

# HOW TO PROTECT YOUR CLIENT AGAINST THE I.R.S.



Presented by  
Raul O. Serrano, Jr., C.P.A.

[www.SerranoCPA.net](http://www.SerranoCPA.net)



*This Revenue Officer is a Tyrant  
Let's call RAUL SERRANO*



"DO YOU HAVE ANY PULL WITH THE IRS?"



# Examination

- ▣ An audit (or examination) is the process by which the IRS determines whether your client properly reported his income and took the correct deductions, exemption, and credits.
- ▣ To do its job, Congress has given the IRS wide powers to inspect your papers and financial records, and to ask you and others about your financial affairs.

IRC Section 7602

# IRC Section 7602 ...

**Permits the IRS, for any statutorily authorized purpose to:**

1. Examine any books, papers, records, or other data and take testimony under oath, and
2. Summon a taxpayer or any other person, requiring him to appear, produce books and records, and testimony under oath.

## 7602 cont ...

- ▣ The courts have construed Section 7602 very broadly ....
- ▣ The limited constraints placed on the IRS are set forth in **U.S. v. Powell.**  
(see next slide)

# U.S. v. Powell (379 U.S. 48 (1964))

A court will enforce a summons if:

1. The examination is being conducted for a legitimate purpose.
2. The summons seeks information that may be relevant to a determination of a civil tax liability.
3. The IRS is not already in possession of the material.

# IRS Authority

The IRS has NO AUTHORITY  
to compel production of  
documents or testimony other  
than specifically granted by  
statute.

# Circular 230 Section 10.20

**No attorney, CPA, or EA shall neglect or refuse to promptly submit records or information in any matter before the IRS, upon proper and lawful request by a duly authorized officer or employee of the IRS.**

Unless he believes in good faith and on reasonable grounds that such information is privileged or that the request therefore is of doubtful legality.

# Taxpayer Objective in the examination

1. To limit the scope of the examination.
2. To keep a record of what the agent has seen.  
(i.e. what the agent knows and does not know)
3. To move the agent through the examination as quickly as possible.

# To accomplish these objectives

... (1 of 2)

1. Assemble files and records of the client in good order. Also, review records and anticipate likely questions that may arise.
2. Remove and separate opinion letters from files.
3. Advise the client and others who may deal with the agent to give the agent what is requested without any explanation unless one is requested.
4. Have a preliminary meeting with the agent to present the power of attorney form when it is required.

# To accomplish these objectives

... (2 of 2)

5. Ask the agent to make written requests for records.
6. Ask the agent to hold questions for the practitioner, preferably at the end of the examination.
7. In small or less complicated examinations, be available to answer questions as they arise
8. Ask the agent to provide a written list of the proposed adjustments.

# Prepare for the final meeting with the agent

Know the following ... (4 of 7 items)

1. The issue that will be subject of the discussions  
*(Wait until the agent has determined the proposed adjustments)*
2. The facts behind the issues  
*(Including both favorable to service & taxpayer)*
3. An updated examination of the law on a particular issue. *(Research of Service pronouncements in rev rulings, acquiescence, and the like will be very important in resolving the issue)*
4. A list of points for and against the taxpayer's position. *(A fact and law investigation should be used to prepare this list)*

# Prepare for the final meeting with the agent

Know the following ... cont ...

5. Tax computations that show the additional tax that will be payable if an adjustment is agreed to or the effect of a concession on subsequent years' returns.
6. An evaluation of the chances of success at an Appeals office conference or in court, taking in to account the costs of litigation
7. The potentially adverse effect of discussions with the revenue agent or negotiations with the Appeals officer

# Revenue Agent Reports

A taxpayer has the following alternatives :

1. Accept the findings in the report and sign a waiver of the restrictions on assessment (Form 870)
2. Request a conference in the regional Appeals Office within thirty days of the letter and file a protest within that time if the total amount of the proposed additional tax exceeds \$2500 for any taxable period
3. Ignore the thirty-day letter, in which case the taxpayer will be sent a statutory notice of deficiency (ninety-day letter)

# Repetitive Examinations

- ▣ If the IRS selects return for examination & the same issue was examined in either of the two preceding years, the taxpayer may suggest that the examination be discontinued under the IRS policy against repetitive examinations (Based on IRC Section 7605(b)).
- ▣ This relief is available if the prior examinations produced no change or small tax change (IRM Section 4241).

# Repetitive Examinations

- ▣ The purpose of IRM 4241 is to ease the administrative burden on the service and the taxpayers, and to save both parties from having to invest the time to revisit an issue that was examined in either of the two preceding years with little or no tax change.

# Appealing an IRS decision

If you don't agree with the  
examiner's findings, you  
have the right to **APPEAL**  
them.

# Appeals

Appeals Office conferences are informal. No stenographer is present to record discussions of the facts and the law relating to the issue involved.

Testimony under oath is not taken.

Matters alleged, as facts must be submitted in the form of an affidavit or declared to be true under penalties of perjury.

# PROS of appealing an Audit

1. Appealing, in majority of cases, results in some savings.
2. Appealing delays your audit tax bill for months, buying time to raise the cash, etc...

# CONS of appealing an Audit

1. The Appeals officer can raise new issues the auditor missed;  
*i.e. transferee liability*

# HOW TO APPEAL AN AUDIT?

- ▣ After the audit is complete, the IRS sends you an examination report with proposed adjustments. If you do not sign and return the report within a few weeks, the IRS usually sends a 30 day letter explaining how to protest the report.

**PROTEST** is the official term for appealing an IRS determination. You must protest within 30 days of the date of the notice.

# HOW TO FILE A SMALL CASE REQUEST

- ▣ You may submit a **Small Case Request** if the entire amount of additional tax and penalty proposed for each tax period is \$25,000 or less. For an offer in compromise, the entire amount for each tax period includes total unpaid tax, penalty and interest due.

# HOW DOES THE APPEALS OFFICE WORK?

- ▣ IRS Regional Appeals Office is completely separate & independent from the local district office.
- ▣ Appeals Officers are usually senior IRS employees with accounting or legal backgrounds.
- ▣ Only job is to settle cases and often uses the hazards of litigation.

# HAZARDS OF LITIGATION

- ▣ Appeals, unlike exam, can consider hazards of litigation in resolving the tax dispute.
- ▣ Hazards of litigation are the uncertainties of the outcome of the case at trial.

## Factors which may be considered hazards ...

- ▣ Doubt as to legal conclusions, which will be reached by the court.
- ▣ Credibility of prospective witnesses.
- ▣ Probative value of the evidence expected to be presented.

# ISSUES THAT APPEALS WON'T HEAR

- ▣ Cases for refusals to comply with the tax laws based on moral grounds, political, constitutional, religious and similar grounds. (Tax Protestors)

# Collections

If not 100% successful ...

*HERE COMES THE*  
*COLLECTION DIVISION OF*  
*THE IRS*

# Collections: (1 of 2)

## Steps to benefit our clients

1. Due Process Hearings and Equivalent Hearings
2. Installment Agreements
3. Innocent Spouse Relief
4. Collection Status 53
5. Offer in Compromise
6. Expiration of Statute of Limitation

# Collections: (2 of 2)

## Steps to benefit our clients

7. Trust Fund Tax Recovery Penalty
8. Individual Income Tax Liabilities that the taxpayer cannot pay  
*(Bankruptcy)*

# 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 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.

# Collection Due Process Hearing

- ▣ If the taxpayer fails to request the CDP hearing within the 30-day period then he will lose his right to a CDP hearing under Section 6330 with respect to the tax and tax periods shown on the CDP notice. The Service will be free to pursue collection action at the conclusion of the 30 day period following the date of the CDP notice.

# Collection Due Process Hearing

- ▣ Suspension of statute of limitations, The period of limitation will be extended if the taxpayer timely request a CDP hearing concerning a pre-or post-levy CDP notice. The extended period of limitation starts on the date the Service receives the taxpayer's written request for a CDP hearing and continues until the Service 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.

# 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 appeals. The equivalent hearing will be held by appeals and will follow appeals procedures for a CDP hearing. Appeals will not issue a Notice of determination. Under such circumstances, Appeals will issue a Decision letter.

# Equivalent Hearing

- ▣ In an equivalent hearing the basic rules are:
  1. Appeals will consider the same issues as in a CDP hearing on the same matter.
- ▣ 2. The period of limitation under 6502,6531 and 6532 are not suspended during an equivalent hearing.
- 3. Collection action is not required to be suspended.
- 4. Decision Letter will generally contain the same information as a Notice of Determination.
- 5. An equivalent hearing Notice Letter will not obtain court review of a decision made by appeals.

Notes:

The Form you use for both the CDP and the equivalent hearing is Form 12153.

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.
  1. If you disagree with the decision of the Revenue Officer, and wish to appeal, you must first request a conference with a Collection Manager.
  2. If you do not resolve your disagreement with the Collection Manager, you may request Appeals consideration by completing Form 9423, Collection Appeals Request.
  3. On 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 appeal within 2 days of your conference with the Collection Manager or the IRS will resume collection action.

# Collection Appeals Rights

- While you are appealing your case the IRS will normally stop collection actions until your appeal 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 appeal offers a quick review of a specific collection action. No court review available.

For 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.

The statutory authority for the Collection Appeals Program is Section 7123(a).

Advantage of 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 Service is administering the tax laws. The advocate group is independent from the IRS examination, collection, and appeals functions.

# Taxpayer Assistance Orders

- ▣ The function of the Office of Taxpayer Advocate are:
  1. To assist taxpayers in resolving problems with the Service;
  2. To identify areas in which taxpayers have problems in dealing with the Service;
  3. To propose changes (to the extent possible) in the administrative practices of the Service that will mitigate those problems; and
  4. 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.
  1. The tax must be for a year which pre-dates the bankruptcy petition by a least three years.
  2. 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 maintained for each taxpayer.
- ▣ 3. The tax must not be capable of being assessed after the petition in bankruptcy has been filed.
- ▣ 4. If the return was filed late, the filing must predate the filing of the bankruptcy petition by at least two years.
- 5. The tax must not be the result of a fraudulent return or a willful attempt in any manner on the citizen's part to evade or defeat the tax.

# Bankruptcy

## ▣ Notes:

1. If the IRS filed a pre-petition lien against you the IRS has a secured claim as to the equity available as of the date of the lien.
2. look- back period- 3 years, including federal extension.
  1. Rules which make income tax assessments dischargeable;
  2. Look-back period.

# Federal Tax Liens

- ▣ 1. tax lien is a security device, which protects the government's position as a creditor. The federal tax lien is one of the significant powers of the Service. It protects the creditor status of the Service in the context of other competing interests.

Lien has a 10 year life unless Action to reduce the lien to judgment is taken.

# Federal Tax Liens

- ▣ 2. The Revenue Officer must document the case history to reflect that on the initial contact the taxpayer was asked:
  - ▣ a. If the taxpayer received Publication 1, and
  - ▣ b. If he or she had any questions.
- ▣ Determine whether the taxpayer received Publication 1, your rights as a taxpayer.
- ▣ Explain the collection process to the taxpayer and the taxpayer's right under the process.  
(IRM 5.1.10.3.2 Effective Initial Contact).

WHAT MATTERS MOST  
IS HOW YOU SEE YOURSELF.



December 8, 2005

Internal Revenue Service  
Attn: Disclosure Officer  
7850 S.W. 6<sup>th</sup> Court  
Room 260  
Plantation, FL 33324-3202

Re: **Freedom of Information Request**  
**Name**  
**SSN**  
**Form 1040, 1995**

Gentlemen:

Under the provisions of the Freedom of Information Act, 5 U.S.C. s552, we, the undersigned, request access to the following records relating to the audit of the Form 1040, filed by \_\_\_\_\_, Social Security number \_\_\_\_\_, for the calendar year 1995.

1. The examination division administrative file for the audit. The requested file includes any workpapers, notes, documents, memoranda, telephone call slips or other material prepared or accumulated relative to this examination.
2. Any files relative to this audit that may have been retained by specialist agents, either as specialty case files, desk files or as group files, which are not otherwise included in the administrative file submitted with the Revenue Agent's report. The requested agent's desk or group files include any workpapers, notes, documents, memoranda, telephone call slips or other material prepared or accumulated relative to this examination.
3. Any files relative to this audit that include information and documents obtained pursuant to summonses issued to third parties which are not otherwise included in the administrative file submitted with the Revenue Agent's report.
4. Please send a complete Statement of Account, i.e., Individual Master File and Information Returns Master File transcripts, for the tax year 1995.

Internal Revenue Service  
Attn: Disclosure Officer  
December 8, 2005  
Page 2

If you should determine that any portion of the records or information we request is exempt, please make available that portion considered nonexempt.

In addition to the above records, please provide a list of all information relative to this audit which is maintained electronically. This list should identify the information by subject matter and format (i.e., tape, disk, etc.).

The Internal Revenue Service may incur up to \$20.00 in charges without further authorization from us. If the total charges are estimated to exceed that amount, please provide us with an estimate of the charges and seek further authorization from us.

If all or any portion of this request is denied, please notify us of the specific exemption(s) you think justifies your refusal to release the information. Please also provide a list of any documents you consider exempt, which identifies the type, author and subject matter of each document and the basis for exempting it from this request.

Any notification regarding this request may be sent to:

**Raul O. Serrano, Jr., C.P.A.**  
**4330 Sheridan Street, Suite 202B**  
**Hollywood, FL 33021-1406**  
**(954) 987-4878**

Enclosed is a copy of the executed Power of Attorney authorizing us to act in this matter.

Thank you for your attention and anticipated cooperation herein. If you should need any additional information, please do not hesitate to contact our office.

Sincerely,

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

ss  
Enclosure  
cc: Mrs.

Certified Mail No.  
Return Receipt Requested

August 1, 2005

Internal Revenue Service  
7850 S.W. 6<sup>th</sup> Court  
Plantation, FL 33324

Attention: Disclosure Officer

**Re: Freedom of Information Request**

**Name**

**SSN**

**Civil Penalty; 06/30/1994**

Gentlemen:

Under the provisions of the Freedom of Information Act, 5 U.S.C. s552, we, the undersigned, request access to the following records relating to a civil penalty assessed against Mr. \_\_\_\_\_, Social Security number \_\_\_\_\_, relating to payroll taxes due for the period ended 06/30/1994.

Please provide us with copies of the following:

1. Form 4180, Report of Interview, held with persons relative to recommendation of 100% Penalty Assessments.
2. Form 4183, Recommendation, regarding the 100% Penalty Assessment.
3. Form 2751, Proposed Assessment, of the 100% Penalty.
4. Letter 1153 and other correspondence mailed to Mr. \_\_\_\_\_.
5. Copy of computation sheets, transcripts of account and other documentary evidence relating to the assessment of the civil penalty against Mr. \_\_\_\_\_.
6. Please send a complete Statement of Account, i.e., Individual Master File and Information Returns Master File transcripts, for the tax year 1994.

If you should determine that any portion of the records or information we request is exempt, please make available that portion considered nonexempt.

If any portion of this request is denied, please notify us of the specific exemption(s) you think justifies your refusal to release the information. Please also provide a list of any documents you consider exempt, which identifies the type, author and subject matter of each document and the basis for exempting it from this request.

The Internal Revenue Service may incur up to \$20.00 in charges without further authorization from us. If the total charges are estimated to exceed that amount, please provide us with an estimate of the charges and seek further authorization from us.

Any notification regarding this request may be sent to:

**Raul O. Serrano, Jr., C.P.A., P.A.**  
**4330 Sheridan Street**  
**Suite 202B**  
**Hollywood, FL 33021-1406**  
**(954) 987-4878**

Enclosed is an executed Power of Attorney authorizing us to act in this matter.

Thank you for your attention and anticipated cooperation herein. If you should need any additional information, please do not hesitate to contact our office.

Sincerely,

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

ss

Enclosure

cc: Mr.

**CERTIFIED MAIL NO.**  
**RETURN RECEIPT REQUESTED**

March 31, 1998

Internal Revenue Service  
51 S. W. First Avenue  
Room 700  
Miami, FL 33130

Attention:

Re: Name  
SSN  
Civil Penalty, 3/95,6/95,9/95,  
12/95,3/96,9/96,12/96,3/97,6/97

Dear Mr. :

On behalf of the taxpayer, , protest is hereby made of the proposed assessment of the Trust Fund Recovery Penalty in your Letter 1153(DO) and Form 2751, dated January 28, 1998. The following information is submitted in support of this protest:

1. CONFERENCE

The taxpayer wants to appeal the proposed assessment to the Appeals Office and requests a hearing.

2. NAME AND ADDRESS OF TAXPAYER

3. DATE AND SYMBOLS

January 28, 1998  
Letter 1153(DO) (Rev. 3-93)  
Form 2751 (Rev. 2-93)

4. TAX PERIODS INVOLVED

Tax periods ended 03/31/95, 06/30/95, 09/30/95, 12/31/95, 03/31/96, 09/30/96, 12/31/96, 03/31/97 and 06/30/97.

5. ITEMIZED SCHEDULE OF UNAGREED ADJUSTMENTS

a. Taxpayer disagrees with the proposed assessment of the Trust Fund Recovery Penalty of \$8,551.91 for the liability of

b. Taxpayer disagrees with the Revenue Officer's conclusion that she should be held responsible for the Federal taxes owed by

6. STATEMENT OF FACTS

was not an employee nor an officer of , nor did she have any ownership or any other interest in the company.

Mrs. \_\_\_\_\_ was a signatory in the bank account of the company only as a convenience to her ex-husband who travels a lot and is not always readily available. Mrs. \_\_\_\_\_ did not have authority to make any tax payments to the Internal Revenue Service nor to order anyone to do so. She had no authority to pay nor authorize payments to anyone.

7. STATEMENT OF LAW

The statutory authority for the 100% penalty is provided by Internal Revenue Code 6672. The penalty can be imposed against "any person required to collect, truthfully account for, and pay over" withheld employment taxes or certain collected excise taxes. The penalty may be imposed on any person or collecting agency "who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof".

8. CONCLUSION

Mrs. \_\_\_\_\_ was not an employee of \_\_\_\_\_, nor was she an officer nor have any ownership interest in the company, and she was not a "responsible person", since a responsible person is defined as one who has the duty to perform or the power to direct the act of collecting, accounting for or paying over trust fund monies. [IRM 8(11)41.2]. Since Mrs. \_\_\_\_\_ did not have the responsibility nor the authority to perform the above mentioned duties, she should not be held responsible for the liabilities of \_\_\_\_\_.

Once again, we respectfully request that this matter be referred to the Appeals Office, and that a conference be scheduled at the convenience of the Appeals Office, in order to state more fully the taxpayer's position with respect to the foregoing.

The Form 2848, Power of Attorney, properly executed by our client, is hereby enclosed for your file.

This protest was prepared by the undersigned as representative for the taxpayer. The undersigned has no personal knowledge whether the statements of fact contained in the protest and accompanying documents are true and correct.

Sincerely,

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

ss  
Enclosure  
cc: Mrs. \_\_\_\_\_

District Director  
Internal Revenue Service

Attention: Disclosure Officer

Re: Freedom of Information Request  
Name  
SSN  
Civil Penalty  
9/30/87;09/30/88;12/31/88;06/30/89;09/30/89

Gentlemen:

Under the provisions of the Freedom of Information Act, 5 U.S.C. s552, we, the undersigned, request access to the following records relating to a civil penalty assessed against Mr. , Social Security number , relating to payroll taxes due for the periods September 30, 1987, September 30, 1988, December 31, 1988, June 30, 1989, and September 30, 1989.

Please provide us with copies of the following:

1. Form 4180, Report of Interview, held with persons relative to recommendation of 100% Penalty Assessments.
2. Form 4183, Recommendation, regarding the 100% Penalty Assessment.
3. Form 2751, Proposed Assessment, of the 100% Penalty.
4. Letter 1153 and other correspondence mailed to Mr. .
5. Copy of computation sheets, transcripts of account and other documentary evidence relating to the assessment of the civil penalty against Mr. .

If you should determine that any portion of the records or information we request is exempt, please make available that portion considered nonexempt.

If any portion of this request is denied, please notify us of the specific exemption(s) you think justifies your refusal to release the information. Please also provide a list of any documents you consider exempt, which identifies the type, author and subject matter of each document and the basis for exempting it from this request.

District Director  
Internal Revenue Service  
May 13, 1998  
Page 2

Any notification regarding this request may be sent to:

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

Attached is a Power of Attorney authorizing us to act in this matter.

Thank you for your attention and anticipated cooperation herein. If you should need any additional information, please do not hesitate to contact our office.

Sincerely,

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

bgs

Enclosure

cc: Mr.

CERTIFIED MAIL NO.  
RETURN RECEIPT REQUESTED

# Request for a Collection Due Process Hearing

Use this form to request a hearing with the IRS Office of Appeals only when you receive a **Notice of Federal Tax Lien Filing & Your Right To A Hearing Under IRC 6320**, a **Final Notice - Notice Of Intent to Levy & Your Notice Of a Right To A Hearing**, or a **Notice of Jeopardy Levy and Right of Appeal**. Complete this form and send it to the address shown on your lien or levy notice for expeditious handling. Include a copy of your lien or levy notice(s) to ensure proper handling of your request.

(Print) Taxpayer Name(s) [REDACTED]

(Print) Address: c/o Serrano, 4330 Sheridan St Ste 202B Hollywood FL 33021

Daytime Telephone Number: (954) 987-4878 Type of Tax/Tax Form Number(s): 941

Taxable Period(s): 12/31/2004

Social Security Number/Employer Identification Number(s): [REDACTED]

Check the IRS action(s) that you do not agree with. Provide specific reasons why you don't agree. If you believe that your spouse or former spouse should be responsible for all or a portion of the tax liability from your tax return, check here  and attach Form 8857, Request for Innocent Spouse Relief, to this request.

Filed Notice of Federal Tax Lien (Explain why you don't agree. Use extra sheets if necessary.)

Notice of Levy/Seizure (Explain why you don't agree. Use extra sheets if necessary.)

Taxpayer is currently not financially able to pay the liabilities due to the U.S. Treasury. We would respectfully request the opportunity for a hearing in order to raise relevant issues, including but not limited to the appropriateness of collection actions and collections alternatives to levy.

I/we understand that the statutory period of limitations for collection is suspended during the Collection Due Process Hearing and any subsequent judicial review.

Taxpayer's or Authorized Representative's Signature and Date: [Signature] 8-15-05

Taxpayer's or Authorized Representative's Signature and Date: \_\_\_\_\_

IRS Use Only

IRS Employee (Print) \_\_\_\_\_

IRS Received Date \_\_\_\_\_

Employee Telephone Number \_\_\_\_\_

# Request for a Collection Due Process Hearing

Use this form to request a hearing with the IRS Office of Appeals only when you receive a **Notice of Federal Tax Lien Filing & Your Right To A Hearing Under IRC 6320**, a **Final Notice - Notice of Intent to Levy & Your Notice of a Right To A Hearing**, or a **Notice of Jeopardy Levy and Right of Appeal**. Complete this form and send it to the address shown on your lien or levy notice for expeditious handling. Include a copy of your lien or levy notice(s) to ensure proper handling of your request.

(Print) Taxpayer Name(s) \_\_\_\_\_

(Print) Address: \_\_\_\_\_

Daytime Telephone Number: (954) 987-4878 Type of Tax/Tax Form Number(s): Income/1040

Taxable Period(s): 12/31/2003

Social Security Number/Employer Identification Number(s): \_\_\_\_\_

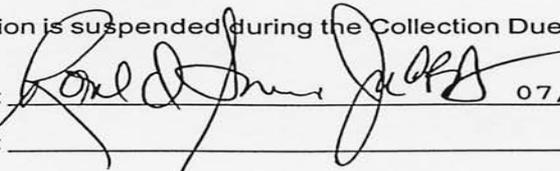
Check the IRS action(s) that you do not agree with. Provide specific reasons why you don't agree. If you believe that your spouse or former spouse should be responsible for all or a portion of the tax liability from your tax return, check here  and attach Form 8857, Request for Innocent Spouse Relief, to this request.

**Filed Notice of Federal Tax Lien (Explain why you don't agree. Use extra sheets if necessary.)**

**Notice of Levy/Seizure (Explain why you don't agree. Use extra sheets if necessary.)**

We would respectfully request the opportunity for a hearing in order to raise relevant issues, including but not limited to the appropriateness of collection actions and collection alternatives to levy, since we have written to the Internal Revenue Service in answer to the liability in question and have not yet received a reply. We have herein enclosed a copy of our letter dated May 5, 2005, regarding this matter for your convenience.

I/we understand that the statutory period of limitations for collection is suspended during the Collection Due Process Hearing and any subsequent judicial review.

Taxpayer's or Authorized Representative's Signature and Date:  07/11/05

Taxpayer's or Authorized Representative's Signature and Date: \_\_\_\_\_

IRS Use Only:

IRS Employee (Print): \_\_\_\_\_ IRS Received Date: \_\_\_\_\_

Employee Telephone Number: \_\_\_\_\_

November 11, 1998

District Director  
Internal Revenue Service  
300 Lock Road, Suite 201  
Deerfield Beach, FL 33442

Attention:

Re: Protest by:  
Names  
SSN  
Form 1040, 12/31/1996; 12/31/1997

Dear Sir:

On behalf of the taxpayers, \_\_\_\_\_, protest is hereby made of the adjustments in individual income tax liability set forth in your 30-day letter dated October 13, 1998, and the examination report transmitted therewith. The following information is submitted in support of this protest:

1. CONFERENCE  
The taxpayers want to appeal the findings of the examiner to the Appeals Office, and request an oral hearing in order to state more fully the taxpayers' position.
2. NAME AND ADDRESS OF TAXPAYER
3. DATE AND SYMBOLS FROM 30-DAY LETTER  
October 13, 1998  
Letter 950(DO)(CG)
4. TAX PERIOD INVOLVED  
Tax Years Ended 12/31/1996 and 12/31/1997.
5. ITEMIZED SCHEDULE OF UNAGREED ADJUSTMENTS
  - a. Taxpayers disagree with the increase in income of \$6,881.00 in 1996 and \$42,900.00 in 1997.

b. Taxpayers disagree with the increase in income taxes of \$2,725.00 in 1996 and \$16,710.00 in 1997.

6. STATEMENT OF FACTS

Mr. \_\_\_\_\_, a shareholder of \_\_\_\_\_, EIN: \_\_\_\_\_, in liquidating the company, received a distribution of \$38,500.00 on January 6, 1997. He was advised that the distribution was a liquidating dividend and not taxable, since he was receiving his basis.

7. STATEMENT OF LAW

Internal Revenue Code, Section 331(a), states as follows:  
"Distributions in complete liquidation treated as exchanges. Amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock."

Internal Revenue Code, Section 301(c), states as follows:  
"Amount taxable. In the case of a distribution to which subsection (a) applies--

(1) Amount constituting dividend. That portion of the distribution which is a dividend (as defined in Section 316) shall be included in gross income.

(2) Amount applied against basis. That portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock.

(3) Amount in excess of basis.

(A) In general. Except as provided in Subparagraph (B), that portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, shall be treated as gain from the sale or exchange of property."

Internal Revenue Code, Section 316(a), states as follows:  
"General rule. For purposes of this subtitle, the term "dividend" means any distribution of property made by a corporation to its shareholders--

(1) out of its earnings and profits accumulated after February 28, 1913."

8. CONCLUSION

Mr. \_\_\_\_\_'s intentions were to liquidate the company, and in doing so, he received a liquidating dividend distribution which he was advised was treated as return of basis and therefore not taxable.

Under Internal Revenue Code, Section 331, distributions in complete liquidation are treated as if the shareholder is receiving full payment in exchange for his stock. Therefore, if the distribution in exchange was greater than the stock basis, a capital gain would result not dividend income. Also, Internal Revenue Code, Section 301(c), defines taxable amount of distribution in the following:

(A) if the company has accumulated earnings and profits to the extent of the accumulated earnings and profits is dividend income;

(B) that portion of the distribution which is not a dividend shall be applied against his basis in the stock, and any excess shall be treated as gain from the sale of exchange of property.

Since the company had no accumulated earnings and profits in 1996 nor 1997, than the distributions should not be deemed to be constructive dividends nor dividends.

Once again, we request that this matter be referred to the Appeals Office, and that a conference be scheduled at the convenience of the office, in order to state more fully the taxpayer's position with respect to the foregoing.

The Form 2848, Power of Attorney, has already been filed with the Internal Revenue Service (a copy which is enclosed herein).

This protest was prepared by the undersigned, as representative for the taxpayer. The undersigned has no personal knowledge whether the statements of fact contained in the protest and accompanying documents are true and correct.

Sincerely,

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

ss

Enclosures

cc: Mr. & Mrs.

November 14, 1996

District Director  
Internal Revenue Service

Re: Protest by:  
Names  
SSN

Gentlemen:

On behalf of the taxpayers, \_\_\_\_\_, protest is hereby made of the adjustments in income tax liability set forth in your 30-day letter dated October 17, 1996, and the examination report transmitted therewith. The following information is submitted in support of this protest:

1. CONFERENCE

The Taxpayers want to appeal the findings of the examiner to the Appeals Office and request a hearing.

2. NAME AND ADDRESS OF TAXPAYERS

3. DATE AND SYMBOLS FROM 30-DAY LETTER

October 17, 1996  
Letter 950

4. TAX PERIODS INVOLVED

Tax years ended December 31, 1993, and December 31, 1994

5. ITEMIZED SCHEDULE OF UNAGREED ADJUSTMENTS

(a) Taxpayers disagree with the adjustment to income of \$35,974.00 and \$26,556.00 for the tax years ended December 31, 1993, and December 31, 1994, respectively;

(b) Taxpayers disagree with the increase in tax of \$15,351.00 and \$10,334.00 for the tax years ended December 31, 1993, and December 31, 1994, respectively;

(c) Taxpayers disagree with the proposed negligence penalties of \$3,070.20 and \$2,066.80 for the tax years ended December 31, 1993, and December 31, 1994, respectively;

(d) Taxpayers disagree with the proposed delinquency penalties of \$1,529.00 and \$1,534.35 for the tax years ended December 31, 1993, and December 31, 1994, respectively.

6. STATEMENT OF FACTS

is a Certified Public Accountant and the sole shareholder of Mr. has an accounting practice which includes income tax preparation and compilation, review and audits of financial statements, prepared according to generally accepted accounting principles and generally accepted auditing standards. Mr. is only directly involved with the accounting side of the practice, and he hires tax accountants to prepare and run the tax preparation side of it. Although Mr. signs all of the income tax returns, only two are prepared by him, which is his personal tax return and that of the corporation; which for privacy and confidentiality purposes, he does not allow anyone to see nor review. It is this situation, and the fact that he prepared his tax returns by hand without the assistance of a computer tax program, that created the mistakes found by the Revenue Agent, since, once again, Mr. is an accounting expert and not a tax expert.

7. STATEMENT OF LAW

Internal Revenue Code, Section 1368(b)(2) states:  
(2) Amount in excess of basis. If the amount of the distribution exceeds the adjusted basis of the stock, such excess shall be treated as gain from the sale or exchange of property.

Internal Revenue Code, Section 1367(a)(2) states:  
(2) Decreases in basis. The basis of each shareholder's stock in an S corporation shall be decreased for any period (but not below zero) by the sum of the following items determined with respect to the shareholder for such period:

(A) distributions by the corporation which were not includible in the income of the shareholder by reason of section 1368,

(B) the items of loss and deduction described in subparagraph (A) of section 1366(a)(1),

(C) any nonseparately computed loss determined under subparagraph (B) of section 1366(a)(1),

(D) any expense of the corporation not deductible in computing its taxable income and not properly chargeable to capital account, and

Internal Revenue Code, Section 6662, states:  
6662. Imposition of Accuracy-Related Penalty.

(a) Imposition of penalty. If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies.

(b) Portion of underpayment to which section applies. This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:

- (1) Negligence or disregard of rules or regulations.
- (2) Any substantial understatement of income tax.

8. CONCLUSION

is a Certified Public Accountant and, as such, by definition, is an expert in accounting. Accounting includes the knowledge and training in preparation of financial statements in accordance with generally accepted accounting principles and generally accepted auditing standards and other accounting promulgated authorities. The designation of a Certified Public Accountant does not in any way imply that the holder is an expert in tax matters. Although Mr. owns an accounting practice which prepares income tax returns, he leaves the preparation of tax returns and running of the tax practice to employees who are tax accountants, and he fully relies on their knowledge. Once the tax returns are prepared by his tax accountants, Mr. signs them on behalf of the P.A.

Mr. did not intend to neglect nor disregard rules nor regulations of the Internal Revenue Code, and only made inadvertent mistakes on his return, which were made because of his lack of tax knowledge. We believe that the Section 6662 penalty for negligence or disregard of rules or regulations is not proper and should not be assessed.

Also, as to the increase in income for the capital gain for the distribution in excess of basis, we strongly disagree with the amounts shown in the income tax examination changes. We believe that the adjustment for 1993 should be as follows:

Beginning Tax Basis	\$ -0-
Distributions for the Calendar Year	50,530.
Less: Current Earnings	<u>(35,672.)</u>
Distribution in Excess of Basis	\$14,858.
	=====

Internal Revenue Code, Section 1368(b)(2), requires that distributions in excess of basis at the end of the year be treated as gain for the sale or exchange of property and, therefore, each year the beginning tax basis is zero.

We also disagree with the computation for 1994, since the above computation for 1993 will affect it.

District Director  
Internal Revenue Service  
November 14, 1996  
Page 4

Once again, we request that this matter be referred to the Appeals Office, and that a conference be scheduled at the convenience of the office, in order to state more fully the taxpayers' position with respect to the foregoing.

The Form 2848, Power of Attorney, has already been filed with the Internal Revenue Service (a copy of which is enclosed herein).

This protest was prepared by the undersigned as representative for the taxpayers. The undersigned has no personal knowledge whether the statements of fact contained in the protest and accompanying documents are true and correct.

Sincerely,

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

ss

Enclosures

cc: Mr. & Mrs.

# Collection Appeal Request

1. Taxpayer's Name		2. Representative: (Form 2848, Power of Attorney Attached)			
3. SSN/EIN	4. Taxpayer's Business Phone	5. Taxpayer's Home Phone	6. Representative's Phone		
7. Taxpayer's Street Address					
8. City		9. State	10. Zip Code		
11. Type of Tax (Tax Form)	12. Tax Periods Being Appealed			13. Tax Due	

## Collection Action(s) Appealed

14. Please Check The Collection Action(s) You're Appealing:

- |   |   |
|---|---|
| <input type="checkbox"/> Federal Tax Lien       | <input type="checkbox"/> Denial of Installment Agreement      |
| <input type="checkbox"/> Levy or Notice of Levy | <input type="checkbox"/> Termination of Installment Agreement |
| <input type="checkbox"/> Seizure                |   |

## Explanation

15. Please explain why you disagree with the collection action(s) you checked above and explain how you would resolve your tax problem. Attach additional pages if needed. Attach copies of any documents that you think will support your position.

Under penalties of perjury, I declare that I have examined this request and the attached documents, and to the best of my knowledge and belief, they are true, correct, and complete. A submission by a representative, other than the taxpayer, is based on all information of which preparer has any knowledge.

16. Taxpayer's or Authorized Representative's Signature	17. Date
18. Collection Manager's Signature	19. Date Received

# **Significant changes to offer in compromise program**

**In May of 2012, the IRS published new guidelines for its offer in compromise program, and thereby significantly more taxpayers will qualify for OIC relief under these new procedures.**

# HIGHLIGHTS:

- **Twelve months, not forty eight months, is the multiplier for future value of income for cash offers paid in five months or less.**
- **Twenty four months, not sixty months, is the multiplier for future value of income for deferred offers. A deferred offer is any offer that is not paid in five months or less.**

# HIGHLIGHTS:

- **IRS no longer forces the taxpayer to offer every dollar he or she has. IRS allows \$1,000.00 plus allowable monthly living expenses to be subtracted from the computation.**
- **Taxpayers are allowed an additional \$3,450.00 in equity in up to 2 cars per household, used for production of income, or health & welfare of family.**

# HIGHLIGHTS:

- **Autos with greater than 75,000 miles or six years old are allowed an additional \$200.00 per month of operating expense.**
- **Minimum payments allowed for post-secondary student loans secured by federal government. (payment must actually being made).**
- **Delinquent state taxes allowed, but not much. Complex formula.**

# HIGHLIGHTS:

- **Miscellaneous: Minimum payments on credit cards are now allowed and also bank fees.**
- **Dissipated assets no longer included in calculating a taxpayer's reasonable collection potential. However, it will be included if it can be shown that the asset was disposed of within 6 months before or after the tax assessment in an attempt to avoid paying the taxes.**

# **Six year rule for repayment of tax liability**

- In cases where taxpayers cannot full pay and do not meet the criteria for a streamline agreement, they may still qualify for the six year rule. The timeframe for this rule was increased in 2012 from 5 years to six years.**

# **Six year rule for repayment of tax liability**

- The six year rule allows for payment of living expenses that exceed the Collection Financial Standards, and allow for expenses, as long as the tax liability, including penalty and interest, can be full paid in 6 years.**

# **Six year rule for repayment of tax liability**

- **Taxpayers are required to provide financial information in these cases, but do not have to provide substantiation of reasonable expenses.**