CALIFORNIA CONTINUING EDUCATION, INC
PRESENTS

TAX DEBT CONTROL

by
Curtis L. Harrington

HARRINGTON & HARRINGTON
PATENTAX®
P.O. Box 91719, Long Beach, CA 90809-1719
(562) 594-9784, Fax: (562) 594-4414
http:/www.patentax.com E-mail: curt@patentax.com PATENTAX®

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I. PHILOSOPHY

Getting into trouble with the IRS is easy. People do it all the time. Easy steps include not opening mail, not investigating, and praying that IRS problems will go away. Its psychologically difficult to take control. The IRS can ruin your life. Creditors can ruin your life. Most often, by the time a taxpayer in trouble faces the problem it will have grown to an overwhelming complexity. At the overwhelming stage, there is an overpowering impetus to take immediate action -- and the action taken can cause more severe and different problems. Tax Debt resolution suffers from a combination of infrastructure division and the resulting lack of awareness of how the two main tax debt relief mechanisms interact with each other. A thoughtful approach could compensate for this problem. When possible, the taking a middle analytical path (by also not jumping immediately to any IRS or bankruptcy filing) to enable (1) more time for investigation of the nature of a taxpayer's debt and (2) a better plan to project both the possibilities and advantages of actions in future with an updatable time projection.

II. CRIMINAL OVERLAY

The criminal tax problem may not be as much of a "front and center" problem for average taxpayers seeking to discharge taxes, but in some cases it can be. Many people forget that "simply avoiding payment" or "conscious failure to pay" taxes can be a criminal evasion. As a taxpayer seeks to eliminate tax debt, it should be constantly remembered that every planning move should be justifiable when seen through a criminal evasion filter.

The overriding aspects of this outline presuppose a taxpayer with low financial net worth and/or some legitimate basis for inability to pay tax. Further, both bankruptcy and offer-in-compromise filings require a taxpayer to set

forth in writing, under penalty of perjury, all of their assets. The mechanism is supposed to relieve taxpayers of debt because they don't have enough assets to easily pay their taxes. When a taxpayer has liquid assets several multiples of magnitude over the amount needed to pay the tax, watch out!! The same is true for illiquid assets that are many more than several magnitudes over the amount needed to pay the tax (government expects taxpayers to suffer an inefficient liquidation if necessary, in order to pay the tax). Further complications include not filing as a potential "plan" to evade taxes. Filing of tax returns is important whether money is available to pay the tax or not.

III. INFRASTRUCTURE LACK OF INTEGRATION

The two main avenues for compromising tax debt are "Offer-In-Compromise" and "Bankruptcy". Currently non-collectible is another designation, but generally requires a persistent, chronic, dim future prospect of ability to pay over the long term. The rules are different for each of these options, but the path to each affirmative basis for relief triggers different tolling of statutes of limitation for rules that enable taxpayers to take advantage of any solution.

A main structural impediment that prevents debtors from having counsel that includes a balanced approach on both is that tax practitioners and bankruptcy practitioners are by and large usually two different groups of practitioners of predominantly different types. First, the populations of the two groups are predominantly separate and only rarely are professionals a member of both groups. Tax practitioners predominantly include attorneys, CPA's, enrolled agents, and unenrolled preparers. Bankruptcy practitioners are exclusively attorneys.

Debtor Bankruptcy practitioners are generally versed in non-tax bankruptcy law, but often have a rudimentary knowledge of tax discharge law. Bankruptcy practitioners have a right to practice before the IRS and Tax Court, but among more than a few tax debtor bankruptcy practitioners, an in-depth tax practice is somewhat rare. Conversely, the overwhelming bulk numbers of Tax practitioners (CPA's, enrolled agents, and unenrolled preparers) do not have a right to practice bankruptcy law. Further, unenrolled tax preparers cannot normally represent taxpayers beyond the preparation and filing of a return.

The vast majority of CAPS and enrolled agents prepare and file tax returns and also represent taxpayers (whether those taxpayers were tax preparation clients or not). Thus, the majority of Offers-In-Compromise are filed by taxpayers (with or without the assistance of a clinic), or by CPA's and enrolled agents. Add to this, the fact that most taxpayers in trouble will reach out to the most recent and most familiar professional relating to their tax debt which is likely to be either a CPA or enrolled agent, or an unenrolled preparer that will probably refer them to a CPA or enrolled agent.

There is probably more decisional weighting in greater likelihood that a CPA or enrolled agent will be contacted first. This includes the so-called negative association with bankruptcy and the apprehension over potential costs with an attorney, especially if a creditor begins an adversary proceeding. But it is also more likely that practitioners that have the capability only to file Offers-In-Compromise will urge and sell that service to a prospective client because (1) it is a service the CPA or enrolled is licensed to perform, and (2) they are unable to advise what the bankruptcy result might be (either because they don't know or actively don't want to know).

The IRS is only one creditor, but a CPA's or enrolled agent's tax client may have dozens of other non-tax creditors. Its understandable for a CPA or enrolled agent to severely want to avoid the non-tax side of bankruptcy. But unfortunately any taxpayer is best served by pointing out the aspects of the taxpayer's WHOLE STORY on that taxpayer's situation and options, both now and as projected into the future.

Many bankruptcy attorneys have not delved deeply into tax issues. On the whole, chapter 7 bankruptcy attorneys have traditionally maximized income by spending a limited amount of time with each client, in much the same economic model as some volume tax preparers operate. For the most part, bankruptcy judges provide some oversight, but only when the worst examples of lack of attention to detail crop up in the more problematic bankruptcy cases. One recent case of note was In Re Sears (9th BAD August 15, 2014) that at least partially resulted from an inadequate amount of attorney time spent with the client. Part of the case opinion included suggestions about the minimum standard of time and interaction between attorney and client.

Exacerbating the above problems from divided practitioner infrastructure above, is a common propensity for any practitioner to "take quick action" when presented with a client's problem. There is a saying that "a hammer sees every problem as a nail". Each practitioner tends to take action with the solution with which they are most familiar. This is even worse when clients deliberately avoid and delay for as long as they can comfortably ignore their problem, before seeking help at the last minute.

When action is needed "now" its very likely that no time will be spent looking at the "other"side of the potential solution. Careful bankruptcy practitioners will include a disclaimer in their engagement agreements suggesting the client consult a tax attorney, while tax practitioners will include a provision to have the client consult a bankruptcy attorney. There is usually the added a general provision that has the client assumes the risk of errors resulting from an incomplete investigation.

In some cases practitioners take action knowing that the result will be ineffective or rejected, but do so to relieve an annoyance pressure point the taxpayer wants altered immediately despite the problems likely to be created. The practitioner hopes to combat a charge of filing in bad faith with the defense of a mixture of exigency and negligence? In reality, there is not too much in the tax realm that requires such immediate, last minute action. Conversely, even a taxpayer whose house is heading toward foreclosure jeopardy can take the time to learn about their tax debts.

Both "Offer-In-Compromise" and "Chapter 7 Bankruptcy" contemplate that the debtor have a limited net worth for efficient elimination of tax debt. They are different in that "Offer-In-Compromise" only rids government tax debt, but "Chapter 7 Bankruptcy" has the potential to rid government debt along with personal debt. Often a debtor with sizeable personal debt might choose bankruptcy, even where priority, nondischargeable tax debt will not only remain, but will be "locked in" due to the bankruptcy at least until the next separate bankruptcy is possible.

What is needed is a well known main scope of tax debt considerations. Ultimately, the taxpayer should know available options, and the magnitude those options can provide as that taxpayer moves through time. Part of the destination involves exposure to practitioners that understand tax debt from both "Offer-In-Compromise" and "Chapter 7 Bankruptcy" perspectives. The IRS has at least taken a half-step in this direction by providing a "PRE-QUALIFIER" tool to enable all practitioners to get an idea about how the taxpayer would fare in making an offer in compromise. (irs.treasury.gov/oic_pre_qualifier/). A similar tool for testing tax debt dischargeability for each state's bankruptcy exemptions environment would be of great benefit.

The underlying theme herein is that "Knowledge Breeds Control Capability." Any failure to know as many facts and options as possible can increase inefficiency & unpredictability of outcome. Any investigation as a needed tonic to compensate for "failure to know," would be helpful.

IV. THE BASIC LIMITATION STATUTES

The IRS 10 year IRS tax collection statute 25 U.S.C. §6502(a)(1) provide for the government and IRS to get a 10 year "collection window" chance to collecting the tax for a given tax assessment year before the 10 year collection statute expires due to passage of time. Certain acts can cause the time ticking away toward this 10 year non-collection deadline to be temporarily "stopped" or tolled" which causes the 10 year period to become 11, 12, or more. A debtor that outlives the length of the collection statute is relieved from the IRS's ability to collect the tax owing for that particular assessment.

The bankruptcy statutes generally provide for the government and IRS to get a "collection window" at collecting the tax before a taxpayer can file for bankruptcy and obtain a discharge (in some instances, for some taxes) of the taxes owing. This window of opportunity at collection is broken down into three possibly overlapping time periods, all of which must be elapsed before bankruptcy filing in order to have a "chance" to discharge the taxes. Some of the periods pertain to other types of taxes other than federal income tax. For now we focus only on federal income tax to simplify the complexity involved. In essence, a bankruptcy must be filed "beyond" all three periods in order to be able to discharge the tax. The three periods usually only "nest" within the longest period if a return is filed on time. Part of the reason that some years can be discharged even if filed late, is for the very reason that the "2 years from tax filing" period exists.

One of the reasons the discharge of taxes is in the news relates to the recent 9th circuit case of MARTIN SMITH v. IRS (In Re Smith) (14-15857)(9th Cir July 13, 2016), in which the 9th circuit had an opportunity to join a line of cases in other circuits holding that any late filed tax return would not be dischargeable in bankruptcy (the 9th circuit refused to join this line of cases). The so-called "One Day Late Rule" cases in the 1st, 5th & 10th circuits include: (1) In re Fahey, 779 F.3d 1, 4 (1st Cir. 2015); (2) In re Mallo, 774 F.3d 1313 (10th Cir. 2014) cert. denied in Mallo v. I.R.S., 135 S. Ct. 2889 (2015); & (3) In re McCoy, 666 F.3d 924, 932 (5th Cir. 2012). There are other restrictions on discharging taxes on a late filed case, one of which is known as the SFR problem, and it will discussed below.

In the spirit of repetition, the three bankruptcy periods as thresholds that a bankruptcy filing should be beyond in time are:
the 2 year bankruptcy tax filing statute 11 U.S.C. § 523(a)(1)(B)(ii);
the 3 year bankruptcy tax year statute 11 U.S.C. § 507(a)(8)(A)(i); and,
the 240 day bankruptcy tax assessment statute 11 U.S.C. § 507(a)(8)(A)(ii).

These seem as if the application to a tax year would be straightforward, but they are not. The 3 year statute is normally measured from the time the taxes are due to be filed and it can change from tax year to tax year, and with a taxpayer's extension. The 2 year from filing statute is a little easier to measure, so long as tax returns are filed with good proof of when they were filed. The 240 days from assessment is often difficult to measure because assessment occurs when the IRS posts an amount of tax due. Paper returns may go days and weeks before opening, and the IRS may be slow at putting the numbers up. All of these dates need to be known precisely, especially if a bankruptcy is planned to be filed with the expectation of discharging certain tax amounts from certain tax years.

Statistically, it makes no sense to leave only a short time between time the last known threshold is exceeded and the date of taking action by filing (CUTTING IT CLOSE), as all sorts of hidden inaccuracies may be present. The debtor might just be wrong about computing the time periods. Further, calling the IRS and getting a verbal assurance does not count. Even getting a transcript of account showing entry of an assessment may not count, because it could also be wrong (see below). One of the worst situations is an error where a filing was a day off

because some internal or policy change, or mis-calculated factor moved the outer edge of a threshold a few days one way or the other.

What if the taxpayer was living in an area with a disaster such that the IRS moved the due date of the tax return into the future by a week? (In a Presidentially Declared Disaster Area, the deadline for assessment may be postponed for a period of up to one year for individuals & businesses under IRC Section 7508A.) A quick-draw on filing a bankruptcy might cause a violation of the 3 year statute, for example. In another set of possibles, what if a preparer gave a false filing receipt and the return was never filed? Trying to correct such an error in the midst of an Offer-In-Compromise or a bankruptcy filing would be a double punishment that might incur additional interest and delays where the IRS record would need correcting before action on the tax debt could take place. A more salient point is that if an underlying date in the time and filing computations may be in error and any computation based on it might also be incorrect. The transcript of account might be wrong.

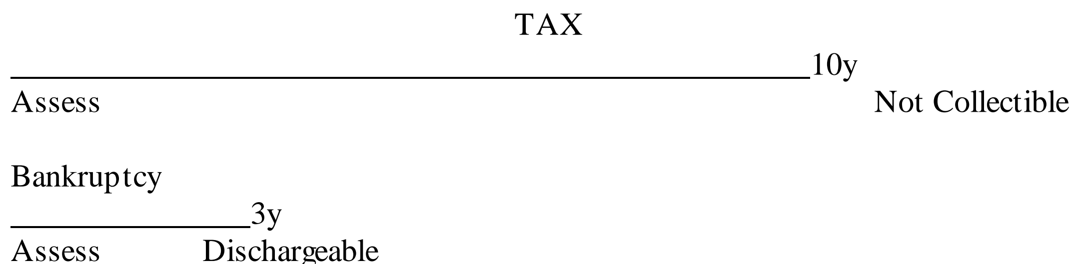
V. Tolling

For taxes, tolling has more significant short term impact in bankruptcy than the relatively longer term impact for the tax collection statute. But again, tolling in both bankruptcy and tax can occur due to actions taken before the IRS. Tolling in both bankruptcy and tax can also occur due to actions taken in bankruptcy.

In general, for bankruptcy, a given tax year must at minimum have a vintage that is aged by greater than a minimum amount, usually a triple test (including 3 years since the taxes were due, 2 years since a return was filed and 240 days since the tax was assessed). For bankruptcy, if a taxpayer is at a point less than the minimum age for discharge, tolling pushes that minimum age into the future by “freezing” or “tolling” the ability to count time toward the total of thee minimum age for discharge.

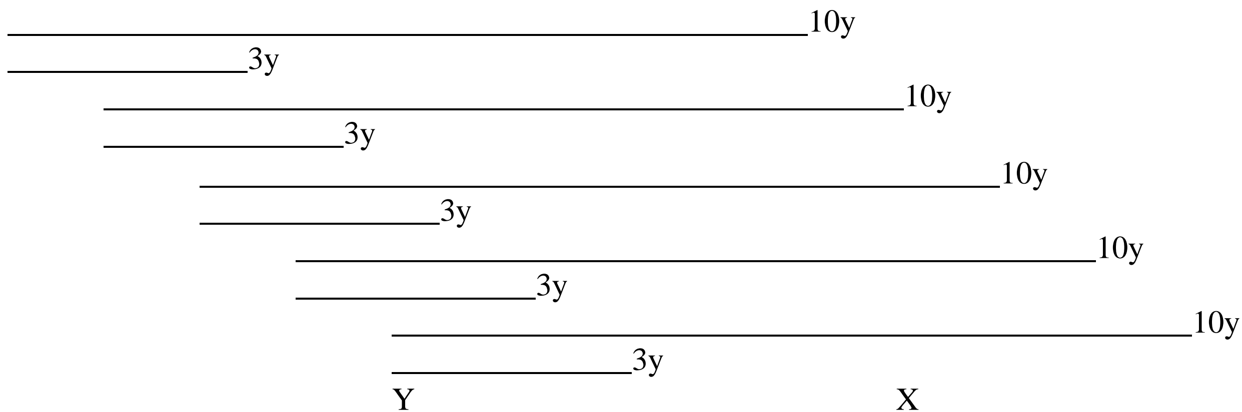
For tax, the government’s IRS has 10 years to collect the tax, measured from the date of assessment. If the government cannot collect the taxes owed within that 10 year period of time (subject to further exceptions), the tax cannot be civilly collected from the taxpayer, and the taxpayer thereafter owes nothing for the tax year in question. When a taxpayer is at a point less than the 10 years left to collect the tax, tolling stops the time count from assessment. Stopping the time counting for the exhaustion of the 10 year period, in effect pushes the 10 year threshold forward.

Note at the outset, that the very differences in the goals of the periods, as well as the lengths of the two periods. The shorter period involves having a particular tax year “eligible for discharge” but only if a bankruptcy filing is performed. The longer period involves having a particular tax year designated as “no longer collectible.” For a given tax year and the time near the 10-year collection statute nears, taking any action that fails to eliminate a tax debt for a given year will probably unnecessarily prolongs the time the debt is owing for that year.



Each tax year for which money is owed has its own, separate time line. The problem is that most tolling events resulting from a taxpayer’s actions to relieve unwanted consequences of the tax debt will toll or freeze all a

taxpayer’s years simultaneously. Assuming tax returns were filed on time, and that unpaid taxes are owed for each year, a compressed collection of the above lines for five years, with older years at the top might look like this:



A taxpayer at time X (drawing a vertical line upward from the “X” symbol through all of the years) has 1 year to go on the collection statute for the oldest tax owing, 2 years on the next oldest tax owing, and so on. If an offer in compromise application is filed, the 10y lines to the right of the X will begin extending, AND the taxpayer will have to make an offer and pay some amount on all of the taxes in the diagram. If Bankruptcy is chosen at time X, all of the taxes are discharged, but the tax debtor has to suffer possible negative effects of the bankruptcy.

But, most taxpayers that are behind on their taxes might not be able to tolerate all of the collection activities that would occur over 9 years. Taxpayer at time Y, (drawing a vertical line upward from the “Y” symbol through all of the years) for example, in the current year as his present day, about to file a return. Tax years from current, one year ago, & two years ago are not dischargeable. Tax owing from three years ago will be dischargeable in a day, as well as taxes from 4 years ago. Although no one should ever try and file for an eligibility that occurred a day ago (its just too statistically dangerous), its clear that for any point on the simplified compressed chart that as the taxpayer moves into the future that tax years slide from non-dischargeable, to dischargeable, and finally from “collectable to a point “no longer collectable as past the CSED date”

Also keep in mind that for an actual taxpayer’s chart, some years may have been paid on time. Others may be effectively ineligible because of a substitute for return (SFR -- see below). Many more and different possibilities present themselves. What is not shown on the above, over-simplified chart, but which might be valuable to the taxpayer, include:
-What is the magnitude of tax debt for each tax year?
-Is there any tax year which is simply not dischargeable?
-Is there any year for which CSED will either never occur or will occur at 30 years, or 50?
-What are the taxpayer assets available to pay the tax (voluntarily or forced)?
-What is the amount owed in non-tax debt versus tax debt, at any given time?
-Is there any net-worth changing event, inheritance or financial disaster on the horizon?
-What is the taxpayer’s current annual income?
-What state or federal exemptions are available to the taxpayer?

Unintended Tolling: Small magnitude tolling can occur without action or realization of the tax filer, for administratively mandated (extended) due dates. Examples include moved tax return due dates in a given geographical location for natural disasters, and target dates (like April 15) that may otherwise fall on a weekend or a holiday.

Deliberate Acts Tolling: Tax Actions: Generally the 10 year Collection Statute Expiration Date CSED is 10 years from assessment (§6502(a)(1)). Acts that extend this statute are numerous and only some of the more easily found provisions are shown in the below chart.

50+ year CSED?: Also keep in mind that before the end of the 10 year CSED period (whether or not extended by any tolling) that the IRS may institute a civil suit to reduce the assessment to a judgement, and thus create an additional 20 year CSED in addition to the first 10 year CSED. (§7401)(§7402) (§6502). And, that 20 year CSED is extendible for another 20 years(subject to court approval)(IRM 5.17.4.6.2.5.). This is 50 years if not extended by taxpayer's acts along the way (SEE 28 U.S.C. 3201(c)). This type of litigation also suspends collection during the pendency of the lawsuit. (IRM 5.1.19.3.2.2.) Ordinary state court property liens are recorded in county/state court, but this type of federal lien is created on the filing of the judgement in the U.S. district court. (26 U.S.C. 6323(f))

In one case the 50+ year CSED is becoming a reality.

Holding the Tax Liability door open for many years can be a bigger disaster than holding the Tax Liability door open. The more that a Taxpayer obstreperously avoids paying, is that just another evasion tactic? (http://patentax.com/Daviscourt.pdf)

Imagine the following theoretical facts, and how they might appear to the IRS:

- (1) Yr 0: Taxpayer avoids paying year capital gains on the sale of a business by using a tax shelter.

- (2) Yr 3-10: IRS collection activities occur

- (3) Yr 10: Taxpayer files for bankruptcy in an attempt to discharge the tax owed, but the bankruptcy court denies discharge and finds that taxpayers willfully attempted to evade or defeat the collection of tax under 11 U.S.C. § 523(a)(1)(C). (which recently has been set by legal decision to carry the same standard of proof applicable to tax evasion).

- (4) Yr 12: After tolling delay from the bankruptcy, IRS resumes collection activity.

- (5) Yr 15: Taxpayer utilizes administrative due process procedures, including collection due process and offer-in-compromise and are unsuccessful.

- (6) Yr 16: IRS refers The Justice Department to file suit to reduce the assessments to judgement and thus extend the period for collection for another 20 years (possibly to Yr 36, and possibly to Yr 56 if extended before Yr 36 is over).

- (7) Yr 18: Taxpayer files a complaint in federal district court against a number of federal workers, including a revenue officer, collection supervisor, an advisor, a settlement officer appeals officer, offer in compromise manager, tax examiner, offer specialist, group manager and the acting director for area collection, and other yet unknown tax and justice personnel in a "Bivens" action for "a conspiratorial plot to deny him his constitutional rights, purportedly on account of his alleged disability, at all relevant stages of the aforementioned tax collection effort."

- (8) Yr 19: The Bivens action was dismissed based upon the fact that because the Internal Revenue

> Internal Revenue Code gives taxpayers meaningful protections against government transgressions in tax assessment and collection . . . Bivens relief is unavailable for plaintiffs' suit.

In text books the possibility of a 10 year collection statute + a 20 year collection for a judgement and then a 20 year renewal on that judgement to equal 50 years (not including tolling) seems such an anomalous & unusual remote possibility as to border on the ridiculous.

Will the establishment of evasion using the courses of action from the past be possible? Will the course of action be one continuous plan continually carried out so as to avoid inhibition of prosecution via criminal statutes of limitation?

Would YOU wish a quick resolution to this tax debt? (Or at least some action to blunt a charge of evasion by obstreperous non-payment actions?) What actions would YOU take begin such resolution?

(1) Would you start a stream of payment to IRS on a regular basis?

(2) Would you compute your reasonable collection amount and liquidate everything else and attempt a further offer-in-compromise without delay?

(3) Would you begin your own payment plan subject to a formula that was based upon the IRS cost of living standards?

(4) If your income was steady, would you set up and be willing to risk failure to try a long-term repayment plan?

(5) Given that a tax crime conviction would set up the tax debt owing as an even more onerous restitution payment, what acts and statements could you telegraph to IRS to show that steps are being taken to begin liquidation to an IRS living standards connected subsistence level?

(6) After liquidation to an IRS living standards connected subsistence level and achievement of a $0 further collection potential, would you consider asking to being placed on currently not collectible (CNC) status?

(7) Would you consider living overseas in order to possibly enable yourself to repay the tax debt more rapidly and efficiently through foreign earned income exclusion?

(8) What other actions would you consider to stave off criminal prosecution while paying off your tax debt?

Another principle to remember is that an action taken by a related taxpayer can cause the statute of limitations to continue to remain tolled, even against the wishes of the taxpayer being tolled. Actions regarding joint filers and appeals of actions to quash are two examples.

VI. HANDY BUT INCOMPLETE SET OF TOLLING EVENTS

Collection Statute Limitations & Tolling Events		
Type. No.'s Separated by Periods =IRM	Time	Cite
Second Tier Tax Collection Suspension upon Second Tier Assessment when First Tier applies for refund within 90 days	Period beginning with First Tier Refund	4961(c)
Installment Agreements CSED suspension During pendency, 30 days after rejection, 30 days following termination, or appeal of rejection. (Whenever Levy is precluded)	Short, optional, non integrated time periods. Small, additive time periods	6159, 6331 IRM 5.1.19.3.5
Innocent Spouse Application Analyze 6015 claims and 6330 periods together where 6015 is raised during Collection Due Process Hearing 5.1.19.3.6	From Request to waiver, or refusal +90 days + Tax Court Appeal Period + tax court decision is final + 60 days	6015(b), (c), (f)
Substitute for Return SFR for a given (previous) tax year	Also Starts a 10 year collection statute, but will start delayed from 1-4 years	6020(b) 6502(a)(1) 5.1.19.3.15
Collection Due Process Hearing IRM 5.1.19.3.3	Date Request is received, until hearing is final including any court appeals	6330(e), 6320(c)
No Levy While 7122 Offer In Compromise is pending IRM 5.1.19.3.4	6331(k)(3) indicates reference to (I)(5) a suspension of 6502 collection statute. IRM 5.1.19.3.4 indicates CSED suspension during "offer pending"+ "post rejection" 30 days +"time of timely appeal" rejection considered in appeals.	6331(k)(3)
General Time for Assessment	3 years	6501(a)
General Time After assessment, Collection	10 Years	6502(a)(1)
{Installment Agreement before 90 days of end of any extension period agreed in writing, at the time entered into (OR) release of levy under 6343 after 10 year period and any extension period agreed in writing} (AND) court collection proceeding.	Judgement / Court Litigation Collection by levy is extended and shall not expire until tax liability is satisfied or becomes unenforceable.	6502(a)(2) IRM 5.1.19.3.2
Notice of Deficiency	90 days + 60 days or 150 days + 60 days	6503(a)(1)
Tax Court Petition Filed	Tax Court Decision Final + 60 days	6503(a)(1)
Consolidated Return Group Suspension when notice of deficiency sent to group member	Stops for members as if they had individually received notice.	6503(a)(2)
Taxpayer Assets in Court Custody (Due to Bankruptcy)	Custody Time & 6 months	6503(b)

Taxpayer outside U.S. for 6+ continuous months IRM 5.1.19.3.7; Includes partnerships under IRM 5.1.19.3.7.3	Absence. If on return <6 months left then for + 6 months from return	6503(c)
Extension Request Estate Tax Re: 6161(a)(2), 6161(a)(3), 6163, 6166, 6166A	Period of Extension	6503(d) 5.1.19.3.12
Extension of time for payment of 6167 Foreign Expropriation losses	Extension of 6167(a) or (b);Limit 9 years	6503(e)
Wrongful Levy / Seizure (to extent of value) of 3rd party property (until anyone gets 6325(b)(4) certification) (3rd party related to Taxpayer?)	Seize-Return P. Make Certificate	6503(f) 5.1.19.3.10
Suspension Pending Correction period under 507(g)(2) for tax regarding 507, 4971(Tax for Failure to meet minimum funding standards), 4795(tax on prohibited transactions) are extended for time	Event through Notice of Deficiency + 90 days.	6503(g)
Title 11 Assessment 6501, 6502 or 6229; 6212 Consolidated Return	Active Case filed (assessment) + 60 days thereafter	6503(h)(1)
Title 11 Collection 6501, 6502 or 6229; 6212 Consolidated Return. IRM 5.1.19.3.1	Active Case filed (collection) + 6 months thereafter	6503(h)(2)
Extension for Certain Summons (Initial Summons & Summons w/in 30 days of initial summons)	Judicial Enforcement Period = 1st day of Court Proceeding Brought through resolution	6503(j)
Agreed Assessment & Extensions	Extension + 6 months	6511(c)(1) 6501(c)(4)
Preparer Penalty Challenge. Initiation is (payment of 15% of penalty & claim for refund); & continues until resolution (IRS Denial, District Court Lawsuit w/in 30 days of denial / 6 months + 30 days filing of refund)	From start to finish / resolution of the liability for the penalty resolution	6694(c)(3)
Regulations Requiring notice to the secretary of Treasury (in bankruptcy or receivership fiduciary) between institution of action and notice received by secretary.	Assessment tolled by notice & for 30 days after notice, up to 2 years max	6872
Transferee/Fiduciary Liability Assessed & mailed (6212) & until Tax Court Over (note 1)	From Mailing to Tax Court decision +60 days	6901(f)
Combat Zone. 7508(a)(1)(I) extends collection and assessment for area presence, hospital and 180 days thereafter. Under 7508(e)(3) of hospitalization from area presence, then any period of hospitalization and next 180 days will not add to collection statute tolling.	Time in Zone + 180 days is the amount of the extension. If hospital time, only area time tolls collection as hospital time & 180 days following does not count	7508

Action to Quash or Intervene in Summons. (1) Taxpayer whose Liability Summons issued (2) Anyone else intervening	Suspension (1) Enforcement Proceeding through appeals. (2) from 6 mo after service through resolution	7609(e)
Taxpayer Assistance Order TARD = Taxpayer Advocate Received Date TARD day not Counted	System Programming make recordation unreliable. Gen. TARD -1 thru TAO issue	7811(d) 5.1.19.3.13
U.S. Military Service: Request for Deferment. Eligible if active for 30 days or more 10 U.S.C. §101(d)(1).	Active service period and 180 days thereafter.	50 U.S.C.A. §3911(3) 5.1.7.12
Bankruptcy Statute Limitations & Tolling		
Type	Time	Cite
3 year bankruptcy tax year statute. Tollable (If taxes owing for a given year fails the 3 year statute, its a PRIORITY DEBT)	Bankruptcy Filing must be more than 3 years since the filing due date (with extensions)	§507(a)(8)(A)(i)
Nature's Extenders	Extensions, disaster, executive,	Administrative
Tolling: Government unit Prohibited from Collection	Prior Bankruptcy+ 90 DAYS Collection Due Process + 90 DAYS	§507(a)(8)hanging para after (G)
240 day bankruptcy tax assessment statute (If taxes owing for a given year fails the 240 day year statute, its a PRIORITY DEBT)		§507(a)(8)(A)(ii)
Especially Susceptible to Equitable Tolling	240 day window philosophy	Judge
Tolling: Government unit Prohibited from Collection	Prior Bankruptcy+ 90 DAYS Collection Due Process + 90 DAYS	§507(a)(8)hanging para after (G)
2 year bankruptcy tax filing statute) Putnam v. IRS 503 br 656 (Bankr. E.D.N.C. 2014)-(If taxes owing for a given year fails the 2 year statute, its NOT a priority debt)		§523(a)(1)(B)(ii)
Especially Susceptible to Equitable Tolling	2 year window philosophy	Judge
Fraudulent Return or Willful Evasion (If taxes owing for a given year fails the 2 year statute, its NOT a priority debt)	Not dischargeable	§523(a)(1)(C)
Tolling	Offer-In-Compromise + 30 days	§523(a)(1)(B)(ii)

Ollie-Barnes v. Internal Revenue Service (In re Ollie-Barnes), Case No. 09-82198 (AP No. 14- 09004) (Bankr. M.D.N.C. November 6, 2014) (Kahn, J.)	2 year statute equitably tolled by prior bankruptcies	Created

(note 1) Fiduciaries and Transferees: Transferees and transferred assets. The period of limitations for assessment of an initial transferee is one additional year beyond that for the taxpayer. For a transferee of a transferee, the period is extended one year after the period for the prior transferee, but not more than three years after the period as to the taxpayer. See IRC Section 6901(c)(2). These periods may be extended by agreement and, moreover, an extension by the taxpayer affects the transferee's own period. The periods may also be suspended during certain court proceedings (see IRC Section 6901 (c), (d) and(f)). Generally, a time limitation imposed by state law on fraudulent transfers has no bearing on the assessment period; federal law controls. See United States v. Summerlin, 310 U.S. 414 (1940); Bresson v. Commissioner, 111 T.C. 172 (1998). Fiduciaries and transferred assets: The period of limitations for assessment against a fiduciary ends at the later of one year after the liability arises or the expiration of the period for collection of the tax. See IRC Section 6901(c). This period may be extended by agreement. See IRC Section 6901(d).

VII. EQUITABLE TOLLING (HISTORY & WARNING)

Equitable tolling generally relates to the ability of the courts to give relief when the principles (especially window magnitude principles) embodied in limitation statutes are violated, even where the individual scalar magnitude technicalities do not create a violation, but where the policy behind the principles would be frustrated. Facially, the bankruptcy 3 year, 2 year and 240 day provisions seem straightforward. 3 years from the due date of a tax (including extensions) can be counted using a calendar. 2 years from the time of filing a late tax return, until the filing of the bankruptcy petition also seems straightforward. 240 days after assessment also seems straightforward, but may be difficult to track since “assessment” is a posting activity that occurs within the agency and is generally unknown (you can’t trust someone on a phone line to give you that information).

The Supreme Court tolled the bankruptcy 3 year statute in 2002 in the Young case (Young v. United States 535 U.S. 43 (2002)). In Young, A timely filed return was followed by two bankruptcies, with the second bankruptcy having a filing date that was over 3 years from the due date, with extension, of the filing of taxes were filed. The two chapter 13 bankruptcies were so close together that the IRS didn’t have a full 3 year opportunity to collect the tax.

IRS Chief Counsel Memoranda of 200404049 stated that despite the tolling of the 3 year statute in the In re Young holding of the Supreme Court for the time which an Offer In Compromise was pending, the Chief Counsel’s Office Opined that “equitable tolling” does not operate to suspend the 3 year “look back” period of 507(a)(8)(A)(i).

Then, in 2005, the “hanging paragraph” was added just after 507(a)(8)(G) that codified the tolling provisions (to overrule Young) as (1) “governmental unity is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection actions taken or proposed against the debtor plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title (title 11) plus 90 days”

You would think that a congressional amendment to codify tolling could perhaps eliminate judicial activism in going for "equitable tolling", but that might be incorrect....

Todd Terry Putnam v. Internal Revenue Service (In Re Todd Terry Putnam) Bankr E.D.N.C., 2014) (January 14, 2014) Three chapter 13 petitions were filed. No discharge for tax returns filed August 2004, even though chapter 13 case #3 was filed July 2011. Footnotes indicate that the earliest tax year owing occurred postpetition as to the first bankruptcy filing. However, even considering this first year's tax owing to be prepetition, the total number of days between the three chapter 13 filings totaled 643 days, far short of the 730 days (2 x 365) in two years.

Ollie-Barnes v. Internal Revenue Service (In re Ollie-Barnes), Case No. 09-82198 (AP No. 14- 09004) (Bankr. M.D.N.C. November 6, 2014) (Kahn, J.) Debtor was only "outside" bankruptcy for only 1 year and 8 months of a 3-serial bankruptcy stretch. The philosophy of the 2 year bankruptcy statute is that the government get a 2 year opportunity to collect from the taxpayer after the taxpayer's late return is filed. That aspirational objective of the 2-year statute was not met, and so the court held that there was equitable tolling and that the 2 year statute was not met.

Further a case prior to 2005 was In Re Nolan, 205 BR 885 (1997), which rejected tolling of the 3 year statute. But I believe that the value of Nolan is its exploration of the operability of 523(b) which states that taxes are excepted from the general rule of 523(a)(10) that provides that a general debt being nondischargeable in a prior bankruptcy is not dischargeable in a later bankruptcy. (Keith Lunden Opinion) It sets up a lions share of the reasoning that equitable tolling should be resisted by bankruptcy courts for tax debts, but that doesn't mean that a given debtor's case won't be judicially held to be equitably tolled (despite 523(b) and the 2005 hanging paragraph) as to one or more of the three bankruptcy time periods.

Conclusions from these discussed tolling cases is that (1) equitable tolling is still alive, (2) the 2-year limitation under 523(a)(1)(B)(ii) is particularly subject to equitable tolling because the changes in the bankruptcy statute were responsive to the 3-year and 240 day code provision and not the 2-year code provision, and (3) once a taxpayer starts a pattern of multiple applications and overlapping deviations from singular availment of relief, that it is more likely is it that a court will find some creative opening to deny a tax discharge (and / or a finding that the 10-year collection statute was exhausted). If some act must be availed of to get a taxpayer out of trouble should be followed by a long period of normalcy.

Other possibilities for equitable tolling?
The above chart is laden with traps for the taxpayer. It might be used to suggest more and different "inventive" possibilities for extension of the 10 year collection statute. But they also bring into question as to which of the categories that toll the tax collection statute might also toll bankruptcy statute. The "a request by the debtor for a hearing and an appeal of any collection actions taken or proposed against the debtor plus 90 days" phrase is subject to interpretation. First, what about the text of the provision? Is it read as (a request by the debtor for a hearing and an appeal) of any collection actions taken or proposed against the debtor plus 90 days"? Or is it read as (a request by the debtor for a hearing) and (read as an alternative OR) (an appeal of any collection actions taken or proposed against the debtor) plus 90 days"? The former requires a hearing AND an appeal in one action. The latter, although it uses "and" seems to suggest a hearing or an appeal. (assuming the hearing was unfavorable)? What a mess, especially a mess for inviting judicial intervention. The next possible matters that could be found to toll a bankruptcy limitation period might be:

(A)What about the request and appeal of a denial of an installment agreement, especially where its clear that the taxpayer's motivation was to stop collections?

(B) What about innocent spouse?

(C) Is charging a wrongful seizure an attack on a collection action?

(D) When will a Taxpayer Assistance Order and appeal implicate collections?

(E) What is the effect of any of the foregoing when combined with a CDP request?

We have seen from the chart that a CDP hearing request triggers both a bankruptcy tolling and a tax collection statute tolling. It is again emphasized that an action will toll all the years in question. Once a bankruptcy limitation for a given tax year is clearly beyond its threshold limit, tolling it may probably not negatively affect that limit, HOWEVER that fact alone is not helpful. (1) there might be a mistake as to that limit, (2) transcript may be in error, (3) most practitioners don't take the time to file a freedom of information act for the taxpayer to compare it to the transcript, (4) there may be facts in the file that suggest tolling at an earlier time period for a different, unexpected and unusual reason, (5) a taxpayer can never preclude the possibility of judicial equitable tolling, and (6) both the IRS and a judge might dig into and find facts that support a new theory of equitable tolling.

Imagine, without even considering tolling, a 10-year history of inability to pay taxes. For each tax year, there will be three limitation periods and a 10-year collection statute. This translates into 40 possibilities. Then applying tolling will complicate the 40 possibilities. It may be that in reality, there will be a fewer number of critical years, but there with be different values attached to the owing in each year. If there are one or two large values that make a decision to act particularly critical, it may be that correctly evaluating those years can make a difference on whether the client is willing to accept the negative cost of taking action in order to remove the tax debt for those years. This is the principle outlined in the Seare case opinion of "ascertaining debtor's objectives and defining the goals of the representation." Without taking the time for investigation for so complex a system, it will be impossible to help the debtor achieve any sort of predictable control. Especially true when tax actions affect bankruptcy and vice versa.

VIII. SFR (SUBSTITUTE FOR RETURN) THRESHOLD

The overall SFR mechanism as to discharge of tax debt operates with an often used philosophical mechanism of "Tell Me Before I Find You." The most important aspects of this mechanism involve non-filers that "come in from the cold" deciding to resume a pattern of tax return filings after having not filed for a long time (often as much as 20 years). If you prepare and turn in tax returns for the past 6-7 years, and do it before IRS knows about your lack of filing, the service has a policy of not instituting criminal tax evasion charges.

The "Tell Me" part of the mechanism is extremely important in a country having a "voluntary" tax system and in which the 5th Amendment of the Constitution, though declining in importance, is still active. Where a taxpayer files a fraudulent return (say on January 30) and then files a non-fraudulent amendment (say on March 1), fraud has still been committed and all of the potential civil and criminal penalties can be visited upon the taxpayer. Thus its clear that the taxpayer's narrow voluntary first statement of what they owe, as embodied in a return is golden for the IRS. IRS does not want a system in which people can "fabricate" and then "correct it when caught". IRS has never had and never will have a staff sufficiently massive to operate such a system. Thus, the "Tell Me Before I Find You"mechanism is also at the heart of the SFR mechanism, with IRS valuing voluntary tax representations and seeking to severely punish later "correct it when caught" compliance. IRS does this in a way that disadvantages the bankruptcy system.

Generally, people drop off the IRS tax grid when they become homeless, when they die, when they leave the country, and for dozens of other reasons. So long as there is no employer, contractor boss, service recipient or merchant to file 1099's or W-2 statements to the IRS, there is no reason that the IRS should know that a person is still alive. Without any such indication, the IRS may likely never try and make contact. However, where IRS believes that money continues to being earned, it may “get around” to creating and recording a tax return under IRC 6020(b), known as a “Substitute for Return” or SFR.

In practice this happens from 1 - 3 years after the due date for a return of the tax year in question. If done properly, there should be (1) some fairly concrete indication that the taxpayer is still actively earning money, and (2) proper records procedure for opening, and then (3) computing the tax on such income, and finally (4) mailing the computed SFR return to the taxpayer. As a “pure tax reminder” mechanism the SFR has some effectiveness. When the taxpayer gets an SFR, it is computed with some form of income, and with subtracted personal tax exemption and the standard deduction to arrive at an adjusted gross income (AGI) figure, and with the tax calculated based upon that AGI.

Because the “bare bones” computation does not include deductions and credits that are personal to the individual taxpayer. So, an employee taxpayer is encouraged to voluntarily create and file a tax return after an SFR, because (1) the IRS allows it as a mechanism to re-set the amount owing, and (2) in order to reduce the tax bill to the IRS by claiming those deductions. The self-employed have a severe need to make the adjustment because the “cost of goods sold” is typically an enormous business deduction made before arriving at taxable income.

The typical nightmare scenario entails a business that buys $80,000 of goods and sells them to a buyer for $100,000. If the buyer 1099's the seller, the government sees an income to the seller of $100,000; but without the cost of goods sold deduction. The SFR tax bill sent to the seller-manufacturer will show an income of $100,000 minus the standard deductions and personal exemptions, a tax computed based upon $90,000 adjusted gross, and an income tax of about $20,000. The seller-manufacturer is then highly motivated to create and file a return that shows only a $20,000 profit and might result in a tax liability of $1000 (ignoring self employment tax that may or may not be present).

The problem is that the IRS (a) sets the initial $20,000 tax bill for the SFR as a lower threshold, (b) will not allow ANY AMOUNT of tax for that year to be discharged in bankruptcy unless there is a new voluntary disclosure of additional income that the IRS didn’t previously know about (c) that results in a tax exceeding the $20,000 lower threshold, and only allows a bankruptcy discharge for that part of the total tax that (c) exceeds the $20,000 threshold in this example. In both the employment case and the business case, the IRS allows late filed return which they substitute for the SFR in terms of your payment (and along with late fees for not filing on time, and interest, and penalties, etc). But for purposes of bankruptcy discharge, they will not allow a discharge at or below the threshold level, even though they acknowledge that the amount owing to them may only be $1000.00

Thus, for most taxpayers, the presence of an SFR in a given tax year is a blocking event for bankruptcy discharge. In that event, an Offer-In-Compromise becomes an incrementally stronger candidate, particularly if there is no regular non-tax debt, and also particularly if the SFR year is the only tax debt owing.

IX. SFR REPLACEMENT WITH A LATER FILED RETURN

A. Generally 5.1.19.3.15 (01-01-2006)

If the taxpayer later files their own "signed", voluntary disclosure, return showing a tax liability smaller than the assessed liability, and that return is accepted by the Service as filed, the tax liability may be reduced to show the amount of tax reflected on the taxpayer's return. The original SFR CSED date remains intact.

If the taxpayer's "signed, later" return reflects more tax than that assessed from the statutory notice based on the section 6020(b) return, then an additional assessment is input for the increased amount. In this scenario, the original CSED remains intact and a second CSED will be systemically established based on the additional assessment (amounts over the threshold SFR amount). In essence, treating a single tax year as having two assessment dates. Of course, the first assessment date that sprang from the SFR will not work for bankruptcy.

September 2, 2010, IRS Office of Chief Counsel Notice CC-2010-016 made the IRS position clear on this issue. IRS will only object to discharge of tax based on a return filed after the statutory due date as a late return, if tax assessment has already been made by the substitute for return process under 6020(b). In other words the SFR portion is the only portion they will raise in a bankruptcy objection.

B. SFR TYPICALLY USES DEFICIENCY PROCEDURES
Deficiency procedures are generally followed, and the SFR sections dealing with the 30-day and 90-day letters are IRM 5.18.1.5.5 (04-06-2016) Letter 2566 (30-Day Letter) & IRM 5.18.1.5.6 (04-06-2016) Statutory Notice of Deficiency (ASFR 90-Day Letter)

Letter is sent. If a taxpayer fails to file, IRS may file a substitute return for you. This return might not give you credit for deductions and exemptions you may be entitled to receive. We will send you a Notice of Deficiency CP3219N (90-day letter) proposing a tax assessment. You will have 90 days to file your past due tax return or file a petition in Tax Court. If you do neither, we will proceed with our proposed assessment. If you have received notice CP3219N you can not request an extension to file.
The return we prepare for you (our proposed assessment) will lead to a tax bill, which, if unpaid, will trigger the collection process. This can include such actions as a levy on your wages or bank account or the filing of a notice of federal tax lien.

C. ASFR 30-Day Letter 5.18.1.5.11.9.1 (04-06-2016) The ASFR 30-Day Letter is automated. The 30-Day Letter consists of:

30-Day Letter 2566
Tax Calculation Summary
Summary of the Income Sources
Explanation of Penalties and Interest
Taxpayer Response Form
Publications 1, 5 and 594
Notice 609
Cover Sheet & Return envelope
Note: If there is allocated tips income, Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Over-assessment, is added to the Letter.

When a taxpayer fails to file a timely income tax return or files a false or fraudulent return, the Service may execute a return under the authority of the IRC 6020(b) deficiency procedures. If the taxpayer fails to respond to the 90 day notice, the Service makes a deficiency assessment. The Service may also make a deficiency assessment if the deficiency is upheld by the Tax Court. Upon that assessment, the 10 year period of limitations on collection, provided for in IRC 6502(a)(1) begins.

X. SFR CREATION RULES

A. GENERALLY
The Service has authority to prepare and process a tax return when a person fails to file a required return or files a false or fraudulent return under authority of IRC Section 6020(b). If the Service processes a tax return prepared under the authority of IRC Section 6020(b), the assessment date will start the period for the statute of limitations for collection per IRC Section 6502(a)(1), but does not start the period of limitations for assessment (the usual 3 year / 6 year periods).

Much of the older procedure is described in the case of Millsap v. Comm'r 91 TC 926 (1988)
Much of the early procedures involved starting with a "dummy" SFR having a $0 amount as an entry. Then the person working up the case would add info from the master data file. Data from the master data file would then be used to compute the tax. The revenue agent, after constructing the income and tax, would create a report. The SFR was required to be signed manually. Then the revenue agent would mail the report along with a "30-day" letter with an explanation and computing the (Side by side comparison of self employed to wage earner)

1999 IRM 5.18.1.7.1 (5/27/1999 Non filer using master account IRS Chief Counsel N(35)000-169 (11/16/99(procedure is established by the IRM & CC Notice Without data from which tax can be computed, its not a valid 6020(b) return.

2008 changes to the rules. Commissioner Authority was delegated and the process seems to have entered a more computer-friendly era. Automatic SFR system, ASFR. Is for wage earners earning less than $100k. So, today a lot more automation is involved.

Much of the newer procedure is described in VIVIAN L. RADER, ET AL.,v. Comm'r 143 T.C. No. 19 (October 29, 2014). It also reminds us that most attacks on an SFR are lame. Like fail "to cite a deficiency statute and/or a tax statute from which a deficiency and penalties could arise." To constitute a section 6020(b) SFR, "the return must be subscribed, it must contain sufficient information from which to compute the taxpayer's tax liability, and the return form and any attachments must purport to be a 'return'." Spurlock v. Commissioner, T.C. Memo. 2003-124, 2003 WL 1987. The SFRs should consist of :
-an IRC Section 6020(b) Certification (Form 13496);
-income tax examination changes (either Form 4549-A or Form 4549); and
-an explanation of the changes (Form 886-A).
That combination of documents is sufficient to constitute a valid SFR under section 6020(b). See Gleason v. Commissioner, T.C. Memo. 2011-154, 2011 WL 2600917, at *12.

There is <u>NO</u> requirement that a valid SFR include a Form 1040, U.S. Individual Income Tax Return, executed on behalf of the taxpayer. See id.; see also Nix v. Commissioner, T.C. Memo. 2012-304, at *13-*14, aff'd, 553 Fed. Appx. 960 (11th Cir. 2014); Holloway v. Commissioner, T.C. Memo. 2012-137, 2012 WL 1727685, at *2; sec. 301.6020-1(b)(2), Proced. & Admin. Regs. Moreover, respondent had the right under section 6020(b) to elect married filing separately status for petitioners rather than joint filing status. See Smalldridge v.Commissioner, 804 F.2d 125, 127-128 (10th Cir. 1986), aff'g T.C. Memo. 1984-434; Conovitz v. Commissioner, T.C. Memo. 1980-22, 1980 Tax Ct. Memo LEXIS 567, at *12. 6 In these cases, respondent elected that status by way of amendments to answer rather than in connection with the preparation of 27722-11

B. Deficiency Procedures
When a taxpayer fails to file a return as prescribed by law, they are sent a series of notices advising them of the delinquency condition. If the taxpayer does not respond to the notices, a final notice is sent informing them that the Service is authorized to prepare a substitute return unless they file a correct signed return within the period

allowed by the notice. See IRM 4.19.17, Non-Filer Program, at IRM 4.19.17.1, and IRM 5.18.1, Automated Substitute for Return (ASFR) Program (for the Compliance Services Collection Operation (CSCO)) , and IRM 5.18.2, Business Returns IRC 6020(b) Processing. If the taxpayer ignores the deficiency procedures, the IRS moves on to its collection phase. If the taxpayer engages in the deficiency procedures, a protest is made, followed by Appeals handling, and if not agreed, then tax court, then circuit court of appeals, & the Supreme court.

C. Collection for the SFR
8.22.8.7.3 (11-08-2013) 6020(b) Assessments
Taxpayers may raise 6020(b) liability in a CDP hearing if they did not receive Letter 1085, 30 Day Letter Proposed IRC 6020(B) Assessment or Letter 1616, 30 Day Letter, Proposed IRC 6020(b), Assessment Partnership Return, or otherwise have an opportunity to contest the tax liability. These procedures may be the case where the taxpayer moved or was unreachable, These letters are not sent by certified mail. IRS is instructed to ask the taxpayer in the CDP hearing if they received Letter 1085 or Letter 1616. The taxpayer' assertions regarding receipt may determine whether liability may be raised. IRS agents check to see if the taxpayer requested an Appeals hearing in response to either letter and whether taxpayer acknowledged receipt of the letter to the revenue officer. IRS is always probing for actual knowledge.

The taxpayer is required to file their own return as an amendment to the 6020(b) to (as a prerequisite in some cases) to properly raise liability. IRS is to give the taxpayer 21 calendar days to file their own tax return. If the taxpayer fails to file their own return after disputing a 6020(b) liability, the merits of the liability are not properly raised per Treas. Reg. 301.6320-1(f)(2) Q & A -F3. Note the opportunity offered to address liability in the attachment to the determination or decision letter.

D. Math Error IRM8.22.8.8 (03-29-2012)
A taxpayer may dispute a math error liability in a CDP hearing. A math error is a mistake on a tax return that is corrected by the IRS during processing. IRM 21.5.4.2, What Is a Math Error, lists when the Service may summarily assess a deficiency resulting from the mathematical or clerical error. The notice of math error is not considered a notice of deficiency and a taxpayer who receives one cannot petition Tax Court.

The taxpayer may request abatement of the math error liability within 60 days of the notice of math error and the IRS must abate the liability. If the IRS does not abate the math error liability after the taxpayer's timely request, then the assessment is invalid. Thus, math error may not provide the most direct start of a procedure to cure mistakes in an amount of an SFR assessment.

Reassessment of the tax with respect to the abatement is subject to the deficiency procedure. If a petition is timely filed, the Tax Court has jurisdiction to redetermine the deficiency. If a tax liability was incorrectly assessed under math error procedures instead of SNOD, the assessment is invalid and needs to be abated. Your notice of determination should reflect the facts that support this finding and if you are successful, collection should not be sustained.

Triggers for collection, in addition to the CDPH Request form (form no. 12153), include a Notice of Federal Tax Lien under IRC §6320 and for Notice of Levy/Seizure under IRC §6330

E. Other Request Bases
Some of these were seen in a case Lee Roy Sullivan v. Comm'r (TCM 2012-337) and other places on the internet. In the Sullivan case, 17 or so of these were nakedly listed and the taxpayer lost with a vengeance. The bases

should be considered (1) if they really do apply, (2) if there really is a reason to raise them, and (3) provided that they are raised sparingly and not in a list. It is important to remember that IRS may be resistive to curing errors and that a shotgun approach is rude and wasteful of judicial time, regardless of where it is located.

(1) Collection alternatives including Offer in Compromise (OIC), payment schedule, CNC (Currently Not Collectible), hardship, etc. under §6320 & §6330 from the proposed collection action.
(2) Face-to-face hearing on relevant issues with filled out appropriate forms.
(3) Collection actions are inappropriate. The administrative record is invalid and incomplete.
(4) Request proof of verification from the Secretary that all applicable law and administrative procedures have been met pursuant to IRC under §6320 & §6330. Request proof of receipt of the Notice of Deficiency (the 90 day letter) and the Notice and Demand Letter.
(5) Assessment was not made on the applicable CDP notice periods per IRC §6201. Notice & Demand for payment letter was not sent to the last known address within 60 days of assessment, as required by IRC § 6303.
(6) There was no statutory Notice of Deficiency (90 Day Letter) and therefore taxpayer could not contest the existence and the amount of the underlying tax liability for these tax periods. The validity of the assessments for the tax years in question is defective because of no notice & opportunity to dispute such tax liability per §IRC 6330(C)(2)(B). Taxpayer may also contest the amount of the underlying tax liability as required by law.
(7)For the $500/$5000 frivolous penalty, taxpayer contests the existence and the amount of the underlying tax liability for this penalty because for notice and lack of opportunity to challenge this penalty per IRC §6330(C)(2)(B). Since no (statutory notice of deficiency) SNOD was issued I am entitled to adjudication. Request to schedule a hearing for this civil penalty and request the necessary forms and instructions.
(8) Request copies of the Notice and Demand letter (90-day letter), Form 17-A, Summary Record of Assessment, Form 23-C or replacement form, RACS Report and form 4340, "Certificate of Assessment and Payments", copy of the record of assessment with the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period and the amount assessed per 26 CFR Part 301.6203-1, & Send a copy of the entire administrative file including the Case Activity Record.
(9) Request Appeals Division of my an intention to make an audio recording of the hearing pursuant to IRC § 7521, to bring with me a court reporter, a representative and two witnesses; and request the appeals officer make arrangements to allow a tape recorder through the security check point at any conference.
(10) Taxpayer withdraws any improper constitutional, moral, political, religious or conscientious arguments heretofore made, withdraw any legal positions which are classified and published by the IRS as “frivolous or groundless” or published on the IRS website.
(11) The tax assessments were incorrect and the proposed levy/lien actions were not appropriate based on the reasons to be presented at the hearing. The requirements of the applicable law or administrative procedures have not been met and the actions taken were not appropriate under the circumstances. The Revenue Officer has not followed all legal and procedural requirements and the actions taken or proposed actions are inappropriate under the circumstances.
(12) The proposed collection action or levy/lien action does not balance with the needs for the Service to collect the tax and, considering the circumstances, it is an intrusive action and more intrusive than necessary, by IRC §6330 [c](3). There has been no sufficient meaningful opportunities to appropriately protest the existence and the amount of the tax liabilities in response to the Notices of Deficiency. The Services substitute-for-return and its procedures for the tax years in question were incorrect and were not sent to for review.
(13) The review of computer transcripts, the CDP notice (LT-1058) was not sent.
(14) Reconsideration of the assessments under Audit Reconsideration Process is requested. Please send publication 3598 which explains how to make this request.
(15) Taxpayer requests the withdrawal of Notice of the Federal Tax Lien (NFTL) and with the submission of additional information. The criteria for this exists, including: Withdrawal of the lien will facilitate collection of

the tax liability; With the consent of the taxpayer or the National Taxpayer Advocate (NTA), the withdraw of such notice would be in the best interest of the Taxpayer (determined by the NTA of the taxpayer) and the United States . The filing of Notice of Lien was premature or otherwise not in accordance with administrative procedures of the IRS. The tax lien violates §6320(a) in that the IRS failed to send the Taxpayer a copy of the NFTL and the CDPH notice within five working days of the filing. There is additional information that indicates the withdrawal of the filed lien should be considered. Qualification for other lien options including subordination is urged.
(16) For a Collection Hearing & OIC, IRS has on record complete income tax returns for the years in question. There is a Substitute for Return (SFR). After a thorough review of the complete IRS file, for the purposes of the appeals division, the SFR is the taxpayer's return for the year in question.
(17)Taxpayer has many reasons and justifications for an in-person conference, including tape recordings, opportunity to present testimony of witnesses, chance to show his papers and explain them at the same time, and in addition to the effect of personal presentation.
(18) Though taxpayer has explained taxpayers position as clearly as possible Appeals does not understand taxpayer's position, needs more information, has any questions, Appeals can contact taxpayer in writing. Taxpayer or taxpayer's representative can explain in more detail an exact position if given notice and if Appeals needs additional information.
(19) Taxpayer hereby requests a copy of the record of assessment with the requirements of 26 CFR part 301.6230-1, which states: If the taxpayer (directly or through taxpayer's representative requests a copy of the record of the assessment, taxpayer shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period and the amount assessed.
(20) IRS failed to send to Taxpayer, in writing no later than five days after filing of the Notice of Federal Tax Lien, a copy of the Notice of Federal Tax Lien, and a notice that the taxpayer had a right to request a CDP hearing before Appeals, according to IRC §6320(a).
(21) The Civil Penalty for Tax Year in question does not apply because taxpayer was denied due process & a right to appeal the arbitrary imposition of the penalty. The Civil Penalty was unwarranted, unjustified and violated the due process rights of the taxpayer. Request a verification of accuracy of the tax liability, as required in IRM part 5-collection process; Chapter 13; section 2; #2.3 item 21:5.13.2.2.3 (03-26-1999).
(22) Verification of the Accuracy of the Tax Liability: CQMS Standard: Was the accuracy of the tax liability verified when required? Definition of the tax liability initiative: Was the accuracy of the tax liability verified when seizure action was taken if after July 22, 1998, or at anytime during the case when a taxpayer questioned the accuracy of the stated balance due or the underlying liability? Examples might include possible unposted payments, taxes discharged in bankruptcy, substitute for return / IRC § 6020(b) assessment, audit reconsideration, non-master file case, trust fund recovery penalty, "innocent spouse" situation, other penalties and interest. To meet this CQMS standard, on all seizures occurring after July 22, 1998, the Revenue Officer must document in the case history that the accuracy of the tax liability has been verified. Further, anytime during the investigation, when a taxpayer questions the accuracy of the balance due or underlying tax liability, the file should reflect that appropriate research was conducted regarding information presented by the taxpayer in support the query. Verification of liability must be documented even when it appears that the taxpayer is questioning the liability simply to delay.
(23) Taxpayer may have had a pending bankruptcy case, at the time the CDP notice was issued.
(24) Taxpayer requests spousal relief and has appropriate spousal defenses.
(25) Taxpayer requests documentation of the case history that the accuracy of the tax liability has been verified.
(26) If research concludes that the recorded liability was accurate, was an explanation provided to the taxpayer? If the liability was determined to be in error, was action initiated to adjust the liability to the proper amount owed? Taxpayer requests proof of accuracy of the tax liability & the documentation of the research of said proof.

XI. BREADTH OF TYPES OF SFR ERRORS

Possible SFR Errors can include:

Started, but Incomplete SFR:

IRS personnel started the SFR and it shows up on the transcript, but was never finished.

SFR generated using unreliable data (stretching reasonableness)

Current reported income and other factors (sometimes called minors) don't belong in taxpayer's records.

Posting to wrong account

Due to an Error, someone else's data was reported to a taxpayer's account (yours)

Bad Assumptions in SFR calculations

Any date other than a gross income account used to bootstrap a non-filer profile

Identity Theft

Identity thief used your info to receive payment. 1099 was reported to your account

Deliberate Mis Reporting

Prankster turns in bogus 1099 (IRS says contact reporter which takes time)

Error in 1099 reporting?

1099 is correct, but the IRS posted it to your account rather than the correct account

SFR generated despite the Taxpayer's having filed a timely return.

This is the most common error which is guaranteed where return processing is delayed.

SFR not sent to taxpayer's last known address

Any deviation, such as identity, wrong address, etc. could entitle taxpayer to a do-over at time zero.

XII. TAX DEBT RECORDS ACCURACY

In 2013-2015, there were some reports of significant inaccuracy for IRS transcript record keeping.
(1) Statistical sampling in a 2013 report stated that from 64 CDP (regular) hearings and 68 EH (equivalent) hearings, 8 were mis-classified (CDP as EH) or (EH as CDP). 8 of 132 is 0.06 or 1 in 16.5 This is important because an equivalent hearing (EH) does not toll the collection statute nor bankruptcy limitations as IRS is not prohibited from collection upon request of an equivalent hearing.

(2) Same Report in 2013. 4311 of 39419 had improper Collection Statute Expiration Dates (CSED) mostly because the IRS entered an improper extension. 0.109 (10.9%) error rate = 1 out of 9. Depending upon the reason for the CSED extension, the bankruptcy limitations periods will also toll.

(3) More specifically regarding collection due process hearing (CDP) The larger problem was stated in a late 2013 news release: 12/2013 Problems Found With IRS Collections Due Process Hearings
A recent report from the Treasury Inspector General for Tax Administration (TIGTA) has uncovered some troubling information about how the IRS handles Collection Due Process (CDP) hearings. Specifically, the investigation identified the following problems:

(a) An estimated 1,450 of 47,855 taxpayer cases may have incorrectly received a CDP hearing when they should have been granted an Equivalent Hearing (EH). [ERROR RATE 3.03 %]

(b) In an estimated 10,151 of 47,855 taxpayer cases, the Collection Statute Expiration Date (CSED) was incorrectly calculated. [ERROR RATE 21.2 %]

Remember, The bankruptcy trustee's office gets its data from the transcript (or else it would never catch up on the

delays associated with a FOIA request of a taxpayer's whole record for all of the years for which tax debt relief is sought -- because it can take months to get a complete FOIL taxpayer record.) Consequently, I allege that the error rates above falling on the taxpayer's transcript would otherwise be taken as "authority." CDP is only one topic where the difference between "regular" CDP and "equivalent CDP" is the difference between the tolling and non-tolling of the bankruptcy statutes. Even though 2013 involved a "rash" of errors, who knows what the IRS's steady-state, present-day rate of error is? And please note that I have not seen any error rates published for SFR's.

Another report states that 40% Of IRS CSED's With Tolling Are Inaccurate: TIGTA Report: Recalculations of the Collection Statute Expiration Date Were Not Always Accurate from September 16, 2013 Reference Number: 2013-30-098 significant error, for example, was characterizing an Equivalent Due Process record as a regular Collection Due Process record. (People were being un-necessarily tolled when an equivalent hearing was supposed to produce no tolling.)

XIII. Bankruptcy v. OIC Example

A. Example 1

Single person
$50,000 Taxes owed for 2012
$50,000 Annual Salary ($4166 per month) selected to be near, but below the California Median Income
Assets:
$1000 bank account
$5000 vehicle, paid for
National Standards for Expenses:
$570 Food
$54 out of pocket health expediture
$2146 for housing and utilities
$173 for public transportation
$266 vehicle operation expense
$668 Federal & State Tax
$500 Per Month Mandatory Health Insurance
Total Expenses $4377 per month
Net Monthly result ($211)

Running these numbers on the Offer-In-Compromise Pre-Qualifier on the IRS website resulted in a total payment of $550. The Single, $550 payment was due to the excess over $4450 of the $5000 equity in the vehicle.

A bankruptcy using the same numbers as above results in:
Vehicle is exempted as it is less than $5350
Bank account $1000 is exempted
Assuming no other household assets, the bankrupt leaves about $28,000 in unused exemption capacity.
The other cost for bankruptcy is the $335 filing fee.
In both cases, the $50,000 tax debt was erased.

Comparison of Results:
(1) If the taxpayer had owned more liquid assets, those liquid assets would have proportionately (minus some discounting) raised the collection potential, making the OIC option significantly more expensive.
(2) Debtor could have owned up to $28,000 value of more assets to keep & still have gotten rid of the tax debt.

(3) Any non-tax debt would have pushed a decision to select bankruptcy even more strongly.
(4) Conclusion generally is that Offer-In-Compromise may be more important for people that cannot file chapter 7 due to the means test (where <50% of the debt is tax), but will have to pay a more.

B. Example 2
(1) Doubling the salary in the above example, and leaving all other numbers the same, the OIC payoff would be $22,572 + $550 excess equity in the car = $23,122 payoff. The bankruptcy case could proceed if 51% of the debt were tax debt (thus avoiding the means test). This would result in elimination of the tax debt, but without any additional "out of pocket payoff" as the increased income does not necessarily create an increase in assets.

XIV. ADVANTAGES OF THE MIDDLE MONITORING PATH

(Employing all aspects above) Instead of simply "reacting," at the last minute, taxpayers should take every advantage of all of the benefits from considering a central path as "an alternative." A middle path is not a place of inactivity, but a place of active planning. Even if trouble is on the near horizon, taking positive action in a central path can have great benefits.
A. Advantages
(1) It gives a taxpayers time to make a FOIA request and to receive their whole IRS record.
(2) It will allow a taxpayer to relatively obtain a tax transcript to identify potential trouble.
(3) It allows a taxpayer to make a comprehensive comparison of the full file to the IRS transcript.
(4) Given the fact that it may take 3-9 months to obtain the full IRS full file, any necessity to take immediate action will be done blindly and potentially at great cost. Without the full file in hand, the taxpayer may only be guessing. Making assertions without proof or backup is essentially like asking IRS to "check its work and report back to the taxpayer." In many instances, rather than investigate and to operate self critically, the IRS will just pass it up the line toward tax court or other tribunal where there will continue to be no definitive finding due to lack of finding any reasons for the event. In short "the IRS will think you are lying and / or throwing up chaff to "get out of paying".
(5) The noise made in absence of proof could cause the barrier between the taxpayer and the criminal overlay to begin to become thin.
(6) While on the middle path (before either bankruptcy or OIC is elected) the taxpayer can remain tax compliant years other than those in question / controversy.
(7) If the taxpayer owes money for more than one year, the taxpayer can make payments that designate the least dischargeable year first. This is not possible with a payment agreement or an Offer-in-Compromise.
(8) In accord with the HANDY BUT INCOMPLETE SET OF TOLLING EVENTS chart above, even a request for a payment agreement has a small amount of tolling that a practitioner might not look for or even consider when seeing an entry on the tax transcript.
(9) Nothing eventuates anger from IRS more than repeatedly making & then breaching a payment agreement. Unless a taxpayer is certain that the payment agreement can be completed without interruption, a taxpayer may be better off with a self directed, periodic form of payment that both reflects income fluctuations as well as keeps the taxpayer in charge of which years the payments are designated at the time they are made.
(10) Taxpayer should have a plot or spread sheet extending into the future that illustrates a likely effect of selecting bankruptcy, Offer-In-Compromise, or continuing with the middle main path.
(11) Major milestones in the path will include a combination of years owing that cannot be discharged, years owing for which the collection statute will run out, dischargeable years, cost in assets for an Offer-In-Compromise, the cost for a bankruptcy, and an advantageous paying down of the nondischargeable years.
(12) A middle path will enable putative SFR years to be analyzed and challenged apart from any manic need to choose an immediate bankruptcy, Offer-In-Compromise or other quick and un-investigated action. The

main factor in obtaining a complete record is time. If a taxpayer chooses bankruptcy, it will be a long time until the next bankruptcy, when a second chance for discharge will be possible. Meanwhile the taxpayer must withstand and fight collections, other creditors within bankruptcy court, and is not as likely to order the full record and analyze it.

(13) A middle path keeps a taxpayer's mind on what may likely go wrong (such as job loss, having to move, repairs, etc and keep improved records for tax and non-tax creditor payments. When running a personal, volunteer payment plan, especially with varying amounts for each payment, exact records are a must.

(14) For the taxpayer that really wants to know the options, the middle path will allow the taxpayer to create and fill out complete filing paperwork for both a bankruptcy filing and an offer-in-compromise to help better update the effect of choosing each option or the third option: "continue to monitor." A debtor wanting action can sometimes use filled bankruptcy records to show that they are serious, and can also use them to make a creditor understand, when asking "I need the loan balance for my form."

(15) Where the taxpayer's complete record was obtained, and in the event that an erroneous SFR arises, the taxpayer can act quickly and with evidence to have it remedied at the 30 day letter point in time.

(16) Any systematic monitoring of how a taxpayer would fare in either

(17) It puts tax and non-tax on notice to perform an in-depth research into their records to discover and refresh their memories and keep better records related to:

(a) evidence of proof that returns were timely filed
(b) evidence of proof that returns were timely filed before IRS started or completed an SFR
(c) discover whether they have been the victims of Identity Theft
(d) uncover errors that the IRS made on the transcript record

(18) Availability of chapter 7 can be tracked via the means test, or if tax is greater than 51% of the debt, then it is not predominantly 101(8) consumer debt under 707(b). A taxpayer can track the percentage of tax and business debt to all debt. Voluntarily paying tax years and consumer debt in a way that keeps the possibility of chapter 7 open may be one of the more valuable controls a taxpayer can have.

(19) Non-Tax Debts: Gives the Taxpayer More Time and preparation to;

(a). Identify the taxpayer's history for long ago secured and unsecured debts regardless of payment status.
(b). Review insurance status and planned changes in amount & type of coverage for debts and assets.
(c). Dig deep to identify potential future debt discovery: Examples include:

(1) professionals list all potential malpractice clients.
(2) Contractors list every contracting party and job.
(3) Potential future class litigants

B. Time to Correct is greater:

(1) The most critical feature of a system that enables a taxpayer to keep both the bankruptcy and the Offer-In-Compromise door open, is the ability to correct IRS errors. Even a taxpayer that files all tax returns on time can still have an SFR on their record if an error is made. From the 2013 sample data, the probability of error for any taxpayer may today be as high as 5-10% (assuming the conditions that created the 2013 errors to have been remedied. Of course, the easiest way to challenge IRS is to always file taxes on time and to be able to produce a number of receipts to prove that taxes were paid on time.

(2) For taxpayers that are "catching up", its important to file missing returns as soon as possible, and then consider ordering a FOIA record and a tax transcript. Although it is preferred to analyze these and begin correcting any errors as soon as possible, even the possession of a complete record and transcript generated 6 months ago will give a better head start.

(3) If the need to challenge an SFR arises, all the available paths should be used, including:

(a) deficiency procedures first, with further action that might cause tolling last, including appeals, tax court, etc. But remember that the first step taken without evidence is likely to be ineffective.

(b) request to amend the records
(c) call your congress representative for help (through the office of congressional liaison)
(d) collection due process proceedings
(e) Request to Taxpayer Advocate
(f) Written Request to SFR Unit
(g) Petition IRS Commissioner
(h) Request correction under IRC 6404
(i) Equivalent CDP Hearing (NOT regular; make sure)
(j) Innocent Spouse (forged return, abuse, non-involvement by spouse)

But all of these start to occur relatively quickly, and if the evidence is not on hand, these procedures will push forward while a taxpayer tries to obtain a full record and transcripts. In addition, deficiency and collection paths move a taxpayer almost instantly into tolling, **and the tolling tends to toll all tax years.** After all, if IRS cannot collect, that doesn't mean they can't collect for the year in question, even due to an argument relating to one tax year, that they can't collect for any years. So, if you are caught unawares for one tax year, the administrative and procedural delay will cause tolling for the other tax years as well. Likewise, a bankruptcy has a major tolling effect on collection for all outstanding years.

(4) Being prepared, and taking the middle path also helps lower the chances of equitable tolling. Any action taken as a planned single action has a better chance for its outcome to be predicted. Filing for serial relief can bring on Equitable tolling which is difficult to predict.

(5) The bankruptcy side has a rule 11 U.S.C. 505 that provides for a bankruptcy judge to hear an bankrupt's tax case and apply IRS rules and procedures. However, (a) not all bankruptcy judges are familiar with stepping into the tax world, (b) you generally don't know which bankruptcy judge will have a filer's case, (c) the rules allow bankruptcy judges to "abstain" for any number of reasons to toss the case back to tax court if possible. The risk of arriving at this more complicated point, when a taxpayer could have applied to IRS to remove an error, is untenable. Avoiding dual cases (a 505 tax case within a bankruptcy case) pending or bankruptcy now and tax later is preferred.

(6) This much we know. From the rules and IRM, the IRS has to correct for many situations in which an SFR goes out only to find out later that a tax return was filed on time for that year. We know that there are rules on SFR generation, but not much is written on this topic. It may be that for the cases where IRS finds an error, it may simply withdraw the SFR without saying much that would otherwise leave a trail of cases establishing a precedent. The bottom line is that although there is not much precedent to follow, its a matter of having the most evidence/information and pushing forward quickly.

XV. TAXPAYER FIRST ACT CREDIT CARD TRAP

President Donald Trump signed the Taxpayer First Act on July 1, 2019. The Taxpayer First Act has a number of provisions, some of which will help IRS with its internal processes, and some of which are external and aspirational. As to one of the provisions, the IRS is about to embark on a relationship with credit card companies to allow taxpayers the ability to pay their taxes directly by credit card. As you may or may not be aware, one major possibility for a taxpayer to favorably resolve solve their IRS debt, when conditions permit is via bankruptcy. A resolution requires use of the 3-year, 2-year & 240 day limitation provisions with tolling.

Bankruptcy Code §523(a)(14) states that if a nondischargeable tax debt to the United States (such as a

nondischargeable tax or a customs duty) then any credit card debt incurred to pay such nondischargeable tax debt is excepted from discharge. As a practical matter this has been the rule for some time, but the possibility of paying federal tax debt directly with credit cards is expected to have a “short circuiting” effect, exposing what was has otherwise been an obscuring relationship between the credit card borrowing and its traceable application directly to a tax debt.

Currently, the use of credit cards to obtain money for use in paying taxes is difficult to trace because it probably involves a borrowing mechanism that uses currency as an intermediate, such as with an ATM machine. Only a few services allow transfer directly from credit card into a bank account, but the fees range from 10%-15%. Over the next few months, the IRS may be able to negotiate credit card transaction fees to 1-2% (not including interest). If and when this occurs, the use of direct credit card payment to the IRS will the greatly preferred in instances where credit cards are used as a source of tax payment funding.

This also will probably mean that tax transcripts can be expected to carry some indication to reflect the fact that a tax payment was accomplished with a credit card. Whether this indication shows up in taxpayer transcripts or is available internally at IRS, the tracing to verify the type of payment should be expected to be easy. Because the charging taxpayer is going to have to pay a publicly known credit card processing fee the records of the transactions may be even more identifiable in the bank credit card records, especially if the user fee is independently posted. In short, the fact of the direct use of a credit card to pay tax debt should be instantly and unambiguously available to both the IRS insolvency unit and to the credit card account creditor.

The combination of direct credit card use and an expected low initial transaction fee should make this option very popular, but once the option is used, it will work to the detriment of tax debtors and shift the possible remedy chosen as between bankruptcy, offer-in-compromise, and other alternatives. Worse still, if tax debt practitioners fail to ask about credit card tax payment, or discover and understand it on the account transcript, and take it into account for an analysis of the debtor’s options, unpleasant surprises will result. Also needed is a warning advisement to avoid the direct use of credit cards to pay tax debt as soon as possible, starting before this mechanism is fully implemented.

Recall *In re Kipnis*, 555 B.R. 877, 881 (Bankr. S.D. Fla. 2016) which established that the Voidable Transactions Acts operate through the 10 year IRS collection statute to give the IRS a 10 year period of avoidance of transfers. 26 U.S.C. § 6502(a)(1) &26 U.S.C. § 6502(a)(1)(A)(i) mean that IRS can use the Voidable Transactions Act to reverse any transaction that is unfair as to IRS.
It makes an interesting effect as to the new credit card provision of the Taxpayer First Act. If someone owing IRS pays someone else (whether at year 1 or year 9 of the 10 year statute), IRS can reverse the transaction and get the money.

If IRS is paid by credit card in year 1, and if the taxpayer bankrupts in year 2, then by virtue of 11 U.S.C. 523(a)(14), the credit card charge to the bank is not dischargeable because the tax debt from the charge was not dischargeable. IRS, however keeps the money from the credit card company. The credit card company is able to maintain its debt through the bankruptcy process because its nondischargeable because the charge was used to pay tax. If bankruptcy had been filed when the underlying tax (paid by credit card) was dischargeable, then the credit card company debt would be dischargeable. The timing of the bankruptcy determines the nature of the debt, and it does not change over time during the course of the bankruptcy..

XVI. REMAINING LIST OF SMALL POINTS

This short list includes fun fact and interesting aspects that may be helpful.

(1) A prepared substitute for return must be signed by the taxpayer before it can be accepted as the taxpayer's regular filed return.

(2) The AFSR tax examiner abates the prior assessment and issues a recalculated notice of deficiency.

(3) Currently, when an assessment based on an ASFR has been made against a taxpayer, and the taxpayer and spouse thereafter file a joint return, the original assessment is abated and a new assessment is made with a collection statute expiration date (CSED) date based upon the new assessment. The IRS Master File does not allow dual CSEDs for different people on a joint return. (Forcing Function)

(4) KEY SFR AMENDMENT ABILITY AUTHORITY - Abatements Section 6404 authorizes the Service to abate the unpaid portion of the assessment of any tax liability, or any portion thereof, which is: (1) excessive in amount; (2) is assessed after the expiration of the period of limitations properly applicable thereto; or (3) is erroneously or illegally assessed.

§6404(b) provides that income and estate tax abatement shall not occur for tax, but this does not appear to affect errors, and is perhaps a prohibition from using this section for mitigation of the magnitude of taxes owing (arguing some sort of compromise).These cases indicate that removing the SFR assessment is possible. Poretto v. Director of Internal Revenue, 295 F.2d 499 , 501 (5th Cir. 1961) (abatement authority under section 6404 not a mandatory duty imposed on district director); Michael v. Commissioner, 133 T.C. 237 (2009). In the circumstances you described, the PEO (professional employer organization) was never authorized under the employment tax laws, specifically § 3504 and Treas. Reg. (3) is erroneously or illegally assessed. As the agent to perform the acts required of the common law employer with regard to the latter's employment tax responsibilities. The PEO is not the employer or a third party payor, which has been designated to perform the acts required of the employer. Because the Service's assessment of employment taxes against the PEO in this situation was either excessive in amount or erroneously assessed, the Service may abate the assessment under section 6404 (a)and the implementing regulation, Treas. Reg.§ 301.6404.

(5) In general, the filing of an amended return by a taxpayer does not extend the statute of limitations on assessment.

(6) It is the timely received date of the amended return not the postmark date that determines if the additional tax on an amended return can be assessed per the account posted Assessment Statute Expiration Date (ASED). If an amended return is received within 60 days from when the Assessment Statute Expiration Date would otherwise expire, a period of 60 days from the received date is allowed for the assessment of the additional amount of tax on that return imposed by Subtitle A (income tax).

(7) The IRS has authority to prepare and process a tax return when a person fails to file a required return or files a false or fraudulent return under authority of IRC Section 6020(b). If the Service processes a tax return prepared under the authority of IRC Section 6020(b), the assessment date will start the period for the statute of limitations for collection per IRC Section 6502(a)(1), but does not start the period of limitations for assessment. Only a follow-on signed voluntary return starts the period of limitation for assessment.

(8) If the Service collects tax payments or if the taxpayer sends in payments beyond the Collection Statute Expiration Date (CSED), the taxpayer may be legally entitled to a refund per IRC Section 6401(a) and Section 6402.

(9) In general, the SFR Program and its automated version (ASFR) were developed to deal with taxpayers who have not filed income tax returns voluntarily and for whom income information is available to substantiate a significant income tax liability without costly field investigation. The purpose of the program is to assess the correct tax liability by either: (a) Securing a voluntary income tax return from the taxpayer; or, (b) Computing tax, interest, and penalties based upon the IRP documents submitted by payers or other internally available information.

(10) 25.6.1.9.8 (11-01-2004) AKA Statutory Mitigation Provisions: In general, IRC Sections 1311-1314 authorizes correction of errors in years otherwise barred by the statute of limitations. These mitigation provisions apply only in seven specific circumstances described in IRC Section 1312. When an adjustment results in an increase in tax, an assessment can be made within one year from the date a determination has been made. See IRC Section 1314(b). The mitigation provisions are intended to offset the benefit a party might otherwise obtain by maintaining a position in an open tax year that is inconsistent with the treatment of the same item in a closed year (e.g., a taxpayer receives a double deduction). The statutory rules however, are detailed and do not reach all such benefits.

(11) An Expeditious Assessment may be made for (1) taxes in jeopardy at the time a delinquent return is secured/prepared, (2) for jeopardy collection of taxes for potential transfer, (3) termination of a taxable year when a jeopardy situation exists, including unreported income from illegal activities or attempts to move assets beyond the control of IRS, (4) at more than 60 days before the assessment statute expiration date (ASED).

(12) Why the Public Records Statute cannot be used: Cuts off the right to correct your personal record via 5 U.S. Code § 552a - Records maintained on individuals. 26 U.S. Code § 7852 - Other applicable rules makes tax records an exception.

(13) Here is some background on the rules for amending IRS records.
Requests to Amend (IRS) Records 11.3.18.5 (08-08-2008)

Overall responsibility for processing requests to amend or correct records is placed with the Disclosure Manager, except for amendments of Counsel Records. Any necessary correction of records will be made at the direction of the Disclosure Manager by the employees normally responsible for the maintenance of such records.

The response authorizing amendment must be signed by the system manager or by a Disclosure Manager having an appropriate authorization from the system manager, and having obtained the concurrence of the function responsible for the records being amended. Responses which do not authorize an amendment may be signed without concurrence by the Disclosure Manager.

Initial requests should be acknowledged not later than 10 days (excluding Saturdays, Sundays and legal public holidays) from the date of receipt of such request, unless the request can be acted upon and completed within that time frame. Responses to initial requests and to requests for review of refusal to amend a record should, if possible, be issued within 30 days of receipt (excluding Saturdays, Sundays, and legal public holidays.)

Disclosure Managers should be available to discuss amendments with the individual and to offer advice on how to file amendments, statements of disagreement, and to give information with respect to civil

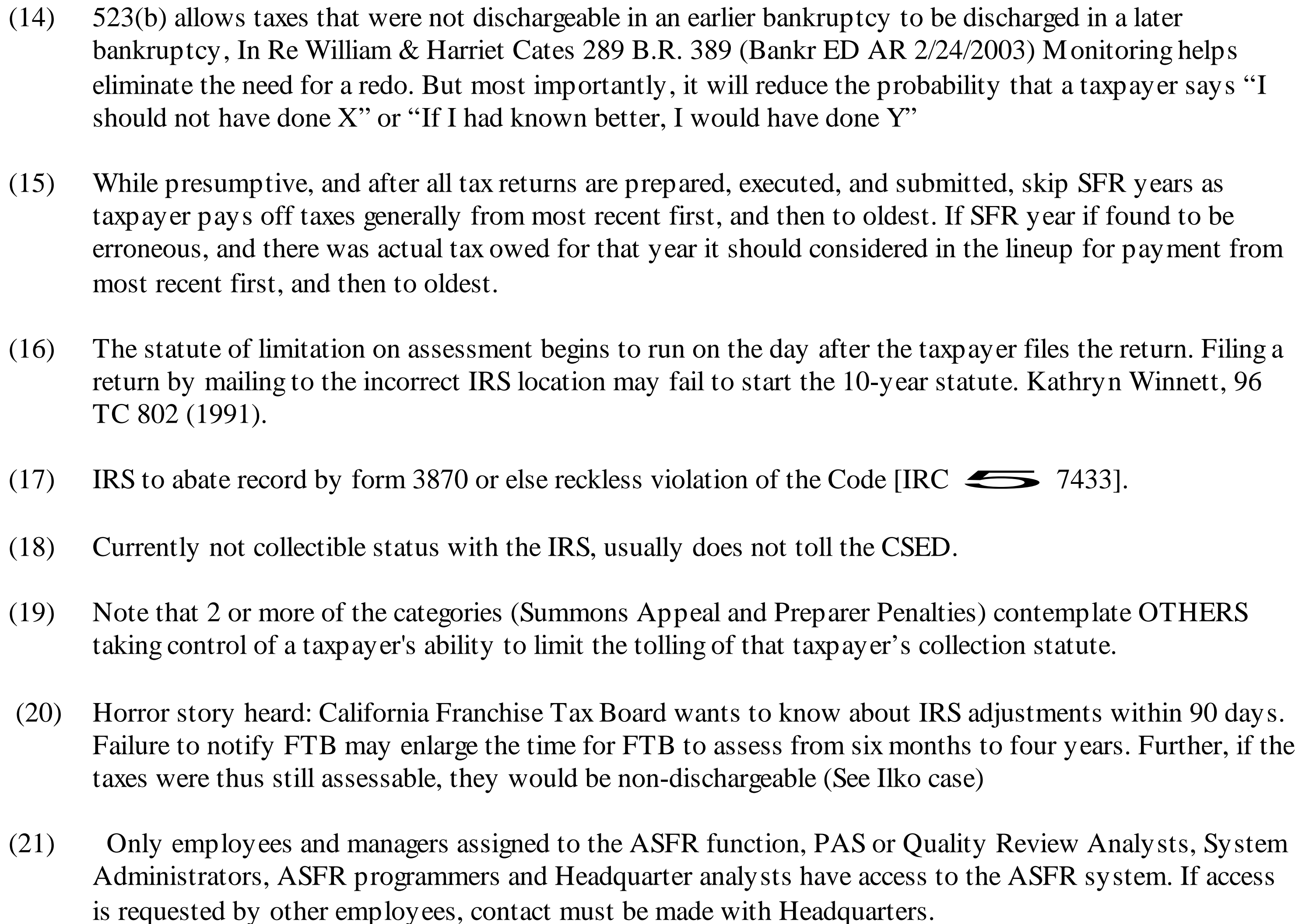
remedies.

The Disclosure Manager should establish an amendment case file for all requests for amendment which are refused or only partially granted. Requests for amendment which are initially granted in full require no case file. The purpose of the file is to document all actions from the initial refusal through the final civil action. It should include a copy of the Privacy Act Request for Amendment and all correspondence and related material involving a particular record. The amendment case file should be retained until the period for civil action has elapsed (i.e., two years after denial of a right to appeal or an initial denial if no appeal was filed), at which time the case file should be destroyed. The case file may also contain copies of the statements of disagreement and agency justification which will be located with the record.

(14) 523(b) allows taxes that were not dischargeable in an earlier bankruptcy to be discharged in a later bankruptcy, In Re William & Harriet Cates 289 B.R. 389 (Bankr ED AR 2/24/2003) Monitoring helps eliminate the need for a redo. But most importantly, it will reduce the probability that a taxpayer says “I should not have done X” or “If I had known better, I would have done Y”

(15) While presumptive, and after all tax returns are prepared, executed, and submitted, skip SFR years as taxpayer pays off taxes generally from most recent first, and then to oldest. If SFR year if found to be erroneous, and there was actual tax owed for that year it should considered in the lineup for payment from most recent first, and then to oldest.

(16) The statute of limitation on assessment begins to run on the day after the taxpayer files the return. Filing a return by mailing to the incorrect IRS location may fail to start the 10-year statute. Kathryn Winnett, 96 TC 802 (1991).

(17) IRS to abate record by form 3870 or else reckless violation of the Code [IRC  7433].

(18) Currently not collectible status with the IRS, usually does not toll the CSED.

(19) Note that 2 or more of the categories (Summons Appeal and Preparer Penalties) contemplate OTHERS taking control of a taxpayer's ability to limit the tolling of that taxpayer’s collection statute.

(20) Horror story heard: California Franchise Tax Board wants to know about IRS adjustments within 90 days. Failure to notify FTB may enlarge the time for FTB to assess from six months to four years. Further, if the taxes were thus still assessable, they would be non-dischargeable (See Ilko case)

(21) Only employees and managers assigned to the ASFR function, PAS or Quality Review Analysts, System Administrators, ASFR programmers and Headquarter analysts have access to the ASFR system. If access is requested by other employees, contact must be made with Headquarters.

A CP 36Z is generated and sent to Files when a TC 976 posts on a module where an ASFR Dummy return has posted. Files will pull the return, attach the CP 36Z to the front of the return and route the return to the ASFR Operation, Department or Team.

If all research attempts have been exhausted and no return has been secured, contact the taxpayer and request a copy of the return, including WOEA. Update ASFR with Status 080. Continue the ASFR if no return is received after 45 days.

(22) 5.18.1.4.3 (04-06-2016) ASFR Recon(sideration) Transcripts: 5.1.15.4.5 An SFR reconsideration must be filed with the filing of an original return. Trying to destroy an SFR without an original return having been filed makes no sense as you are asking IRS to "do it over" and re-SFR the taxpayer.

(23) Interesting Notes on "Dummy SFR" 5.18.1.5.1 (05-19-2009) ASFR Dummy TC 150: When an ASFR 30-Day Letter is generated, ASFR requests a TC 971 Action Code 141 post to the module. The TC 971 triggers a dummy return to then post. The dummy return posts as a TC 150 for $.00 to the module. An ASFR dummy return can be identified by the literal -SFR to the right of the TC 150 on TXMODA. Additionally, the tax class and document type of the DLN will be 210 with a Julian date of 887. The Julian date for Exam SFR is 888. An ASFR dummy return and an account collection assignment of 8000 signify the account belongs to ASFR and ASFR processing has begun. Since only one tax return can post to a tax module on IDRS, all returns filed by taxpayers subsequent to the issuance of the 30-Day Letter must be manually assessed and input to IDRS. See IRM 5.18.1.8.2.3.14, Returns, for instruction on processing filed returns.

5.18.1.5.4 (04-06-2016) If a 30-day letter has been issued and no dummy TC 150 is posted, request one using Option 26 on ASFR. See IRM 5.18.1.5.1, ASFR Dummy TC 150

5.18.1.4.3 (04-06-2016) Ensure the ASFR default assessment was reversed. If the default assessment is not reversed, follow procedures in paragraph 2) below.

If the default assessment is not reversed take the following actions:

- -Zero out tax, penalties, credits, income, and SE amounts.
- -Use credit reference 887 to reduce the exemption to zero.
- -Input Hold Code 4 and credit reference 999 with 00 amount to indicate a secondary account return associated with a joint return.
- -Notify taxpayer the case is resolved.
- -Resolve any existing credits on the module per IRM 5.19.2.5.7, Credit Balance Overview, including input of TC 971 with AC 296 if appropriate. See IRM 5.19.2.5.7.4, Input of TC 971 AC 296 - Credit Research Completed.

5.18.1.5.10 (04-06-2016) ASFR Archive All requests for ASFR documentation on assessments subsequent to June 21, 2005 are worked by the ASFR functions as access to ASFR is required to retrieve the information

5.18.1.5.10 (04-06-2016) ASFR Archive Subsequent to June 21, 2005, paper files on ASFR systemic assessments (defaults) are not available, and all ASFR generated documentation is stored on the ASFR archive database. Additionally, all ASFR generated documentation on manual assessments subsequent to June 21, 2005, is stored on the ASFR archive database, and is not associated with the manual assessments.

5.18.1.5.11 (10-01-2005) ASFR Statuses
All ASFR inventory exists in statuses. Statuses define where the module is in the ASFR process, and if the module is workable, or non-workable.

(24) Not supposed to start an SFR during bankruptcy.
Terminate SFR for VIOLATION OF AUTOMATIC STAY 5.18.1.5.11.5 (04-06-2016)
Status 011: Centralized Insolvency Office (CIO)

Insolvency identifies a case that has been assessed by ASFR in violation of the automatic stay they will contact ASFR to make an adjustment. The ASFR Bankruptcy Coordinator will reverse the assessment and establish an IDRS control base for continued monitoring

(25) SFR AFTER RETURN IS FILED 5.18.1.5.11.19 (04-06-2016)

Status 060: TERMINATE ASFR, Ref Hold-Rtn Filed Pre 30-Day Letter
Status 060 indicates that the taxpayer filed a return prior to the issuance of a 30-day letter and the modules is a Refund Hold module.
Update to Status 060 when a Refund Hold return has posted to the module, and then immediately update to Status 109. Do not let module appear on the ASFR 421 List. See IRM 5.18.1.6.3.6, ASFR 421 List: Terminated Case List.

5.18.1.5.11.20 (04-06-2016) Status 061: TERMINATE ASFR, Return Filed Pre-30-Day Letter

Status 061 indicates that the taxpayer filed a return prior to issuance of the 30-Day Letter.
Update to Status 061 when a return has posted to the module, and then immediately update to Status 109. Do not let module appear on the ASFR 421 List. See IRM 5.18.1.6.3.6, ASFR 421 List: Terminated Case List.

(26) The bottom of the garbage heap. SFRs fail for many reasons. The bottom four designators are indicative of their fate. 5.18.1.5.11.21 (10-01-2005) Status 062: TERMINATE ASFR, Failed ASFR Criteria and Must Be Reassigned

Status 062 indicates that the account requires reassignment out of 8000.
Modules are systemically moved to Status 062 when the module fails validation, and there are no other modules being worked on ASFR. Then ASFR will move module to Status 762.
When a module terminates into Status 062, the ASFR TAI COMMENT field contains one of the following literals: "NO IRP DATA AVAILABLE"
"MISSING CASE MINORS"
"TERMINATE SFR- EXCESSIVE MINORS"
"MISSING SUPPS- TERMINATE AUDIT REPORT"
Modules will be reassigned from 8000.

(27) Refund Statute Expiration Date (RSED) is different and has no tolling.
The RSED defines how long the taxpayer has to file a claim for refund for a specific module/period.
The RSED has two components and refund is possible at the later of the 2 dates:
3-Year Look Back – 3 years since the received date of the original return.
2-Year Look Back – Any payment made within the past 2 years.

(29) Given the numerous described errors, tolling should not be considered something this is necessarily accurately ascertainable, and like any good engineering project, an amount of extra “safety should be employed. IRS employees have also been caught extending tolling events when they should not have been extended. The key points are: (1) you should find out IRS’s complete records by FOIA and also transcripts -- you must know as much as IRS knows to minimize error. (2) use the records to get an idea of the multifarious activity and provide a safety factor of time before taking action to make certain that you don’t foreclose the very advantage you were trying to compute and avoid.