UNIVERSITY OF BUFFALO
TAX INSTITUTE

Tax Enforcement Update Current Issues
Defenses & Pitfalls

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Introduction

This discussion highlights key tax enforcement issues and defenses. It also addresses significant pitfalls a tax practitioner may face in the hope such awareness will help protect both the client and the practitioner.

I. Pre-Assessment

Civil Audits

1. Appealing an adverse determination:

   (a) Filing a protest and the rights to go to Appeals.

   The IRS Audit Division will issue an audit report, once they believe they’ve reached a determination of proposed changes to a tax return. This is often accompanied by what was traditionally called a “30 Day Letter.” It should be noted, however, that this is policy and there is no requirement that 30 days be given to respond. Often these letters allow 15 days or sometimes shorter periods of time. Since they are policy, the Audit Division can extend the time period, if requested, but extensions are solely discretionary on the part of the Examination Division. (See Exhibit 1 for an example of a 30 Day Letter.) The taxpayer/practitioner thereafter has a right to file a Protest challenging the determination. (See Exhibit 2 for a pro forma example of a Protest.) Once a Protest is filed, the case will be transferred to the IRS Appeals Office. An independent Appeals Officer will thereafter be assigned the case and contact the representative to set up a conference. It should be noted that this is discretionary on the part of the IRS in relation to issuing a 30 Day Letter; and if there is imminent expiration of a statute of limitations, the IRS will refuse to do this without the agreeing to sign an extension of the statute of limitations. (Normally the statute of limitations for the IRS to issue a Notice of Deficiency is three years from the date the return was due or filed, whichever is later. The statute, however, is six years in the event of a 25% omission of income and indefinite if fraud can be established.)

   (b) Notice of Deficiency (90 Day Letter)

   If the IRS declines to issue a 30 Day Letter, the Service cannot immediately assess the tax liability that has been determined. Although the issuance of a 30 Day Letter is discretionary, it is statutorily required for the IRS to issue a Notice of Deficiency before they can make a valid assessment. If the 30 Day Letter is issued and the IRS Appeals Officer does not reach an agreed settlement with the taxpayer, the IRS Office of Appeals will issue the Notice of Deficiency. Again, whether it’s issued by Examine or Appeals, the Notice of Deficiency is a prerequisite to the assessment of an income tax liability.

   Note: The Notice of Deficiency is often referred to as a 90 Day Letter. This is due to the fact that it provides for 90 days to petition the United States Tax Court in order to challenge the determination made by the Internal Revenue Service. Failure to petition within the 90 days will deprive the taxpayer of the prepayment remedy to go to the United States Tax
Court to challenge the liability. The fact that a taxpayer petitions the Tax Court does not necessarily mean the case will ultimately have to be adjudicated. If the petition is filed in response to a Notice of Deficiency issued by the Examination Division, the case will be transferred to the IRS Appeals Office to allow for a settlement conference. The vast majority of the cases are settled at the Appeals Office. In the event a case is not settled, it will be referred to the IRS Counsel’s Office for litigation. However, the attorneys at IRS Counsel will also attempt to settle the case. Again, very few cases actually end up going to litigation before the Tax Court. In the event that Appeals issued the Notice of Deficiency, it will not be sent back to Appeals for a settlement conference since the taxpayer already had that opportunity. (An example of a Notice of Deficiency and basic Petition is attached as Exhibit 3.)

In the unfortunate event that the taxpayer and/or his representative fails to petition the court within the 90 day timeframe, the remedies to challenge a tax deficiency become more limited. It is possible to ask for an audit reconsideration under certain circumstances. Alternatively, what is referred to as an Offer in Compromise based on doubt as to liability can also be pursued. (The vast majority of Offers in Compromise submitted relate as to doubt as to collectability where the liability itself is not being challenged, just the ability to pay.) Whether a redetermination or doubt as to liability Offer in Compromise is pursued, it is definitely not an option that should be relied on if a timely petition can be filed. In both cases, there is no judicial review and the taxpayer is at the mercy of the IRS as to the determination. These remedies are most useful when the issue is a factual question, such as substantiation, and can be clearly demonstrated. If there is a legal issue or an issue that is gray, an audit reconsideration or Offer in Compromise as to doubt as to liability will be less likely to be successful. A last possibility is to try to challenge the determination through a bankruptcy filing. Section 505 of the Bankruptcy Code allows for the court to hear a tax dispute that has not previously been adjudicated. This, again, would not be a first option since many clients will not want to file bankruptcy and the statute states that the court “may” hear a tax case, but does not require the court to do so.

Caveat: The IRS has been occasionally using a different form for a Notice of Deficiency. The appearance of the form is somewhat misleading and can often be missed since it deviates from the standard Notice of Deficiency used for decades by the IRS. (Attached as Exhibit 4 is a copy of this form which practitioners should be on the lookout for.)

II. Post Assessment Issues

1. Liens

The assessment of a tax liability creates a lien on all property belonging to the taxpayer. This lien is referred to as a “secret lien,” since only the IRS and the taxpayer are aware of its existence. The assessment, however, starts the collection process.

I.R.C. §6323(a) provides for a priority for judgment creditors, secured creditors, mechanic’s lien holders and bona fide purchasers, over a prior Federal tax assessment lien. However, the IRS can file a Notice of Federal Tax Lien to secure the IRS’ interest ahead of
subsequent interests enumerated under §6323. The Federal Tax Lien must be recorded in the County Clerk’s Office where the individual resides and for corporations relating to personal property, in the Department of State. The public filing can obviously be devastating to a client’s credit.

2. **Levy**

A Federal tax levy involves a seizure of a taxpayer’s assets in the possession of a third party, such as a bank account, accounts receivable, etc. These are normally “one time shots,” and only attach to what is owed at the time the levy is served. Banks are required to hold the funds for 21 days to give the taxpayer time to challenge the appropriateness of the levy action. If a taxpayer wants to free up the account and has no basis to challenge the levy, he normally can instruct the bank to release the funds prior to the expiration of the 21 days.

The IRS can also serve a wage levy which is continuous. Unlike creditors under State law, the IRS is not limited to a 10% garnishment and the formula for exemptions is much less generous under the Federal statute set forth in I.R.C. §6334. It should also be noted that there is no exemption for a levy against an IRA, pension or ERISA qualified plan in relation to a Federal tax liability.

**Note:** Before the IRS can levy, a Final Notice of Intent to Levy must be sent by certified mail to the taxpayer’s last known address. *(See Exhibit 5 for an example.)*

**Caveat:** The IRS has misleadingly started occasionally using a different format than their normal 1053 letter as a Final Notice of Intent to Levy. Practitioners should be aware of this alternative notice, a copy of which is attached as *Exhibit 6.*

It is important to know if a taxpayer receives the Final Notice of Intent to Levy since I.R.C. §6330 allows for 30 days to file an appeal. Once an appeal is filed, all collection is frozen while the appeal is pending. Through the appeal process, a taxpayer can ask for an Offer in Compromise, Installment Agreement, or some other remedy that is less invasive than the IRS levying on their assets. Once the case is appealed, it will be referred to an independent IRS Appeals Officer who will review the matter and determine whether or not the requested relief will be granted. In the event the Appeals Hearing Officer decides adversely to the taxpayer, the taxpayer has the right to file a petition with the United States Tax Court challenging the appeal’s determination. The standard for appeal to the Tax Court, however, is “abuse of discretion.” This is a very difficult standard to show and very few cases are successful in challenging an Appeal Officer’s determination.

In the event a taxpayer or a practitioner fails to file the appeal within the 30 day timeframe set forth by statute, an appeal can still be filed based on IRS policy. The IRS refers to this as an “Equivalency Hearing.” As a policy, the IRS will normally hold collection, but they are not statutorily required to do so. Moreover, the taxpayer has no right to appeal to the United States Tax Court to challenge an adverse determination by the Appeals Officer.
III. Defenses

Bankruptcy/OIC/Statute of Limitations

Although beyond the scope of this discussion, bankruptcy, Offer in Compromise and the expiration of the statute of limitations are common ways to avoid the payment, or full payment, of an outstanding tax liability.

1. Bankruptcy:

Although there are many misconceptions about the value of bankruptcy in relation to taxes, income taxes can, under the right circumstances, be discharged in bankruptcy. (Eliminated without full payment.) Although there are many nuances and exceptions, generally if the return was due more than three years prior to the bankruptcy filing and the tax was assessed more than 240 days prior to the bankruptcy filing, the taxes can be discharged. Among the exceptions to discharge would be situations where no return was filed, the return was filed late and within two years of the bankruptcy, a Substitute For Return (SFR) was prepared by the IRS, or there was fraud in relation to the tax liability. Again, the type of bankruptcy, timing issues and other variables will determine whether or not bankruptcy as a remedy is a good solution for a particular client. It is important, however, to know that it can be a very useful tool in dealing with taxes under the right circumstances.

2. Offer in Compromise:

As stated above, an Offer in Compromise can be submitted based on doubt as to liability if a taxpayer has for some reason missed their opportunity to challenge an audit determination. However, most Offers in Compromise that are submitted are dealing with doubt as to collectability. The amount required to compromise a tax debt is based on a very objective formula and detailed discussions beyond the scope of this outline. However, it is important to make clients who have significant tax liabilities aware that settling with the IRS is based on an objective formula which takes into account the value of their assets, their income and allowable expenses. There are unfortunately many unscrupulous companies nationally that will solicit business based on information derived from public lien filings and make false representations regarding what is possible in compromising with the IRS. Any solicitation that states the percentage that the liability can be settled for or states a specific amount without first getting financial information from the taxpayer is questionable, since it is impossible to make such a prediction without the required information. It should be noted that there are rare circumstances where the IRS can deviate from the rigid formula based on hardship. These types of Offers are referred to as “Effective Tax Administration or Special Circumstance Offers” and are very difficult to get accepted, but under the right circumstances are worth pursuing.

3. Statute of Limitations

There is a 10 year statute of limitations for collection, which runs from the date the tax is assessed. There are numerous events that can toll the statute of limitations from running, such as
a bankruptcy filing, which prevents the statute from running on non-discharged taxes while the bankruptcy is in effect plus six months. Additionally, the filing of timely Collection Due Process Appeal, an Innocent Spouse Request, an Offer in Compromise or an Installment Agreement Request will stop the statute of limitations from running while these submissions are pending. It should be noted, however, that the IRS does make mistakes in calculating the statute of limitations, which this author has discovered in several cases. Therefore, if faced with collection action on a liability that exceeds 10 years in age, transcripts of account should be obtained and analyzed.

IV. Federal Income Tax Audits/Civil and Criminal Issues

1. Examination Authority of the IRS

   A. Pursuant to IRC §7602, it can do the following:

      1. Examination without a summons,

      2. Examination by use of a summons,

      3. Examination under oath. .

   B. Generally, during an audit, the Service will first attempt to voluntarily obtain information from the taxpayer. The service center or tax examiner will usually do so by making an informal request by letter. The success of an informal investigation is contingent on the taxpayer’s voluntary compliance. It is the practitioner’s duty to determine when it is in
      the taxpayer’s best interest to voluntarily comply.

   C. If the taxpayer is unable or unwilling to voluntarily provide the requested documentation
      or testimony, the IRS can resort to the use of a formal summons procedure to compel
      production of the requested documents or testimony.

   D. The summons must be personally delivered to the person being summoned or left at the
      person’s last and usual place of abode. The return date of the summons must be no
      sooner than 10 days from the date of service of the summons. IRC §7605(a).

   E. When a summons is issued to a third-party, defined as a person other than the taxpayer,
      the IRS must follow additional procedures. Notice of the summons must be given to the
      taxpayer within three days by certified or registered mail. The taxpayer is thereafter
      given up to 23 days to begin a court proceeding to quash the summons. The IRS is
      required to serve the summons on the third-party by delivering it to the third-party
      personally, by leaving it at the usual place of abode, or service by registered or certified
      mail.

   F. The taxpayer whose liability is being investigated is entitled to bring an action in the
      appropriate U.S. District Court to quash the summons.

   G. If the taxpayer brings a motion to quash, the third-party is prohibited from complying
      with the summons until the court rules on the taxpayer's petition or motion to quash, but
the statute of limitations for assessment and collection with respect to the taxpayer is stayed during the pendency of such a proceeding.

H. The taxpayer voluntarily complies with a summons by appearing at the specified time and place, and by producing the requested documents or testimony. Even if the person summoned objects to the scope or propriety of the summons, he or she must appear to raise the objections.

I. If the person summoned appears to raise objections, or fails to appear, the IRS can enforce the summons by commencing a proceeding in federal district court. The proceeding is commenced by the Service’s filing of a petition in the federal district court where the person summoned resides or is found.

J. As a practical matter, a practitioner representing a party who intends to comply with the summons but who requires additional time to do so, should contact the revenue agent who issued the summons to request additional time. Provided that the time requested is reasonable, the revenue agent will usually agree to the extension.

2. The Attorney Client Privilege

A. The attorney-client privilege is not as broad as many attorneys think. Generally, it only applies to confidential communications which have not been otherwise disclosed. A common law privilege of confidentiality exists for communications between an attorney and client with respect to the legal advice the attorney gives the client.

B. Communications protected by the attorney-client privilege must be based on facts of which the attorney is informed by the taxpayer, for the purpose of securing the professional advice of the attorney. The taxpayer must either be a client of the attorney or be seeking to become a client of the attorney.

C. The privilege may not be claimed where the purpose of the communication is the commission of a crime or tort.

D. The privilege of confidentiality applies only where the attorney is advising the client on legal matters. It does not apply in situations where the attorney is acting in other capacities.

1. A taxpayer may not claim the benefits of the attorney-client privilege simply by hiring an attorney to perform some other function. For example, if an attorney is retained to prepare a tax return, the attorney-client privilege will not automatically apply to communications and documents generated in the course of preparing the return.

E. The privilege of confidentiality also does not apply where the communication is made for further communication to third parties.

1. For example, information that is communicated to an attorney for inclusion in a tax
return is not privileged because it is communicated for the purpose of disclosure.

F. The privilege of confidentiality does not apply where an attorney is acting in another capacity, or where an attorney who is licensed to practice another profession is performing such other profession.

G. The attorney-client privilege is considered waived if the communication is voluntarily disclosed to anyone other than the attorney, the client, or the agents of the client or the attorney.

H. Additionally, the attorney work product doctrine is applicable to the IRS summons. Generally, the doctrine protects materials prepared in anticipation of litigation.

3. The Federal Tax Practitioner Privilege

A. There is no Accountant-Client privilege under federal law. However, communications and documentation between an accountant and an attorney, who was hired by the attorney for purposes of aiding the attorney in representing a client and rendering legal advice, are protected by the privilege. See U.S. v. Kovel, 296 F.2d 918 (1961).

B. I.R.C. §752.5 provides for the application of confidentiality privilege to taxpayer communications with federally authorized practitioners.

C. The Federal Tax Practitioner’s Privilege extends the present law attorney-client privilege of confidentiality to tax advice that is furnished to a client taxpayer (or potential client taxpayer) by any individual who is authorized under Federal law to practice before the IRS.

D. The provision allows taxpayers to consult with other qualified tax advisors in the same manner they currently may consult with tax advisors that are licensed to practice law.

E. The provision does not modify the attorney-client privilege of confidentiality, other than to extend it to other authorized practitioners.

1. The privilege established by the provision applies only to the extent that communications would be privileged if they were between a taxpayer and an attorney.

2. The privilege does not apply to any communication between a certified public accountant, enrolled agent, or enrolled actuary and such individual’s client (or prospective client) if the communication would not have been privileged between an attorney and the attorney’s client or prospective client.

3. For example, information disclosed to an attorney for the purpose of preparing a tax return is not privileged under present law. Such information would not be privileged under the provision whether it was disclosed to an attorney, certified public accountant, enrolled agent or enrolled actuary.
F. The privilege may not be asserted to prevent the disclosure of information to any regulatory body other than the IRS.

1. The ability of any other regulatory body, including the Securities and Exchange Commission (SEC), to gain or compel information is unchanged by the provision. No privilege may be asserted under this provision by a taxpayer in dealings with such other regulatory bodies in an administrative or court proceeding.

G. The privilege of confidentiality created by this provision will not apply to any written communication between a federally authorized tax practitioner and any director, shareholder, officer, employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of such corporation in any tax shelter.

H. The privilege created by this provision may be waived in the same manner as the attorney-client privilege.

1. For example, if a taxpayer or federally authorized tax practitioner discloses to a third party the substance of a communication protected by the privilege, the privilege for that communication and any related communications is considered to be waived to the same extent and in the same manner as the privilege would be waived if the disclosure related to an attorney-client communication.

I. The privilege of confidentiality may only be asserted in any non-criminal tax proceeding before the IRS, as well as in non-criminal tax proceedings in the Federal Courts where the IRS is a party to the proceeding or in the Federal courts with regard to a non-criminal tax proceeding where the United States is a party.

4. Fifth Amendment Privilege

A. The privilege against self-incrimination may apply pursuant to the Fifth Amendment to the United States Constitution. This privilege applies when the individual asserting the privilege can establish:

1. Compulsion,

2. A testimonial communication, and

3. The incriminating nature of the communication.

B. An attorney cannot assert a Fifth Amendment privilege on behalf of a client.

C. In general, this privilege does not apply to corporations.

D. The taxpayer or any other witness cannot assert a blanket fifth amendment privilege in response to an IRS summons, IRS interrogation or grand jury proceeding. Instead, the taxpayer or testifying witness must appear and assert the privilege on a question-by-question or document-by-document basis.
5. Tax Related Crimes

A. Federal

1. Evasion under IRC §7201.
   
a. Most frequently charged and is a felony defined as the willful attempt to evade or defeat any tax imposed by Title 26. This charge is not limited to fraudulent tax returns but can include evasion of

b. The elements are:

   (i) the existence of a tax deficiency;
   
   (ii) an affirmative act constituting an evasion or attempted evasion; and
   
   (iii) willfulness.

c. If convicted, the defendant may be fined up to $250,000, imprisoned not more than 5 years, or both.

2. Willful Failure to Collect or Pay Over Tax under IRC §7202.

a. Insurance that employers will comply with their obligation to collect and pay over the withholding and FICA taxes of their employees.

b. Both the failure to truthfully account for and the failure to pay over must be willful.

c. To establish “willfulness” the government must establish beyond a reasonable doubt that at the time the payment was due the taxpayer possessed sufficient funds to enable him to meet his obligation or that the lack of sufficient funds was the result of a voluntary act.

d. If convicted a defendant may be fined up to $250,000, imprisoned not more than 5 years, or both.

3. Willful Failure to File a Return under IRC §7203.

(a) To obtain a conviction under IRC 7203 the government must establish:

   a. Willfulness, and

   b. The omission of at least one of the following duties:

      (i) payment of any tax or estimated tax as required by the Code,

      (ii) preparation and filing of a return as required under the Code,

      (iii) maintenance of records required to be kept under the Code, or

      (iv) supply of any information required to be supplied under the Code.
(b) Often used to prosecute tax protesters who fail to file return based on constitutional grounds.

(c) Willful failure to file is a misdemeanor punishable by imprisonment of not more than one year, a fine not to exceed $100,000 or both.

2. Preparation of a False Return under IRC §7206(1).

   a. Any taxpayer who willfully makes any document under the Internal Revenue laws which he or she does not believe to be accurate and correct is guilty of this offense.

   b. The elements of this offense are as follows:

      (a) a belief that the return, statement or document is false,
      (b) willfulness,
      (c) materiality, and
      (d) making and subscribing to the document under penalty of perjury.

   c. If convicted the offense is a felony and punishable by no more than three years in prison, a fine not to exceed $250,000 or both.

3. Aiding and Assisting in the Preparation of a false return under IRC §7206(2).

   a. Generally used to prosecute return preparers and tax shelter promoters.

   b. The elements include:

      (a) proof that the defendant aided or assisted in the preparation of a return,
      (b) the return was false or fraudulent as to a material matter, and
      (c) willfulness.

   c. If convicted the offense is a felony and punishable by no more than three years in prison, a fine not to exceed $250,000 or both.

4. Submitting a False Document under IRC §7207.

   a. The elements include:

      (a) delivery or disclosure to the IRS of any list, return, account, statement or other document, and
      (b) knowledge that the document is false or fraudulent to any material matter (i.e. Willfulness).

   b. IRC §7207 is a lesser offense of IRC §7206(1).

   c. Conviction under IRC §7207 is a misdemeanor and is punishable by no more than 1 year in jail, a fine not to exceed $100,000, or both.

5. The Statute of limitations for the above tax crimes is 6 years under IRC §6531.
a. The statute of limitations begins to run on the date of the last affirmative act. U.S. v. Anderson, 319 F.3d 1218 (10th Cir. 2003)


   a. Conspiracy under 18 USC §371- Often a conspiracy charge is included when the government charges a tax crime under the Code and the defendant acted with another to commit the crime. §371 is often used by the government against professionals like lawyers and accountants who assist in their client’s violation of the tax laws.
   
   b. False Statement under 18 USC §1001 – requires a material false statement made knowingly.
   
   c. Mail Fraud under 18 USC §1341- if taxpayer files a fraudulent return and used the mail to send it to the IRS, he/she could be guilty of mail fraud.
   
   d. Perjury under Title 18 USC §1621 - A false return case may be prosecuted pursuant to either 18 USC §1621 or IRC §7206(1).
   
   e. Obstruction of Justice.

6. Civil Considerations

   A. Statute of Limitations:

   1. Generally, the Statute of limitations for assessment and/or collection are not tolled during the criminal investigation.

   2. However, if a taxpayer executes a consent to extend the statute of limitations on assessment or collection, the statute will be extended accordingly.

   3. Additionally, if the Internal Revenue Service or the Tax Department can prove fraud on the part of the taxpayer, there is no statute of limitations on civil assessment.

   B. Criminal vs. Civil Numbers:

   1. Generally, the criminal numbers in a tax case are different from the civil amounts ultimately determined to be due from the taxpayer.

   2. The reason for this is that the burden of proof in a criminal case is different than a civil fraud case. A federal criminal tax case will only include the amount of that the IRS believes it can prove beyond a reasonable doubt.

   3. However, the burden of proof in a civil fraud case is clear and convincing evidence – which is a lesser standard. As such, the criminal numbers in a case could be $50,000, but the civil numbers in the same case could be in excess of $100,000 or $200,000.
4. Additionally, the criminal case concerns only the tax in issue and does not include interest and penalties. However, the civil fraud case will include interest and penalty.

5. IRC Section 6663 imposes a civil fraud penalty which is 75% of the tax determined to be due.

6. A payroll tax charge under §7202 would only include the trust fund portion of the tax.

V. Trust Fund Taxes & the Trust Fund Recovery Penalty

1. Civil Exposure

(a) Under the provisions of I.R.C. §6672, any person who is required by law to collect, truthfully account for, and pay over any tax and who willfully fails to do so or willfully attempts in any manner to evade or defeat payment, is liable for a penalty equal to the total amount of the tax. This is what is referred to as the Trust Fund Recovery Penalty ("TFRP").

(b) The Trust Fund Recovery Penalty allows the government to "pierce the corporate veil" and assert a liability against an individual for the withheld taxes that were not remitted, as required, to the government. The entity/employer is liable for the entire payroll tax, both the withheld portion and the employer's contribution, as well as accrual of interest and penalties. The TFRP however is limited only to the portion that was required to be withheld in trust for the government. Interest will not accrue on this liability until it is assessed against the individual. Additionally, there is no penalty added to the trust fund liability.

(c) In the situation of a sole proprietorship, the individual is liable for the entire payroll taxes, not limited to the trust fund, since there is no corporate insulation from any liabilities.

(d) The government takes failure to remit the withheld payroll taxes very seriously since the government gives credit to the employees, regardless of the fact that the funds were never remitted.

(e) In order for an individual to be held liable, the government must establish that the targeted person or persons were both responsible and willful in relation to the failure to remit the payroll taxes. Once these elements are determined, the IRS will assert liability through the issuance of a 60 Day Letter. (See Exhibit 7). This document is referred to as a 60 Day Letter since the targeted individual(s) has 60 days to file a Protest. If a Protest of the determination is in fact filed, the case will be sent to the IRS Appeals Office where the individual will receive an independent hearing on whether or not they are in fact liable pursuant to the provisions of I.R.C. §6672.
(f) The TFRP is used only as a collection device; therefore, under IRS Policy Statement P5-14, the liability will only be collected once, even though multiple parties may have been assessed. The liability, however, is joint and several, meaning that the IRS can collect from any of the parties in varying amounts.

(g) The liability for remaining trust fund taxes arises at the time of withholding, not when the taxes are due. Thus, a resignation by a potential Responsible Party prior to the due date of the return will not relieve them of liability if they held the position when the withholding was required.

2. Determining Responsibility

IRM 5.7.3.3.1 states that “a determination of the responsibility depends on the facts and circumstances.” It normally can include persons who are officers or employees of the corporation, partners or employees of a partnership, corporate directors or shareholders, or even other persons or entities outside the delinquent business organization. However, employees who act under the dominion and control of others and who are not in a position to make independent decisions, will not be assessed the TFRP.

Normally, the TFRP will not be imposed on unpaid volunteers or directors of tax exempt organizations if they do not participate in the daily or financial operations of the organization and lack knowledge of the failure to remit the payroll taxes. However, IRM 5.7.3.3.1.1 states that the exception will not apply if it will result in no one being held responsible.

If a business is sold, the individual who assumes control can be liable if funds become available and they are not used to pay delinquent payroll taxes that existed prior to the buyer’s taking over control. However, the buyer is not required to use the funds that he has infused into the company personally for payment of the prior trust fund taxes if no funds are held in trust for the government as of the date of the change in ownership. (See Slodov v. United States)

3. Willfulness

IRM 5.7.3.3.2 defines willfulness to mean “intentional, deliberate, voluntary, reckless, knowing as opposed to accidental.” The IRS must show that to hold a Responsible Person willful that they were aware of or should have been aware of the outstanding tax liability, but intentionally disregarded the law or were indifferent to its requirements. Failure to investigate or correct mismanagement after being notified that withholding taxes have not been paid, satisfies the willful element. IRM 5.17.7.1.3 further states that “no evil intent or bad motive is required.” The Second Circuit Court of Appeals In Rem v. United States stated that a person is willful if he knew of the company’s obligation to pay withholding taxes and nevertheless they allowed the company funds to be used for other purposes instead.

Willfulness cannot be negated merely by delegating authority to others. Failure to personally attend to the payroll tax requirement can, by itself, be willful. Once a
Responsible Individual is aware of the tax liability, they are under a duty to see that the taxes are paid.

There are a minority of Circuit Courts, however, that have allowed for "reasonable cause" to be a defense to willfulness. Even the courts that do recognize this defense would indicate that it should be applied narrowly.

4. **Challenging a Civil Trust Fund Liability**

If a trust fund liability is asserted against an individual, as stated above, they have the right to file a Protest. If they receive an adverse decision by the IRS Appeals Office, or fail to timely file a Protest, the liability can still be challenged by paying the amount for one quarter for one employee and thereafter filing a claim for refund. A claim for refund can be based on lack of responsibility and/or willfulness. If the IRS denies the refund claim, the individual can bring a suit against the IRS in Federal District Court or the Court of Claims. It is also possible to challenge the assertion of the liability through a bankruptcy filing pursuant to Bankruptcy Code §505. This section allows for the challenge of a tax liability that has not previously been adjudicated. However, it is discretionary on the Bankruptcy Court's part to hear a tax challenge.

5. **Strategies and Defenses for Minimizing Penalty**

**Statute of Limitations** - The statute of limitations for the IRS to assert a trust fund liability against a potential Responsible Officer is three years from April 15th of the year following the quarters involved.

**Filing a Protest** - This will not only give an individual an opportunity to challenge the determination, but it will stop the assessment as well as collection. Not only does interest not accrue until the tax is assessed, which is beneficial in itself, but even if the targeted individual ultimately loses the appeal, the IRS may also be pursuing collection against the employer and not their potential targets. Since the liability is only collected once, this could be beneficial to the client.

**Designation of Payment** - This is one of the most important strategies. If a targeted Responsible Person still has control over a business and/or its assets, every effort should be made to designate any voluntary payment made to the IRS in relation to the outstanding payroll taxes to "trust fund only." This should be done by making the designation on the front and back of the check and stating it in a cover letter. If the designation is not made, the IRS will apply the payments to the best interests of the government, which would be first to the non-trust fund portion of the liability. The IRS will then apply any excess to the trust fund, interest and penalties. Where multiple quarters are involved, it is far better to designate to trust fund for each quarter, thereby not utilizing any of the funds towards non-trust fund, interest or penalties. This can dramatically reduce the exposure of a Responsible Person.
6. **Criminal Exposure**

The first part of IRC §7202 is virtually identical to IRC §6672. The significant difference, however, is that §7202 provides for a fine of up to $10,000, imprisonment for up to five years, or both, as opposed to merely civil liabilities as set forth in §6672. In May, 2015, the Director of Operations, Policy and Support, of the Internal Revenue Service Criminal Investigation Division, stated at an ABA meeting, that there would be enhanced criminal enforcement in employment tax cases. It should be noted that the government’s policy had previously been not to prosecute where there was an “inability to pay defense.” However, the Ninth Circuit in a case called *U. S. v. Easterday*, 539 F.3d, 1176A (9th Cir. 2009) stated that for criminal purposes, it is not required that the government show the defendant had the ability to pay. The government has also successfully argued that subsequent payment of a trust fund liability does not preclude criminal prosecution because under §7202, the crime is completed upon failure to remit the payment on the due date.

There is a greater risk of prosecution if certain factors are present, including prior companies that had payroll tax problems, continual pyramiding of new liabilities, and extravagant lifestyle of the targeted individual. It should also be noted that the IRS can do “parallel” investigations with regard to payroll taxes. This could involve situations where a Revenue Officer is running an investigation for the civil liability and simultaneously the Criminal Investigation Division is also investigating an individual for potential charges under §7202. Although the Internal Revenue Manual states that these investigations are “parallel,” and the Criminal Division should not direct the Revenue Officer’s conduct, all information obtained by the Revenue Officer is ultimately turned over to the Criminal Investigation Division, if requested. This is significantly problematic for potential targets of §7202 prosecution.

The fact that §6672 and §7202 are identical in relation to the elements of the crime and the willfulness element is defined identically by both the civil and criminal sections of the Manual, a practitioner has to be very leery about cooperation with the Revenue Officer. In the vast majority of payroll tax investigations, the Revenue Officer will do a 4180 interview. This interview involves the utilization of Form 4180. *(See Exhibit 8).* This document is set up to determine if the individual being interviewed is both responsible and willful and who else could also be held liable. Unfortunately, however, this form can amount to a confession if the Criminal Investigation Division wants to use the statements used therein later to support a prosecution. What is also troubling is that the IRS gives a Notice 784 prior to the 4180 to the individual being interviewed. At no point does the Notice say there could be criminal exposure. *(See Exhibit 9).* A tax practitioner is in a very difficult situation, since lack of cooperation with the Revenue Officer can result in seizure of assets and the refusal to consider an Installment Agreement at the business level. Additionally, the Revenue Officer can be angered by the failure to cooperate and that could result in a criminal referral where one may not have occurred otherwise. Lack of cooperation is often cited as one of the factors in making a criminal referral.
On the other hand, a practitioner may not want to allow a client to be interviewed and risk that the information is later used to turn the case into a criminal prosecution or to further buttress a criminal investigation that is already ongoing. It is very unfortunate that the government is utilizing this approach, which not only puts the taxpayer and his representative in a “no win” situation, but has significant constitutional implications and undermines fundamental fairness. This has become more problematic since the IRS is now made a public statement that they intend to increase criminal prosecutions of trust fund violations. At a minimum, a client now has to be made aware of the risk. Perhaps if there is a continual increase of representatives refusing to allow interviews and/or cooperation with the Revenue Officers as a result of the government’s current position, the IRS may hopefully in the future rethink this policy.

VI. Recent New York State Enforcement Issues

1. Driver’s License Suspensions

In an effort to enhance collection efforts, the New York State Department of Taxation and Finance ("Tax Department") along with the Department of Motor Vehicles ("DMV") announced an initiative to suspend the drivers’ licenses of Taxpayers owing $10,000.00 or more in State tax debt. This program was approved by State legislators and the Governor, and was made part of the State Tax Law in 2013. See NY Tax Law §171-v.

Those with child support obligations or commercial drivers’ licenses are excluded from the program. For others owing $10,000.00 or more, the Tax Department will mail them a notice stating they have sixty (60) days to make arrangements to pay the outstanding balance, or their identifying information will be forwarded to the DMV for the purpose of license suspension (Exhibit 10). After that timeframe expires, the Taxpayer can expect a notice from the DMV stating his or her license will be suspended in the next fifteen (15) days (Exhibit 11). This is the Taxpayer’s last chance to make arrangements to pay the balance due. If this is not done, the Taxpayer’s license is effectively suspended. At this point, unless payment arrangements are made, the Taxpayer’s only option to drive legally is to request a restricted license from the DMV. For a fee, a restricted license allows someone to drive to work or for the health and welfare of themselves and their family, but for no other purpose.

There are couple things a Taxpayer can do to hold off a proposed suspension. One is to simply make a payment arrangement within the timeframe of the 60-day notice. If the balance is paid in full, then a proposed suspension is avoided altogether. However, a Taxpayer can also make other arrangements. They can request a payment plan or income execution, or submit an Offer in Compromise. It should be known that aside from payment in full, the other options only hold a proposed suspension. If the Taxpayer defaults on a payment plan or execution, or his or her Offer in Compromise is rejected, then suspension action will resume. Since the suspension is essentially an effort to collect debt, it should also be known that suspension action can also be stopped with a bankruptcy filing.
To buy time, and within the timeframe of the 60-day notice, the Taxpayer can also request a Conciliation Conference via Form CMS-1-MN (Exhibit 12). As long as this hearing is requested within those 60 days, the proposed suspension will be held throughout this appeals process. When this request is made, the Tax Department will schedule a hearing at a local office with the Taxpayer and/or his or her representative. It can take the Tax Department up to four months to schedule a hearing. If a payment arrangement is made prior to the scheduled hearing, then the appeal can be withdrawn. Again, unless the balance is paid in full, a proposed suspension is only held while another payment arrangement is in place.

If the hearing proceeds, the State’s conferee (hearing officer) and possibly a Civil Enforcement Agent will be present. Keep in mind that the above-referenced law is very straightforward. If a Taxpayer cannot come up with a basis to avoid suspension that conforms to the statute, the conferee will generally uphold the proposal to suspend. Unless the Taxpayer agrees with the conferee’s decision, an Order upholding suspension will be issued about a month after the hearing (Exhibit 13). At that point, the Taxpayer has ninety (90) days to appeal the Order via petition to the State Division of Tax Appeals. This is an impartial tribunal tasked with resolving tax disputes. If the aforementioned timeframes are observed, a proposed license suspension will be held throughout this whole process. However, it is recommended that payment arrangements be made as soon as possible so as to avoid time-consuming hearings and other proceedings.

2. New York State Garnishment

New York State is using the form attached as Exhibit 14 to garnish bank accounts and other assets in possession of a third party. It has come to our attention that this form is causing significant confusion on the part of the financial institutions who receive these notices. The highlighted portion of the notice in the attachment indicates:

You are required . . . to immediately transfer . . . all personal property in which the judgment debtor . . . is known or believed to have an interest now in or hereafter coming into your possession or custody as may be necessary to satisfy the total amount due . . . including all debts now or coming due from you to the judgment debtor . . .

The excerpt that the State is using is actually only a portion of the law (a copy of the relevant section of the statute is attached as Exhibit 15). The statute actually states, in relevant part:

. . . the person served with the execution shall transfer all such property and pay all such debts upon maturity, . . . to the Support Collection Unit (State) and execute any document necessary to effect the transfer of payment. After such transfer of payment, property coming into the possession or custody of the garnishee, or debt incurred by him, shall not be subject to the levy. Until such transfer or payment is made or until the expiration of 90 days after the service of the execution upon him or her, or of such further time as is provided by any order of the
court served upon him or her, whichever event first occurs, the garnishee is forbidden to make or suffer any sale, assignment or transfer of, or any interference with any such property or pay over or otherwise dispose of any such debt . . . at the expiration of 90 days after levy is made by service of the execution or of such further time as a court, upon motion of the judgment creditor or Support Collection Unit has provided, the levy shall be void . . .

There have been numerous cases where financial institutions have continued to hold funds that came in long after the garnishment and subsequent to the 90 day period. These funds have been erroneously remitted to the State.
EXHIBIT 1
Dear [Name],

On September 17, 2015, we discussed the findings in the enclosed report and you indicated agreement.

**What to do if you agree**
To agree with the examination changes on this report, you need to sign, date, and return one of the enclosed Examination Reports by the response date shown above. If you filed a joint return for this tax period, both taxpayers must sign the report.

If the report shows that you owe additional tax, please include payment for the full amount to limit penalty and interest charges to your account. Payments should be made payable to the United States Treasury. We have enclosed an envelope for your convenience. *(Please note: This report may not reflect the results of later examinations of partnerships, "S" Corporations, trusts, etc., in which you have an interest. Changes made to those tax returns could affect your tax.)*

**What to do if you do not agree**
If you don't agree with the changes shown in the Examination Report, please contact the examiner by the response date listed above. The enclosed Publication 3498, *The Examination Process*, explains actions you should take when you do not agree with the examiner's proposed changes.

**How to contact us**
If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

[Name]
Revenue Agent

Enclosures:
Examination Report (2)
Publication 3498
Envelope
EXHIBIT 2
Protest

To: Internal Revenue Service

ATTN: 

Re: NAME: 
TIN: 
FORMS: 
YEARS: 
TYPE: Income Tax 
SUBJECT: Protest of Decision in Request for Compromise Under Doubt as to Liability

1. The above named taxpayer requests a hearing before an appeals officer in Buffalo, New York, about the above referenced matter.

2. Name and address of taxpayer:

addr2>
city>, state>, zipcode>

3. Name and address of representative (form 2848 is attached):

Deborah J. Weber
Attorney at Law
Andreozzi, Bluestein, Weber, Brown, LLP
333 International Drive, Suite B-4
Williamsville, New York 14221

4. Date and symbols of rejection letter:

DATE:
SYMBOLS:

5. Tax periods and years involved are those referenced above.

6. Protested Adjustments.

The determination appealed from is based on the following errors:
1.

7. Statement in Support of Appeal:

Facts:
A.

Law:
A.

Statement of representative:

I prepared this protest and the supporting documents. I also prepared the attached form 2848 (power of attorney). I believe that the factual statements in this protest, supporting document, and the attached form 2848 are true and correct.

Deborah J. Weber
EXHIBIT 3
UNITED STATES TAX COURT

[omitted]

Petitioner,

- vs. -

Docket No.:

Commissioner of Internal Revenue,
Respondent.

---

PETITION

The Petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in the Notice of Deficiency dated _____, 2015, and alleges as follows:

1. The Petitioner is an individual with a residence at ________________________.

2. Upon information and belief, the Notice of Deficiency was mailed to the Petitioner on _____, 2015, and was issued by the Office of the Internal Revenue Service at _________________. A copy of the Notice of Deficiency is attached hereto at Exhibit A.

3. The determination made by the Commissioner relates to income taxes, penalties and interest for the following period(s) and amount(s) shown below, all of which are in dispute:

   a. December 31, ____ Form 1040 Income Tax

      Increase in Tax: $_____
      Failure-to-file penalty: $_____
      Failure-to-pay penalty: $_____
      Interest: $_____

4. The determination made by the Commissioner set forth in the Notice of Deficiency is based upon the following errors:
a. The amount of gross, adjusted and taxable income, and tax computed thereon, as determined by the Commissioner, is incorrect.

b. The Petitioner is not liable for the penalties determined by the Commissioner of Internal Revenue.

5. The facts upon which the Petitioner relies are as follows:

   a. The Petitioner is entitled to deductions which would serve to offset the deficiency for tax year _____.

   WHEREFORE, the Petitioner prays that the Court re-determine the deficiency set forth above and determine that the Petitioner is not liable for the tax increase or penalty as set forth in the Notice of Deficiency.

Respectfully submitted,

__________, 2015

Gary Bluestein, Esq.
Attorney for Petitioners
Androzzi, Bluestein, Weber, Brown, LLP
333 International Dr., Ste. B-4
Williamsville, NY 14221
716-633-3200
Tax Court Bar No.: BG0408
EXHIBIT 4
Notice of Deficiency
Increase in tax and notice of your right to challenge

We have determined that there is a deficiency (increase) in your 2012 income tax. You have the right to challenge the increase in U.S. Tax Court. This notice explains how the additional amount was calculated and how you can challenge the increase in U.S. Tax Court.

What you need to do immediately

Review this notice, and compare our changes to the information on your 2012 tax return. NOTE: The amounts shown above may differ from your previous notice because not all items can be challenged in tax court.

If you agree with the changes we made
- Sign the enclosed Form 5564—Notice of Deficiency Waiver and mail it to us in the envelope provided.
- You can send a payment with Form 5564. Otherwise, you’ll receive a bill for the amount due (including any interest and applicable penalties).

If you don’t agree with the changes
- You have the right to challenge the increase in tax by filing a petition with the U.S. Tax Court by April 27, 2015. The Court can’t consider your case if the petition is filed late. You can download a petition form and rules from www.ustaxcourt.gov or contact:

Clerk of the U.S. Tax Court
400 Second Street, NW
Washington, DC 20217
1-202-521-0700

Continued on back...
EXHIBIT 5
CERTIFIED MAIL - RETURN RECEIPT

Date:
09/24/2015
Social Security or
Employer Identification Number:

Person to Contact:

Contact Telephone Number:

Employee Identification Number:

For Account of:

FINAL NOTICE
NOTICE OF INTENT TO LEVY AND NOTICE OF YOUR RIGHT TO A HEARING
PLEASE RESPOND IMMEDIATELY

Why We Are Sending You This Letter
Your federal tax is still unpaid. We asked you to pay the tax, but we still haven't received your payment. This letter is your notice of our intent to levy (under Internal Revenue Code (IRC) Section 6331) and your right to request an Appeals hearing (under IRC Section 6330(a)).

What You Need To Do
Please send us a full payment today to prevent additional collection action. Make your check or money order payable to "United States Treasury". Write your Social Security number or Employer Identification Number on your payment. Send your payment to us in the enclosed envelope, along with a copy of this letter. The amount you owe through 10/04/2015 is $[redacted]. Additional penalty and interest charges will be due if you pay after this date. (To ensure that you and your spouse receive this notice, we are sending a copy to each of you. Each copy contains the same information related to your joint account. Any amount you owe should be paid only once.)

If you wish to request an Appeals hearing, complete the enclosed Form 12153, Request for a Collection Due Process or Equivalent Hearing, and send it to us within 30 days from this letter's date. You must complete, sign, and return this form to the above address within 30 days to preserve your rights to contest an Appeals' decision in the U.S. Tax Court.

Information about Interest and Penalty Charges
The unpaid amount from prior notices may include tax, penalties, and interest you still owe. It also includes any credits and payments we've received since we sent our last notice to you. Below is a brief explanation of the interest and/or failure to pay penalty that may be included in the amount you owe:

Interest - Internal Revenue Code Section 6601
We charge interest when your tax is not paid on time. Interest is computed from the due date of your return (regardless of extensions) until paid in full. Interest is also charged on penalties for late filing and failure to pay tax owed. Interest compounds daily, except on late or underpaid estimated income taxes for individuals or corporations.
Paying Late - Internal Revenue Code Section 6651(a)(2), (a)(3) and (d)(1)
We charge a late penalty of ½ percent of the tax owed each month or part of a month that the tax remains unpaid from the due date, up to a maximum of 25 percent of the tax due. The ½ percent increases to 1 percent for each subsequent month or part of a month if the tax remains unpaid 10 days after we issue a notice of intent to levy.

What We Are Going To Do
We may file a Notice of Federal Tax Lien at any time to protect the government’s interest. A lien is a public notice to your creditors that the government has a right to your current assets, including any assets you acquire after we file the lien.

If you don’t pay the amount you owe, make alternative arrangements to pay, or request an Appeals hearing within 30 days from this letter’s date, we may take collection action against your property, or rights to property, such as real estate, automobiles, business assets, bank accounts, and other income.

How To Get Help
If you have recently paid this tax or if you can’t pay it, call us immediately at the telephone number shown at the top of this letter.

The enclosed Publication 594, The IRS Collection Process, and Publication 1660, Collection Appeal Rights, provide more information.

Sincerely yours,

REVENUE OFFICER

Enclosures:
Copy of this letter
Publication 594
Publication 1660
Form 12153

The table below shows the amount you owe:

<table>
<thead>
<tr>
<th>Form Number</th>
<th>Tax Period</th>
<th>Unpaid Amount from Prior Notices</th>
<th>Additional Penalty</th>
<th>Additional Interest</th>
<th>AMOUNT YOU OWE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1040</td>
<td>12/31/2011</td>
<td>$[redacted]</td>
<td>$[redacted]</td>
<td>$[redacted]</td>
<td>$[redacted]</td>
</tr>
</tbody>
</table>

Total: $[redacted]
Use this form to request a Collection Due Process (CDP) or equivalent hearing with the IRS Office of Appeals if you have been issued one of the following lien or levy notices:

- **Notice of Federal Tax Lien Filing and Your Right To A Hearing Under IRC 6320,**
- **Notice of Intent to Levy and Notice of Your Right To A Hearing,**
- **Notice of Jeopardy Levy and Right of Appeal,**
- **Notice of Levy on Your State Tax Refund,**
- **Notice of Levy and Notice of Your Right to a Hearing.**

Complete this form and send it to the address shown on your lien or levy notice. Include a copy of your lien or levy notice to ensure proper handling of your request.

Call the phone number on the notice or 1-800-829-1040 if you are not sure about the correct address or if you want to fax your request.

You can find a section explaining the deadline for requesting a Collection Due Process hearing in this form's instructions. If you've missed the deadline for requesting a CDP hearing, you must check line 7 (Equivalent Hearing) to request an equivalent hearing.

<table>
<thead>
<tr>
<th>1. Taxpayer Name: (Taxpayer 1)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxpayer Identification Number</td>
<td></td>
</tr>
<tr>
<td>Current Address:</td>
<td></td>
</tr>
<tr>
<td>City: ________________________</td>
<td>State: ____________</td>
</tr>
</tbody>
</table>

| 2. Telephone Number and Best Time to Call During Normal Business Hours |
|---|---|---|---|---|---|---|---|
| Home: ( ) _______ - ____________ | am. | pm. |
| Work: ( ) _______ - ____________ | am. | pm. |
| Cell: ( ) _______ - ____________ | am. | pm. |

<table>
<thead>
<tr>
<th>3. Taxpayer Name: (Taxpayer 2)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxpayer Identification Number</td>
<td></td>
</tr>
<tr>
<td>Current Address:</td>
<td></td>
</tr>
<tr>
<td>(If Different from Address Above)</td>
<td></td>
</tr>
<tr>
<td>City: ________________________</td>
<td>State: ____________</td>
</tr>
</tbody>
</table>

| 4. Telephone Number and Best Time to Call During Normal Business Hours |
|---|---|---|---|---|---|---|---|
| Home: ( ) _______ - ____________ | am. | pm. |
| Work: ( ) _______ - ____________ | am. | pm. |
| Cell: ( ) _______ - ____________ | am. | pm. |

| 5. Tax Information as Shown on the Lien or Levy Notice (If possible, attach a copy of the notice) |
|__________________________________________________________________________________________|
| Type of Tax (Income, Employment, Excise, etc. or Civil Penalty) | Tax Form Number (1040, 941, 720, etc) | Tax Period or Periods |
|__________________________________________________________________________________________|
|                                                                                          |                                     |                        |
|                                                                                          |                                     |                        |
|                                                                                          |                                     |                        |
|                                                                                          |                                     |                        |

Form 12153 (12-2013)  Catalog Number 26685D  www.irs.gov  Department of the Treasury - Internal Revenue Service
EXHIBIT 6
Notice of intent to levy

**Intent to seize your property or rights to property**

Amount due immediately: $71,906.55

We haven't received a payment despite sending you several notices about your overdue taxes. The IRS may seize ( levy) your property or your rights to property on or after September 27, 2015.

Property includes:
- Wages and other income
- Bank accounts
- Business assets
- Personal assets (including your car and home)
- Alaska Permanent Fund Dividend and state tax refund
- Social Security benefits

**Billing Summary**

- **Amount you owed**: $70,017.02
- **Additional interest charges**: 1,889.53
- **Amount due immediately**: $71,906.55

---

Payment

INTERNAL REVENUE SERVICE
ACS SUPPORT - STOP 5050.
P.O. BOX 219236,
KANSAS CITY, MO 64121-9236.

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- Make your check or money order payable to the United States Treasury.
- Write your Taxpayer ID number (******* ) and the tax period(s) on your payment and any correspondence.

**Amount due**: $71,906.55
What you need to do immediately

Pay immediately

- Send us the amount due of $71,906.55, or we may seize (levy) your property on or after September 27, 2015.
- If you can’t pay the amount due, pay as much as you can now and make payment arrangements that allow you to pay off the rest over time. Visit www.irs.gov/payments for more information about:
  - Installment and payment agreements: download required forms or save time and money by applying online if you qualify
  - Automatic deductions from your bank account
  - Payroll deductions
  - Credit card payments

Or, call us at 1-800-829-7650 to discuss your options.

- If you’ve already paid your balance in full or think we haven’t credited a payment to your account, please send proof of that payment.

Right to request a Collection Due Process hearing

If you wish to appeal this proposed levy action, complete and mail the enclosed Form 12153, Request for a Collection Due Process or Equivalent Hearing, by September 27, 2015. Send the form to us at the address listed at the top of page 1. Be sure to include the reason you are requesting a hearing (see section 8 of, and the instructions to, Form 12153) as well as other information requested by the form. If you don’t file Form 12153 by September 27, 2015, you will lose the ability to contest Appeals’ decision in the U.S. Tax Court.

Please check here if you’ve included any correspondence. Write your Taxpayer ID number (________________________) and the tax period(s) on any correspondence.
EXHIBIT 7
Internal Revenue Service

Department of the Treasury

Date: APR 13 2015

Dear [Name],

Our efforts to collect the federal employment or excise taxes due from the business named above have not resulted in full payment of the liability. We therefore propose to assess a penalty against you as a person required to collect, account for, and pay over withheld taxes for the above business.

Under the provisions of Internal Revenue Code section 6672, individuals who were required to collect, account for, and pay over these taxes for the business may be personally liable for a penalty if the business doesn't pay the taxes. These taxes, described in the enclosed Form 2751, consist of employment taxes you withheld (or should have withheld) from the employees' wages (and didn't pay) or excise taxes you collected (or should have collected) from patrons (and didn't pay), and are commonly referred to as "trust fund taxes."

The penalty we propose to assess against you is a personal liability called the Trust Fund Recovery Penalty. It is equal to the unpaid trust fund taxes which the business still owes the government. If you agree with this penalty for each tax period shown, please sign Part 1 of the enclosed Form 2751 and return it to us in the enclosed envelope.

If you don't agree, have additional information to support your case, and wish to try to resolve the matter informally, contact the person named at the top of this letter within ten days from the date of this letter.

You also have the right to appeal or protest this action. To preserve your appeal rights you need to mail us your written appeal within 60 days from the date of this letter (75 days if this letter is addressed to you outside the United States). The instructions below explain how to make the request.
APPEALS

You may appeal your case to the local Appeals Office. Send your written appeal to the attention of the Person to Contact at the address shown at the top of this letter. The dollar amount of the proposed liability for each specific tax period you are protesting affects the form your appeal should take.

For each period you are protesting, if the proposed penalty amount is:

$25,000 or less

You should:

Send a letter listing the issues you disagree with and explain why you disagree. (Small Case Request).

More than $25,000

Submit a formal Written Protest.

One protest will suffice for all the periods listed on the enclosed Form 2751, however if any one of those periods is more than $25,000, a formal protest must be filed. Include any additional information that you want the Settlement Officer/Appeals Officer to consider. You may still appeal without additional information, but including it at this stage will help us to process your request promptly.

A SMALL CASE REQUEST should include:

1. A copy of this letter, or your name, address, social security number, and any information that will help us locate your file;

2. A statement that you want an Appeal's conference;

3. A list of the issues you disagree with and an explanation of why you disagree. Usually, penalty cases like this one involve issues of responsibility and willfulness. Willfulness means that an action was intentional, deliberate or voluntary and not an accident or mistake. Therefore, your statement should include a clear explanation of your duties and responsibilities; and specifically, your duty and authority to collect, account for, and pay the trust fund taxes. Should you disagree with how we calculated the penalty, your statement should identify the dates and amounts of payments that you believe we didn't consider and or/ any computation errors that you believe we made.

Please submit two copies of your Small Case Request.

A formal WRITTEN PROTEST should include the items below. Pay particular attention to item 6 and the note that follows it.
1. Your name, address, and social security number;

2. A statement that you want a conference;

3. A copy of this letter, or the date and number of this letter;

4. The tax periods involved (see Form 2751);

5. A list of the findings you disagree with;

6. A statement of fact, signed under penalties of perjury, that explains why you disagree and why you believe you shouldn't be charged with the penalty. Include specific dates, names, amounts, and locations which support your position. Usually, penalty cases like this one involve issues of responsibility and willfulness. **Willfulness means that an action was intentional, deliberate or voluntary and not an accident or mistake.** Therefore, your statement should include a clear explanation of your duties and responsibilities; and specifically, your duty and authority to collect, account for, and pay the trust fund taxes. Should you disagree with how we calculated the penalty, your statement should identify the dates and amounts of payments that you believe we didn't consider and/or any computation errors you believe we made;

**NOTE:**

To declare that the statement in item 6 is true under penalties of perjury, you must add the following to your statement and sign it:

"Under penalties of perjury, I declare that I have examined the facts presented in this statement and any accompanying information, and, to the best of my knowledge and belief, they are true, correct, and complete."

7. If you rely on a law or other authority to support your arguments, explain what it is and how it applies.

**REPRESENTATION**

You may represent yourself at your conference or have someone who is qualified to practice before the Internal Revenue Service represent you. This may be your attorney, a certified public accountant, or another individual enrolled to practice before the IRS. If your representative attends a conference without you, he or she must file a power of attorney or tax information authorization before receiving or inspecting confidential tax information. Form 2848, Power of Attorney and Declaration of Representaive, or Form 8821, Tax Information Authorization, may be used for this purpose. Both forms are available from any IRS office. A properly written power of attorney or authorization is acceptable.
If your representative prepares and signs the protest for you, he or she must substitute a declaration stating:

1. That he or she submitted the protest and accompanying documents, and

2. Whether he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.

CLAIMS FOR REFUND AND CONSIDERATION BY THE COURTS

CONSIDERATION BY THE COURTS

If you and the IRS still disagree after your conference, we will send you a bill. However, by following the procedures outlined below, you may take your case to the United States Court of Federal Claims or to your United States District Court. These courts have no connection with the IRS.

Before you can file a claim with these courts, you must pay a portion of the tax liability and file a claim for refund with the IRS, as described below.

SPECIAL BOND TO DELAY IRS COLLECTION ACTIONS FOR ANY PERIOD AS SOON AS A CLAIM FOR REFUND IS FILED

To request a delay in collection of the penalty by the IRS for any period as soon as you file a claim for refund for that period, you must do the following within 30 days of the date of the official notice of assessment and demand (the first bill) for that period:

1. Pay the tax for one employee for each period (quarter) of liability that you wish to contest, if we've based the amount of the penalty on unpaid employment taxes; or pay the tax for one transaction for each period that you wish to contest, if we've based the amount of the penalty on unpaid excise tax.

2. File a claim for a refund of the amount(s) you paid using Form(s) 843, Claim for Refund and Request for Abatement.

3. Post a bond with the IRS for one and one half times the amount of the penalty that is left after you have made the payment in Item 1.

If the IRS denies your claim when you have posted this bond, you then have 30 days to file suit in your United States District Court or the United States Court of Federal Claims before the IRS may apply the bond to your trust fund recovery penalty and the interest accruing on this debt.
CLAIM FOR REFUND WITH NO SPECIAL BOND

If you do not file a special bond with a prompt claim for refund, as described above, you may still file a claim for refund following above action items 1 and 2, except these action items do not have to be taken in the first 30 days after the date of the official notice of assessment and demand for the period.

If IRS has not acted on your claim within 6 months from the date you filed it, you can file a suit for refund. You can also file a suit for refund within 2 years after IRS has disallowed your claim.

You should be aware that if IRS finds that the collection of this penalty is in jeopardy, we may take immediate action to collect it without regard to the 60-day period for submitting a protest mentioned above.

For further information about filing a suit you may contact the Clerk of your District Court or the Clerk of the United States Court of Federal Claims, 717 Madison Place, NW, Washington, D.C. 20005.

If we do not hear from you within 60 days from the date of this letter (or 75 days if this letter is addressed to you outside the United States), we will assess the penalty and begin collection action.

Sincerely yours,

Revenue Officer

Enclosures:
Form 2751
Publication 1
Envelope

BOD: WI
Form 4180
(August 2012)

Department of the Treasury - Internal Revenue Service
Report of Interview with Individual Relative to Trust Fund Recovery
Penalty or Personal Liability for Excise Taxes

Instructions: The interviewer must prepare this form either in person or via telephone.
Do not leave any information blank. Enter "N/A" if an item is not applicable.

Section I - Person Interviewed

1. Name

2. Social Security Number (SSN)

3. Address (street, city, state, ZIP code)

4. Home telephone number

5. Work telephone number

6. Name of Business and Employer Identification Number (EIN)

7. Did you use a third-party payer, such as a payroll service?
   □ Yes (if yes complete Section VI A)
   □ No

8. What was your job title and how were you associated with the business? (Describe your duties and responsibilities and dates of employment.) If person being interviewed is a payroll service provider or a professional employer organization, complete Section VI B

Section II - Responsibilities

1. State whether you performed any of the duties / functions listed below for the business and the time periods during which you performed these duties.

<table>
<thead>
<tr>
<th>Did you...</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Determine financial policy for the business?</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>b. Direct or authorize payments of bills/creditors?</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>c. Prepare, review, sign, or authorize transmit payroll tax returns?</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>d. Have knowledge withheld taxes were not paid?</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>e. Authorize payroll?</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>f. Authorize or make Federal Tax Deposits?</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>g. Authorize the assignment of any EFTPS or electronic banking PINs/passwords?</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>h. Could other individuals do any of the above? (Complete Section IV and V)</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Name</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Contact Number</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>l. Have signature authority or PIN assignment on business bank accounts?</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Bank Name(s)</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Account Number(s)</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

Section III - Signatures

I declare that I have examined the information given in this interview and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of person interviewed

Date

Signature of interviewer

Date

Date copy of completed interview form given to person interviewed

Taxpayer Statement on Page 4: □ Yes □ No

Interview Continued on subsequent pages? □ Yes □ No

Intervener Handouts ("X" if given or explain why not in case history.)

□ Notice 609, Privacy Act Notice □ Notice 784, Could You be Personally Liable for Certain Unpaid Federal Taxes?

DXA

www.irs.gov

Form 4180 (Rev. 8-2012)
Section IV: Business Information

1. List corporate positions below, identifying the persons who occupied them and their dates of service.

<table>
<thead>
<tr>
<th>Position (e.g. president, director)</th>
<th>Name</th>
<th>Address</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Did the business use the Electronic Federal Tax Payment System (EFTPS) to make Federal Tax Deposits (FTDs) or payments?

- [ ] No
- [ ] Yes  If yes, to whom are the PINS or passwords assigned

3. Other than the EFTPS, does the business do any other banking electronically?

- [ ] No
- [ ] Yes  Where

To whom are the PINS/passwords assigned

4. Does the business file Form 941 electronically?

- [ ] No  Who is authorized to sign Form 941
- [ ] Yes  Who files the returns electronically

Section V: Knowledge/Willfulness

1. During the time the delinquent taxes were increasing, or at any time thereafter, were any financial obligations of the business paid? (such as rent, mortgage, utilities, vehicle or equipment loans, or payments to vendors)

- [ ] No
- [ ] Yes  Which obligations were paid?

Who authorized them to be paid

2. Were all or a portion of the payrolls met?

- [ ] No
- [ ] Yes  Who authorized

3. Did any person or organization provide funds to pay net corporate payroll?

- [ ] No
- [ ] Yes  (Explain in detail and provide name)

4. When and how did you first become aware of the unpaid taxes?

5. What actions did you attempt to see that the taxes were paid?

6. Were discussions ever held by stockholders, officers, or other interested parties regarding nonpayment of the taxes?

- [ ] No
- [ ] Yes

Identify who attended, dates, any decisions reached, and whether any documentation is available.

7. Who handled IRS contacts such as phone calls, correspondence, or visits by IRS personnel?

When did these contacts take place, and what were the results of these contacts?
### Section VI - Payroll Service Provider (PSP) or Professional Employer Organization (PEO)

**A - Third-Party Payer Arrangements**

(complete this section only if you are interviewing a taxpayer who used a third-party payer)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Who signed the service contract or entered into the agreement for services with the third-party payer?</td>
<td>2. Who in the business handled the contacts with the third-party payer?</td>
</tr>
<tr>
<td>3. Who was your contact at the third-party payer?</td>
<td>4. How were funds to be made available for the third-party payer to pay the taxes?</td>
</tr>
<tr>
<td>Name of Bank(s) and Account number(s) from which funds were to be transferred.</td>
<td></td>
</tr>
<tr>
<td>5. What actions did you take to verify the third-party payer was filing returns, or making required payments?</td>
<td>6. Were funds available for the third-party payer to use for payment of the taxes?</td>
</tr>
<tr>
<td></td>
<td>☐ Yes ☐ No</td>
</tr>
<tr>
<td></td>
<td>if yes, explain in detail how and when the money was transferred to the third-party.</td>
</tr>
<tr>
<td>7. Were you aware that the third-party payer was not making the required payments?</td>
<td>8. Did you receive IRS notices indicating that the employment tax returns were not filed, or that the employment taxes were not paid?</td>
</tr>
<tr>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
</tr>
</tbody>
</table>

**B - Third-Party Payer Companies**

(complete this section only if you are interviewing a Third-Party Payroll Service Payer)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Who in your organization handled the contacts with the client?</td>
<td>2. Who was your contact at the client business?</td>
</tr>
<tr>
<td>3. Who at the client business signed the service contract or entered into the agreement for services?</td>
<td>4. Who had control over the payments of the client’s employment taxes?</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>5. How were the funds to be made available from the client business to pay the taxes?</td>
<td></td>
</tr>
<tr>
<td>Bank Name(s)</td>
<td>Account Number(s)</td>
</tr>
<tr>
<td>6. Were there funds actually available for you to make the tax payments?</td>
<td></td>
</tr>
<tr>
<td>☐ Yes ☐ No</td>
<td></td>
</tr>
<tr>
<td>if yes, explain in detail how and when the money was transferred to the third-party.</td>
<td></td>
</tr>
<tr>
<td>if no, what actions did you take to attempt to collect the funds from the client?</td>
<td></td>
</tr>
</tbody>
</table>

### Section VII - Personal Liability for Excise Tax Cases

(complete only if Business is required to file Excise Tax Returns)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Are you aware of any required excise tax returns which have not been filed?</td>
<td>2. With respect to excise taxes, were the patrons or customers informed that the tax was included in the sales price?</td>
</tr>
<tr>
<td>☐ No ☐ Yes (list periods)</td>
<td>☐ No ☐ Yes</td>
</tr>
<tr>
<td>3. If the liability is one of the “collected” taxes (transportation of persons or property and communications), was the tax collected?</td>
<td>4. Were you aware, during the period tax accrued, that the law required collection of the tax?</td>
</tr>
<tr>
<td>☐ No ☐ Yes</td>
<td>☐ No ☐ Yes</td>
</tr>
</tbody>
</table>

www.irs.gov
Section VIII: Signatures

I declare that I have examined the information given in this interview and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of person interviewed

Date

Signature of interviewer

Date

Date copy of completed interview form given to person interviewed

Interviewer Handouts ("X" if given or explain why not in case history.)

☐ Notice 609, Privacy Act Notice

☐ Notice 784, Could You be Personally Liable for Certain Unpaid Federal Taxes?
Could You be Personally Liable for Certain Unpaid Federal Taxes?

If you are an employer, you must withhold federal income, social security (or railroad retirement), and Medicare taxes from your employees' wages or salaries. If you provide communication or air transportation services, you also may have to collect certain excise taxes from people who paid you for the services. (Get Pub. 510 for more information on excise taxes.) These taxes are called trust fund taxes and must be paid to the Internal Revenue Service through tax deposits or as payments made with the applicable returns.

The trust fund recovery penalty.—If trust fund taxes willfully aren't collected, not truthfully accounted for and paid, or are evaded or defeated in any way, we may charge a trust fund recovery penalty. This penalty is equal to the amount of the trust fund taxes evaded, not collected, not accounted for, or not paid to IRS. We also charge interest on the penalty.

Who has to pay the penalty?—The trust fund recovery penalty may apply to a person or persons IRS decides is responsible for collecting, accounting for, and paying the trust fund taxes and who acted willfully in not doing so. If IRS can't immediately collect the taxes from the employer or business, we will decide who the responsible person or persons are and who acted willfully.

"Willfully" means voluntarily, consciously, and intentionally. A responsible person acts "willfully" if this person knows that the required actions are not taking place for any reason. Paying other business expenses instead of trust fund taxes is considered willful behavior.
Any person who had responsibility for certain aspects of the business and financial affairs of the employer (or business) may be a responsible person. A responsible person may be an officer or employee of a corporation, or a partner or employee of a partnership. This category may include accountants, trustees in bankruptcy, members of a board, banks, insurance companies, or sureties. The responsible person can even be another corporation, a volunteer director/trustee, or employee of a sole proprietorship. Responsible persons may include those who direct or have authority to direct the spending of business funds.

If we charge you this penalty, we may take your assets (except exempt assets) to collect the amount owed.

Avoid the penalty.—You can avoid the trust fund recovery penalty by making sure that all taxes are collected, accounted for, and paid to IRS when required. Make your tax deposits and payments on time. IRS employees are available to assist you if you need information on tax deposits and payments. You may telephone the IRS tax information number in your area for help. Pub. 937, Employment Taxes and Information Returns, Pub. 15, Employer's Tax Guide, and Form 941, Employer's Quarterly Federal Tax Return, are also helpful and available from IRS.

Notice 784
(Rev. February 1993)
You must pay your New York State tax debts or your driver’s license may be suspended.

New legislation allows New York State to suspend the driver’s licenses of persons who have delinquent unpaid tax debts. Our records indicate you owe the amounts listed on the enclosed Consolidated Statement of Tax Liabilities.

Unless you respond within 60 days from the date this notice was mailed, we will provide the New York State Department of Motor Vehicles with your name, social security number, and other identifying information, and your driver’s license will be suspended.

This suspension will remain in effect until you pay the amount due or make arrangements with the Tax Department for payment.

Exemptions

Certain drivers are not subject to suspension for unpaid tax debts, including:
- drivers holding commercial driver’s licenses, and
- persons making certain child or combined child and spousal support payments.

See the back for more information about these and other exemptions and for instructions on contacting the Tax Department if any of the exemptions apply to you.

How to avoid suspension of your license

If none of the exemptions listed on the back apply to you, you must pay the amount due or set up a payment plan to avoid suspension of your license. You can pay in any of these ways:

Online: Follow the prompts on our Web site for making an online payment.
Phone: Call us at (518) 862-6000.
Mail: Follow the instructions on the enclosed Payment Document. Be sure to use the address on the Payment Document. Do not send payment to any other address.

If you disagree

See the back for instructions on how to respond.

Questions?
- Call (518) 862-6000
- Visit our Web site

DTF-454 (3/15)  www.tax.ny.gov
How to respond to this notice

If any of the following apply, call the Tax Department at (518) 882-6000. We may ask you to provide proof supporting your claim.

Child support exemption
Your license will not be suspended based on this notice if:

- Your wages are being garnished for the payment of child support or combined child and spousal support from this state or any other state.
- You have made a satisfactory payment arrangement with a support collection unit for payment of child support or combined child and spousal support to avoid the suspension of your driver's license.

Commercial driver's license exemption
Drivers with commercial driver's licenses are not subject to suspension based on this notice.

Other grounds
Your license will not be suspended based on this notice if any of the following apply:

- You are not the taxpayer named in the notice.
- The tax debts have been paid.
- The Tax Department is already garnishing your wages to pay these debts.
- Your license was previously selected for suspension for unpaid tax debts and:
  - you set up a payment plan with the Tax Department, and
  - the Tax Department erroneously found you failed to comply with that payment plan on at least two occasions in a twelve-month period.

You may also contact the department to establish either of the following:

- You are eligible for innocent spouse relief under section 654 of the Tax Law for certain New York State income tax debts. See Publication 89, Innocent Spouse Relief, available on our Web site or by calling (518) 882-6000.
- Enforcement of the underlying tax debts has been stayed by the filing of a bankruptcy petition.

Protests and legal actions
The legislation limits the grounds for challenging the suspension of your license. Whether you are filing a protest with the Tax Department, or bringing a legal action, you may only raise the grounds listed above.

- Contacting the Tax Department to ask questions or to resolve any of these issues will not extend your time to protest.

If you do not respond within 60 days
Unless you do one of the following within 60 days, we will provide your name, social security number, and other identifying information to the Department of Motor Vehicles for the purpose of suspending your driver’s license:

- resolve your tax debts or set up a payment plan,
- notify the Tax Department of your eligibility for an exemption, or
- protest the proposed suspension of your license by:
  - filing a Request for Conciliation Conference (Form CMS-1-MN, available on our Web site), with the Tax Department; or
  - filing a petition (Form TA-10) with the Division of Tax Appeals, available at www.dta.ny.gov.

www.tax.ny.gov
01/22/2015 NEW YORK COUNTY, NEW YORK D.O.

YOUR NEW YORK STATE DRIVER LICENSE WILL BE SUSPENDED EFFECTIVE 02/05/2015. THIS ACTION IS TAKEN UNDER SECTION 510 OF THE VEHICLE AND TRAFFIC LAW.

CAUSE: DELINQUENT UNPAID TAX DEBT WITH THE NYS DEPARTMENT OF TAXATION AND FINANCE. CASE NUMBER [REDACTED].

IF YOU HAVE ANY QUESTIONS REGARDING WHY THIS SUSPENSION WAS ISSUED OR ABOUT CLEARING THIS SUSPENSION, CONTACT:

THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE
518-862-6000
www.tax.ny.gov

YOU ARE ELIGIBLE FOR A RESTRICTED USE LICENSE. CONTACT THE MOTOR VEHICLES OFFICE LISTED BELOW. THE FEE FOR A RESTRICTED USE LICENSE IS $75. THERE MAY BE ADDITIONAL FEES.

YOU MAY NOT DRIVE A MOTOR VEHICLE IN NEW YORK STATE FOR ANY REASON WHILE THIS ORDER IS IN EFFECT, UNLESS YOU RECEIVE A RESTRICTED USE LICENSE/PRIVILEGE FROM DMV. IF YOU DO DRIVE, YOU MAY BE SUBJECT TO ARREST AND THE PENALTIES PROVIDED BY LAW.

IF YOU HAVE NOT ALREADY DONE SO, TURN IN YOUR NYS DRIVER LICENSE (INCLUDING ANY DUPLICATES) TO THE DEPARTMENT OF MOTOR VEHICLES AT THE OFFICE LISTED BELOW.

DEPARTMENT OF MOTOR VEHICLES
366 WEST 31ST STREET, NEW YORK, NY 10001

Commissioner of Motor Vehicles

OFFICE USE ONLY 64 N
EXHIBIT 12
September 2, 2015

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

NYS Tax Department, BCMS
W.A. Harriman Campus
Albany, NY 12227-0918

RE: [Redacted]

Form CMS-1-MN - Request for Conciliation Conference

To Whom It May Concern:

Enclosed, please find the following:

1. Copy of Notice of Proposed Driver License Suspension Referral, dated July 22, 2015;

2. Form CMS-1-MN - Request for Conciliation Conference;

3. Supporting Statement to Form CMS-1-MN; and

4. Form POA-1 - Power of Attorney.

The Taxpayer is requesting a Conciliation Conference through the Bureau of Conciliation and Mediation Services in order to discuss the proposed suspension of his driver's license. As set forth on the Supporting Statement, the Taxpayer's license should not be suspended due to his occupation and because he intends to address his liability through an Installment Payment Agreement.

Please process the enclosed documentation and acknowledge receipt of this request. It is requested that the Conciliation Conference be held in Buffalo, New York.

Should you have any questions or concerns, please contact the undersigned, Power of Attorney, at 716-633-3200, extension 214.

Very truly yours,

ANDREOZZI, BLUESTEIN,
WEBER, BROWN, LLP

[Signature]

GB/rm
Enclosures
You must pay your New York State tax debts or your driver's license may be suspended.

New legislation allows New York State to suspend the driver's license of persons who have delinquent unpaid tax debts. Our records indicate you owe the amounts listed on the enclosed Consolidated Statement of Tax Liabilities.

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- drivers holding commercial driver's licenses, and
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If you disagree

See the back for instructions on how to respond.

Questions?
- Call (518) 862-6000
- Visit our Web site

www.tax.ny.gov
How to respond to this notice

If any of the following apply, call the Tax Department at (518) 882-6000. We may ask you to provide proof supporting your claim.

Child support exemption
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- Your wages are being garnished for the payment of child support or combined child and spousal support from this state or any other state.
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  - the Tax Department erroneously found you failed to comply with that payment plan on at least two occasions in a twelve-month period.

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- notify the Tax Department of your eligibility for an exemption, or
- protest the proposed suspension of your license by:
  - filing a Request for Conciliation Conference (Form CMS-1-MN, available on our Web site), with the Tax Department; or
  - filing a petition (Form TA-10) with the Division of Tax Appeals, available at www.dta.ny.gov.

www.tax.ny.gov
List of unpaid bills

This document lists the bills we've issued to the taxpayer named above that haven't been paid. If you've used more than one taxpayer identification number to report your taxes, there may be other unpaid bills that aren't listed here.

**Interest and penalties continue to accrue on unpaid bills.**
- To avoid additional charges, pay these bills immediately.
- Pay online at [www.tax.ny.gov](http://www.tax.ny.gov) or use the coupon.

Recent payments
The amounts due listed below may not include any recent payments that you've made. For an up-to-date statement, visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov).

**Bills subject to collection action**
The following unpaid bills are subject to collection action. This means we may collect the unpaid amounts by garnishing your wages, seizing your property, or filing warrants against you.

<table>
<thead>
<tr>
<th>Tax type</th>
<th>Assessment ID</th>
<th>Tax Period Ended</th>
<th>Tax Amount Assessed</th>
<th>(+) Interest Amount Assessed</th>
<th>(+) Penalty Amount Assessed</th>
<th>(-) Assessment Payments/Credits</th>
<th>(-) Balance Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>INCOME</td>
<td>12/31/13</td>
<td>$5,278.00</td>
<td>$500.78</td>
<td>$375.70</td>
<td>$1,000.00</td>
<td>$5,152.48</td>
<td></td>
</tr>
<tr>
<td>INCOME</td>
<td>12/31/10</td>
<td>0.00</td>
<td>16.51</td>
<td>144.11</td>
<td>0.00</td>
<td>160.62</td>
<td></td>
</tr>
<tr>
<td>INCOME</td>
<td>12/31/12</td>
<td>5,655.00</td>
<td>1,065.39</td>
<td>783.29</td>
<td>0.00</td>
<td>7,513.68</td>
<td></td>
</tr>
<tr>
<td>INCOME</td>
<td>12/31/11</td>
<td>1,394.00</td>
<td>419.73</td>
<td>283.83</td>
<td>0.00</td>
<td>2,097.56</td>
<td></td>
</tr>
<tr>
<td>INCOME</td>
<td>12/31/10</td>
<td>8,171.00</td>
<td>2,577.06</td>
<td>1,573.35</td>
<td>0.00</td>
<td>10,321.41</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>Total</strong></td>
<td>$25,245.75</td>
</tr>
</tbody>
</table>

Questions?
- Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)
- Call (518) 457-5434

DTF-987-E (4/13) [www.tax.ny.gov](http://www.tax.ny.gov)
Department of Taxation and Finance
Bureau of Conciliation and Mediation Services

Request for Conciliation Conference

Name of taxpayer: [Redacted]

Taxpayer ID number (EIN or SSN): [Redacted]

Current address (number and street): [Redacted]

City: [Redacted]
State: [Redacted]
Zip code: [Redacted]

Daytime telephone number: [Redacted]

If you are not representing yourself, you must submit a properly completed power of attorney (POA-1) with this request. A POA-1 is not necessary if the person representing you is a spouse, parent, child, or guardian. See 20 NYCRR 4000.2.

Taxpayer's representative, if any (name of representative and firm):
Gary Bluestein of Andreozzi, Bluestein, Weber, Brown, LLP

Address (number and street):
333 International Drive, Suite B-4

City: [Redacted]
State: NY
Zip code: 14221
Daytime telephone number: (716) 633-3200

I am requesting a conciliation conference for tax type: Income

I am filing this request in response to receiving the following (enclose copy):

☐ Notice of deficiency, determination, or demand (attach additional sheets, if necessary)
  Notice dated: ______________________ Notice number: ____________

☐ Notice of disallowance, refund denial, or unanswered refund claim
  Notice dated: ______________________ Refund claim filed on: ______________________
  Refund claim amount $ ________________

☒ Refusal, revocation, suspension, or denial of a license, permit, certificate, registration or exempt status
  Notice type: Notice of Proposed Driver's License Suspension Referral
  Dated: 7/22/15

I would like my conference scheduled at the Tax Department office located in:

☐ Albany  ☐ Binghamton  ☐ Brooklyn  ☒ Buffalo  ☐ Hauppauge

☐ Kew Gardens  ☐ Rochester  ☐ Syracuse  ☐ White Plains  ☐ Utica

Explain why you disagree with the department notice (attach additional pages, if necessary).

I understand that a willful false representation is a misdemeanor punishable under section 210.45 of the Penal Law.

Print name of person signing: Gary Bluestein
Signature: [Redacted]
Date: 9/2/15

Mail to:
NYS TAX DEPARTMENT
BCMS
W A HARRIMAN CAMPUS
ALBANY NY 12227-0918

CMS-1-MN (3/15) Page 1 of 2
The above cited Taxpayer respectfully requests a Conciliation Conference with the Bureau of Conciliation and Mediation Services in response to the Notice of Proposed Driver License Suspension Referral issued to him, dated July 22, 2015. As set forth below, the Taxpayer is requesting that his driver's license not be suspended due to his profession as a physician and because he intends to address the liability through an Installment Payment Agreement.

Due to the Taxpayer's occupation as a physician, his ability to drive is critical. He could have emergency cases where he would need to drive at a moment's notice. If the Taxpayer is unable to drive, it could put his patients at risk which would thereby jeopardize his ability to practice medicine.

The Taxpayer also intends to address his liability through an Installment Payment Agreement. A Conciliation Conference is being requested as a protective measure while the terms of an Installment Payment Agreement can be finalized.

We respectfully request that the Conciliation Conference be held in Buffalo, New York.
EXHIBIT 13
September 04, 2015

Re: CMS No. Suspension Referral Year 2015

Dear [Name]

Please take notice of the enclosed Conciliation Order.

Please take further notice that pursuant to section 170.3-a of the Tax Law, this order will be binding unless you file a petition within ninety (90) days from the date of this order with the Division of Tax Appeals. Petition forms and the Rules of Practice and Procedure may be obtained from the Division of Tax Appeals website (http://www.dta.ny.gov) or by contacting:

NYS Division of Tax Appeals
Agency Building 1
Empire State Plaza
Albany, NY 12223
Phone: (518) 266-3000

A request for petition forms and the rules is not considered the filing of a petition for hearing and does not extend the time limits for filing a petition.

Respectfully,

[Signature]

Thomas F. O'Donnell
Conciliation Conference
518-530-4172

Enclosure

cc: Gary Bluestein, Esq. √
Andrezzzi Bluestein et al
333 International Dr Suite B4
Williamsville, NY 14221
State of New York  
Department of Taxation and Finance  
Bureau of Conciliation and Mediation Services  

In the Matter of the Request  

for Redetermination or Revision of the Notice of Proposed  
Driver's License Suspension Referral.  

Re:  Tax Article No.: 8  
Year/Period: 2015  
Notice of Proposed Driver's License Suspension Referral  
CMS No.:  

CONCILIATION ORDER  

A Conciliation Conference was conducted by Thomas F. O'Donnell, Conciliation Conferee, at the offices of the Commissioner of Taxation and Finance in Buffalo, NY 14203 on Tuesday, July 21, 2015. Requester appeared by Royston Mendonza. The Department was represented by James Horning.  

After giving due consideration to the evidence presented, the request is denied and the statutory notice is sustained. 

Thomas F. O'Donnell  
Conciliation Conferee  

Dated: September 04, 2015
New York State Department of Taxation and Finance
NYS AR RECEIVABLES
P O BOX 4137
BRINGHAMPTON, NY 13902-4137

Tax Compliance Levy
First and Final Demand

Levy ID:
Taxpayer ID:

The judgment creditor is the state of New York, or any of its agencies or municipal corporations, AND/OR the debt enforced is for child support, spousal support, maintenance or alimony.

Garnishee
If you have any questions, please call: (518) 457-

241153

Under authority of the Tax Law of the State of New York and Section 5232(a) of the Civil Practice Laws and Rules in the matter of the Commissioner of Taxation and Finance of the State of New York, Judgment Creditor -

Against:

Judgment Debtor(s)

Accounts listed herein and any others which exist:

<table>
<thead>
<tr>
<th>Warrant ID</th>
<th>County</th>
<th>Date Docketed</th>
<th>Original Warranted Amount</th>
<th>Current Balance Due</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>800,028.27</td>
<td>892,827.48</td>
</tr>
</tbody>
</table>

Total Amount Due, Owing and Unpaid:

802,827.48

It appears that you are indebted to the above named judgment debtor(s) or that you are in possession or custody of property not capable of delivery which you know or have reason to believe that the judgment debtor(s) has(have) an interest.

You are required by Section 5232(a) of the Civil Practice Laws and Rules to immediately transfer to the undersigned all personal property not capable of delivery in which the judgment debtor(s), not deceased, is(are) known or believed to have an interest now in or hereafter coming into your possession or custody as may be necessary to satisfy the total amount due as set forth herein including all debts now or coming due from you to the judgment debtor(s) together with any other lawful additions including fees, costs and expenses of this levy, if any, to execute any documents necessary to affect such transfer or payment; and to comply with any and all further provisions of such section.

Dated: 
Signature: 

☐ No open account ☐ No account balance
☐ All exempt funds ☐ Other (attach explanation)
☐ Restricted/Turnover required (acct. bal.$____________________)
☐ Payment enclosed

(Make check or money order payable to the Commissioner of Taxation and Finance. Enter the Levy ID indicated above on the payment.)

DTF-981 (8/11)

Name: N CROPSEY
Title: For Deputy Tax Commissioner

Acknowledgment of Service

Signature
Date ____________ Time ____________

Please refer to the back of this form for additional information and mailing instructions.
EXHIBIT 15
(a) Levy by service of execution. The sheriff or support collection unit designated by the appropriate social services district shall levy upon any interest of the judgment debtor or obligor in personal property not capable of delivery, or upon any debt owed in the judgment debtor or obligor, by serving a copy of the execution on the person, in the same manner as a summons, except that such service shall not be made by delivery to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule 318. In the event the garnishment is the state of New York, such levy shall be made in the same manner as an income execution pursuant to section 5231 of this article. A levy by service of execution is effective only if, at the time of service, the person served owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property not capable of delivery in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has notice in a notice which shall be served with the execution that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property not capable of delivery in the possession or custody of the person served. All property not capable of delivery in which the judgment debtor or obligor is known or believed to have an interest then in or thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due or thereafter coming due as to the judgment debtor or obligor shall be subject to the levy. The person served with the execution shall forthwith transfer all such property, and pay all such debts upon demand. In the case of or to the support collection unit and execute any documentary instrument to effect the transfer or payment. After such transfer or payment, property coming into the possession or custody of the garnishee, or debt incurred by him, or her shall not be subject to the levy. Until such transfer or payment is made, or until the expiration of ninety days after the service of the execution upon him or her, or of such further time as is provided by any order of the court served upon him or her, whichever event first occurs, the garnishee is forbidden to make or suffer any sale, assignment, transfer, or any alienation with, any such property, or put over or otherwise dispose of any such debts, to any person other than the sheriff or support collection unit or upon the execution of the sheriff or support collection unit or upon the order of the court. At the expiration of ninety days after a levy is made by service of the execution, or of such further time as the court, upon motion of the judgment creditor or support collection unit has provided, the levy shall be void except as to property or debts which have been transferred or paid to the sheriff or to the support collection unit or as to which a proceeding under sections 5225 or 5227 has been brought. A judgment creditor who, or support collection unit which, has specified personal property or debt to be levied upon in a notice of such execution shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the levy. (b) Levy by seizure. The sheriff or support collection unit of the appropriate social services district shall levy upon any interest of the judgment debtor in personal property capable of delivery by taking the property into custody without interfering with the lawful possession of pledgees and lessees. The sheriff or support collection unit shall forthwith serve a copy of the execution on the person whose property or debt was taken. (c) Notice to judgment debtor or obligor. Where an execution does not state that a notice in the form presented by statute (a) of section fifty-two hundred twenty-two of this chapter has been duly served upon the judgment debtor or obligor within a year, the sheriff or support collection unit shall, not later than four days after service of the execution upon any garnishee, mail by first class mail, or personally deliver, to each judgment debtor or obligor who is a natural person, a copy of the execution together with such notice. The sheriff or support collection unit shall specify on the notice to judgment debtor or obligor the name and address of the judgment creditor or the judgment creditor's attorney or the support collection unit. The notice shall be mailed to the judgment debtor or obligor at his or her residence address; and in the event such mailing is returned as undeliverable by the post office, or if the residence address of the judgment debtor or obligor is unknown, then to the judgment debtor or obligor in care of the place of employment of the judgment debtor or obligor if known, or in an envelope bearing the legends "personal and confidential," not indicating on the outside thereof, by the return address or otherwise, that the communication is from a sheriff or support collection unit or concerns a debt; or if neither the residence nor the place of employment of the judgment debtor or obligor is known, then to the judgment debtor or obligor at any other known address. (d) For the purposes of this section "obligor" shall mean an individual other than a judgment debtor obligated to pay support, alimony or maintenance pursuant to an order of a court of competent jurisdiction who has been found to be in "default" of such order as such term is defined in paragraphs seven of subsection (a) of section fifty-two hundred forty-one of this article and the establishment of such default has been subject to the procedure established for the determination of a "mistake of fact" for income purposes pursuant to subsection (a) of section fifty-two hundred forty-one of this article, except that for the purposes of this section only, a default shall not be found on retrospective child support obligations as defined in paragraph (b) of subsection one of section four hundred forty and subsection one of section two hundred forty, and paragraph (b) of subsection nine of section two hundred thirty-six of the domestic relations law. (e) Notwithstanding the provisions of subsection (a) of this section, if direct deposit or electronic payments reasonably identifiable as statutorily exempt payments as defined in paragraph two of subsection (a) of section fifty-two hundred fifty-five of this article were made to the judgment debtor's account during the forty-five day period preceding the date that the execution notice was served on the garnishee banking institution, then such account shall not be levied, nor shall any garnishment institution shall not execute, levy, attach, garnish, institution shall not execute, levy, attach, garnish, otherwise restrain or encumber two thousand five hundred dollars in the judgment debtor's account. Notwithstanding the provisions of subsection (a) of this section, an execution shall not apply to an amount equal or less than the greater of two hundred forty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or two hundred forty times the state minimum hourly wage prescribed in section sixty three hundred fifty-two of the labor law as in effect at the time the earnings are payable (a) as stated on the website of the New York State department of labor shall be necessary for the reasonable requirements of the judgment debtor and his or her dependents. This amount shall be equal to seventeen hundred six dollars on the effective date of this subsection, and shall rise to seventeen hundred forty dollars on July 1, 1980.