.*, Reg. §301.6330-1(d)(2).
- ⁴⁷ *Industrial Investors*, 93 TCM 1126, Dec. 56,904(M), TC Memo. 2007-93.
- ⁴⁸ *Id.*
- ⁴⁹ *C.I. Smith*, 94 TCM 150, Dec. 57,041(M), TC Memo. 2007-221.
- ⁵⁰ *Id.*
- ⁵¹ *Id.*
- ⁵² the IRS, Collection Financial Standards, available at www.irs.gov/individuals/article/0,,id=96543,00.html.
- ⁵³ the IRS, Nat'l Standards: Food, Clothing and Other Items, available at www.irs.gov/businesses/small/article/0,,id=104627,00.html.
- ⁵⁴ the IRS, Nat'l Standards: Out-of-Pocket Health Care, available at www.irs.gov/businesses/small/article/0,,id=173385,00.html.
- ⁵⁵ This amount represents an increase of 6.1 percent, up from \$2,199 under the previous standards.
- ⁵⁶ the IRS, California—Local Standards: Housing and Utilities, available at www.irs.gov/businesses/small/article/0,,id=104701,00.html.
- ⁵⁷ the IRS, Local Standards: Transportation, available at www.irs.gov/businesses/small/article/0,,id=104623,00.html.

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