

Table of Contents

VOLUME 1

Dedication	v
About the Authors	vii
About the Contributing Authors	ix
Table of Chapters	xi
Acknowledgments	lxvii

Chapter 1 **Organization of the IRS**

§ 1:1	Function and Authority of the Internal Revenue Service	1-3
§ 1:2	Former IRS Organization	1-5
§ 1:3	1998 Reorganization	1-6
Chart 1-1	IRS Organization Chart: 2020	1-10
§ 1:4	Fiscal Year 2018–2022 IRS Strategic Plan	1-11
§ 1:5	IRS Oversight Board	1-11
§ 1:6	Department of Treasury and the Commissioner of Internal Revenue	1-12
§ 1:7	Chief Counsel.....	1-13
§ 1:8	Independent Office of Appeals	1-13
§ 1:9	Taxpayer Advocate Service (TAS)	1-14
§ 1:9.1	TAS Overview	1-15
§ 1:9.2	Using the Taxpayer Advocate Program and Taxpayer Assistance Orders (TAOs)	1-17
§ 1:9.3	TAS Organizational Structure	1-19
[A]	TAS Casework Function	1-19
[B]	TAS Systemic Analysis and Advocacy	1-20
§ 1:9.4	Treasury Inspector General for Tax Administration	1-21
§ 1:10	Operating Divisions.....	1-22
§ 1:10.1	Wage and Investment (W&I) Operating Division	1-22
[A]	Taxpayer Characteristics	1-22
[B]	Organizational Structure	1-22

[B][1]	Communications, Assistance, Research and Education (CARE)	1-23
[B][1][a]	Media and Publications	1-23
[B][1][b]	Stakeholder, Partnership, Education, and Communication.....	1-24
[B][1][c]	Field Assistance Operations Overview.....	1-24
[B][2]	Customer Account Services (CAS).....	1-24
[B][2][a]	Submission Processing	1-25
[B][2][b]	Accounts Management (AM)	1-25
[B][2][c]	Joint Operations Center (JOC)	1-25
[B][3]	Compliance	1-25
§ 1:10.2	Small Business/Self-Employed Operating Division	1-26
[A]	Taxpayer Characteristics	1-26
[A][1]	Overview	1-26
[A][2]	Small Businesses	1-27
[A][3]	Self-Employed and Supplemental Income Earners	1-27
[A][4]	Other SB/SE Taxpayers	1-28
[B]	Organizational Structure	1-28
[B][1]	Communications and Stakeholder Outreach (CSO)	1-29
[B][1][a]	Taxpayer Assistance Centers (TAC).....	1-30
[B][2]	Customer Account Services Organization (CAS).....	1-30
[B][2][a]	Submission Processing	1-31
[B][2][b]	Accounts Management (AM)	1-31
[B][3]	Compliance Organization	1-32
[C]	Stakeholder Relationship Management (SRM).....	1-33
[C][1]	Issue Management Resolution Systems.....	1-33
§ 1:10.3	Large Business & International (LB&I)	1-34
[A]	Taxpayer Characteristics	1-34
[B]	Organizational Structure	1-34
[B][1]	The “Future State”	1-35
[B][2]	Nine Practice and Compliance Areas	1-35
§ 1:10.4	Tax Exempt and Government Entities (TE/GE) Operating Division	1-36
[A]	Taxpayer Characteristics	1-36
[B]	TE/GE Organizational Structure	1-37
[C]	Employee Plans (EP) Organization	1-37
[D]	Exempt Organizations (EO)	1-38
[E]	Government Entities (GE) Organization.....	1-38
[E][1]	Tax Exempt Bonds.....	1-38
[E][2]	Federal, State, and Local Governments (FSLG).....	1-38

Table of Contents

[E][3]	Indian Tribal Governments	1-39
[F]	Process-Based Organizational Segments	1-39
[F][1]	TE/GE Rulings and Agreements	1-39
[F][2]	TE/GE Examinations.....	1-39
[F][3]	TE/GE CAS	1-40
§ 1:11	Office of Chief Counsel	1-40
§ 1:11.1	Organizational Structure.....	1-41
[A]	Associate Chief Counsel Offices	1-41
[B]	Division Counsel and Area Counsel	1-41
[C]	Chief Counsel Directives Manual.....	1-42
§ 1:12	Department of Justice, Tax Division	1-43
§ 1:13	Appeals.....	1-45
§ 1:13.1	Organizational Structure.....	1-45
[A]	Appeals Operating Division Structure	1-45
§ 1:14	Joint Committee on Taxation	1-46
§ 1:15	Office of Professional Responsibility (OPR).....	1-47
§ 1:16	Criminal Investigation (CI)	1-47
§ 1:17	Freedom of Information Act (FOIA) Public Liaisons.....	1-48
§ 1:18	IRS VITA Grant Program.....	1-49
§ 1:19	IRS Whistleblower Office.....	1-50
§ 1:20	E-Services for Tax Professionals	1-50

Chapter 2 Circular 230 and the Ethics of Tax Practice

§ 2:1	Ethics of Tax Practice and Circular 230	2-3
§ 2:2	Who May Practice Before the IRS?.....	2-4
§ 2:3	Rules Governing Tax Return Preparers.....	2-10
§ 2:3.1	In General.....	2-10
§ 2:3.2	Treasury Regulations Section 1.6109-2(h) Exceptions	2-10
§ 2:3.3	Competency Examinations for Registered Tax Return Preparers	2-12
§ 2:3.4	Forms Requiring a PTIN.....	2-13
§ 2:4	Circular 230: Duties and Restrictions.....	2-15
§ 2:4.1	Duty to Cooperate	2-16
§ 2:4.2	Knowledge of Client Error or Omission	2-16
§ 2:4.3	Duty to Disclose Adverse Authority.....	2-18
§ 2:5	Office of Professional Responsibility	2-21
§ 2:5.1	OPR Investigations	2-25
§ 2:5.2	Alternative Disciplinary Approaches.....	2-27
§ 2:5.3	Processing Investigations	2-29
§ 2:5.4	Sanctions and Other Disciplinary Measures	2-31
§ 2:5.5	Statute of Limitations for Circular 230 Disciplinary Actions	2-34

§ 2:6	Best Practices for Tax Advisors.....	2-36
§ 2:7	Competency	2-37
§ 2:8	Standards for Tax Returns and Documents, Affidavits, and Other Papers	2-37
§ 2:9	Written Advice	2-38
§ 2:10	Historical Perspective: Original (1994 Edition) Standards for Tax-Shelter Opinion Letters	2-40
§ 2:10.1	Definition of Terms	2-42
§ 2:10.2	Tax-Shelter Opinion Requirements	2-45
[A]	Factual Matters.....	2-45
[B]	Relating Law to Facts	2-47
[C]	Identifying Material Issues.....	2-47
[D]	Opinions on Each Material Issue	2-47
[E]	Overall Evaluation	2-48
[F]	Description of Opinions	2-50
[G]	Partial Opinions and Reliance on Other Opinions	2-51
§ 2:11	Historical Perspective: Revised Standards for Tax-Shelter Opinion Letters and Related Matters (May 2005 Until June 2014).....	2-52
§ 2:11.1	Requirements for Covered Opinions	2-53
Chart 2-1	Circular 230 Written Advice Flowchart.....	2-54
[A]	Covered Opinion Defined.....	2-54
[B]	Excluded Advice Defined	2-55
[C]	Federal Tax Issue Defined	2-59
[D]	Reliance Opinion Defined.....	2-59
[E]	Marketed Opinion Defined.....	2-59
[F]	Conditions of Confidentiality Defined.....	2-60
[G]	Contractual Protection Defined	2-60
[H]	Prominent Disclosure Defined.....	2-61
[I]	State or Local Bond Opinion Defined.....	2-61
[J]	Principal Purpose	2-62
[K]	Requirements for Covered Opinions	2-63
[L]	Competence to Provide Opinion and Reliance on Opinion of Others	2-67
[M]	Required Disclosures	2-67
[N]	Effect of Opinion That Meets Former Section 10.35 Standards	2-69
[O]	Effective Date	2-69
§ 2:11.2	Procedures to Ensure Compliance with Covered Opinions.....	2-69
[A]	Failure to Comply with the Requirements for Covered Opinions.....	2-69
[B]	Effective Date	2-70

Table of Contents

§ 2:12 Establishment of Advisory Committees..... 2-70
 § 2:12.1 Advisory Committees 2-70
 § 2:12.2 Effective Date..... 2-71
§ 2:13 Disreputable Conduct..... 2-71
§ 2:14 Violation of Regulations..... 2-72
§ 2:15 Tax-Shelter Opinion Letters and Attorney-Client
 Privilege..... 2-73
 § 2:15.1 Introduction..... 2-73
 § 2:15.2 Statutory Change..... 2-76

Chapter 3 Types & Uses of Authority in Federal Tax Practice

§ 3:1 Types of Authority in Federal Tax Practice 3-2
§ 3:2 Statutory/Legislative Authority 3-3
 § 3:2.1 The Code and Legislative History 3-3
 § 3:2.2 Legislative History and the Blue Book..... 3-4
 § 3:2.3 Tax Treaties..... 3-5
§ 3:3 Administrative Authority..... 3-6
 § 3:3.1 Regulations 3-6
 [A] Final Regulations 3-7
 [B] Prospective and Retroactive Regulations 3-11
 [C] Proposed Regulations 3-12
 [D] Temporary Regulations 3-12
 [E] Procedural Regulations 3-13
 [F] Finding Regulations 3-15
 § 3:3.2 March 2019 Treasury Tax Regulatory Process
 Policy Statement 3-16
 § 3:3.3 IRS Rulings 3-17
 [A] Letter Rulings 3-17
 [A][1] Closing Agreement..... 3-19
 [A][2] Determination Letter 3-20
 [A][3] Information Letter..... 3-20
 [A][4] Circumstances Under Which Letter Rulings
 Are Issued 3-20
 [A][5] Circumstances Under Which Letter Rulings
 Are Not Issued 3-21
 [A][6] Circumstances Under Which Determination
 Letters Are Not Issued..... 3-22
 [A][7] Considerations Involved in Ruling Requests..... 3-22
 [A][8] Letter Ruling Conferences 3-23
 [A][9] Disclosure Pursuant to Section 6110 3-25
 [A][10] 9100 Relief 3-26
 [A][10][a] Filing Requirements 3-29
 [A][10][b] Conference of Right..... 3-31
 [A][10][c] Judicial Review 3-32

[B]	Revenue Rulings	3-32
[C]	Revenue Procedures	3-34
[D]	Technical Advice Memoranda (TAMs)	3-35
[E]	Action on Decisions—IRS Acquiescence Program for Court Decisions	3-37
[F]	Chief Counsel Advice	3-39
[G]	General Counsel Memoranda (GCMs)	3-41
[H]	Other Pronouncements.....	3-41
§ 3:3.4	Judicial Authority.....	3-42
[A]	Tax Court.....	3-42
[B]	Decisions of Other Federal Courts	3-44
[C]	Court of Appeals	3-45
[D]	U.S. Supreme Court	3-46
[E]	Judicial Authority	3-46
§ 3:3.5	Other Secondary Authority	3-47
§ 3:3.6	Internal Revenue Manual.....	3-48
§ 3:3.7	Computerized Research	3-49
§ 3:3.8	Free Databases and Websites.....	3-49
Appendix 3A	Free Websites	App. 3A-1

Chapter 4 Tax Returns and Interest

§ 4:1	Background.....	4-4
§ 4:2	Income Tax Returns—Who Must File.....	4-5
§ 4:2.1	Individual Income Tax Returns	4-5
[A]	Individual’s Filing Status	4-6
[B]	Joint Return	4-7
[C]	Joint and Several Liability	4-7
[D]	Qualifying Widow(er) with Dependent Child.....	4-8
[E]	Head of Household	4-8
[F]	Individual Is Under Eighteen Years of Age	4-8
[G]	Alien.....	4-9
§ 4:2.2	C Corporation, S Corporation and Consolidated Groups	4-10
§ 4:2.3	Partnerships	4-15
§ 4:2.4	Limited Liability Partnership.....	4-17
§ 4:2.5	Limited Liability Company	4-17
§ 4:2.6	Trusts and Estates.....	4-18
§ 4:2.7	Exempt Organizations/Political Organizations/ Homeowners’ Associations	4-19
§ 4:2.8	Information Returns and Payee Statements	4-19
[A]	Bank and Financial Accounts (FBAR)	4-20
[B]	Foreign Account Tax Compliance Act (FATCA).....	4-21
[B][1]	Disclosures Regarding Foreign Assets.....	4-22

Table of Contents

[B][2]	The End of Foreign Bank Secrecy for U.S. Account Holders.....	4-24
§ 4:2.9	IRS Substituted Returns.....	4-26
§ 4:2.10	Amended Returns	4-27
§ 4:2.11	Net Operating Loss	4-31
§ 4:3	When to File Tax Returns	4-32
§ 4:3.1	Extension of Time for Filing Returns	4-32
§ 4:3.2	Filing Dates	4-33
[A]	Individual Tax Return	4-33
[B]	Resident Aliens and U.S. Citizens Living Abroad	4-33
[C]	Corporation	4-34
[D]	Partnership	4-35
[E]	Trusts and Estates.....	4-35
[F]	Exempt Organizations/Political Organizations/ Homeowners' Associations.....	4-36
[G]	Filing Date Falls on Saturday, Sunday, or Legal Holiday.....	4-38
[H]	Mailbox Rule—Timely-Mailed, Timely-Filed, Timely-Paid.....	4-39
[I]	Superseded Returns Filed Prior to Expiration of Extended Due Date.....	4-41
[J]	Superseded Return—Impact on Statute of Limitations	4-43
[K]	Qualified Amended Return	4-45
[L]	Extensions of Time to File Tax Return	4-45
[L][1]	Individuals	4-46
[L][1][a]	Additional Extension.....	4-48
[L][2]	Corporations	4-48
[L][3]	Partnerships	4-50
[L][4]	Estates and Trusts	4-50
[L][5]	Information Returns.....	4-50
§ 4:4	How to File Tax Returns	4-50
§ 4:4.1	Electronic Filing.....	4-50
§ 4:4.2	Certified or Registered Mail	4-53
§ 4:4.3	Use of Private Meter Machines	4-54
§ 4:4.4	Designated Private Delivery Service.....	4-54
§ 4:4.5	Hand Delivery	4-56
§ 4:4.6	What Constitutes a Valid Tax Return.....	4-57
§ 4:5	Who Must Sign the Return.....	4-60
§ 4:5.1	Individuals.....	4-60
§ 4:5.2	Joint Return	4-61
§ 4:5.3	Minor	4-61
§ 4:5.4	Deceased Taxpayer.....	4-61

§ 4:5.5	Corporation	4-62
§ 4:5.6	Partnership	4-62
§ 4:5.7	Power of Attorney	4-65
§ 4:6	Common Errors When Preparing Individual Tax Returns	4-66
§ 4:7	Interest on Underpayments and Overpayments of Tax.....	4-67
§ 4:7.1	Background.....	4-67
§ 4:7.2	Basic Interest Calculation	4-71
[A]	Step One: Amount of Tax Underpayment or Overpayment.....	4-71
[B]	Step Two: Date Interest Begins Accruing on Underpayment or Overpayment	4-72
[C]	Step Three: Date Interest Stops Accruing on Underpayment or Overpayment	4-74
[D]	Step Four: Applicable Interest Rates.....	4-76
§ 4:7.3	Restrictions and Adjustments to the General Rules	4-78
[A]	Large Corporate Underpayments (LCU)— “Hot Interest”	4-78
[B]	Large Corporate Overpayments—GATT Interest.....	4-78
[C]	Net Operating Loss Carrybacks	4-79
[D]	Foreign Tax Credit Carrybacks.....	4-80
[E]	Refunds Within Forty-five Days After Return Is Filed	4-81
[F]	Interest Netting and Overpayment Interest Resulting from Transfer of Credits	4-82
[F][1]	Background	4-82
[F][2]	Current Law	4-83
[F][3]	When Does Global Interest Netting Apply?	4-85
[F][4]	How to Request Interest Netting.....	4-86
[F][5]	Statute of Limitations for Filing Form 843	4-87
[F][6]	Case Law.....	4-88
[G]	Applicability to Assessable Penalties, Additional Amount, and Additions to Tax.....	4-92
[H]	Overpayment of Estimated Quarterly Tax Payments	4-93
[I]	Statutory Deposit Procedures—Cash Bond Versus Payment of Tax.....	4-93
[J]	Notice and Demand Grace Period.....	4-94
[K]	Waiver of the Restrictions on Assessment and Collection	4-95
[L]	Abatement of Interest Attributable to Unreasonable Service Error.....	4-95

Table of Contents

[M]	Suspension of Interest When the IRS Fails to Contact an Individual Taxpayer	4-96
[N]	Combat Zone	4-98
[O]	Presidentially Declared Disaster	4-98
[P]	Impact of a Termination and Jeopardy Assessments	4-98
[Q]	Seized Property	4-99
[R]	Interest on Estate Tax Returns	4-99
[S]	Restricted Interest	4-100
§ 4:7.4	Administrative Procedures—Claims for Refunds	4-100
§ 4:7.5	Litigating Interest Issues	4-101
[A]	Tax Court	4-102
[B]	District Court or Court of Federal Claims	4-102
[B][1]	Suits for Refunds of Interest on Underpayments	4-102
[B][2]	Suits for Statutory Interest on Overpayments	4-103
[B][3]	Interest Offsets	4-104

Chapter 5 Taxpayer Access to IRS Information

§ 5:1	Informal Requests for Tax Information	5-2
§ 5:2	Freedom of Information Act	5-2
§ 5:2.1	Overview	5-2
§ 5:2.2	FOIA Public Liaisons	5-7
§ 5:2.3	Information Available	5-8
[A]	Records Covered by FOIA	5-8
[B]	Publications Required by FOIA	5-9
[C]	Public Inspections Required by FOIA	5-9
§ 5:3	Making FOIA Request	5-10
§ 5:3.1	Contents of FOIA Request	5-11
§ 5:3.2	Where to Send a FOIA Request	5-16
§ 5:3.3	Timing of the IRS Response to a FOIA Request	5-17
§ 5:3.4	FOIA Exemptions	5-19
[A]	Section 552(b)(1) Exemption: Classified Documents Pertaining to National Defense and Foreign Policy	5-19
[B]	Section 552(b)(2) Exemption: Internal Personnel Rules and Practices	5-20
[C]	Section 552(b)(3) Exemption: Information Exempt Under Other Laws	5-23
[D]	Section 552(b)(4) Exemption: Trade Secrets and Confidential Commercial or Financial Information	5-23

[E]	Section 552(b)(5) Exemption: Inter-Agency or Intra-Agency Memorandums or Letters	5-25
[F]	Section 552(b)(6) Exemption: Personal Privacy	5-29
[G]	Section 552(b)(7) Exemption: Law Enforcement	5-31
[H]	Section 552(b)(8) Exemption: Financial Institutions	5-35
[I]	Section 552(b)(9) Exemption: Geological Information	5-36
§ 5:3.5	FOIA Exclusions	5-36
[A]	Exclusion 1	5-36
[B]	Exclusion 2	5-36
[C]	Exclusion 3	5-36
§ 5:3.6	Administrative Appeal Procedures	5-37
§ 5:3.7	Judicial Action	5-38
§ 5:3.8	FOIA Practice Tip	5-40

Chapter 6 The Examination Function

§ 6:1	What Is an IRS Audit?	6-3
§ 6:2	How Returns Are Selected for Examination	6-3
Table 6-1	Total Amount of IRS Audits on Individual Tax Returns?	6-7
Table 6-2	IRS Audit Rates by Income Level for Individuals (2008 and 2009 Versus 2015, 2016, 2017 and 2018)	6-8
Table 6-3	IRS Audit Rates/Statistics by Tax Filing Type (2011 Versus 2018)	6-9
§ 6:3	Types of IRS Audits	6-10
§ 6:3.1	Computer Scoring: Discriminant Inventory Function (DIF) System Audits and Unreported Income Discriminant Index Formula (UIDIF) Audits	6-11
§ 6:3.2	Campus Reporting Compliance Programs	6-12
[A]	Correspondence and Submission Processing Center Examinations	6-13
[B]	Automated Underreporter (AUR) Program (Formerly Information Reporting Program (IRP) Audits)	6-14
[B][1]	In General	6-14
[B][2]	Soft Notice Program	6-16
[C]	Mathematical Errors	6-16
§ 6:3.3	Taxpayer Compliance Measurement Program (TCMP) Audits and the National Research Program (NRP)	6-18

Table of Contents

§ 6:3.4	Project Audits	6-21
§ 6:3.5	Large Case Examinations.....	6-23
§ 6:3.6	Partnership Audits (TEFRA and BBA)	6-23
§ 6:3.7	Executive Branch Audit Influence Barred	6-25
§ 6:4	Office and Field Audits	6-26
§ 6:4.1	Office Examinations	6-27
§ 6:4.2	Field Examinations	6-28
§ 6:5	Chronology of an IRS Audit.....	6-29
§ 6:5.1	Practical Aspects of an IRS Audit.....	6-35
[A]	IRS's Authority to Examine Books and Records.....	6-35
[B]	IRS Methods of Obtaining Information	6-35
[B][1]	Information Document Request (IDR)	6-35
[B][2]	Third-Party Contacts.....	6-37
[B][3]	Formal Document Request (FDR)	6-37
[B][4]	Tour of Taxpayer Business	6-38
[B][5]	Accountants' Work Papers.....	6-39
§ 6:6	How to Handle an IRS Audit	6-40
§ 6:6.1	Introduction.....	6-40
§ 6:6.2	Interview Techniques	6-46
§ 6:6.3	Notice of Proposed Adjustment.....	6-47
§ 6:6.4	Agent's Resolution Authority	6-47
§ 6:6.5	Do's and Don'ts.....	6-48
§ 6:6.6	Audit Conclusions	6-50
[A]	No Change	6-50
[B]	Agreed Case.....	6-50
[C]	Unagreed Case.....	6-51
[D]	Partially Agreed Case	6-52
§ 6:7	Technical Advice Memorandum	6-52
§ 6:8	Chief Counsel Advice (CCA)/Counsel Involvement.....	6-54
§ 6:9	Fast Track Dispute Resolution Program: Fast Track Mediation or Fast Track Settlement: Alternative to Traditional Appeals.....	6-55
§ 6:10	Thirty-Day Letter	6-58
§ 6:11	Strategic Considerations	6-60
§ 6:12	Extending the Statute of Limitations (and Taxpayer Bill of Rights 3).....	6-63
§ 6:13	Statutory Notice of Deficiency.....	6-68
§ 6:14	Early Termination of Audits: Repetitive Audit Procedures	6-69
§ 6:15	Reopening of Case by Taxpayer Other Than by Filing Formal Claim: Audit Reconsiderations	6-70
§ 6:16	Abatement of Interest for IRS Errors and Delays, and Penalties for Erroneous IRS Advice	6-73
§ 6:17	Reopening of Closed Audit by IRS	6-74
§ 6:18	Rescission of the Ninety-Day Letter	6-75

§ 6:19	Abatement of Interest: Taxpayer Bill of Rights 2.....	6-77
§ 6:20	Attorney-Client Privilege Extended to “Federally Authorized Tax Practitioners”	6-80
§ 6:20.1	Background	6-80
§ 6:20.2	Law	6-82
§ 6:20.3	Questions and Concerns.....	6-87
§ 6:20.4	Attorney-Client Privilege and Section 7525	6-89
[A]	All Communications Between an Attorney or Practitioner and the Client Are Not Privileged Communications.....	6-90
[B]	The Privilege Does Not Apply to Communications with Third Parties	6-91
[C]	The Privilege Does Not Apply to the Preparation of Tax Returns.....	6-91
[D]	A Confidential Document Does Not Remain Privileged Regardless of Distribution.....	6-92
[D][1]	Voluntary Disclosure.....	6-93
[D][2]	Inadvertent Disclosure	6-95
[E]	Giving Preexisting Documents to an Attorney or Practitioner Does Not Qualify Them for the Privilege	6-97
[F]	The Tax Practitioner Privilege Is Not Unlimited.....	6-97

Chapter 7 Large Case Examinations

§ 7:1	What Is a Large Case Audit?	7-4
§ 7:2	2015 LB&I Reorganization	7-4
§ 7:2.1	LB&I Principles of Collaboration	7-6
§ 7:2.2	New Organizational Structure	7-6
§ 7:2.3	Practice Areas	7-7
Chart 7-1	LB&I Organizational Chart	7-8
§ 7:2.4	Goals of the Reorganization	7-9
§ 7:2.5	Campaigns.....	7-9
§ 7:2.6	Issue-Based Examinations and Issue-Driven Risk Analysis	7-10
§ 7:2.7	LB&I's Previous Reorganizations	7-11
§ 7:3	Who Will Be on My Team?	7-11
§ 7:3.1	Case Manager Roles and Responsibilities.....	7-11
§ 7:3.2	Issue Manager Roles and Responsibilities	7-12
§ 7:3.3	Managers of Team Members Who Are Not Designated As the Case Manager or Issue Manager.....	7-14
§ 7:3.4	Team Coordinator Roles and Responsibilities	7-14
§ 7:3.5	Issue Team Member Roles and Responsibilities.....	7-14

Table of Contents

§ 7:4	The LB&I Examination	7-15
§ 7:4.1	Phase One: Planning a LB&I Examination.....	7-16
[A]	IRS Preliminary Examination Work and Risk Analysis	7-16
[B]	Planning File.....	7-19
[C]	Examination Plan	7-20
[C][1]	LB&I Examination Process (LEP).....	7-22
[D]	Opening Conference with Taxpayer	7-24
§ 7:4.2	Phase Two: Execution Phase	7-26
[A]	Acknowledgment of Facts	7-26
[B]	Resolution Phase	7-28
§ 7:5	Taxpayer Preparation for Large Case Examinations.....	7-29
§ 7:5.1	Opening Conference	7-32
§ 7:5.2	Other Factors to Consider for an LB&I Examination	7-33
[A]	Regular Communications with the Team Manager (aka Case Manager) or Issue Manager	7-33
[B]	Communications with Other IRS Audit Personnel	7-34
[C]	Communications with and Access to Taxpayer’s Employees	7-34
[D]	Location/Retrieval of Records	7-36
[D][1]	Memorandum of Understanding Agreement to Use Secure Email	7-36
[E]	IRS Requests for Documents, Information, and Summonses	7-37
[E][1]	LB&I Information Document Request Process	7-38
[E][2]	IDR Process: Issuance	7-38
[E][3]	Key Process Points of a Proper IDR	7-39
[E][4]	IDR Enforcement Process: Response and Enforcement.....	7-40
[E][5]	Key Points: IDR Enforcement Process	7-40
[F]	Affirmative Issue	7-43
[F][1]	30-Day Window Exception	7-44
[G]	Issue Resolution/Notices of Proposed Adjustments (NOPAs)	7-45
[H]	Involvement of IRS Counsel, Specialists, and Technical Advisors	7-47
[I]	Preliminary Strategies for Resolution	7-48
[J]	Accounting Method Issues.....	7-48
[K]	Impact on Future Years	7-49
[L]	Estimated Completion Date	7-49
[M]	Statute of Limitations	7-50

[N]	Taxpayer’s Risk Analysis	7-51
[O]	Agreements Reached During Prior Audits	7-51
[P]	Rollover Settlements	7-51
[Q]	IRS Accommodations	7-52
[R]	Security and Disclosure Concerns	7-52
[S]	Power of Attorney	7-53
[T]	Audit Location	7-53
[U]	Requests for Tax Returns of Corporate Officials—Compliance Check	7-54
[V]	Be Familiar with Possible Alternative Dispute Resolutions Techniques	7-55
[W]	Designating a Case for Litigation	7-55
[X]	Be Familiar with Publication 5125, Large Business and International Examination Process	7-56
[Y]	Closing Conferences	7-57
[Z]	Resolution/Settlement Considerations	7-57
§ 7:6	Appeals for LB&I Taxpayers	7-60
§ 7:6.1	Appeals Jurisdiction in Docketed Cases	7-60
§ 7:6.2	Pre-Conference Appeals Meeting	7-61
§ 7:6.3	Opening Conference	7-63
§ 7:6.4	Opening Conference: Appeals Procedure Changes	7-65
§ 7:6.5	Appeals Case Memorandums (ACMs)	7-66
§ 7:6.6	Post-Settlement Conference	7-67
§ 7:7	Joint Committee on Taxation (JCT)	7-68
§ 7:7.1	Background	7-68
§ 7:7.2	Joint Committee Criteria	7-70
§ 7:7.3	Cases Not Required to Be Reportable to the JCT	7-73
§ 7:7.4	Assessment Statute of Limitations and JCT	7-75
§ 7:7.5	JCT Pending in Appeals	7-76
§ 7:7.6	JCT Review	7-76
§ 7:7.7	Claims Questioned by Joint Committee	7-77
§ 7:8	Implication of State Tax Filings Resulting in Federal Adjustments	7-78
§ 7:9	Rapid Appeals Process (RAP)	7-80
§ 7:10	Compliance Assurance Program (CAP)	7-81
§ 7:10.1	Three Phases of Pre-2020 CAP	7-82
[A]	Phase One: Pre-CAP	7-82
[B]	Phase Two: CAP	7-83
[C]	Phase Three: CAP Compliance Maintenance	7-83
§ 7:10.2	2020 CAP Program—CAP Recalibrated	7-84
§ 7:10.3	Aspects of the CAP Program	7-86
§ 7:10.4	Memorandum of Understanding	7-87

Table of Contents

§ 7:10.5	Assignment of Account Coordinator.....	7-88
§ 7:10.6	Post-Filing Activities	7-88
§ 7:10.7	Key Considerations	7-90
§ 7:11	Prior LB&I Coordinated Issues (ISP, Tiered Issues, IPG and IPN).....	7-91
§ 7:12	Alternative Dispute Resolution (ADR).....	7-93
§ 7:12.1	Pre-Filing Agreement Program	7-94
[A]	Exclusions.....	7-95
§ 7:12.2	Delegation Order 4-24	7-97
§ 7:12.3	Delegation Order 4-25	7-99
§ 7:12.4	Early Referral Program	7-99
§ 7:12.5	Accelerated Issue Resolution (AIR)	7-100
§ 7:12.6	Revenue Procedure 94-69: Qualified Amended Return.....	7-102
§ 7:12.7	Superseding Returns Filed Prior to Expiration of Extended Due Date.....	7-105
§ 7:12.8	Limited Issue-Focused Examination (LIFE)	7-108
§ 7:12.9	Fast-Track Dispute Resolution Program: Fast-Track Settlement	7-108
[A]	Overview	7-108
[B]	FTS Procedures	7-108
§ 7:12.10	Post-Appeals Mediation	7-111
§ 7:12.11	Appeals and LB&I Arbitration.....	7-114
§ 7:12.12	Comprehensive Case Resolution (CCR).....	7-114
[A]	Industry Issue Resolution Program	7-115
[A][1]	Business Tax Issues Appropriate for IIR.....	7-116
[A][2]	Business Tax Issues Not Appropriate for IIR.....	7-116
[A][3]	How to Submit an IIR for Consideration.....	7-116
[A][4]	How the IIR Process Works	7-117
[A][5]	IIR Guidance Issued	7-117
§ 7:12.13	Advanced Pricing Agreements (APA)	7-125
[A]	The APA Process: Pre-Filing Conference.....	7-127
[B]	The APA Process: APA Submission.....	7-130
[C]	APA User Fees	7-131
[D]	The APA Process: APA Annual Report.....	7-131
§ 7:12.14	APAs: Rollback of Transfer Pricing Method.....	7-132
§ 7:12.15	Advance Pricing and Mutual Agreement Program	7-132
§ 7:12.16	Competent Authority Process	7-133
§ 7:13	Policy of Restraint—Tax Accrual Workpapers (TAW).....	7-136
§ 7:13.1	Overview.....	7-136
[A]	Summary of Relevant Cases	7-142

§ 7:13.2 Uncertain Tax Position: Schedule UTP 7-149
 [A] UTPs a Historical Background:
 Announcements 2010-9, 2010-17, 2010-30,
 2010-75, and 2010-76 7-151

Chapter 8 Claims for Refund and Refund Suits

§ 8:1 Tax Refund Claims and Suits..... 8-2
 § 8:1.1 Administrative Processing of a Tax
 Refund Claim 8-4
 § 8:1.2 Notice of Claim Disallowance 8-4
 § 8:1.3 Protest to Appeals 8-6
 § 8:1.4 Requirements for a Tax Refund Claim 8-7
 [A] Timely Claim for Refund 8-7
 [B] Proper Claim for Refund 8-9
 Table 8-1 Refund Claims General Rules 8-11
 § 8:1.5 Formal Claim for Refund 8-21
 § 8:1.6 Informal Claim for Refund..... 8-32
 § 8:1.7 Protective Claim for Refund..... 8-34
 § 8:1.8 Affirmative Issue Claim for Refund 8-36
 § 8:1.9 Special Issues Concerning the Refund Statute
 of Limitations 8-38
 [A] Determining a Return’s Filing Date 8-38
 [B] The Look-Back Rule..... 8-48
 [C] The IRS Cannot Modify the Refund Statute
 of Limitations 8-51
 § 8:2 Tentative Carryback Adjustments..... 8-51
 § 8:3 Carrybacks and Carryovers of Net Operating
 Losses, Capital Losses or Credits 8-53
 § 8:4 Joint Committee Review..... 8-60
 § 8:5 Suspending the Statute of Limitations During
 Period of Disability 8-64
 § 8:5.1 Statements Required to Claim Financial
 Disability 8-65
 § 8:5.2 Effect of the COVID-19 Pandemic on Refunds
 and Refund Suits..... 8-66
 § 8:6 Refund Litigation 8-68
 § 8:6.1 Two Types of Refund Suits 8-70
 § 8:6.2 Jurisdiction for Tax Refund Suits..... 8-72
 [A] Full Payment 8-72
 [B] Payment Versus Deposit 8-73
 [C] Timely Refund Suit: Notice of Claim
 Disallowance 8-74

Table of Contents

§ 8:6.3	Tax Refund Complaint.....	8-76
[A]	Form of the Complaint.....	8-77
[B]	Request for Jury Trial.....	8-77
[C]	Government’s Answer and Counterclaim.....	8-77
[D]	Burden of Proof.....	8-77
[E]	Judgment and Appeals.....	8-78
§ 8:7	Reduction of Refund for Nontax Debt.....	8-78
§ 8:8	Refund Proceedings Involving Divisible Taxes and IRS Levies.....	8-79
§ 8:9	Waiving Right to Sue the United States.....	8-82
§ 8:10	Erroneous Refunds and Credits.....	8-82
§ 8:11	Suit on an Account Stated.....	8-86

Chapter 9 Administrative Appeals

§ 9:1	Introduction.....	9-3
§ 9:1.1	Organization of the Appeals Office.....	9-5
§ 9:2	Appeals Independence.....	9-8
§ 9:3	When Can Taxpayers File an Appeal?.....	9-9
§ 9:4	Must the Service Grant an Appeal?.....	9-11
§ 9:4.1	No Immediate Tax Consequence Cases.....	9-11
§ 9:5	How to Appeal.....	9-12
§ 9:5.1	Procedural Requirements.....	9-12
§ 9:5.2	Written Protest.....	9-13
§ 9:5.3	Rebuttal to Taxpayer Protest.....	9-16
§ 9:5.4	Appeals’ Representation.....	9-19
§ 9:5.5	Appeals Conference.....	9-19
[A]	Opening Conference.....	9-22
[B]	Examination and Counsel Participation in Nondocketed Settlement Conferences.....	9-23
[C]	Appeals Conferences—Face-to-Face Conference.....	9-24
§ 9:6	<i>Ex Parte</i> Communications Prohibited.....	9-26
§ 9:6.1	General Definition of “Ex Parte”.....	9-27
§ 9:6.2	Types of Communications Prohibited.....	9-27
§ 9:6.3	Types of Communications Not Prohibited.....	9-27
§ 9:6.4	Administrative File Not a Communication.....	9-28
§ 9:6.5	Preliminary Review Considerations.....	9-28
§ 9:6.6	New Issues Raised by Taxpayer.....	9-31
§ 9:6.7	Ongoing Communications with Originating Function.....	9-31
§ 9:6.8	New Facts or Evidence.....	9-31
§ 9:6.9	Communications with Counsel.....	9-32
§ 9:6.10	Joint Committee Communications.....	9-33
§ 9:6.11	Taxpayer Advocate Service.....	9-34

§ 9:6.12	Outside Experts	9-34
§ 9:6.13	“Opportunity to Participate”	9-34
§ 9:6.14	Waiver.....	9-34
§ 9:6.15	Pre-Settlement and Post-Settlement Conferences	9-35
§ 9:6.16	Compliance and Taxpayer Remedies	9-36
§ 9:7	Negotiations, Settlement Practices, and the Hazards of Litigation	9-39
§ 9:7.1	Hazards of Litigation	9-39
[A]	Taxpayer-Adverse Guidance	9-42
§ 9:7.2	Controlling Law: Golsen Rule.....	9-44
§ 9:7.3	Settlements in General	9-45
§ 9:7.4	Mutual Concession Settlements	9-46
§ 9:7.5	Split-Issue Settlements	9-46
§ 9:7.6	Nuisance Value Settlements.....	9-47
§ 9:7.7	Qualified Settlement Offer.....	9-48
§ 9:7.8	Technical Advice	9-48
§ 9:7.9	Appeals Case Memorandum.....	9-49
§ 9:7.10	Docketed Cases—Appeals Jurisdiction.....	9-50
§ 9:7.11	New Issues.....	9-52
§ 9:7.12	Whipsaw Issues	9-53
§ 9:7.13	Penalties	9-53
§ 9:7.14	Settlements That Affect Later Taxable Years	9-54
§ 9:7.15	Agreement Forms	9-54
[A]	Forms 870 and 870-AD	9-55
[A][1]	Form 870-AD and Equitable Estoppel	9-56
[A][2]	Duty of Consistency.....	9-59
[B]	Closing Agreements.....	9-59
[C]	Settlement Agreements in Docketed Tax Court Cases.....	9-63
[D]	Collateral Agreements Distinguished	9-63
§ 9:8	Joint Committee Cases.....	9-64
§ 9:9	Alternative Dispute Resolution.....	9-65
§ 9:9.1	Post-Appeals Mediation	9-66
[A]	Confidentiality and <i>Ex Parte</i>	9-69
[B]	Appeals Procedures Apply.....	9-69
[C]	Practical Observations	9-70
§ 9:10	Coordinated and Appeals Emerging Issues	9-71
§ 9:10.1	Compliance Coordinated Issues.....	9-71
§ 9:10.2	Appeals Coordinated Issue.....	9-72
§ 9:10.3	Appeals Informal Coordinated Issues	9-73
§ 9:10.4	Appeals Emerging Issue	9-73
§ 9:11	Unagreed Non-Docketed Case: Issues Not Resolved in Appeals	9-74

Table of Contents

§ 9:12 Collection Due Process Hearings 9-74

 § 9:12.1 Requesting a CDP Hearing 9-74

 § 9:12.2 Suspension of Collections 9-75

 § 9:12.3 CDP Hearing 9-76

 § 9:12.4 Collection Appeal Requests 9-77

 § 9:12.5 Judicial Review of CDP Determination 9-79

§ 9:13 Rapid Response Appeals Process and Rapid Appeals Process 9-81

§ 9:14 Can the Taxpayer Record a CDP Hearing with Appeals? 9-82

 § 9:14.1 Legal Basis and Background for Recording 9-83

 § 9:14.2 IRS Interpretation of the Law and Former Policy 9-83

 § 9:14.3 Court’s View 9-84

 § 9:14.4 IRS Position 9-84

VOLUME 2

Table of Chapters v

Chapter 10 Tax Court Litigation

§ 10:1 Introduction 10-4

§ 10:2 Organization of Tax Court 10-5

 § 10:2.1 In General 10-5

 § 10:2.2 Matters Allowed to the Special Trial Judges 10-7

 § 10:2.3 Jurisdiction Overview 10-8

 § 10:2.4 Jurisdiction Over Deficiency Proceedings 10-8

 [A] Valid Statutory Notice of Deficiency 10-9

 [A][1] Existence of a Deficiency 10-9

 [A][2] Deficiency Tax 10-9

 [A][3] The Last Known Address Issue 10-10

 [A][4] The *Scar* Issue 10-11

 [A][5] Motion to Dismiss for Lack of Jurisdiction 10-12

 [B] Timely Tax Court Petition 10-13

 [B][1] Mailbox Rule—Timely-Mailed, Timely-Filed, Timely-Paid 10-13

 § 10:2.5 Extent of Tax Court Jurisdiction Over Deficiency Proceedings 10-25

 [A] Jurisdiction Over Additional Issues 10-25

 [B] Incidental Refund Jurisdiction 10-26

 [C] Equitable Recoupment Jurisdiction and More 10-27

§ 10:2.6	Jurisdiction Over Non-Deficiency Proceedings	10-30
[A]	Determination of Innocent Spouse and Joint Return Separate Liability Elections	10-31
[B]	Review of Final Partnership Administrative Adjustments Under TEFRA.....	10-43
[B][1]	Bipartisan Budget Act of 2015	10-44
[C]	Review of Partnership Administrative Adjustments Where Administrative Adjustment Request Is Not Allowed in Full Under TEFRA	10-44
[D]	Review of Final Partnership Administrative Adjustments for Large Partnership Under TEFRA.....	10-44
[E]	Review of Large Partnership Administrative Adjustments Where Administrative Adjustment Request Is Not Allowed in Full Under TEFRA	10-44
[F]	Statutory Interest Determinations	10-45
[G]	Review of Abatement of Interest Denials	10-46
[H]	Awarding Reasonable Litigation and Administrative Costs	10-48
[I]	Enforcement of Overpayment Decisions.....	10-49
[J]	Modification of Decisions in Section 6166 Estate Tax Cases	10-50
[K]	Review of Jeopardy Assessments in Ongoing Tax Court Cases	10-51
[L]	Review of Certain Sales of Seized Property.....	10-51
[M]	Collection Due Process Actions for Release of Liens and Levies	10-52
[N]	Disclosure Actions.....	10-53
[O]	Injunction Authority.....	10-53
§ 10:2.7	Jurisdiction Over Administrative Determinations by the IRS	10-54
[A]	Declaratory Judgment Relating to Oversheltered Return	10-55
[B]	Declaratory Judgment Relating to Qualification of Exempt Organization.....	10-55
[C]	Declaratory Judgment Relating to Worker Classification.....	10-55
[D]	Declaratory Judgment Relating to Qualification of Retirement Plan.....	10-58
[E]	Declaratory Judgment Relating to Gift Valuation	10-58
[F]	Declaratory Judgment Relating to Government Obligations	10-59

Table of Contents

	[G]	Declaratory Judgment Relating to Eligibility of an Estate to Make Installment Payments Under Section 6166.....	10-59
	[H]	Whistleblower Award Actions.....	10-59
§ 10:2.8		Special Trial Judge Reports: <i>Ballard v. Commissioner</i>	10-60
	[A]	Background.....	10-60
	[B]	Special Trial Judge Reports: Post- <i>Ballard v. Commissioner</i> Amendments to Tax Court Rules of Practice.....	10-62
§ 10:2.9		Tax Court Rules of Practice and Procedure.....	10-64
§ 10:3		Tax Court Litigation.....	10-66
	§ 10:3.1	In General.....	10-66
§ 10:4		Practice Before the Tax Court.....	10-66
§ 10:5		Tax Court Versus Other Forums.....	10-67
	§ 10:5.1	Alternative Forums.....	10-67
		[A] U.S. District Courts.....	10-67
		[B] Federal Court of Appeals.....	10-69
		[C] U.S. Court of Federal Claims.....	10-70
		[D] U.S. Court of Appeals for the Federal Circuit.....	10-71
§ 10:5.2		Factors to Consider for Choice of Litigation Forum.....	10-71
		[A] Payment of Deficiency.....	10-71
		[B] Trial by Jury.....	10-73
		[C] Geography, Legal Precedent, and Timetable.....	10-74
		[D] Lower Court and Appellate Considerations.....	10-75
		[E] Increased Tax Deficiency.....	10-76
		[F] Government Representation.....	10-77
		[G] Availability of Discovery.....	10-77
		[H] Small Tax Case Procedures.....	10-78
		[I] Off-the-Record Telephone Conference Calls and Chamber’s Conferences.....	10-78
§ 10:5.3		Res Judicata and Collateral Estoppel.....	10-79
§ 10:6		Commencing a Tax Court Case.....	10-86
	§ 10:6.1	Disclosure Statement.....	10-87
	§ 10:6.2	Service of Papers.....	10-87
	§ 10:6.3	Form and Style of Papers.....	10-88
	§ 10:6.4	Electronic Filing (eFiling) in Tax Court: the DAWSON System.....	10-91
§ 10:6.5		Appearance by Counsel.....	10-91
§ 10:6.6		Pleadings.....	10-92
		[A] General Rules.....	10-92
		[B] Form Required.....	10-92
		[C] Petition.....	10-93

[C][1]	Petition for Innocent Spouse or Separate Liability Election: The “Stand-Alone Proceeding”	10-97
[C][2]	Petition for Award of Reasonable Administrative Costs.....	10-101
[C][3]	Petition for Lien or Levy Action.....	10-103
[D]	Commissioner’s Answer.....	10-105
[E]	Petitioner’s Reply.....	10-107
[F]	Amended and Supplemental Pleadings	10-107
§ 10:6.7	Motions	10-108
§ 10:7	Parties.....	10-112
§ 10:8	Stipulations, Discovery, and Settlements	10-112
§ 10:8.1	Stipulations.....	10-112
§ 10:8.2	Discovery.....	10-119
[A]	Timing of Discovery	10-120
[B]	Informal Discovery Request.....	10-120
[C]	Interrogatories	10-121
[D]	Requests for Production	10-122
[E]	Requests for Admission	10-122
[F]	Evidentiary Depositions.....	10-123
[G]	Depositions	10-123
[G][1]	Depositions upon Consent of the Parties	10-124
[G][2]	Depositions Without Consent of the Parties, Including Nonparty Witnesses, Party Witnesses, and Expert Witnesses.....	10-125
[G][3]	Deposition of an Expert Witness for Other Than Discovery Purposes.....	10-126
[H]	Deposition After Commencement of Trial.....	10-126
[I]	Discovery of Experts	10-127
[I][1]	Interrogatories	10-127
[I][2]	Deposition.....	10-127
[I][3]	Expert Witness Reports	10-128
[J]	Motion for Protective Order.....	10-129
[K]	Motion for Continuance	10-130
§ 10:8.3	Settlement	10-131
[A]	Settlements by Appeals.....	10-132
[B]	Settlements by Counsel	10-134
[C]	Tax Court Mediation and Voluntary Binding Arbitration.....	10-135
§ 10:9	Trial.....	10-138
§ 10:9.1	Place of Trial	10-138
§ 10:9.2	Evidence.....	10-139
§ 10:9.3	Burden of Proof.....	10-140
[A]	Burden on the Taxpayer: In General	10-140
[B]	Burden on the Commissioner: Taxpayer Bill of Rights 3	10-142

Table of Contents

§ 10:9.4 Courtroom Procedures 10-150
 [A] Calendar Call..... 10-150
 [B] Trial 10-153
§ 10:10 Trial Memoranda and Briefs 10-157
 § 10:10.1 In General..... 10-157
 § 10:10.2 Form and Content 10-160
§ 10:11 Decision of the Court 10-161
§ 10:12 Proceedings After Trial..... 10-162
§ 10:13 Small Tax Cases..... 10-164

Chapter 11 Statute of Limitations/Assessments/Summary Assessments

§ 11:1 Overview of Assessments 11-4
§ 11:2 What Is an “Assessment”? 11-5
§ 11:3 Statute of Limitations—Assessments 11-6
§ 11:4 What Is the Filing Date of a Return? 11-9
 § 11:4.1 Date Return Deemed Filed..... 11-10
 [A] Early Return..... 11-10
 [B] Return of Certain Employment Taxes 11-11
 [C] Return Executed by Secretary..... 11-11
 [D] Return of Excise Taxes 11-12
 § 11:4.2 Mailbox Rule—Timely-Mailed, Timely-Filed,
 Timely-Paid..... 11-12
 § 11:4.3 Filing Date Falls on Saturday, Sunday, or
 Legal Holiday 11-16
 § 11:4.4 Superseding Returns Filed Prior to Expiration
 of Extended Due Date..... 11-17
§ 11:5 Exceptions to General Three-Year Assessment Rule 11-19
 § 11:5.1 False Return..... 11-19
 § 11:5.2 Willful Attempt to Evade Tax 11-20
 § 11:5.3 No Return..... 11-20
 § 11:5.4 Extension by Agreement 11-20
 § 11:5.5 Tax Resulting from Changes in Certain Income
 Tax, Gift Tax or Estate Tax Credits..... 11-21
 § 11:5.6 Termination of Private Foundation Status..... 11-22
 § 11:5.7 Special Rule for Certain Amended Returns 11-22
 [A] What Is an Amended Return?..... 11-22
 § 11:5.8 Failure to Notify Secretary of Certain Foreign
 Transfers 11-23
 [A] Section 6501(c)(8)..... 11-23
 § 11:5.9 Gift Tax on Certain Gifts Not Shown
 on Return..... 11-28
 § 11:5.10 Listed Transactions 11-28

§ 11:5.11	Certain Orders of Criminal Restitution	11-29
§ 11:5.12	Request for Prompt Assessment.....	11-29
§ 11:5.13	Substantial Omission of Gross Income.....	11-30
[A]	Information Regarding Foreign Financial Assets	11-36
§ 11:5.14	Personal Holding Company Tax.....	11-37
§ 11:5.15	Incorrect Return Filed	11-37
§ 11:5.16	Net Operating Loss or Capital Loss Carrybacks.....	11-39
[A]	IRS's Ability to Adjust Attributes in Closed Years for NOL Determinations	11-41
[B]	Taxpayer's Ability to Make Adjustments to Items in Closed Years for NOL Determinations.....	11-42
[C]	The Tax Cuts and Jobs Act of 2017	11-46
§ 11:5.17	Foreign Tax Carrybacks.....	11-46
§ 11:5.18	Credit Carrybacks.....	11-46
§ 11:5.19	Tentative Carryback Adjustment Assessment Period.....	11-47
§ 11:5.20	Pass-Through Entities (S Corporations, Partnerships, Trusts)	11-48
§ 11:6	Transferee Liability Assessments	11-49
§ 11:7	Suspension of Assessment Statute.....	11-49
§ 11:8	Issuance of Notice of Deficiency	11-50
§ 11:9	Assets in Court Control or Custody	11-52
§ 11:10	Taxpayer Outside United States.....	11-52
§ 11:11	Extensions of Time for Payment of Estate Tax	11-53
§ 11:12	Extensions of Time for Payment of Tax Attributable to Recoveries of Foreign Expropriation Losses.....	11-53
§ 11:13	Wrongful Seizure.....	11-53
§ 11:14	Wrongful Lien	11-53
§ 11:15	Suspension Pending Correction	11-54
§ 11:16	Cases Under Title 11 United States Code (Bankruptcy and Receiverships)	11-54
§ 11:17	Extension of Time for Payment of Undistributed PFIC Earnings Tax Liability	11-54
§ 11:18	Designated Summonses.....	11-55
§ 11:19	Third-Party Summonses	11-57
§ 11:20	Mitigation of the Statute of Limitations	11-57
§ 11:20.1	Introduction.....	11-57
§ 11:20.2	Purpose of the Mitigation Provisions	11-58
§ 11:20.3	General Requirements	11-59
[A]	Determination.....	11-60
[B]	Some Bar to Adjustment.....	11-61
[C]	Inconsistent Position	11-62
[C][1]	What Meets the "Inconsistent Position" Requirement?	11-62

Table of Contents

[C][2]	Active Versus Passive “Inconsistent Position”....	11-65
[C][3]	Inconsistent Position Not Required.....	11-65
[D]	Existence of a Relationship	11-67
[E]	Circumstances of Adjustment	11-67
[F]	Problem Areas Under Section 1312 Circumstances of Adjustment	11-69
[G]	Method, Manner, and Procedure of Adjustment.....	11-71
§ 11:21	Summary Assessments—Jeopardy and Termination Assessments	11-72
§ 11:21.1	Jeopardy Levy Cases Outside Section 7429— Nature of Problem.....	11-72
§ 11:21.2	Termination Assessments Defined.....	11-74
§ 11:21.3	Jeopardy Assessments Defined.....	11-76
§ 11:21.4	Presumption Where Owner of Large Amount of Cash Is Not Identified.....	11-77
§ 11:21.5	Problem of Departing Aliens	11-78
§ 11:21.6	Issuance of Notice of Deficiency	11-80
§ 11:21.7	Amount Assessable.....	11-81
§ 11:21.8	Taxpayer Remedies for Jeopardy and Termination Assessments	11-81
[A]	Overview	11-81
[B]	Posting Bond to Stay Collection.....	11-82
[C]	Statutory Framework	11-83
[C][1]	Administrative Review	11-84
[C][2]	Judicial Review	11-86
[C][3]	Finality of Court Determination	11-88
[C][4]	Burden of Proof—In General	11-89
[C][5]	Burden of Proof—Section 7491	11-95
[C][6]	Stay of Sale of Seized Property	11-96
§ 11:21.9	Other Types of Immediate Assessment	11-97
§ 11:21.10	Jeopardy Levy Procedures	11-97
§ 11:21.11	Jeopardy Levy Cases Outside Section 7429	11-99
§ 11:21.12	Statute of Limitations for Refunds	11-102
§ 11:21.13	Statute of Limitations for TEFRA and BBA.....	11-102
§ 11:21.14	Collection After Assessment.....	11-103

Chapter 12 TEFRA and the BBA

§ 12:1	Overview of TEFRA.....	12-5
§ 12:1.1	Prior Law.....	12-5
§ 12:1.2	Theory of TEFRA.....	12-6
§ 12:1.3	Significant Danger in TEFRA for Taxpayers	12-8
§ 12:1.4	TEFRA/Non-TEFRA Determination	12-9

§ 12:1.5	Some Key Differences Between TEFRA and Non-TEFRA Procedures	12-12
§ 12:1.6	Special Enforcement Areas	12-14
§ 12:2	Terminology Under TEFRA	12-14
§ 12:2.1	Tax Matters Partner (TMP)	12-14
§ 12:2.2	Partner	12-15
§ 12:2.3	Notice and Non-Notice Partner	12-15
§ 12:2.4	Pass-Through Partner	12-15
§ 12:2.5	Indirect Partner	12-16
§ 12:2.6	Investor	12-16
§ 12:2.7	Notice Group and 5% Group	12-16
§ 12:2.8	Partnership Item	12-16
§ 12:2.9	Non-Partnership Item	12-16
§ 12:2.10	Affected Item	12-17
§ 12:2.11	Notice of Beginning of Administrative Proceeding (NBAP)	12-17
§ 12:2.12	Sixty-Day Letter	12-17
§ 12:2.13	Final Partnership Administrative Adjustment (FPAA)	12-17
§ 12:2.14	Request for Administrative Adjustment (AAR)	12-18
§ 12:2.15	Computational Adjustment	12-18
§ 12:2.16	Inconsistent Treatment	12-19
§ 12:2.17	Settlement Agreement	12-19
§ 12:2.18	Consistent Treatment	12-19
§ 12:2.19	Affected Items Statutory Notice of Deficiency	12-19
§ 12:2.20	Foreign Partnerships	12-20
§ 12:3	Tax Matters Partner (TMP)	12-20
§ 12:3.1	Designation of the TMP	12-20
§ 12:3.2	Authority and Responsibilities of the TMP	12-22
[A]	Generally	12-22
[B]	Treasury Regulations Section 301.6223(g)-1	12-24
[C]	TMP's Responsibilities Under the Tax Court Rules	12-25
§ 12:3.3	Authority of Persons Other Than the TMP	12-25
§ 12:4	Partnership Items/Non-Partnership Items/Affected Items	12-28
§ 12:4.1	Partnership Items	12-31
§ 12:4.2	Computational and Substantive Affected Items	12-33
[A]	Outside Basis	12-35
[B]	At-Risk	12-36
[C]	Passive Losses	12-37
[D]	Cancellation of Indebtedness (COD)	12-37

Table of Contents

§ 12:4.3	Non-Partnership Items	12-38
[A]	Conversion	12-38
[B]	Special Enforcement Areas.....	12-39
[C]	Election to Treat Partnership Items As Non-Partnership Items	12-41
[D]	Penalties	12-42
§ 12:5	Examination of a TEFRA Partnership Return	12-43
§ 12:5.1	Administrative Steps in an Audit of a TEFRA Return	12-45
§ 12:5.2	Examination	12-46
§ 12:5.3	TEFRA Appeals.....	12-47
§ 12:5.4	Affected TEFRA Court Actions	12-48
[A]	Court Filings by Tax Matters Partner Pursuant to Section 6226(a).....	12-48
[B]	Filing by Notice Partner or Representative of 5% Group Pursuant to Section 6226(b).....	12-49
[C]	Priority of Actions.....	12-49
§ 12:6	TEFRA Settlement Procedures.....	12-49
§ 12:6.1	Consistent Treatment	12-51
[A]	In General	12-51
[B]	Limitations on Requests for Consistent Treatment	12-52
§ 12:6.2	Effect of Settlement.....	12-53
[A]	General Rule of Conversion	12-53
[B]	Nonapplicability of Section 6601(c)	12-54
[C]	Partial Versus Complete Settlements	12-55
§ 12:6.3	Docketed Tax Court Case Settlement Procedure	12-55
§ 12:7	TEFRA Statute of Limitations on Assessment.....	12-57
§ 12:8	TEFRA Assessments.....	12-61
§ 12:8.1	Restriction on Assessment and Collection of Tax—General Rule	12-61
§ 12:8.2	Exceptions to the General Rule	12-61
§ 12:8.3	Assessment of Tax Attributable to Affected Items.....	12-62
§ 12:8.4	Period of Limitations for Making Assessments of Tax Attributable to Affected Items.....	12-63
§ 12:8.5	Computational Adjustments (Assessments)	12-63
§ 12:8.6	Procedures to Challenge a Computational Adjustment.....	12-64
§ 12:9	Administrative Adjustment Request Sections 6227 and 6228	12-66
§ 12:9.1	Introduction.....	12-66

§ 12:9.2	Section 6227	12-66
[A]	Limits on Filing AARs	12-66
[B]	TMP Filed AARs on Behalf of the Entire Partnership	12-67
[C]	Partner Filed AARs Not on Behalf of Entire Partnership	12-68
[D]	Time Limit for Making Refunds or Credits Under Section 6227	12-68
§ 12:9.3	Section 6228	12-68
[A]	Judicial Review of AARs on Behalf of Partnership	12-68
[B]	Coordination of TMP Petitions Under Section 6228(a) and FPAA for the Same Year	12-69
[C]	Parties to Action, Scope of Judicial Review, and Review of Court Determination	12-69
[D]	Judicial Review of AARs on Behalf of the Partner and Not the Partnership	12-70
§ 12:10	Electing Large Partnerships	12-71
§ 12:10.1	Definition of an Electing Large Partnership	12-71
§ 12:10.2	Election Required to Be Treated As an ELP	12-72
§ 12:10.3	Exclusions from ELP	12-72
§ 12:10.4	Simplified Flow-Through to the Partners	12-72
§ 12:10.5	Treatment of Partnership Items and Adjustments	12-72
§ 12:10.6	Computing Imputed Underpayment	12-73
§ 12:10.7	Partnership May Be Liable for Imputed Underpayment	12-73
§ 12:10.8	Partnership Liable for Interest and Penalties	12-74
§ 12:10.9	Partnership-Level Adjustments	12-74
§ 12:10.10	Requests for Administrative Adjustment	12-74
§ 12:10.11	Partner with Authority	12-75
§ 12:11	Partnership Audit Procedures: Bipartisan Budget Act of 2015	12-75
§ 12:11.1	Terminology Under the BBA	12-81
§ 12:11.2	Partnerships Impacted by the Changes	12-83
§ 12:11.3	Reason for the Regime Change	12-84
§ 12:11.4	Revised Partnership Audits and Adjustments Rules	12-85
§ 12:11.5	BBA Default Rules: Assessment and Collection at the Partnership Level	12-88
Chart 12-1	BBA Roadmap for Taxpayers	12-90
Table 12-1	BBA Procedures	12-91

Table of Contents

§ 12:11.6	BBA Adjustment and Collection Mechanisms ...	12-92
[A]	Amount of Imputed Underpayment (Section 6225).....	12-92
[B]	Payment of Imputed Underpayment by Partnership	12-94
[C]	Modifications Based on Closing Agreements	12-94
§ 12:11.7	Alternative Mechanism for Payment by Partners: The Push-Out Election	12-95
[A]	Push-Out Election for Tiered Partnership and Other Pass-Through Structures.....	12-97
[B]	Section 6221(b) Election Out of the BBA	12-98
[B][1]	Election	12-99
[B][2]	Eligibility to Elect Out of Default Regime....	12-99
[B][3]	Eligible Partner	12-99
§ 12:11.8	To Opt Out or Not to Opt Out of the BBA Regime: Things to Consider	12-100
§ 12:11.9	Administrative Adjustment Request (AAR)....	12-102
§ 12:11.10	Partnership “Sole” Representative	12-105
§ 12:11.11	Partnership Representative Designation by the IRS.....	12-108
§ 12:11.12	Penalties and Reasonable Cause Relief.....	12-109
[A]	Penalties Under the Default Rule of BBA.....	12-109
[B]	Penalties in the Case of a Section 6226 Push-Out Election	12-110
§ 12:11.13	Statute of Limitations	12-110
§ 12:11.14	Examination Process.....	12-112
[A]	Notice of an Administrative Proceeding (NAP)	12-112
[B]	Notice of Proposed Partnership Adjustment (NOPPA)	12-112
[C]	Notice of Final Partnership Adjustment (FPA)	12-113
§ 12:11.15	Centralized Partnership Audit Regime and International Tax Rules.....	12-114
§ 12:11.16	BBA Provisions Related to U.S. Foreign Tax Credits	12-117
§ 12:11.17	Affected BBA Court Actions.....	12-117
§ 12:11.18	Effective Date and Elections into the BBA in an Eligible Tax Year.....	12-118
§ 12:11.19	Amendment to Section 704(e) and Section 761	12-120
§ 12:11.20	State Implications Arising from the BBA Federal Partnership Rules.....	12-120

Chapter 13 Third-Party Liability

§ 13:1 Introduction: Transferee and Fiduciary Liability 13-4

§ 13:2 Who Is the Transferee? 13-4

§ 13:3 How Does Transferee Liability Arise? 13-4

 § 13:3.1 At Law 13-4

 § 13:3.2 In Equity 13-8

§ 13:4 Extent of Liability of Transferee 13-9

§ 13:5 Special Problem of Life Insurance Proceeds 13-10

§ 13:6 Fiduciary Liability 13-11

§ 13:7 IRS Procedures 13-12

 § 13:7.1 Transferee Liability Cases 13-12

 § 13:7.2 Fiduciary Liability Cases 13-14

§ 13:8 Statute of Limitations 13-15

 § 13:8.1 Assessment 13-15

 § 13:8.2 Collection 13-16

§ 13:9 Bankruptcy 13-16

§ 13:10 Res Judicata 13-17

§ 13:11 Introduction: Trust Fund Recovery Penalty for
Employment Taxes 13-22

§ 13:12 Penalty Equal to the Total Amount of Tax Evaded,
Not Collected, or Not Accounted For and
Paid Over 13-25

§ 13:13 The Responsible Person 13-26

 § 13:13.1 Tax-Exempt Organizations Exception:
Taxpayer Bill of Rights 2 13-40

 § 13:13.2 Statute of Limitations on Assessment and
Collection 13-41

§ 13:14 Willfulness and Reasonable Cause 13-43

§ 13:15 Requirement of Corporate Insolvency 13-53

§ 13:16 Joint and Several Liability 13-54

 § 13:16.1 Contribution Under the Taxpayer Bill of
Rights 2 13-54

§ 13:17 Designation of Payments 13-55

§ 13:18 Liability of Third Persons 13-58

§ 13:19 Bankruptcy 13-59

§ 13:20 Burden of Proof 13-60

§ 13:21 Adjudicating the Controversy: Administrative and
Judicial Remedies (Including Taxpayer Bill of
Rights 2 and 3) 13-65

§ 13:22 Criminal Liability: Employment Tax Enforcement
Program 13-67

 § 13:22.1 Employment Tax Schemes 13-68

 [A] Pyramiding 13-68

 [B] Employment Leasing 13-68

Table of Contents

[C]	Paying Employees in Cash	13-68
[D]	Filing False Payroll Tax Returns or Failing to File Payroll Tax Returns	13-68
[E]	Frivolous Arguments.....	13-68
[F]	Offshore Employee Leasing.....	13-69
[G]	Misclassifying Worker Status	13-69
[H]	S Corporation Officers Compensation Treated As Corporate Distributions	13-70
[I]	Filing False Payroll Tax Returns or Failing to File Payroll Tax Returns	13-70
§ 13:23	Questionable Employment Tax Practice (QETP) Initiative Agreements	13-70
§ 13:23.1	Introduction.....	13-70
§ 13:23.2	QETP Definition.....	13-71
§ 13:23.3	General Overview of the Program	13-71
§ 13:23.4	Purpose of the MOU.....	13-71
§ 13:23.5	MOU Participants.....	13-72
§ 13:23.6	What Will Happen Under the MOU?	13-73
§ 13:23.7	QETP and Taxpayer Privacy.....	13-73
§ 13:23.8	QETP Beyond the MOU	13-73
§ 13:24	Introduction: Innocent Spouse	13-74
§ 13:24.1	Innocent Spouse Relief: Taxpayer Relief Act of 1997	13-75
§ 13:24.2	Innocent Spouse and Separate Liability Elections: Taxpayer Bill of Rights 3	13-76
§ 13:24.3	Traditional Innocent Spouse Election.....	13-76
[A]	Knowledge	13-81
[B]	Inequitable.....	13-90
[C]	Understatement.....	13-94
[D]	Apportionment of Relief	13-95
[E]	Burden of Proof.....	13-96
§ 13:24.4	Separate Liability Election.....	13-97
[A]	Burden of Proof.....	13-98
[B]	Individuals Eligible to Make Election.....	13-98
[C]	Time for Election	13-99
[D]	Election Not Valid Regarding Certain Deficiencies Involving "Actual Knowledge"	13-99
[E]	Liability Increased by Reason of Transfers of Property to Avoid Tax.....	13-104
[F]	Allocation of Deficiency.....	13-104
§ 13:24.5	Tax Court Review.....	13-107
§ 13:24.6	Discretionary Equitable Relief: Revenue Procedure 2003-61 (Requests on or After November 1, 2003)	13-109
[A]	Eligibility for Equitable Relief.....	13-111

	[B]	Circumstances Under Which the IRS Ordinarily Will Grant Equitable Relief Under Section 6015(f).....	13-113
	[C]	Factors for Determining Whether to Grant Equitable Relief.....	13-115
	[D]	Refunds.....	13-118
	[E]	Procedure.....	13-118
	[F]	Effective Date	13-119
	[G]	Burden of Proof: Abuse of Discretion Standard?.....	13-119
§ 13:24.7		Equitable Relief: Revenue Procedure 2013-34 (Requests on or After September 16, 2013)	13-120
	[A]	Eligibility for Equitable Relief.....	13-124
	[B]	Circumstances Under Which the IRS Will Make Streamline Determinations Granting Equitable Relief Under Sections 66(c) and 6015(f)	13-127
	[C]	Factors for Determining Whether to Grant Equitable Relief.....	13-128
	[D]	Refunds.....	13-136
	[E]	Procedure.....	13-136
	[F]	Effective Date	13-136
§ 13:24.8		Forms: Innocent Spouse Relief and Injured Spouse Claim	13-137
§ 13:24.9		Common Problems.....	13-138
§ 13:24.10		Effect of Innocent Spouse Relief on Other Spouse	13-139
§ 13:24.11		Types of Relief Requested and Impact on Collection	13-140
§ 13:24.12		Effect of Prior Closing Agreement or Offer in Compromise.....	13-141
§ 13:24.13		Effect of Fraud.....	13-143
§ 13:24.14		Scope of Section 6015.....	13-144
§ 13:24.15		Time and Manner for Requesting Relief.....	13-144
§ 13:24.16		Notice to Nonrequesting Spouse.....	13-148
§ 13:24.17		Credits, Refunds, and Res Judicata	13-151
	[A]	In General	13-151
	[B]	Res Judicata	13-151
	[C]	Credit and Refund Not Available Under Section 6015(c)	13-155
§ 13:24.18		Effect of a Previous Chapter 7 Bankruptcy	13-155

Chapter 14 Summons Power and Third-Party Contacts

§ 14:1	Nature and Scope of the Summons Power	14-2
§ 14:1.1	Criminal Investigations and Summonses	14-6
§ 14:2	Enforcement of the Summons	14-8
§ 14:2.1	The <i>Powell</i> Requirements	14-13
[A]	Legitimate Purpose	14-14
[A][1]	Sole Criminal Purpose.....	14-14
[A][2]	Dual Purpose Summonses	14-18
[B]	Relevance.....	14-22
[C]	Documents Not Already Possessed by the IRS	14-27
[D]	Administrative Procedures.....	14-30
§ 14:2.2	Evidentiary Hearings and Discovery	14-33
§ 14:2.3	Request from a Foreign Government	14-34
§ 14:3	Third-Party Summonses	14-35
§ 14:3.1	Taxpayer Bill of Rights 3	14-35
[A]	Taxpayer Bill of Rights 3 and Service by Mail to Third-Party Recordkeepers.....	14-40
§ 14:4	“John Doe” Summons	14-42
§ 14:5	Required Records Summons	14-43
§ 14:6	Defenses to Summons Enforcement Actions.....	14-44
§ 14:6.1	<i>Powell</i> Defenses	14-45
§ 14:6.2	Privileges.....	14-45
[A]	Attorney-Client Privilege and Tax Practitioner Privileges	14-45
[B]	Work Product Doctrine	14-53
[C]	Fifth Amendment Privilege.....	14-55
[D]	Fifth Amendment—Act of Production and Required Records Exception.....	14-63
§ 14:6.3	Miscellaneous Defenses	14-64
§ 14:7	Suspension of Statute of Limitations	14-67
§ 14:7.1	Designated Summonses and Related Summonses	14-67
§ 14:7.2	Third-Party Summonses	14-69
§ 14:7.3	Formal Document Request Under Section 982.....	14-70
§ 14:8	Notice of Contact of Third Parties	14-72
§ 14:8.1	Notice of Contact of Third Parties: Final Regulations	14-72
[A]	Third-Party Contacts: In General	14-73
[B]	“Initiated by an IRS Employee”.....	14-73
[C]	“Person Other Than the Taxpayer”.....	14-75
[D]	“With Respect to the Determination or Collection” of Tax	14-77

[E]	“Discloses the Identity of the Taxpayer Being Investigated”	14-82
[F]	“Discloses the Association of the IRS Employee”	14-83
[G]	Pre-Contact Notice Requirement	14-83
[H]	Post-Contact Reports Requirement	14-84
[I]	Exceptions	14-89
[J]	Taxpayer Remedy	14-93

Chapter 15 Major Civil Penalties

§ 15:1	Introduction to Civil Penalties.....	15-7
§ 15:1.1	Statute of Limitations	15-10
§ 15:2	Managerial Approval of Penalties.....	15-11
§ 15:2.1	Background	15-11
§ 15:2.2	Case Law	15-12
§ 15:2.3	Administrative Guidance	15-13
§ 15:3	Penalty Defenses: Reasonable Cause, the Almost Global Defense	15-15
§ 15:3.1	Facts and Circumstances Taken into Account.....	15-17
§ 15:3.2	Ordinary Business Care and Prudence	15-20
§ 15:3.3	Reliance on Opinion or Advice.....	15-21
§ 15:3.4	Written Advice from the IRS	15-28
§ 15:3.5	Oral Advice from the IRS	15-29
§ 15:3.6	Ignorance of the Law.....	15-29
§ 15:3.7	Mistake Was Made.....	15-30
§ 15:3.8	Death, Serious Illness, or Unavoidable Absence	15-31
§ 15:3.9	Administrative Waiver	15-31
[A]	First Time Abate (FTA)	15-32
§ 15:3.10	Fire, Casualty, Natural Disaster, or Other Disturbance	15-33
§ 15:3.11	Official Disaster Area.....	15-33
§ 15:3.12	Reasonable Cause Exceptions Expanded	15-34
§ 15:3.13	Reasonable Cause in Partnership Cases	15-34
[A]	Penalties Under TEFRA.....	15-34
[B]	Penalties and Reasonable Cause Defense Under the BBA	15-37
[C]	Penalties with a Section 6226 Push-Out Election	15-38
[D]	Section 6221(b) Election Out of the BBA	15-39
§ 15:3.14	Procedures Requesting Abatement of Penalties.....	15-39
[A]	Methods for Appealing Penalties.....	15-40
§ 15:3.15	Excessive Fine Claims Against Penalties	15-41

Table of Contents

§ 15:4	Common Penalties Imposed on Taxpayers	15-44
§ 15:4.1	Failure to Timely File Tax Return (Section 6651(a)(1)).....	15-44
[A]	Fraudulent Failure to File.....	15-47
§ 15:4.2	Failure to Pay an Amount Shown on Return (Section 6651(a)(2)) and Subsequent Assessments (Section 6651(a)(3)).....	15-48
[A]	Mitigation of Penalty for Individual's Failure to Pay During Period of Installment Agreement.....	15-52
[B]	Examples of Failure to File and Failure to Pay Reasonable Cause	15-53
§ 15:4.3	Estimated Taxes	15-58
[A]	Failure by an Individual to Pay Estimated Income Tax (Section 6654)	15-59
[A][1]	2018 Exception	15-61
[B]	Failure by a Corporation to Pay Estimated Income Tax (Section 6655)	15-62
[B][1]	Current Year Return Method.....	15-63
[B][2]	Prior Year Return Method.....	15-63
[B][3]	Annualized Income Installment or Adjusted Seasonal Installment Method.....	15-64
§ 15:4.4	Accuracy-Related Penalties: Section 6662	15-65
[A]	In General	15-65
[B]	Negligence or Disregard of Rules or Regulations	15-67
[B][1]	Negligence.....	15-69
[B][2]	Reasonable Basis	15-72
[B][3]	Disregard of Rules and Regulations	15-77
[B][4]	Disclosure, Reasonable Cause, and Good Faith	15-78
[B][5]	Exception for Adequate Disclosure	15-79
[B][6]	Method of Making Disclosure	15-79
[B][6][a]	Comprehensive	15-81
[B][7]	Burden of Proof	15-82
[C]	Any Substantial Understatement of Income Tax.....	15-82
[C][1]	In General.....	15-82
[C][2]	Special Rules in the Case of Carryovers.....	15-83
[C][3]	Reasonable Cause Defense Specific to the Accuracy-Related Penalty, Section 6662	15-84
[C][4]	Substantial Authority Standard	15-85
[C][5]	Determination of Whether Substantial Authority Is Present: Evaluation of Authorities	15-86

[C][6]	Determination of Whether Substantial Authority Is Present: Nature of Analysis	15-86
[C][7]	Determination of Whether Substantial Authority Is Present: Types of Authority.....	15-87
[C][8]	Determination of Whether Substantial Authority Is Present: Special Rules	15-88
[C][8][a]	Written Determinations	15-88
[C][8][b]	Taxpayer's Jurisdiction	15-89
[C][8][c]	When Substantial Authority Is Determined.....	15-90
[C][8][d]	List of Positions.....	15-90
[C][9]	Adequate Disclosure.....	15-90
[C][10]	Method of Making Adequate Disclosure.....	15-91
[D]	Any Substantial Valuation Misstatement.....	15-93
[D][1]	Transfer Pricing Underpayments	15-93
[D][1][a]	Documentation Requirement.....	15-94
[D][1][b]	Transfer Pricing Penalties	15-96
[D][1][b][i]	Transactional Penalty	15-96
[D][1][b][ii]	Net Adjustment Penalty	15-96
[D][2]	Substantial Valuation Misstatement.....	15-99
[D][3]	Specified Method with Documentation Exclusion.....	15-100
[D][4]	Foreign-to-Foreign Transaction Exclusion.....	15-100
[D][5]	2001 Report on the Effectiveness of Section 6662(e).....	15-101
[E]	Any Substantial Overstatement of Pension Liabilities	15-102
[F]	Any Substantial Estate or Gift Tax Valuation Understatement.....	15-102
[G]	Any Disallowance of Claimed Tax Benefits by a Transaction Lacking Economic Substance (Within the Meaning of Section 7701(o)) or Failing to Meet the Requirements of Any Similar Rule of Law.....	15-102
[G][1]	Discussion of Economic Substance Doctrine	15-103
[H]	Penalties for Underpayments Attributable to Undisclosed Foreign Financial Assets	15-110
[I]	Increase in Penalty in Case of Gross Valuation Misstatements	15-112
§ 15:4.5	Civil Fraud.....	15-112
[A]	Pre-1987 Tax Returns	15-112
[B]	Pre-1990 Tax Returns	15-113
[C]	Post-1989 Tax Returns.....	15-113
[D]	The Meaning of Fraud	15-114

Table of Contents

§ 15:4.6	International Penalties.....	15-122
[A]	Section 6038.....	15-124
[A][1]	Section 6038 and 6038A Penalties: Assessable or Not?	15-125
[A][2]	Statute of Limitations Impacted by Section 6038	15-126
[A][3]	Substantial Compliance	15-127
[A][4]	Reasonable Cause Defense to Section 6038....	15-131
[B]	Sections 6721 and 6722 and Intentional Disregard Penalties	15-133
§ 15:4.7	Sanctions and Costs for Delay or Frivolity (Section 6673).....	15-134
§ 15:4.8	Frivolous Tax Returns and Submissions (Section 6702).....	15-137
[A]	Tax Relief and Health Care Act of 2006	15-137
[A][1]	Penalty for Frivolous Returns	15-137
[A][2]	Penalty for Frivolous Submissions	15-138
[A][3]	Listing of Frivolous Positions.....	15-138
[A][4]	Reduction of Penalty.....	15-139
[A][5]	Penalty in Addition to Other Penalties	15-139
[A][6]	Effective Date	15-139
§ 15:4.9	Erroneous Claim for Refund or Credit Penalty....	15-139
[A]	Section 6676.....	15-139
[B]	Calculation of the Section 6676 Penalty	15-142
§ 15:4.10	Civil FBAR Penalties.....	15-143
[A]	Willful Standard and Burden of Proof.....	15-148
[B]	Is a Foreign Credit Card a Financial Account?.....	15-152
[C]	Ignorance, Education, and Outreach.....	15-152
§ 15:4.11	TEFRA Partnership Penalties	15-153
§ 15:5	Penalties Imposed on Preparers, Promoters, and Material Advisors	15-154
§ 15:5.1	Understatement of Taxpayer's Liability by Tax Return Preparer (Section 6694).....	15-154
[A]	Section 6694—Current Perspective	15-156
[B]	Amount of Penalty.....	15-157
[C]	Who Is a Tax Return Preparer?.....	15-158
[D]	One Preparer Per Position Per Firm.....	15-160
[E]	Examples of "Tax Returns"	15-161
[F]	Return Affecting Related Entries	15-164
[G]	Income Derived or to Be Derived	15-164
[H]	Definition of Tax Return Preparer	15-166
[I]	Who Is Not a Tax Return Preparer?	15-167
[J]	Date Return Is Deemed Prepared.....	15-168

§ 15:5.2	Reasonable Cause Defense for Preparers	15-168
§ 15:5.3	Understatements Due to Unreasonable Positions (Being Sustained on the Merits).....	15-171
[A]	Exception for Adequate Disclosure of Reasonable Basis Position	15-175
§ 15:5.4	Understatements Due to Willful or Reckless Conduct (Section 6694(b))	15-178
[A]	Exceptions for Adequate Disclosure, Etc.	15-179
[B]	Section 6694 Returns and Claims for Refund.....	15-180
[C]	Procedures for Assessment and Collection of Penalty.....	15-181
[D]	Burden of Proof.....	15-183
[E]	Administrative Appeal Rights and Abatement of Penalty.....	15-183
§ 15:5.5	Other Penalties for Income Tax Return Preparers (Section 6695)	15-186
§ 15:5.6	Injunctions Against Tax Return Preparers.....	15-190
§ 15:5.7	OPR Referrals of Assessed Preparer Penalties....	15-191
§ 15:5.8	Improper Disclosure of Information	15-193
§ 15:5.9	Monetary Penalties Under the Jobs Act	15-195
§ 15:5.10	Substantial and Gross Valuation Misstatements Attributable to Incorrect Appraisals	15-197
§ 15:5.11	Penalties for Aiding and Abetting Understatement of Tax Liability (Section 6701)	15-198
§ 15:5.12	Procedures Applicable to Penalties Found in Sections 6700 and 6701.....	15-199
§ 15:6	Penalties Imposed on the IRS	15-202
§ 15:6.1	Unauthorized Inspection or Disclosure of Returns and Unauthorized Collection Actions.....	15-202
§ 15:6.2	Suspension of Interest and Penalties Where the IRS Fails to Contact the Taxpayer (Section 6404(g))	15-204
[A]	Notice Requirement: IRS Position	15-205
[B]	Tax Court Litigation	15-206
[C]	Voluntary Reporting of Additional Taxes.....	15-207
[D]	Final Regulations Issued	15-207
§ 15:6.3	Interest on Taxes Abated in Federally Declared Disaster Areas.....	15-208
[A]	Required Notices.....	15-208
§ 15:6.4	Designation of Tax Deposits to Mitigate the Failure-to-Deposit Penalty (Section 6656).....	15-208
§ 15:7	Procedural Rules—Requesting Penalty Relief	15-208
§ 15:7.1	Assessable Penalties.....	15-209

Table of Contents

§ 15:7.2	Post-Assessment Review	15-209
[A]	First Time Abate	15-210
§ 15:7.3	Pre-Assessment Review by Appeals	15-213
§ 15:7.4	Deficiency Procedures	15-214
§ 15:7.5	Appeals Review of International Penalties.....	15-215
§ 15:7.6	Penalty Abatement Request	15-216
§ 15:7.7	Qualified Amended Return and Revenue Procedure 94-69	15-217
§ 15:8	Additional Penalties: Tax Shelters/Reportable Transactions	15-224
§ 15:8.1	Historical Perspective.....	15-224
[A]	Office of Tax Shelter Analysis	15-225
§ 15:8.2	Federal Tax Shelter Rules	15-225
§ 15:8.3	Transactions Entered into Before January 1, 2003	15-226
§ 15:8.4	General Disclosure Principles (Section 6011).....	15-227
[A]	Final Regulations	15-227
[A][1]	Listed Transactions	15-227
[A][1][a]	Listed Transactions in Chronological Order.....	15-228
[A][2]	Reportable Transactions	15-230
[A][2][a]	Confidential Transactions	15-230
[A][2][b]	Transactions with Contractual Protection.....	15-231
[A][2][c]	Loss Transactions	15-232
[A][3]	Transactions of Interest.....	15-235
[B]	Transactions Involving a Brief Asset Holding Period.....	15-237
[C]	Special Participation Rules for Reporting Shareholders	15-238
[C][1]	Definition of “Reporting Shareholder”.....	15-238
[C][2]	Reportable Transactions	15-238
[D]	Disclosure.....	15-239
[D][1]	Special Rules	15-239
[D][2]	Registration Numbers	15-240
[E]	Record Retention Requirements.....	15-240
§ 15:9	Registration of Tax Shelters; Material Advisors.....	15-240
§ 15:10	State Tax Shelter Rules	15-243
§ 15:11	Special Rules for Reasonable Cause Defense to Tax Shelter Items.....	15-243
§ 15:12	Reportable Transactions Penalty	15-243
§ 15:12.1	Reportable Transaction Understatement.....	15-244
§ 15:12.2	Item Defined.....	15-244
§ 15:12.3	Higher Penalty for Nondisclosed Items	15-245

§ 15:12.4	Section 6662A Reasonable Cause Exception	15-245
§ 15:12.5	Definitions of Reportable and Listed Transactions	15-247
§ 15:12.6	Special Rules: Coordination with Penalties on Other Understatements	15-247
§ 15:12.7	Special Rules: Coordination with Other Penalties	15-247
§ 15:12.8	Special Rule for Amended Returns	15-248
§ 15:12.9	Interest on Unpaid Taxes Attributable to Non-Disclosed Reportable Transactions.....	15-248
§ 15:13	Promoting Abusive Tax Shelters (Section 6700).....	15-248
§ 15:14	Taxpayer’s Failure to Include Reportable Transaction Information with Return (Section 6707A)	15-250
§ 15:14.1	Imposition of Penalty.....	15-252
§ 15:14.2	Failure to Disclose—Extension of the Statute of Limitations	15-252
§ 15:14.3	Amount of Penalty.....	15-252
§ 15:14.4	Definitions.....	15-253
§ 15:14.5	Authority to Rescind Penalty.....	15-253
§ 15:14.6	No Judicial Appeal	15-254
§ 15:14.7	Penalty Reported to the SEC	15-255
§ 15:14.8	Coordination with Other Penalties	15-256
§ 15:14.9	Reporting by the Commissioner	15-256
§ 15:15	Actions to Enjoin Promoters of Abusive Tax Shelters and Other Individuals and Conduct.....	15-256
§ 15:16	Failure to Furnish Information Regarding Reportable Transactions (Section 6707)	15-257
§ 15:17	Investor List Maintenance Requirements	15-259
§ 15:17.1	Background.....	15-259
§ 15:17.2	Persons Required to Maintain Lists of Investors and Composition of the Lists.....	15-259
§ 15:17.3	Maintaining the List	15-260
§ 15:17.4	Furnishing the List to the IRS.....	15-261
§ 15:17.5	Failure-to-Maintain-List Penalty.....	15-261
§ 15:18	Failure to Maintain Lists of Advisees with Respect to Reportable Transactions.....	15-261
§ 15:19	Excise Tax on Certain Tax-Exempt Entities Entering into Prohibited Tax Shelter Transactions	15-262
§ 15:19.1	Background.....	15-262
§ 15:19.2	Being a Party to or Approving of Prohibited Transactions	15-262
	[A] Tax-Exempt Entity	15-262
	[B] Entity Manager	15-263

Table of Contents

[C] Tax Imposed on Entity: No Knowledge or Reason to Know 15-263

[D] Tax Imposed on Entity: Knowing or Reason to Know 15-264

[E] Tax Imposed on Entity Manager 15-265

§ 15:19.3 Tax-Exempt Entity Defined 15-265

§ 15:19.4 Entity Manager Defined 15-266

§ 15:19.5 Disclosure Requirements 15-266

§ 15:19.6 Prohibited Tax Shelter Transaction Defined 15-267

§ 15:19.7 Subsequently Listed Transaction Defined 15-268

§ 15:19.8 Regulatory Authority 15-268

§ 15:19.9 Coordination with Other Taxes and Effective Date 15-268

Appendix 15A Summary Chart for Civil Tax-Related Penalties App. 15A-1

VOLUME 3

Table of Chapters v

Chapter 16 Civil and Criminal Tax Fraud

§ 16:1 Introduction 16-4

§ 16:2 Four Major Tax Crimes 16-9

§ 16:2.1 Shorthand Formula for Any Criminal Tax Case 16-9

§ 16:2.2 Section 7201 Attempt to Evade or Defeat Tax 16-10

[A] Additional Tax Due and Owing 16-13

[B] Defendant Knew More Federal Income Tax Was Owed 16-17

[C] Affirmative Attempt to Evade or Defeat 16-17

[D] Defendant Acted Willfully 16-22

[E] Civil Fraud Considerations 16-33

§ 16:2.3 Section 7206(1) Fraud and False Statement 16-34

[A] Return, Statement, or Document 16-36

[B] "Makes" Any Return, Statement, or Document 16-39

[C] "Subscribes" Any Return, Statement, or Document 16-41

[D] Made Under Penalties of Perjury 16-43

[E] False Material Matter 16-44

[F] Willfulness—Does Not Believe to Be True and Correct 16-55

§ 16:2.4	Section 7206(2) Assisting in the Preparation of a False Return	16-57
	[A] Aiding and Assisting.....	16-60
	[B] False Material Matter.....	16-65
	[C] Willfulness.....	16-66
§ 16:2.5	18 U.S.C. § 371 Conspiracy to Commit Offense or to Defraud the United States	16-68
	[A] Agreement	16-70
	[B] Membership	16-73
	[C] Overt Act	16-75
	[D] The <i>Klein</i> Conspiracy: Conspiracy to Defraud the United States	16-76
§ 16:2.6	General Observations About These Four Tax Crimes.....	16-99
§ 16:2.7	Proof Beyond a Reasonable Doubt in a Tax Prosecution.....	16-99
§ 16:2.8	Common Defenses Raised in Tax Prosecutions	16-100
	[A] Good Faith.....	16-100
	[B] Reliance on Return Preparer/Accountant	16-102
	[C] Reliance on Advice of Counsel.....	16-104
	[D] <i>Cheek</i> No Defense in Non-Tax Cases	16-104
	[E] Fifth Amendment—Freedom from Self-Incrimination When Filing Tax Returns.....	16-105
	[F] Fifth Amendment—Freedom from Self-Incrimination When Testifying	16-108
	[G] Fifth Amendment—Act of Production and Required Records Exception	16-109
	[H] IRS Deception.....	16-110
	[I] Selective Prosecution Defense.....	16-112
	[J] Taxpayer Already Paid All the Delinquent Taxes, Penalties and Interest.....	16-114
§ 16:2.9	Methods of Proving the Tax Deficiency.....	16-115
	[A] In General	16-116
	[B] Specific Items Method of Proof	16-119
	[C] Bank Deposits Method of Proof	16-121
	[D] Net Worth Method of Proof	16-128
	[E] Expenditures Method of Proof.....	16-132
	[F] The Cash Method of Proof	16-135
	[G] Percentage Mark-Up	16-135
§ 16:2.10	Proving Willfulness—Badges of Fraud	16-136
	[A] Classic <i>Spies</i> Badges of Fraud.....	16-136
	[B] More Badges of Fraud.....	16-136

Table of Contents

[C]	Additional Badges of Fraud from Former IRM 940	16-138
[D]	Badges of Fraud in Civil Cases	16-140
§ 16:2.11	Final Comments on Willfulness	16-144
§ 16:3	Other Tax Crimes	16-148
§ 16:3.1	Section 7203 Willful Failure to File Return, Supply Information, or Pay Tax.....	16-148
§ 16:3.2	Section 7207 Fraudulent Returns, Statements, or Other Documents.....	16-149
§ 16:3.3	Section 7202 Willful Failure to Collect or Pay Tax.....	16-149
§ 16:3.4	Section 7204 Fraudulent Statement or Failure to Make Statement to Employees.....	16-150
§ 16:3.5	Section 7205 Fraudulent Withholding Exemptions Certificate or Failure to Supply Information	16-153
§ 16:3.6	Fraud and False Statements	16-153
[A]	Section 7206(3) Fraudulent Bonds, Permits, and Entries	16-153
[B]	Section 7206(4) Removal or Concealment with Intent to Defraud.....	16-154
[C]	Section 7206(5) Compromises and Closing Agreements.....	16-154
§ 16:3.7	Section 7210 Failure to Obey Summons	16-154
§ 16:3.8	Section 7212 Attempts to Interfere with Administration of Internal Revenue Laws.....	16-155
§ 16:3.9	Section 7213(a)(1)–(4) Unauthorized Disclosure of Returns and Return Information.....	16-160
§ 16:3.10	Section 7216 Disclosure or Use of Information by Preparers of Tax Returns.....	16-161
§ 16:3.11	Section 7214(a) Offenses by Officers and Employees of the United States	16-162
§ 16:3.12	Failure to File FBAR Violations—31 U.S.C. §§ 5314 and 5322	16-163
§ 16:3.13	“Structuring” Violations—31 U.S.C. §§ 5313 and 5324.....	16-165
§ 16:4	Statute of Limitations	16-165
§ 16:5	Evolution of a Criminal Tax Case	16-168
§ 16:5.1	Step One: Hire a Criminal Tax Lawyer	16-168
§ 16:5.2	Step Two: Hire a <i>Kovel</i> Accountant	16-168
§ 16:5.3	Step Three: Isolate the Historical Accountant	16-169
§ 16:5.4	Step Four: Make No Mistakes When Filing Original or Amended Returns	16-170
§ 16:5.5	Pre-CI Referral—the Eggshell Audit	16-170
§ 16:5.6	Fraud Technical Advisor.....	16-171

§ 16:5.7	IRS Criminal Referrals.....	16-172
§ 16:5.8	Investigation by CI—Administrative Versus Grand Jury Investigations.....	16-178
[A]	Background.....	16-178
[B]	Administrative Investigation.....	16-180
[C]	Grand Jury Investigation.....	16-180
§ 16:5.9	Authorization by Department of Justice Tax Division.....	16-181
§ 16:5.10	Government’s Standard of Review for a Criminal Tax Case.....	16-182
§ 16:6	How to Spot a Criminal Investigation.....	16-183
§ 16:7	Representing the Taxpayer Before Indictment in a Criminal Investigation.....	16-185
§ 16:8	Voluntary Disclosure.....	16-190
§ 16:8.1	In General.....	16-191
§ 16:8.2	Voluntary Disclosure—July 16, 2002 Version.....	16-194
§ 16:8.3	Voluntary Disclosure—Revised December 11, 2002 Version.....	16-196
§ 16:8.4	Voluntary Disclosure—Revised September 9, 2004 Version.....	16-200
§ 16:8.5	Voluntary Disclosure—Revised March 26, 2009 Version, Regarding Secret Foreign Bank Accounts.....	16-205
§ 16:8.6	Voluntary Disclosure—Revised June 26, 2009 Version.....	16-209
§ 16:8.7	Voluntary Disclosure—Revised December 2, 2009 Version.....	16-213
§ 16:8.8	Voluntary Disclosure for Swiss Banks— August 29, 2013.....	16-216
§ 16:8.9	New Voluntary Disclosure Practice (VCP) of November 29, 2018.....	16-219
§ 16:8.10	General Procedures for Voluntary Disclosure.....	16-222
[A]	Make Sure There Is No Triggering Event.....	16-222
[B]	Tell the Client He Will Be Identified to the IRS.....	16-222
[C]	Do Not Incriminate the Client.....	16-222
[D]	Move Quickly.....	16-223
[E]	Do Not File Fraudulent Amended Returns.....	16-224
[F]	File Enough Returns.....	16-224
[G]	Quiet or Noisy Voluntary Disclosure?.....	16-225
§ 16:8.11	Streamlined Program.....	16-226
§ 16:9	Dual Prosecution.....	16-228
§ 16:10	Miranda Warnings.....	16-229
§ 16:11	IRS Undercover Operations.....	16-231

Table of Contents

§ 16:12	Government Violation of Taxpayer Bill of Rights.....	16-237
§ 16:13	Parallel Investigations.....	16-238
§ 16:13.1	Permitted Parallel Investigations.....	16-241
§ 16:13.2	Background.....	16-242
§ 16:13.3	Government Participants in Six-Way Conference.....	16-243
§ 16:13.4	Goals and Topics Discussed in Six-Way Conference.....	16-244
§ 16:13.5	Factors and Determinations in Parallel Investigations.....	16-244
§ 16:13.6	Sharing Information.....	16-245
§ 16:13.7	Coordination of Participant Examinations.....	16-246
§ 16:13.8	Parallel Investigations and Collection Matters.....	16-247
§ 16:13.9	Evidentiary Problem in the Parallel Investigation.....	16-247
§ 16:14	Phishing Initiative.....	16-248
§ 16:15	Whistleblower Program.....	16-249
§ 16:15.1	Introduction.....	16-249
§ 16:15.2	Awards in General.....	16-250
§ 16:15.3	Awards in Cases of Less Substantial Contribution.....	16-252
§ 16:15.4	Reduction in or Denial of Award.....	16-253
§ 16:15.5	Appeal of Award Determination.....	16-253
§ 16:15.6	Additional Rules.....	16-253
§ 16:15.7	Effective Date.....	16-253
§ 16:15.8	Above the Line Deduction for Attorneys' Fees and Court Costs.....	16-254
§ 16:16	Whistleblower Office.....	16-254
§ 16:16.1	Establishment of Office and Guidance.....	16-254
§ 16:16.2	Operation of Office.....	16-254
§ 16:16.3	Request for Assistance.....	16-254
§ 16:16.4	Report by Secretary.....	16-255
Appendix 16A	Criminal Penalties in Tax Related Matters.....	App. 16A-1

Chapter 17 The Collection Process

§ 17:1	Authority.....	17-6
§ 17:1.1	Taxpayer Bill of Rights.....	17-9
§ 17:1.2	Statute of Limitations Generally Not to Be Extended.....	17-11
§ 17:1.3	Approval Process for Liens, Levies, and Seizures.....	17-15
§ 17:2	Notice and Demand.....	17-15

§ 17:3	Disclosure of Collection Activity Regarding	
	Joint Returns	17-17
§ 17:3.1	Explanation of Joint and Several Liability.....	17-18
§ 17:3.2	Separate Notice to Each Filer	17-19
§ 17:4	Federal Tax Liens—When Your Client Cannot	
	Pay in Full.....	17-19
§ 17:4.1	Notice and Hearing Requirement—Taxpayer	
	Bill of Rights 3 and Collection Due Process	17-23
[A]	Notice.....	17-23
[B]	Timely Written Request Requirement for	
	Appeals Office Hearing	17-25
[C]	One Hearing Only Rule	17-28
[D]	Prohibition of “Prior Involvement”	17-30
[E]	Conduct of the Hearing	17-31
[F]	Verification by Appeals Officer and Issues	
	Taxpayer May Raise (Including Spousal	
	Defenses)	17-33
[G]	Determination by Appeals Officer	17-37
[H]	Notice of Determination.....	17-37
[I]	Subsequent Judicial Review.....	17-38
[J]	Retained Jurisdiction by Appeals and	
	Changed Circumstances of the Taxpayer	17-42
[K]	Statute of Limitations Suspended	17-42
[L]	Enforcement Action During Suspension of	
	Statute of Limitations	17-43
[M]	Hearings Combined.....	17-44
[N]	Equivalent Hearing	17-44
§ 17:5	Period of Tax Lien	17-47
§ 17:6	Property to Which the Federal Tax Lien Attaches.....	17-47
§ 17:6.1	Real Property.....	17-48
§ 17:6.2	Personal Property	17-48
§ 17:6.3	Forms of Ownership	17-48
[A]	Individual	17-49
[B]	Joint Tenancy.....	17-49
[C]	Tenants in Common.....	17-50
[D]	Tenancy by the Entirety	17-51
[E]	Community Property.....	17-51
[F]	Trusts	17-53
[G]	Partnerships and Joint Ventures.....	17-55
[H]	Terminable Interests	17-58
[I]	Property in the Custody of a Court.....	17-58
[J]	Property Held By Third Parties	17-58
§ 17:7	Filing Notice of Tax Lien and Priority of Liens.....	17-61
§ 17:7.1	Place of Filing Notice of Tax Lien.....	17-62
§ 17:7.2	Priority of the Federal Tax Lien	17-63
[A]	Priority Before the Federal Tax Lien Arises.....	17-64

Table of Contents

[B]	Priority After the Federal Tax Lien Arises but Before an NFTL Is Filed.....	17-67
[C]	Priority After the Federal Tax Lien Arises and After an NFTL Is Filed: The Superpriorities.....	17-72
§ 17:7.3	Securities	17-72
§ 17:7.4	Motor Vehicles.....	17-73
§ 17:7.5	Personal Property Purchased at Retail	17-73
§ 17:7.6	Personal Property Purchased in Casual Sale.....	17-74
§ 17:7.7	Personal Property Subject to Possessory Lien	17-74
§ 17:7.8	Real Property Tax and Special Assessment Lien.....	17-74
§ 17:7.9	Residential Property Subject to a Mechanic's Lien (Certain Repairs and Improvements).....	17-75
§ 17:7.10	Attorneys' Liens.....	17-75
§ 17:7.11	Certain Insurance Contracts.....	17-76
§ 17:7.12	Passbook Loans.....	17-76
§ 17:7.13	Purchase Money Security Interests	17-76
§ 17:7.14	Commercial Transaction Financing Agreements.....	17-77
§ 17:7.15	Real Property Construction or Improvement Financing Agreement.....	17-79
§ 17:7.16	Obligatory Disbursement Agreement.....	17-80
§ 17:7.17	Section 6323(d).....	17-80
§ 17:7.18	Withdrawal of Certain Notices	17-81
§ 17:8	Tax Liens and Bankruptcy.....	17-84
§ 17:9	Special Liens for Estate and Gift Taxes	17-84
§ 17:9.1	Liens for Estate Taxes.....	17-84
§ 17:9.2	Liens for Gift Taxes.....	17-85
§ 17:9.3	Exceptions to Special Estate Tax Liens	17-85
§ 17:10	Preventing the IRS from Filing the Notice of Tax Lien or Securing Its Release	17-86
§ 17:10.1	Release of Lien.....	17-88
§ 17:10.2	Liability Satisfied or Unenforceable.....	17-88
§ 17:10.3	Bond Accepted	17-88
§ 17:10.4	Discharge of Property.....	17-88
[A]	Property Double the Amount of Liability.....	17-89
[B]	Part Payment.....	17-89
[C]	Interest of United States Valueless.....	17-89
[D]	Substitution of Proceeds of Sale	17-89
§ 17:10.5	Subordination of Lien	17-90
§ 17:10.6	Nonattachment of Lien.....	17-90
§ 17:10.7	Administrative Appeal of Erroneously Filed Lien.....	17-90
§ 17:10.8	Civil Action for Failure to Release Lien.....	17-92
§ 17:10.9	Third Parties Provided with Procedure for Release of Erroneously Filed Lien.....	17-94

§ 17:11	Levy and Distraint.....	17-97
§ 17:11.1	Continuous Levies and the Taxpayer Relief Act of 1997 and the IRS Restructuring and Reform Act of 1998	17-99
§ 17:11.2	Release of Levy.....	17-101
[A]	Return of Property—Statutory Scheme	17-102
[B]	Return of Property—Regulatory Scheme	17-103
[B][1]	In General	17-103
[B][2]	Return of Levied upon Property in Possession of IRS Pending Sale Under Section 6335	17-103
[B][3]	Conditions Authorizing Return of Property.....	17-103
[B][4]	Best Interests of the United States and the Taxpayer to Release Levy and Return of Property Where Levy Made in Violation of Law	17-105
[B][5]	Time of Return.....	17-106
[B][6]	Purchase by the United States.....	17-107
[B][7]	Determinations by the Commissioner	17-107
[B][8]	Procedures for Request for the Return of Property.....	17-108
[B][9]	No Interest.....	17-108
[B][10]	Administrative Collection upon Default.....	17-108
§ 17:11.3	Prerequisites for a Valid Levy—Taxpayer Bill of Rights 1	17-108
§ 17:11.4	Prerequisites for a Valid Levy—Taxpayer Bill of Rights 3 and Collection Due Process (and Related Matters).....	17-110
[A]	Notice.....	17-111
[B]	Timely Written Request Requirement for Appeals Office Hearing	17-114
[C]	One Hearing Only Rule	17-117
[D]	Prohibition of “Prior Involvement”	17-118
[E]	Conduct of the Hearing	17-120
[E][1]	In General	17-120
[E][2]	Face-to-Face Meetings—Former Regulations.....	17-121
[E][3]	Face-to-Face Meetings—Present Regulations.....	17-126
[E][4]	Miscellaneous Matters	17-128
[F]	Verification by Appeals Officer and Issues Taxpayer May Raise (Including Spousal Defenses)	17-129
[G]	Determination by Appeals Officer	17-140

Table of Contents

[H]	Notice of Determination	17-141
[I]	Subsequent Judicial Review.....	17-142
[J]	Retained Jurisdiction by Appeals and Changed Circumstances of Taxpayer	17-161
[K]	Statute of Limitations Suspended	17-161
[L]	Enforcement Action During Suspension of Statute of Limitations	17-162
[M]	Hearings Combined.....	17-164
[N]	Equivalent Hearing.....	17-164
[O]	Jeopardy, State Tax Refund, and Disqualified Employment Tax Levy Exceptions.....	17-164
[P]	Offers in Compromise and Installment Agreements.....	17-166
[Q]	Administrative Procedures Codified.....	17-166
[R]	Frivolous Requests for Hearing	17-167
§ 17:12	Property Exempt from Levy	17-167
§ 17:12.1	Wearing Apparel and School Books	17-167
§ 17:12.2	Fuel, Provisions, Furniture, and Personal Effects.....	17-167
§ 17:12.3	Books and Tools of the Trade	17-168
§ 17:12.4	Unemployment Benefits	17-168
§ 17:12.5	Undelivered Mail.....	17-169
§ 17:12.6	Certain Annuities and Pension Payments.....	17-169
§ 17:12.7	Workers' Compensation	17-169
§ 17:12.8	Judgments for Support of Minor Children	17-169
§ 17:12.9	Minimum Exemptions for Wages, Salary, and Other Income	17-170
§ 17:12.10	Certain Service Connected Disability Payments	17-171
§ 17:12.11	Economic Stimulus Payments.....	17-171
§ 17:12.12	Additional Property Exempt from Levy	17-172
§ 17:13	Continuous Levies Authorized.....	17-176
§ 17:13.1	Federal Payment Levy Program	17-177
§ 17:14	Sale of Seized Property.....	17-178
§ 17:14.1	IRS Recordkeeping Rules.....	17-181
§ 17:15	Civil Suits by the Government	17-181
§ 17:15.1	Taxpayer and Third-Party Suits to Restrain Collection	17-182
§ 17:16	Solutions to Collection Problems—Installment Agreements, Offers in Compromise, and Taxpayer Assistance Orders	17-184
§ 17:16.1	Installment Agreements	17-185
[A]	Introduction	17-185
[B]	Typical Forms	17-185

[C]	General Considerations	17-186
[D]	Taxpayer Bill of Rights 1 and 2—Installment Agreements Authorized and Appeals Office Review Available	17-188
[E]	Installment Agreements As a Right—Taxpayer Bill of Rights 3 (“Guaranteed Installment Agreements”)	17-189
[F]	Streamlined Installment Agreements.....	17-190
[G]	Collection Information Statements and Necessary Expenses for “Regular” Installment Agreements—National Standards, Local Standards, and Other Various Expenses	17-191
[H]	Full Payment in Six Years Rule.....	17-197
[I]	Eliminating Excessive Expenses Within One Year	17-197
[J]	Business Taxpayers	17-198
[K]	Appeal Rights	17-199
[L]	Installment Agreement User Fees	17-200
[M]	Failure to Pay Penalty Cut in Half.....	17-200
[N]	Annual Statements to Taxpayers.....	17-200
[O]	Levy Restrictions.....	17-201
[P]	Partial Installment Agreements.....	17-204
[Q]	Online Payment Agreement Application.....	17-205
[R]	Multi-Functional Installment Agreements.....	17-206
[S]	Federal and State Installment Agreements.....	17-207
§ 17:16.2	Offers in Compromise	17-208
[A]	In General	17-210
[B]	Grounds for Compromise.....	17-210
[C]	Special Rules for Evaluating Offers to Compromise.....	17-213
[D]	Procedures for Submission and Consideration of Offers.....	17-218
[E]	Acceptance of Offer to Compromise Tax Liability	17-221
[F]	Rejection of Offer to Compromise and Appeals.....	17-222
[G]	Effect of Offer to Compromise on Collection Activity	17-224
[H]	Deposits	17-225
[I]	Statute of Limitations.....	17-225
[J]	Inspection.....	17-226
[K]	Effective Date	17-226
[L]	Fixed Monthly Payment Option and Relief from Accrued Interest.....	17-226

Table of Contents

[M]	Default	17-227
[N]	User Fees	17-228
[O]	Partial Payment Requirement, User Fees, Miscellaneous Rules, and Frivolous Submissions	17-229
§ 17:16.3	Taxpayer Assistance Orders	17-230
§ 17:17	Payment of Tax by Commercially Acceptable Means	17-232
§ 17:18	Civil Damages for Certain Unauthorized Collection Actions	17-233
§ 17:18.1	Third Parties May Recover Damages for Unauthorized Collection Actions.....	17-237
§ 17:19	Fair Tax Collection Practices Imposed on IRS	17-238
§ 17:20	Checks to Be Paid to the U.S. Treasury.....	17-239
§ 17:21	Practitioner Priority Service (PPS) for Tax Professionals.....	17-240
§ 17:21.1	PPS—In General	17-240
§ 17:21.2	Types of Assistance Offered by PPS	17-241
§ 17:21.3	Hints for Improving PPS Experience	17-241
§ 17:21.4	Tips for Calling PPS	17-242
§ 17:21.5	What Practitioners Should Have on Hand When Calling PPS on an Automated Collection System Account (ACS).....	17-244
§ 17:21.6	What Practitioners Should Expect When Calling PPS for an ACS Account.....	17-245
§ 17:22	E-Services for Tax Practitioners.....	17-245
§ 17:22.1	Disclosure Authorization	17-246
§ 17:22.2	Electronic Account Resolution	17-246
§ 17:22.3	Transcript Delivery System	17-246
§ 17:22.4	Income Verification Express Service (IVES) Program	17-247
§ 17:23	Private Debt Collection for Unpaid Taxes.....	17-247

Chapter 18 Recovering Attorney Fees: Section 7430 of the Code and Related Matters

§ 18:1	Introduction	18-2
§ 18:2	In General	18-3
§ 18:3	Exhaustion of Administrative Remedies	18-5
§ 18:3.1	Requirements.....	18-5
§ 18:3.2	Revocation of Tax Exempt Status	18-7
§ 18:3.3	Actions Involving Summonses, Levies, Liens, Jeopardy, and Termination Assessments	18-8

§ 18:3.4	Exception to Requirement to Exhaust Administrative Remedies	18-9
§ 18:3.5	Examples	18-10
§ 18:4	Only Costs Allocable to the United States.....	18-14
§ 18:5	Pre-Taxpayer Bill of Rights 2: Exclusion of Declaratory Judgment Proceedings	18-14
§ 18:6	Costs Denied Where Prevailing Party Protracts Proceedings.....	18-15
§ 18:6.1	Administrative Proceeding Defined.....	18-16
§ 18:7	Reasonable Litigation and Administrative Costs Defined.....	18-16
§ 18:7.1	Reasonable Litigation Costs.....	18-17
§ 18:7.2	Hourly Cap: “Special Factor” and “Limited Availability”	18-20
[A]	Taxpayer Bill of Rights 3: Expansion of the “Special Factor”	18-25
[B]	Taxpayer Bill of Rights 3: Attorney Fees Recoverable When Pro Bono Services Rendered.....	18-25
§ 18:7.3	Reasonable Administrative Costs.....	18-25
§ 18:8	“Prevailing Party” Defined: Pre-Taxpayer Bill of Rights 2: Burden on the Taxpayer	18-26
§ 18:8.1	Substantially Justified	18-27
§ 18:9	“Prevailing Party” Defined: Taxpayer Bill of Rights 2 and 3 and the “Qualified Offer”	18-28
§ 18:9.1	Final Regulations and the Qualified Offer Rule	18-29
[A]	In General	18-30
[B]	Requirements for Treatment As a Prevailing Party Based upon Having Made a Qualified Offer	18-31
[B][1]	In General	18-31
[B][2]	Liability Under the Last Qualified Offer	18-32
[B][3]	Liability Pursuant to the Judgment.....	18-33
[C]	Qualified Offer Defined	18-34
[C][1]	In General	18-34
[C][2]	To the United States.....	18-34
[C][3]	Specifies the Offered Amount.....	18-35
[C][4]	Designated at the Time It Is Made As a Qualified Offer	18-37
[C][5]	Remains Open.....	18-38
[C][6]	Last Qualified Offer.....	18-38
[C][7]	Qualified Offer Period.....	18-38
[D]	Examples	18-39
[E]	Effective Date	18-48

Table of Contents

§ 18:9.2	Substantially Justified: Burden of Proof Shifts to the IRS.....	18-48
[A]	Is the <i>Internal Revenue Manual</i> “Published Guidance”?	18-56
§ 18:9.3	When the IRS Has Lost in Other Circuits: Taxpayer Bill of Rights 3	18-57
§ 18:10	Manner of Determining Who Is the Prevailing Party.....	18-58
§ 18:11	“Position of the United States” Defined.....	18-58
§ 18:12	Multiple Actions.....	18-60
§ 18:13	Right of Appeal.....	18-60
§ 18:14	Timing.....	18-61
§ 18:15	Net Worth Requirements.....	18-62
§ 18:16	Section 6673 and Rule 11	18-64
§ 18:17	Reporting of Certain Payments	18-66
 Table of Authorities		T-1
 Index		I-1

