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## THE IRS AUDIT APPEAL PROCESS

### A. PRE APPEAL (After Examination and Before Appeal)

#### a. Who can appeal a case

- i. The taxpayer (pro se);
- ii. If a joint return, either the taxpayer or spouse, or both, can meet with the IRS; or
- iii. Any federally authorized practitioner, including an attorney, a certified public accountant, an enrolled agent (a person enrolled to practice before the IRS), an enrolled actuary, or the person who prepared the return and signed it as the preparer.

#### b. How to Appeal a case

##### i. Protest - A written protest must be filed in the following cases:

1. All employee plan and exempt organization cases without regard to the dollar amount at issue.
2. All partnership and S corporation cases without regard to the dollar amount at issue.
3. All other cases, unless the taxpayer qualifies for the small case request procedure, or other special appeal procedures such as requesting Appeals consideration of liens, levies, seizures, or installment agreements.

##### a. If the taxpayer prepares the protest, it should contain:

- i. The taxpayer's name and address, and a daytime telephone number;

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The IRS Mission  
Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.



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"Hello, is this Father O'Malley?"  
"It is."  
"This is the IRS. Can you help us?"  
"I can."  
"Do you know a Ted Houlihan?"  
"I do."  
"Is he a member of your congregation?"  
"He is."  
"Did he donate \$10,000 to the church?"  
"He will."  
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- ii. A statement that the taxpayer wants to appeal the IRS findings to the Appeals Office;
- iii. A copy of the letter showing the proposed changes and findings the taxpayer does not agree with (or the date and symbols from the letter);
- iv. The tax periods or years involved;
- v. A list of the changes that the taxpayer does not agree with, and the reasons for the disagreement;
- vi. The facts supporting the taxpayer's position on every issues the taxpayer has disagreements with the IRS;
- vii. The law or authority, if any, on which the taxpayer is relying; and
- viii. The taxpayer must sign the written protest, stating that it is true, under the penalties of perjury as follows:

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Called in for an audit, Mr. Briggs was confronted by a surly IRS agent. "It says here, Mr. Briggs that you are a bachelor; yet you claim a dependent son. Surely this must be a mistake."

Looking him straight in the eye, Mr. Briggs replied, "Yup, it surely was."

**“Under the penalties of perjury, I declare that I examined the facts stated in this protest, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.”**

**b. If the taxpayer's representative prepares and signs the protest, he/she must substitute a declaration stating:**

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- i. That he/she submitted the protest and accompanying documents; and
- ii. Whether he/she knows personally that the facts stated in the protest and accompanying documents are true and correct. The IRS urges taxpayer to provide as much information as possible.

**ii. Small case request.** If the total amount for any tax period is less than \$25,000, taxpayer may file a small case request instead of filing a formal written protest. In figuring the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund. For a small case

request, follow the instructions in the letter to the taxpayer.

**c. Miscellaneous considerations**

**i. Suspension of interest and penalties.** Generally, the IRS has 3 years from the date the taxpayer filed a tax return (or the date the return was due, if later) to assess any additional tax. However, if the taxpayer files his/her tax return timely (including extensions), interest and certain penalties will be suspended if the IRS does not mail a notice, stating the liability and the basis for that liability, within an 18-month period beginning on the later of:

1. The date on which the taxpayer filed, or
2. The due date (without extensions) of the tax return.

If the IRS mails a notice after the 18-month period, the interest and certain penalties applicable to the suspension period will be suspended.

The suspension period begins the day after the close of the 18-month period and ends 21 days after the IRS mails a notice to the taxpayer stating the liability and the basis for that liability.

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A couple of weeks after hearing a sermon on Psalms 51:2-4 and Psalms 52:3-4 (lies and deceit), a man wrote the following letter to the IRS:

I have been unable to sleep, knowing that I have cheated on my income tax. I understated my taxable income, and have enclosed a check for \$150.00.

Sincerely,

Taxpayer

P. S. If I still can't sleep, I will send the rest.

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**ii. Interest - How To Stop Interest From Accruing**

If additional tax is owed at the end of the examination, the taxpayer can stop the further accrual of interest by sending money to the IRS to cover all or part of the amount the taxpayer and his/her representative thinks might be owed. Interest on part or all of any amount the taxpayer owes will stop accruing on the date the IRS receives the money.

The taxpayer can send an amount either in the form of a deposit in the nature of a cash bond or as a payment of tax. Both a deposit and a payment stop any further accrual of interest. However, making a deposit or payment will stop the accrual of interest on only the amount the taxpayer paid. Because of compounding rules, interest will continue to accrue on the accrued interest, even though the taxpayer has paid the underlying tax.

To stop the accrual of interest on both tax and interest, the taxpayer must make a deposit or payment for both the tax and interest that have accrued as of the date of deposit or payment.

1. **Deposit** – The taxpayer may have all or part of the deposit returned to him/her without filing for a refund. However, if the taxpayer requests and receives a deposit and the IRS later assesses a deficiency for that period and type of tax, the IRS will assess the interest as if the funds were never on deposit. Also, the IRS will not return the deposit to the taxpayer if one of the following situations applies:

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- a. The IRS assesses a tax liability;
- b. The IRS determines that by returning the deposit, it may not be able to collect a future deficiency; or
- c. The IRS determines that the deposit should be applied against another tax liability.

A man walks into a restaurant with his pet alligator under his arm.

"Do you serve tax collectors?" he asks the barman.

Deposits do not earn interest. Accordingly, the IRS will not pay any interest to the taxpayer upon the return of the taxpayer's deposit.

"Of course", says the barman.

"Well," replies the man, "I'll have a beer, and my alligator will have a tax collector."

2. **Payment – of proposed tax (including additions (i.e. penalty and interest)**

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**B. THE APPEAL** - Because taxpayers sometimes disagree on tax matters, the IRS has an appeals system. Most differences can be settled within this system without expensive and time-consuming court trials.

However, the reasons for disagreeing must come within the scope of the tax laws. For example, the taxpayer cannot appeal the case based only on moral, religious, political, constitutional, conscientious, or similar grounds.

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In most instances, the taxpayer may be eligible to take his/her/its case to court if the taxpayer does not reach an agreement at the appeals conference, or if the taxpayer does not want to appeal the case to the IRS Office of Appeals.

Where there's a will there's a tax shelter.

- a. **Regular Appeal** – the Taxpayer can appeal an IRS tax decision to a local Appeals Office, which is separate from and independent of the IRS office taking the action against the taxpayer. The Appeals Office is the only level of appeal within the IRS. Conferences with Appeals Office personnel are **held in an informal manner by**

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**correspondence, by telephone, or at a personal conference.**

If the taxpayer wants an appeals conference, follow the instructions in the letter the taxpayer received. The request will be sent to the Appeals Office to arrange a conference at a convenient time and place. The taxpayer or the representative should be prepared to discuss all disputed issues at the conference. Most differences are settled at this level.

**b. Fast track mediation.** The IRS offers fast track mediation services to help the taxpayers resolve many disputes resulting from:

- i. Examinations (audits);
- ii. Offers in compromise;
- iii. Trust fund recovery penalties; and
- iv. Other collection actions.

Most cases that are not docketed in any court qualify for fast track mediation. Mediation can take place at a conference taxpayer request with a supervisor, or later. The process involves an Appeals Officer who has been trained in mediation. The taxpayer and or the representative may be involved in the mediation session.

**C. POST APPEAL**

**a. Qualified offer.** The taxpayer can receive reasonable costs and fees and be treated as a prevailing party in a civil action or proceeding if:

- i. The taxpayer makes a qualified offer to the IRS to settle case;
- ii. The IRS does not accept that offer; and
- iii. The tax liability (not including interest, unless interest is at issue) later determined by the court is equal to or less than the amount of qualified offer.

This is a written offer made by the taxpayer during the qualified offer period. It must specify both the offered amount of liability (not including interest) and be a qualified offer. To be a qualified offer, it must remain open from the date it is made until the earliest of:

- The date it is rejected,
- The date the trial begins, or
- 90 days from the date it is made.

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Driving to work, a gentleman had to swerve to avoid a box that fell out of a truck in front of him.

**b. Burden of proof.** For court proceedings resulting from examinations started after July 22, 1998, the IRS generally has the burden of proof

for any factual issue if the taxpayer has met the following requirements:

- i. The taxpayer introduced credible evidence relating to the issue.
- ii. The taxpayer complied with all substantiation requirements of the Internal Revenue Code.
- iii. The taxpayer maintained all records required by the Internal Revenue Code.
- iv. The taxpayer cooperated with all reasonable requests by the IRS for information regarding the preparation and related tax treatment of any item reported on the tax return.
- v. The taxpayer had a net worth of \$7 million or less and not more than 500 employees at the time the tax liability is contested in any court proceeding if the tax return is for a corporation, partnership, or trust.

Seconds later, two policemen came by. While one pulled the gentleman over, the second stopped traffic and recovered the box so as to avoid any further mishaps. When they opened the box, they found it contained large upholstery tacks.

"I'm sorry sir," the first trooper told the driver, "but I'm going to have to write you a ticket."

Amazed, the driver asked, "For what?!"

The trooper replied, "Tacks evasion."  
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### Exceptions to the Burden of Proof.

- **Specific law** - The burden of proof does not change on an issue when another provision of the tax laws requires a specific burden of proof with respect to that issue.
- **Use of statistical information.** In the case of an individual, the IRS has the burden of proof in court proceedings based on any IRS reconstruction of income solely through the use of statistical information on unrelated taxpayers.
- **Penalties.** The IRS has the burden of initially producing evidence in court proceedings with respect to the liability of any individual taxpayer for any penalty, addition to tax, or additional amount imposed by the tax laws.

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- c. **Abatement of Interest.** The taxpayer can receive abatement of interest due to error or delay by the IRS.

The IRS may abate (reduce) the amount of interest the taxpayer owes if the interest is due to an unreasonable error or delay by an IRS officer or employee in performing a ministerial or managerial act. Only the amount of interest on income, estate, gift, generation-skipping, and certain excise taxes can be reduced.

The amount of interest will not be reduced if the taxpayer or anyone related to the taxpayer contributed significantly to the error or delay. Also, the interest will be reduced only if the error or delay happened

A man about to have a heart transplant was offered the choice of either a 26 year-old marathon runner's heart or the heart of a 62 year-old IRS agent. He picked the agent's heart because he said it had never

after the IRS contacted the taxpayer in writing about the deficiency or payment on which the interest is based. An audit notification letter is such a contact.

been used.

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- i. **Ministerial act.** This is a procedural or mechanical act, not involving the exercise of judgment or discretion, during the processing of a case after all prerequisites (for example, conferences and review by supervisors) have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act.

***Example.***

The taxpayer moves from one state to another before the IRS selects his tax return for examination. A letter stating that a tax return has been selected for examination is sent to the old address and then forwarded to the new address. When the taxpayer gets the letter, the taxpayer responds requesting to transfer the examination to the area office closest to the Taxpayer's new address. The examination group manager approves the request. After the request has been approved, the transfer is a ministerial act. The IRS can reduce the interest because of any unreasonable delay in transferring the case.

- ii. **Managerial act.** This is an administrative act during the processing of a case that involves the loss of records or the exercise of judgment or discretion concerning the management of personnel. A decision concerning the proper application of federal tax law (or other federal or state law) is not a managerial act.

***Example.*** A revenue agent is examining the taxpayer's return. During the examination, the agent is sent to an extended training course. The agent's supervisor decides not to reassign the case, so the examination of the return is unreasonably delayed until the agent returns. Interest from the unreasonable delay can be abated since both the decision to send the agent to the training class and not to reassign the case is a managerial act.

- d. **Petition to the Court** - If the taxpayer and the IRS still disagree after the appeals conference, the taxpayer may be entitled to take the case to the United States Tax Court, the United States Court of Federal Claims, or the United States District Court. These courts are independent of the IRS.

If the taxpayer elects to bypass the IRS' appeals system, the taxpayer may be able to take case to one of the courts listed above. However, a case petitioned to the United States Tax Court will normally be

considered for settlement by an Appeals Office before the Tax Court hears the case.

- i. **Tax Court** – the taxpayer can take his/her case to the United States Tax Court if the taxpayer disagree with the IRS over:
  - Income tax,
  - Estate tax,
  - Gift tax, or
  - Certain excise taxes of private foundations, public charities, qualified pension and other retirement plans, or real estate investment trusts.

The taxpayer cannot file his/her case with the United States Tax Court before the taxpayer receives a notice of deficiency. The taxpayer can only appeal his/her case if the taxpayer files a petition within 90 days from the mailing date of the notice (150 days if it is addressed to the taxpayer outside the United States).

The notice will show the 90th (and 150th) day by which the taxpayer must file his/her petition with the United States Tax Court.

**NOTE. If the taxpayer consents to the IRS' conclusions regarding tax, the IRS can withdraw a notice of deficiency. Once withdrawn, the limits on credits, refunds, and assessments concerning the notice are void. That means that the taxpayer and the IRS have the rights and obligations that the taxpayer had before the IRS issued the notice. The statute of limitations is not suspended once the IRS issues the notice of deficiency even if the notice is later withdrawn.**

Generally, the United States Tax Court hears cases before the tax assessment and payment. The taxpayer, however, can pay the tax after the IRS issues the notice of deficiency and still petition the United States Tax Court for review. If the taxpayer does not file the petition on time, the proposed tax is assessed, the IRS will send the bill to the taxpayer and the taxpayer will not be able to take case to the United States Tax Court. Under the law, the taxpayer must pay the tax within 21 days (10 business days if the amount is \$100,000 or more).

If the taxpayer files his/her petition on time, the court will schedule the case for trial at a location convenient to the taxpayer. The taxpayer can represent himself/herself before the United States Tax Court or the taxpayer can have an attorney represent him/her as long as the representative has a license to



practice before the court.

**Small tax case procedure.** If the amount in case is \$50,000 or less for any one tax year or period, the taxpayer can request that the case be handled under the small tax case procedure. If the United States Tax Court approves such designation, the taxpayer can present the case to the Tax Court for a decision that is final and that the taxpayer cannot appeal. The taxpayer can get more information regarding the small tax case procedure and other Tax Court matters from the United States Tax Court, 400 Second Street, N.W., Washington, DC 20217. More information can be found on the Tax Court's website at [www.ustaxcourt.gov](http://www.ustaxcourt.gov).

## ii. U.S. District Court and U.S. Court of Federal Claims

Generally, the District Court and the Court of Federal Claims hear tax cases only after the taxpayer has paid the tax and filed a claim for a credit or refund. The taxpayer can file a claim with the IRS for a credit or refund if the taxpayer thinks that the tax taxpayer paid is incorrect or excessive. If the IRS disallows the claim totally or partially, the taxpayer will receive a notice of claim disallowance. If the IRS does not act on the claim within 6 months from the date the taxpayer filed it, the taxpayer can then file suit for a refund without formal rejection from the IRS. The taxpayer must file the suit for a credit or refund no later than 2 years after the IRS informs the taxpayer that the claim has been rejected.