

**Florida Bar Tax Section
Tax Procedure Certification Exam Review
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I. Statute of Limitations

Statutes of limitations are an important part of tax practice and procedure. There are, generally speaking, two statutes of limitations -- one on assessment and one collections. Practitioners also need to have at least a basic understanding of when the statutes start to run or, as importantly, when they do not. Practitioners should also understand circumstances under which the statutes are suspended.

A. Assessment -- IRC 6501

The basic statute of limitations on the assessment of income taxes is provided in IRC 6501. It sets a general period of three years for the IRS to assess taxes. However, it also specifies various circumstances under which the IRS may have either six years or an unlimited amount of time to make an assessment.

(a) General rule Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed.

(b) Time return deemed filed

(1) Early return

For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 4, 21, or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(2) Return of certain employment and withholding taxes

For purposes of this section, if a return of tax imposed by chapter 3, 4, 21, or 24 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such calendar year.

(3) Return executed by Secretary

Notwithstanding the provisions of paragraph (2) of section 6020(b), the execution of a return by the Secretary pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection....

(c) Exceptions

(1) False return In the case of a false or fraudulent return with the intent to evade

tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) Willful attempt to evade tax

In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) No return

In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time....

(8) Failure to notify Secretary of certain foreign transfers

(A) In general

In the case of any information which is required to be reported to the Secretary pursuant to an election under section ... 6038, 6038A, 6038B, 6038D, 6046, 6046D or 6048, the time for assessment of any tax imposed by this title with respect to any tax return, event, or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported under such section.

(B) Application to failures due to reasonable cause

If the failure to furnish the information referred to in subparagraph (A) is due to reasonable cause and not willful neglect, subparagraph (A) shall apply only to the item or items related to such failure....

(e) Substantial omission of items

Except as otherwise provided in subsection (c)—

(1) Income taxes

In the case of any tax imposed by subtitle A—

(A) General rule

If the taxpayer omits from gross income an amount properly includible therein and—

(i) such amount is in excess of 25 percent of the amount of gross income stated in the return, or ...

the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

B. Collection -- IRC 6502

This section sets a ten year statute of limitations on collection. Once the IRS makes an assessment of tax, then there is a separate statute of limitations that governs the time that the IRS has to collect that tax. This period can be extended by filing a suit in federal court to reduce the assessment to judgment, but that is relatively uncommon. This ten year statute of limitations is subject to various tolling provisions that may extend the time that the IRS had to collect the tax after it has been assessed.

(a) Length of period

Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) within 10 years after the assessment of the tax, or

(2) if—

(A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into; or

(B) there is a release of levy under section [6343](#) after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.

If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

C. Suspension of the SOL -- IRC 6503

There are several instances where the statutes of limitations specified in IRC 6501 and/or 6502 are suspended. These include:

6503(a) -- issuance of a statutory notice of deficiency

6503(c) -- taxpayer outside of the United States

6503(h) -- bankruptcy

6503(j) -- certain summonses

D. Claims for Refund -- IRC 6511

Practitioners should also be familiar with the limitations on the time for filing refund claims.

(a) Period of limitation on filing claim

Claim for credit or refund of an overpayment of any tax imposed by this title in respect of

which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

II. Offshore Voluntary Disclosures (and other options)

International tax compliance has been a hot topic in the last ten years. Those that hold foreign financial assets are required to file an FBAR (FinCEN Form 114) on a yearly basis. This is not filed with the IRS. Additionally, the IRS requires that taxpayers file various informational forms disclosing their foreign assets among other things. These differ somewhat from the FBAR.

Taxpayers are also required to report any income from these foreign accounts on their income tax returns and pay any applicable tax. Many practitioners encounter taxpayers who have not paid tax on income from their foreign accounts, have not filed FBARs and/or have not filed all the required informational returns. The IRS provides several options for dealing with these situations and bringing taxpayers back into compliance.

A. 2014 Offshore Voluntary Disclosure Program

The IRS Offshore Voluntary Disclosure Program is working with taxpayers whose penalties may be reduced. The IRS began an open-ended OVDP in January 2012 because of strong interest in the 2009 and 2011 programs. The IRS may end the 2012 program at any time in the future.

The IRS is offering taxpayers with undisclosed income from offshore accounts another opportunity to get current with their tax returns. The 2012 OVDP has a higher penalty rate than the previous programs, but offers clear benefits to encourage taxpayers to disclose foreign accounts now rather than risk detection by the IRS and possible criminal prosecution.

This is a continuation of the program's modified terms introduced in 2012. For purposes of referring to this modified program, it may be referred to as the 2014 OVDP. The modifications are effective on July 1, 2014.

In addition to the OVDP, we offer additional options available to U.S. taxpayers with undisclosed foreign financial assets.

Read the FAQ and IRS' website for much, much more information:

<https://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised>

B. Streamlined Filing Compliance Procedures

Purpose of the streamlined procedures

The streamlined filing compliance procedures describe below are available to taxpayers certifying that their failure to report foreign financial assets and pay all tax due in respect of those assets did not result from willful conduct on their part. The streamlined procedures are designed to provide to taxpayers in such situations with:

- a streamlined procedure for filing amended or delinquent returns, and
- terms for resolving their tax and penalty procedure for filing amended or delinquent returns, and
- terms for resolving their tax and penalty obligations.

As reflected below, the streamlined filing procedures that were first offered on September 1, 2012 have been expanded and modified to accommodate a broader group of U.S. taxpayers. Major changes to the streamlined procedures include:

- extension of eligibility to U.S. taxpayers residing in the United States
- Elimination of the \$1,500 tax threshold, and
- elimination of the risk assessment process associated with the streamlined filing compliance procedure announced in 2012.

Eligibility for the Streamlined Domestic Offshore Procedures

In addition to having to meet the general eligibility criteria described above, individual U.S. taxpayers, or estates of individual U.S. taxpayers, seeking to use the Streamlined Domestic Offshore Procedures described in this section must: (1) fail to meet the applicable non-residency requirement described in section 2.A. above (for joint return filers, one or both of the spouses must fail to meet the applicable non-residency requirement described in 2.A. above); (2) have previously filed a U.S. tax return (if required) for each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) has passed; (3) have failed to report gross income from a foreign financial asset and pay tax as required by U.S. law, and may have failed to file an FBAR (FinCEN Form 114, previously Form TD F 90-22.1) and/or one or more international information returns (e.g., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621) with respect to the foreign financial asset, and (4) such failures resulted from non-willful conduct. Non-willful conduct is conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.

Description of Scope and Effect of Procedures

U.S. taxpayers (U.S. citizens, lawful permanent residents, and those meeting the substantial presence test of IRC section 7701(b)(3)) eligible to use the Streamlined Domestic Offshore Procedures must (1) for each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) has passed (the “covered tax return period”), file amended tax returns, together with all required information returns (e.g., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621), (2) for each of the most recent 6 years for which the FBAR due date has passed (the “covered FBAR period”), file any delinquent FBARs (FinCEN Form 114, previously Form TD F 90-22.1), and (3) pay a Title 26 miscellaneous offshore penalty. The full amount of the tax, interest, and miscellaneous offshore penalty due in connection with these filings should be remitted with the amended tax returns.

The Title 26 miscellaneous offshore penalty is equal to 5 percent of the highest aggregate balance/value of the taxpayer’s foreign financial assets that are subject to the miscellaneous offshore penalty during the years in the covered tax return period and the covered FBAR period. For this purpose, the highest aggregate balance/value is determined by aggregating the year-end account balances and year-end asset values of all the foreign financial assets subject to the miscellaneous offshore penalty for each of the years in the covered tax return period and the covered FBAR period and selecting the highest aggregate balance/value from among those years.

A foreign financial asset is subject to the 5-percent miscellaneous offshore penalty in a given year in the covered FBAR period if the asset should have been, but was not, reported on an FBAR (FinCEN Form 114) for that year. A foreign financial asset is subject to the 5-percent miscellaneous offshore penalty in a given year in the covered tax return period if the asset should have been, but was not, reported on a Form 8938 for that year. A foreign financial asset is also subject to the 5-percent miscellaneous offshore penalty in a given year in the covered tax return period if the asset was properly reported for that year, but gross income in respect of the asset was not reported in that year.

<https://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-in-the-United-States>

C. Delinquent FBAR Submission Procedures

Taxpayers who do not need to use either the OVDP or the Streamlined Filing Compliance Procedures to file delinquent or amended tax returns to report and pay additional tax, but who:

- have not filed a required Report of Foreign Bank and Financial Accounts (FBAR) (FinCEN Form 114, previously Form TD F 90-22.1),
- are not under a civil examination or a criminal investigation by the IRS, and
- have not already been contacted by the IRS about the delinquent FBARs

should file the delinquent FBARs according to the FBAR instructions.

The IRS will not impose a penalty for the failure to file the delinquent FBARs if you properly reported on your U.S. tax returns, and paid all tax on, the income from the foreign financial accounts reported on the delinquent FBARs, and you have not previously been contacted regarding an income tax examination or a request for delinquent returns for the years for which the delinquent FBARs are submitted.

FBARs will not be automatically subject to audit but may be selected for audit through the existing audit selection processes that are in place for any tax or information returns.

<https://www.irs.gov/Individuals/International-Taxpayers/Delinquent-FBAR-Submission-Procedures>

D. Delinquent International Information Return Submission Procedures

Taxpayers who do not need to use the OVDP or the Streamlined Filing Compliance Procedures to file delinquent or amended tax returns to report and pay additional tax, but who:

- have not filed one or more required international information returns,
- have reasonable cause for not timely filing the information returns,
- are not under a civil examination or a criminal investigation by the IRS, and
- have not already been contacted by the IRS about the delinquent information returns

should file the delinquent information returns with a statement of all facts establishing reasonable cause for the failure to file.

Describe your situation in the reasonable cause statement

As part of the reasonable cause statement, taxpayers must also certify that any entity for which the information returns are being filed was not engaged in tax evasion. If a reasonable cause statement is not attached to each delinquent information return filed, penalties may be assessed in accordance with existing procedures.

- All delinquent international information returns other than Forms 3520 and 3520-A should be attached to an amended return and filed according to the applicable instructions for the amended return.
- All delinquent Forms 3520 and 3520-A should be filed according to the applicable instructions for those forms.
- A reasonable cause statement must be attached to each delinquent information return filed for which reasonable cause is being requested.

Information returns filed with amended returns will not be automatically subject to audit but may be selected for audit through the existing audit selection processes that are in place for any tax or information returns.

III. Penalties

A. Different Types of Penalties (not an exhaustive list):

- Failure to file & Failure to Pay -- IRC 6651
- Failure to file Informational Returns -- IRC 6652
- Accuracy Related Penalties -- IRC 6662
- Failure to File Information Related to Foreign Trusts -- IRC 6677
- Failure to File Returns for Foreign Corporations/Partnerships -- IRC 6679
- Information with Respect to Foreign-Owned Corporations -- IRC 6038A(d)
- Notice of Transfers to Foreign Persons -- IRC 6038B(c)
- Foreign Corporations Engaged in U.S. Business -- IRC 6038C(c)
- Information with Respect to Foreign Financial Assets -- IRC 6038D(d)

B. Reasonable Cause – IRC 6662 and 6664

Two important concepts that practitioners should understand in defending against accuracy related penalties are "reasonable cause" and "substantial authority."

1. What is reasonable cause?

20.1.5.6.1 (01-24-2012) Reasonable Cause

1. No accuracy-related penalty under IRC 6662 is imposed if it is shown that the taxpayer had reasonable cause for the position taken and that the taxpayer acted in good faith.
2.
3. IRC 6664(c) provides an exception to the imposition of any accuracy-related penalty if the taxpayer shows that there was reasonable cause and the taxpayer acted in good faith.
4. The determination of whether the taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all the relevant facts and circumstances.
5. ...
6. Generally, the most important factor in determining reasonable cause is the taxpayer's effort to report the proper tax liability. Other factors to consider are the taxpayer's experience, knowledge, education, and the taxpayer's reliance on the advice of a tax advisor.

2. What is substantial authority?

20.1.5.8.1 (01-24-2012) Exceptions to the Substantial Understatement Penalty

1. Before asserting the substantial understatement penalty, exceptions to the penalty must be considered.

2. The amount of an understatement is reduced by that portion of the understatement attributable to:

- A. An item for which there is or was substantial authority, or
- B. An item the relevant facts of which were adequately disclosed and for which there is a reasonable basis.

3. First Time Abate Program

- Applies FTF/FTP
- Taxpayer current on filing/paying and no penalties in last three years
- IRM 20.1.1.3.6.1

IV. Collections

- a. Assessment: required for the IRS to legally collect tax (record liability)
 - i. Notice and demand should be made as soon as practicable and within 50 days after assessment. (But not required)
 - ii. Notice only has to be sent to last known address
- b. Additional assessment (to extent differs from filed/non-filed return) require notice of deficiency where taxes are for income, gift, estate, some excise taxes.
- c. Taxes/items not requiring notice to assess
 - i. Employment
 - ii. Most excise taxes
 - iii. Amounts shown on any return
 - iv. Math/clerical errors
 - v. Jeopardy assessments (expedited assessment process)
 - vi. Penalties (where not associated with a deficiency)
 - vii. Interest
- d. Liens
 - i. IRC 6321. Automatic and relates back to date of assessment

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

- ii. Attaches to all property and rights to property (not just real property)
- iii. Alter-ego liens/nominee liens. Lien may be filed against a 3rd party based on lien filed against the taxpayer.
- iv. “Secret lien”: IRS not required to provide notice/public filing.
- v. Lien publicly filed only for purposes of notice to third parties and establishing priority.
- vi. IRC 6323(a)

The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic’s lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary.

vii. IRC 6323(b): provides for “super-priority liens”. Gives priority to specified persons even where notice of tax lien is filed. (Example: retail purchase if purchaser does not make the purchase for the purpose of evading collection of tax).

- e. Levies
 - i. Administrative or Judicial sale
 - ii. IRC 6331(a)

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax.

- iii. 6331(d) Requirement of notice before levy

Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.

The notice required under paragraph (1) shall be—

- (A) given in person,
- (B) left at the dwelling or usual place of business of such person, or
- (C) sent by certified or registered mail to such person’s last known address, no less than 30 days before the day of the levy.

Jeopardy: Paragraph (1) shall not apply to a levy if the Secretary has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy.

- f. Collection statute of limitation: 10 years after assessment, though may be extended by certain actions/circumstances
 - i. Example: Reducing lien to judgment extends time to collect tax. If suit to reduce the liability to a judgment made within the collection statute of limitations, then the amount of time to collect the tax is determined by the life of the judgment—not the CSED.
- g. Installment Agreement
 - i. Does not have to provide for full payment within CSED (partial pay agreement)
 - ii. Interest/penalties continue to accrue
 - iii. Must stay current on current tax obligations (filing and payment, no pyramiding)
 - iv. Easily defaulted: missed payment, failure to pay/file tax liabilities during period of agreement, change in financial circumstances, failure to provide requested financial information
- h. Offer-in-Compromise
 - i. Doubt as to liability
 - 1. Useful where taxpayer failed to respond to notice of deficiency or other opportunity to dispute underlying liability
 - ii. Doubt as to collectability
 - 1. Based on taxpayer’s ability to pay, accepted only if amount equals/exceeds reasonable collection potential (quick sale of

personal/real property) plus present value of future income (minus necessary living expenses) over 48-60 months (48 months if offer to be paid within 90 days of offer acceptance)

iii. Effective Tax Administration

IRM 4.18.3.2 (12-23-2010)

Considering the Effective Tax Administration Issue

- If there are no grounds for compromise under the doubt as to collectibility or doubt as to liability provisions, a compromise may be entered into to promote effective tax administration when compromise of the liability will not undermine compliance with the tax laws, and:
 - Collection of the full liability will create economic hardship within the meaning of Treasury Regulation 301.6343-1; or,
 - Regardless of the taxpayer's financial circumstances, exceptional circumstances exist such that collection of the full liability will be detrimental to voluntary compliance (DVC).
- Factors supporting (but not conclusive of) a determination that compromise would not undermine compliance with the tax laws include:
 - Taxpayer does not have a history of noncompliance with the filing and payment requirements of the IRC;
 - Taxpayer has not taken deliberate actions to avoid the payment of taxes; and
 - Taxpayer has not encouraged others to refuse to comply with the tax laws.
- i. Collection Due Process
 - i. CDP hearing rights arise when notice of tax lien or levy is issued
 - ii. IRS must provide notice of CDP rights
 - iii. Hearing with Appeals Officer. A Notice of Determination then issued, providing opportunity to file Petition in Tax Court.

V. Payroll-tax specific issues

- a. IRC 6672: The Trust Fund Recovery Penalty
 - Any person required to collect, truthfully account for, and pay over any tax...who willfully fails to collect such tax, or truthfully account for, and pay over any tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof
- b. Called “trust fund taxes” because the amounts are held by the employer in trust for the U.S.
- c. Trust fund taxes (only the portion withheld by the employer)
 - i. Income tax withheld by the employer
 - ii. Federal Insurance Contribution Act (FICA)
 - 1. Employer/employee share responsibility for this tax. ½ is withheld from the wages and the other half is due from the employer (thus, only ½ of total FICA tax is a “trust fund tax”)
- d. Federal Unemployment Tax Act (FUTA)
 - i. Only the employer is responsible for payment
- e. No corporate shield from personal liability
- f. Who is responsible? “Responsible persons”

- i. Person who *willfully* failed to collect, truthfully account for, and pay over trust fund taxes (at the time the taxes were withheld)
- ii. Willfulness: responsible person was aware that taxes were not paid, had authority to pay them, and failed to do so (e.g. paid other creditors)
- iii. Cannot delegate authority
- iv. Look to person's authority to direct the payment of taxes or payments to creditors
 - 1. Authority to sign checks
 - 2. Controls financial affairs
 - 3. Officer of the corporation
 - 4. Ability to hire/fire
 - 5. Authority to borrow money
 - 6. Authority to sign returns, actually signs the returns
- g. Assessment of the TFRP discretionary: more likely to be assessed where collection against the entity would be difficult
- h. Relief available where there was "reasonable cause" for failure to pay.
- i. Assessment
 - i. Federal Tax Deposit Alert sent to employer
 - ii. If no compliance/explanation, revenue officer assigned
 - iii. If employer does not come into full compliance, revenue officer may initiate a responsible person investigation (looks to copies of checks, signatory authority on bank accounts, corporate books/records, tax returns, interviews)
 - iv. No deficiency notice required. However, the IRS must hand-deliver or mail by certified mail a 60-day letter setting forth the amount of the penalty and the tax periods
 - v. Taxpayer may request review by Appeals Officer (within 60 days)
 - vi. Alternative option is to pay amount of withholding attributable to one employee for each tax period at issue and file a claim for refund with the IRS. If claim disallowed, may file suit for refund in District Court. ("Divisible tax" option). Suit cannot be filed before the earlier of 6 months after the refund claim filed with the IRS (unless the IRS mailed a Notice of Disallowance). Suit must be filed within within 2 years from the mailing of the Notice of Disallowance. If no Notice mailed, no limit on time within which a suit may be filed.
 - vii. Voluntary payments may be designated to trust fund portion of liability (no designation if payment made through an installment agreement, offer in compromise, through bankruptcy proceedings)

VI. Relief from Joint and Several Liability "Innocent Spouse Relief"

- a. The IRC provides relief for an "innocent spouse" who signed a joint return and is thus jointly and severally liable for the tax shown thereon.
- b. IRC 6015 provides 3 opportunities for relief. Relieves innocent spouse (i.e. "requesting spouse" or "electing spouse") of the liability to the extent it is attributable to the other spouse

- c. 6015(b) applies to ALL joint filers (regardless of marital status). Sets forth requirements for spouse to be relieved of liability to the extent it is attributable to an understatement attributable to the other spouse.
 - i. Joint income tax return filed
 - ii. Income Tax understatement attributable to erroneous items of one spouse
 - iii. The other spouse establishes the he did not know or have reasons to know there was an understatement
 - iv. Facts and circumstances test: it would be inequitable to hold that individual liable for the deficiency attributable to the understatement.
 - v. Timely election: spouse elects relief within 2 years after IRS begins collection activities with respect to that spouse
- d. IRC 6015(c) applies to taxpayers no longer married or that are legally separated
 - i. Joint income tax return filed
 - ii. Deficiency is allocable to other spouse
 - iii. When makes election for relief under this section he is no longer married to, or is legally separate from, the other spouse, AND hasn't been a member of the same household for the 12 months preceding the election.
 - iv. Election made within 2 years of date IRS begins collection activities against requesting spouse
 - v. Requesting spouse only relieved of deficiency to extent that, if they had filed separate returns, the other spouse would have been liable. But still maintain benefits of joint-filed return. (i.e. no disallowed deductions for married-filing-separately).
 - vi. Exception: Not applicable if there was a transfer of assets between spouses as part of a fraudulent scheme.
- e. 6015(f). (Does not require a deficiency). Provides for equitable relief. Individual may be relieved of liability if:
 - i. Under facts and circumstances test it is inequitable to hold that individual liable for unpaid tax or deficiency; and
 - ii. Relief is not available under the 6015(b) or 6015(c)
- f. Tax Court Review
 - i. Petition in Tax Court must be filed after the earlier of:
 - 1. The IRS mails by certified or registered mail the notice of final determination to the last known address; or
 - 2. 6 months after the request is made (Where IRS fails to make a final determination within 6 months, do not have to wait for a final determination to petition Tax Court.)
 - ii. Petition in Tax Court must be filed no later than:
 - 1. The 90th day after the notice of final determination if mailed by certified or registered mail to the last known address.

VII. Examination/Assessment

- a. Selection for examination
 - i. Returns flagged by “Discriminate Function”, a computer process that analyzes and scores returns for audit selection.
 - ii. Information return/matching: information returns (e.g. 1099s, W-2s) compared to those numbers reported on the return.

- iii. Economics: higher gross incomes increase likelihood of audit
 - iv. Specific return items: the IRS may choose to flag certain items that are frequently abused by taxpayers (e.g. home office expenses, Earned Income Tax Credit), tax protestor items
 - v. Return related to entity under audit or is a related return (e.g. estate tax return and the estate's income tax return)
 - vi. Large deficiencies found in prior audits
 - vii. Whistle-blower/informant
 - viii. High visibility taxpayer with suspect activities, news stories, public announcements
- b. Types of Audits
- i. Correspondence: usually concerns only a few simple items on a return, which can be resolved through mailing documentation and explanations
 - ii. Office: more complex issues, more issues raised, examiners seek interviews
 - iii. Field: with complex returns, often in taxpayer's office, multiple meetings
 - iv. Trust Fund: IRS seeks to establish who is a "responsible officer" for purposes of holding multiple individuals liable for a company's employment taxes.
- c. IRC 6404(g): suspension of interest. Purpose of this statute is to encourage IRS to examine returns within a certain period of the return being filed. If the IRS does not provide notice to the taxpayer specifically stating the taxpayer's liability and the basis thereof at least 36 months before the later of the date the return was filed or the due date of the return (w/o extensions), interest should be suspended (exceptions, among others, include fraud, listed transactions)
- d. Agreements to extend the assessment statute of limitations: frequently sought. Whether to accept should depend on your confidence in the accuracy of the return and potential for development of additional issues.
- e. Information requests
- i. Generally, the taxpayer bears the burden of proof with respect to items on his return, so documents are given voluntarily.
 - ii. The IRS initially makes informal requests for documents, but these are often memorialized in a Form 4564 Information Document Request
 - iii. For biggest audits, the IRS may issue summonses.

IRC 7602(a): (a) Authority to summon, etc.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time

and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

- iv. IRS options to enforce summonses
 - 1. Nothing
 - 2. Contempt order from district court (IRC 7604(b))
 - 3. Criminal prosecution (IRC 7210)
 - 4. Request district court enforcement (7604)
- v. Summons enforcement requirements (*Powell*)
 - 1. Legitimate purpose
 - 2. Information relevant to that purpose
 - 3. IRS does not already have the information
 - 4. IRS followed administrative requirements (e.g. service)
- vi. Third party information requests

IRC 7602(c). Notice of contact of third parties

(1) General notice. An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

(2) Notice of specific contacts. The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) Exceptions. This subsection shall not apply—

- (A) to any contact which the taxpayer has authorized;
- (B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or
- (C) with respect to any pending criminal investigation.

If the IRS issues a 3rd party summons, the taxpayer has 20 days to file a suit to quash the summons in the District Court.

Statutes of limitation tolled while suit to quash the summons is pending.

f. Appeals

- i. Opportunity to appeal the examiner's proposed examination changes (the "30 Day Letter"). Taxpayer given 30 days to request Appeals consideration by filing a protest (setting forth disagreements and supporting facts and law)
- ii. Often appeals consideration depends on the amount of time left on the assessment statute of limitations. Taxpayers frequently asked to sign

agreements to extend statute of limitations. If no agreement, agent will instead issue a Notice of Deficiency and the taxpayer will have the opportunity for appeals consideration after filing a Petition in Tax Court.

- g. Conclusion of audit
 - i. No change
 - ii. Closing Agreement
 - iii. Notice of Deficiency and Tax Court decision
 - iv. Payment and sue for a refund in District Court