

Representing your Client before The I.R.S. Collection Division

By Raul O. Serrano, Jr. C.P.A.

We should start by learning the mission statement of the IRS which is to Provide American taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax laws with integrity and fairness to all.
(Publication 594).

Also, we should know the Taxpayer's Bill of Rights, which among other things, says as follows:

- When dealing with the IRS., you have the right to be treated fairly, professionally, promptly and courteously by the IRS employees. (Publication 1).

As it is evident by the IRS mission statement the IRS cares about its image. Keeping the above in mind lets discuss some rules and steps that we can take to help our clients in their time of need in dealing with the Collection Division of the Internal Revenue Service.

Rules and steps we can take to benefit our clients;

- Review IRS account transcripts to see if taxpayer does owe the monies and if the liability was due to substitute return filings, also, review audit reports and see that the increase in tax was properly recorded.
- Review the client's ability to pay and his net worth, since the IRS will do so and you need to be prepared, also, you may find that the client is insolvent and qualifies for uncollectible status.

If the liability is properly recorded and your client is able to pay, then our job may be done, but if not, then we need to earn our fees. We will discuss procedures which are available to us in no specific order.

INSTALLMENT PAYMENT AGREEMENTS:

The IRS has the authority to enter into a written agreement with the taxpayer, allowing for the full or, partial payment of any tax in installments, if such agreement will facilitate the collection of a tax liability.

The IRS has a rigid formality which the taxpayer has to qualify in order to arrive at the acceptable payment agreement. The following are some important rules:

- **Three-Year Rule**-The IRS has developed a three-year rule. Under this rule, the IRS will not question or disallow expenses of the taxpayer, if the taxpayer can be expected to remain current in all tax requirements, and the tax liability, including projected accruals, can be paid within three years.
- **The IRS still wants installment agreement to be based on a taxpayer's maximum ability to pay.**
- **National Standards-Necessary expenses**, The IRS define necessary expenses as those expenses use for (a.) the health and welfare or (b) production of income of taxpayers and family need to live.
- **Collection Status 53**-The IRS and the taxpayer agree that the tax is not collectible, then enforcement action is suspended and the taxpayers file is put into 53 statuses until his (hers) financial situation is better or the expiration of the collection statute of limitation.

OFFER IN COMPROMISE (O.I.C.):

A taxpayer may apply for an offer -in-compromise in order to satisfy a liability with the IRS, again the IRS has rigid formalities which the taxpayer has to qualify in order for the IRS to accept the offer; the following are some important rules:

- Lump-sum offers in compromise and 20% down payment-pursuant to the new rules, taxpayers are required to make a nonrefundable 20% down payment to the IRS when submitting a request for a lump sum O.I.C., however, taxpayer may specify the liability to which they want their payment applied.
- Offer acceptance and the Twenty-Four month-rule- An offer will be deemed accepted if the offer is not returned or rejected by the IRS or withdrawn by the taxpayer within twenty-four months after submission of the offer. The date of the submission of an offer is define to be the date receipt by the IRS
- Periodic payment Offer-in-Compromise and the initial payment-Taxpayers are required to comply with their own proposed installment payment schedule while the taxpayer's offer is being evaluated by the IRS.

PROCEDURE FOR LEVY (CDP):

- A general ten-day notice and demand;
- A thirty-day notice of intention to levy, and
- A notice of the right to a collection due process.
- Judicial approval of levies(seizure) of principal residences needed, since enactment of the 1998 statutory changes.

COLLECTION DUE PROCESS HEARING:

- A taxpayer is entitled to one CDP hearing with respect to the tax and tax period covered by the pre-or- post-levy CDP notice provided to the taxpayer. The taxpayer is only entitled to one-levy, one-hearing rule.
- Taxpayer must request such a hearing within the 30-day period commencing on the day after the date of the CDP notice. The request must be made in writing and must be sent to the IRS office that issued the CDP notice at the address indicated on the CDP notice.
- If the taxpayer fails to request the CDP hearing within the 30-day period he will lose his (hers) right to a CDP hearing under Section 6330 with respect to the tax and tax periods shown on the CDP notice. The IRS will be free to pursue collection actions at the conclusion of the 30-day period following the date of the CDP notice.
- Suspension of statute of limitations, the period of limitation will be extended if the taxpayer timely requests a CDP hearing concerning a pre-or-post-levy CDP notice. The extended period of limitation starts on the date the IRS receives the taxpayer's written request for a CDP hearing and continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the determination resulting from the CDP hearing becomes final by the expiration of the time for seeking its review or reconsideration.
- Documentation to be furnished to Appeals in order to gain judicial review-Taxpayer may not seek judicial review of an issue that he has raised during the CDP hearing. Bringing the issue to the attention of the Appeals officer may not be sufficient, you must also submit, if requested, evidence with respect to the issue.

EQUIVALENT HEARING:

A taxpayer who fails to make a timely request for a CDP hearing still has the option of an “equivalent hearing” which is an administrative hearing with the office of appeals. The equivalent hearing will be held by the office of appeals and will follow appeals procedures for a CDP hearing. Appeals will not issue a Notice of determination. Under such circumstances the office of Appeals will issue a Decision letter.

In the equivalent hearing the basic rules are:

- Appeals will consider the same issues as in CDP hearing on the same matter.
- The period of Statute of limitation under sections 6502, 6531 and 6532 are suspended during an equivalent hearing.
- Collection actions are not required to be suspended.
- Decision Letter will generally contain the same information as a Notice of Determination.
- An equivalent hearing Notice letter will not obtain court review of a decision made by appeals.
- The Form you use for both the CDP and the equivalent hearings is Form 12153.

Note: for both hearings it is recommended to ask for face-to-face hearings.

COLLECTION APPEALS RIGHTS:

You may appeal a Notice of federal tax lien, levy, seizure or termination of an installment agreement but you must follow the following procedures.

- If you disagree with the decision of the Revenue Officer, and wish to appeal, you must request a conference with a Collection Manager.
- If you do not resolve your disagreement with the Collection Manager, you may request Appeals consideration by completing Form 9423, Collection Appeals request.
- On the Form 9423, list the Collection actions you disagree with and explain why you disagree. You must also explain your solution to resolve your tax problem. The collection office must receive your request for an Appeals within 2 days of your conference with the Collection Manager or the IRS will resume collection action.
- While you are appealing your case the IRS will normally stop collection actions until your appeals is settled or they believe that collection of the amount owed is at risk. Also, the decision is final and binding on both parties.
- Notes: A collection Appeals Program appeals offers a quick review of a specific collection action. No court review available.
- For a rejected Installment agreement, the taxpayer has 30 days to appeal.
- Third party claims to property and alter ego and nominee liens may also be appealed under Collection Appeals Program (CAP).
- The statutory authority for the CAP is Section 7123(a).
- Advantage of a CAP is the broader range of collection actions subject to review than in CDP hearings and also, the fact that persons other than the taxpayers may request an appeal. (ex. Nominee Liens).

TAXPAYER ASSISTANCE ORDERS:

The taxpayer Bill of Rights 2 replaced the Taxpayer Ombudsman with a position called the Taxpayer Advocate.

The taxpayer advocate will have broader authority to affirmatively take any actions as permitted by law to assist taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws. The advocate group is independent from the IRS examination, collection and appeals functions.

The function of the Office of Taxpayer Advocate is:

- To assist taxpayers in resolving problems with the IRS;
- To identify areas in which taxpayers have problems in dealing with the IRS;
- To propose changes (to the extent possible) in the administrative practices of the IRS that will mitigate those problems; and
- To identify potential legislative changes that may mitigate those problems.

Notes: The Form 911 is use to request Taxpayer Advocate Service Assistance and Application for Taxpayer Assistance Order.

BANKRUPTCY:

Rules which make income tax assessments dischargeable:

- The tax must be for a year which pre-dates the bankruptcy petition by at least three years;
- The tax must be officially assessed by the IRS for at least 240 days. The date of the assessment is recorded by the IRS in a computer file maintain for each taxpayer;
- The tax must not be capable of being assessed after the petition in bankruptcy has been filed;
- If the return was filed late, the filing must predate the filing of the bankruptcy petition by at least 2 years;
- The tax must not be the result of a fraudulent return or a willful attempt in any manner on the citizens to evade or defeat the tax.

Note: Look back period-3 years, including federal extension.

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Department of the Treasury
Internal Revenue Service
Philadelphia, PA 19255-0633

Re:

Dear Madam or Sir:

We are in receipt of your Notice Number 972CG, dated _____, wherein a penalty is proposed for the late filing of the _____: 1099; and, although we agree with the late filing, we feel that we can provide information to show that our late filing was due to reasonable cause and not willful neglect.

Our client has a history of filing all of its Forms 1099 on a timely manner, both to the Internal Revenue Service and to the independent contractors. In prior years, the number of 1099's were always under the requirement to electronically file, and therefore, our client paper filed; but, around filing time for the 2021 tax year, our client found that it had in excess of 250 Forms 1099 to be filed and therefore could not paper file but instead had to electronically file.

Our client, as usual, timely issued the 2021 Forms 1099's to its independent contractors; but, because it had never filed electronically in the past, provided the information to her accountants, who did not have experience with the over 250 requirement, but found that in order to electronically file the Forms 1099, they needed a third party software provider and also needed to apply for a Transmitter Control Code from the Internal Revenue Service for reporting as a transmitter. After researching the requirements, we purchased the software needed and also applied for the TCC code which took time; but, upon receiving the above required items, we electronically filed the 2021 Forms 1099's, but being our first time, it took a little longer and we finally got them accepted on May 25, 2022.

Law and Analysis:

I.R.C. Section 6721 provides the Internal Revenue Service with authority to impose civil penalties against taxpayers who fail to timely file correct information returns such as Forms 1099.

Treasury Regulation s301.6724-1, Reasonable Cause.

Waiver of the penalty – (1) General rule. The penalty for a failure relating to an information reporting requirement (as defined in Paragraph (j) of this section) is waived if the failure is due to reasonable cause and is not due to willful neglect.

Court cases interpret the term "willful neglect" to mean "a conscious, intentional failure or reckless indifference" (Boyle, 469 U.S. 241 (1985)). Taxpayer's prior years good compliance history should show that its actions do not fit the definition for willful neglect, and the fact that it timely submitted all of the Forms 1099's to the independent contractors is evident of it exercising ordinary business and prudence, and the late electronically filing to the Internal Revenue Service should be deemed to be due to reasonable cause and not willful neglect.

Our tax system can be complicated and taxpayers, through their tax professionals, are always trying to keep up with the rules and regulations.

Additional Facts:

1. Taxpayer has a good history of compliance;
2. Taxpayer qualifies for lower maximum penalties as a small business, since their average annual gross receipts for the three most recent years of 2018, 2019 and 2020, are Five Million or less;
3. Taxpayer timely electronically filed its 2022 Forms 1099 now that it understands the requirements.

We are respectfully requesting that based on the facts provided above of taxpayer's good historical compliance record, and given the fact that the electronic filing requirement was new to the taxpayer, and the fact that taxpayer timely furnished the independent contractors with their copies of the Forms 1099, that the proposed penalties be abated due to reasonable cause and not willful neglect.

As previously state, taxpayer, upon finding out that it needed to electronically file, made every effort to comply, which included obtaining the third-party software and obtaining a TCC Code in order to assess the Internal Revenue Service Fire System; but, since it was all new to them, it contributed to the late electronic filing with the Internal Revenue Service. Taxpayer takes its tax filings and paying requirements very seriously and the proof is in their prior history of compliance and thereafter.

Conclusion:

As stated above, taxpayer's prior years good compliance history should show that its actions do not fit the definition for willful neglect as interpreted by the Courts, which is to mean "a conscious, intentional failure or reckless indifference". Once again, we are respectfully requesting that due to the above that the proposed penalties be abated for reasonable cause since there was no willful neglect.

Alternative:

We would also like to request the lower maximum penalties for a small business since taxpayer's annual gross receipts are under Five Million:

\$ 0 – 2020
 - 2019
 - 2018

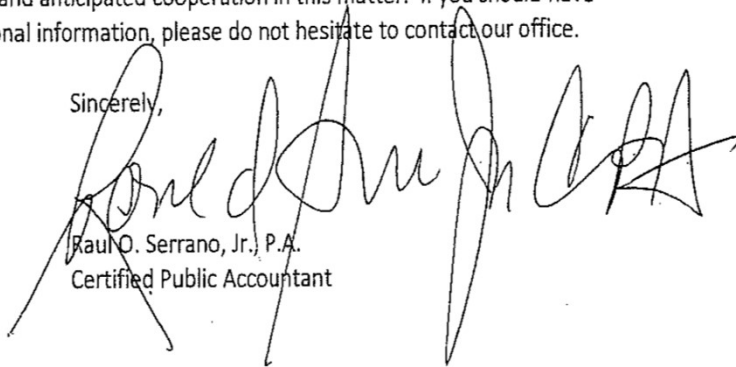
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We have also enclosed a copy of the executed Power of Attorney for your convenience.

Thank you for your immediate attention and anticipated cooperation in this matter. If you should have any questions or should need any additional information, please do not hesitate to contact our office.

Sincerely,

A large, stylized handwritten signature in black ink, likely belonging to Raul O. Serrano, Jr. The signature is fluid and cursive, with the first name 'Raul' being particularly prominent.

Raul O. Serrano, Jr., P.A.
Certified Public Accountant

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Enclosures

cc.