Nuts & Bolts Collections Part II: Next Steps in Assisting Pro Bono Clients with Collections Matters

Erin Stearns, Assistant Professor and Director of the Low-Income Tax Clinic, Sturm College of Law, University of Denver
Soreé Finley, Senior Attorney for Low-Income Tax Clinic, Charlotte Center for Legal Advocacy
Joshua Wu, Member, Clark Hill Strasburger PLC
Sarah Lora, Supervising Attorney, Legal Aid Services of Oregon, Incoming Vice-Chair of the Section of Taxation’s Pro Bono & Tax Clinics Committee (Moderator)
Overview

• First steps in dealing with a low-income client with a collections issue
  – Consultation
  – Screening

• Mechanics of a collections case
  – Income vs. expenses
  – Entering a Power of Attorney
  – The IRS CAF Unit

• Ordering and reviewing transcripts
  – Understanding the years and amounts at issue
  – Various transcripts and what they mean
  – Sample transcripts
Screening Taxpayers

Taxpayers referred by a Low Income Taxpayer Clinic have most likely been screened by the Clinic. So, if you have been asked to assist a taxpayer not referred by a Clinic you should consider the following during intake:

- Taxpayer’s competency.

- Do you believe the taxpayer?

- Is there a tax controversy?
  - Taxpayer’s tax refund is offset
    - A tax refund can be offset for both non-tax federal debt or non-federal debt, i.e. student loans, child support, state tax liabilities, etc.
  - Taxpayer receives an IRS Annual Reminder Notice
    - Taxpayer accounts in Currently-Not-Collectible status (financial hardship) receive annual reminder notices via IRS Letter CP71A reminding them of their tax lability.
Consultation vs. Filing a Power of Attorney

Sometime taxpayers are capable of resolving their own tax issue with a little guidance. Issues to consider when deciding between consultation and representation via a Power of Attorney (Form 2848):

- Does the taxpayer already have representation?
- Is the taxpayer working with the Taxpayer Advocate Service?
- Is the taxpayer comfortable contacting the IRS on their own?
– Does the taxpayer have the resources to contact the IRS?
  • For example, cell phone without minute restrictions (non-prepaid), identification to enter a federal building if they went to a local IRS Tax Assistance Center.

– The number of tax years at issue.

– If a collection issue, can the taxpayer afford a streamline (regular) payment plan?
  • A streamline payment plan is where the payment terms are “72 months – or – the number of months necessary to satisfy the liability in full by the Collection Statute Expiration date, whichever is less”. https://www.irs.gov/businesses/small-businesses-self-employed/streamlined-processing-of-installment-agreements

If you decide to assist and represent the taxpayer before the IRS, then you will need to complete and file an **IRS Form 2848 Power of Attorney and Declaration of Representation**. The Form 2848 must be received by IRS to speak with them about a taxpayer’s case or to receive correspondence relating to the years and tax at issue.
Filing a Power of Attorney...which tax years to include
Completing section 3 of the Form 2848 to submit to the IRS, when the taxpayer knows the exact tax years and tax matters are in issue is simple. However, when the taxpayer does not know all of the tax years or tax matters, then you have a few options when completing the Form 2848:

- If the taxpayer is with you and time allows call the IRS Practioner Priority Service.
- Have the taxpayer contact the IRS to find out what tax years and tax matters are at issue.
- Complete the Form 2848, under Description of Matter list “Income” and expand the range of tax years covered.
Filing a Power of Attorney...CAF Number
If filing a Form 2848 for the first time, in the CAF Number field you can write in “Please Assign” or leave the field blank.

– The CAF Unit will assign you a nine-digit CAF Number with your first filing; number stays with you for life (even through name changes).

Once you have completed the Form 2848 (which must include sections 1, 2, 3, & 7 under Part I and Part II), fax or mail the form to the CAF Unit.
Contacting the IRS

• You can contact the IRS on the taxpayer’s behalf once you have a completed Form 2848 with a CAF Number.
  – If you do not have a CAF Number, then you must wait for one to be assigned before contacting the IRS without the taxpayer.

• If you call the IRS and the Form 2848 has not processed, then you will be expected to fax a copy of the form to the IRS Representative while on the phone.

• If the Form 2848 has processed and you do not want to call the IRS you can access the taxpayer’s records via e-Services.
IRS e-Services

• All must register and create online account, password, and PIN
• New requirements
  – Email, SSN, filing status and address from last return
  – Personal account number from a credit card, mortgage, equity line, or car loan
  – U.S. mobile phone associated with practitioner’s name
  – If you have “credit freeze” through Equifax it must be temporarily lifted
• Two-Factor authentication
Accessing e-Services
Tax Professionals

Enrolled Agents
Annual Filing Season Program Participants
Enrolled Retirement Plan Agents
Certified Professional Employer Organization (CPEO)
Enrolled Actuaries
E-File Providers
Modernized e-File

e-Services
- Online Tools for Tax Professionals

PTIN System
Status: Online Renewal and registration remain open for 2018.

Popular
- Forms, Publications and Instructions
- Employer ID Numbers (EIN)
- Individual Taxpayer Identification Number (ITIN)
- Refund
- Pay
- Affordable Care Act (ACA)

Power Of Attorney (POA)
- Notice or Letter
- Fraud or Scam
- Where to File
- Research Guidance
- Identity Theft
- Tax Reform

Tools
Learn about your responsibilities as a tax professional, PTIN requirements, and get content information for specific areas of the IRS.

News
Registration Now Open for IRS 2018 Nationwide Tax Forums
Protect Client Data, Learn Signs of Data Theft
More News
Gathering Information:
Overall Organization Strategies

Questions to answer:
• What type of tax(es) does T owe?
• For what years does T owe tax?
• How much does T owe including tax, penalties, and interest?
• Has the assessment statute expired?
• When does collection statute expire?
• What collection alternatives may be available to T?
### Gathering Information: Develop a Chart

<table>
<thead>
<tr>
<th>Year</th>
<th>Balance</th>
<th>Filing Date</th>
<th>Assessment Date</th>
<th>CSED</th>
<th>Procedural Status/ Other</th>
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</tr>
</tbody>
</table>
Gathering Information: Type of tax owed

Most common type is income tax, but individual taxpayers may owe additional civil penalties.

Some common civil penalties include:

• Individual Shared Responsibility Penalty
  – Imposed under Affordable Care Act for not having minimum essential coverage

• Trust Fund Recovery Penalties – IRC 6672
  – IRS has ability to assess payroll taxes (FICA) not properly remitted to T individually
Gathering Information: Type of tax owed

- Other considerations:
  - Have joint accounts been mirrored?
  - IRS may “mirror” accounts for married filing joint taxpayers in some instances
    - For example, if one spouse requested Innocent Spouse relief, IRS will create separate account transcripts for each spouse.
    - Joint return transcript will show write off of balance at time mirrored accounts created, but this does not mean that balance was really written off
    - It was just transferred to the mirrored separate accounts
Gathering Information: For what years and amounts does T owe tax?

Years at issue
- Start by asking taxpayer, but proceed with caution
- Err by being overly inclusive on Power of Attorney Form
- Fine to use a standard range, e.g., 2005-2018, if T approves

Amounts at issue
- Consider notices received by taxpayer, but approach as if an incomplete picture
- Contact IRS and obtain transcripts
Gathering Information: Is the assessment statute still open?

Need to identify whether additional assessments could still take place

Basic things to look for:

• When did T file return?
  – If never, has IRS done a substitute for return (SFR) under I.R.C. § 6020(b) authority?
  – If no filing, Statute of Limitations on Assessment never started.
  – Would need to determine if T had a filing requirement

• Has T agreed to extend the statute of limitations on Assessment?
  – Look for Forms 870 or 870-AD

• Has T requested Tax Court review?
Gathering Information: Collection Statute of Limitations

Important to identify Collection Statute Expiration Date (CSED) to identify viable collection alternatives

• Collection Statute is generally 10 years from assessment date
  – Extensions no longer permitted
  – But certain events add time, e.g., Bankruptcy, requesting Collection Due Process hearings, going to Tax Court

• Note that each year has its own CSED (and in some cases several per year), so want to map out CSED(s) for each year.
Gathering Information: Call IRS Practitioner Priority Service

If you do not have e-services, call IRS Practitioner Priority Service
• Phone number is 1-866-860-4259
• They will walk you through the questions raised above, or will transfer your call to a Automated Collections System representative (ACS)
• Request copies of Account Transcripts for all years with balances
  – If returns have not been filed, request Wage & Income Transcripts to determine filing requirements
  – Ask about Assessment and Collection Statute issues
What collection alternatives may be available?

Knowing where a client is procedurally for each year is essential to advising the client on best options for moving forward.

**Next step: Obtain a Collection Information Statement**

Options for individuals are:

- **433-F** → least detailed (2 pages).
- **433-A** → more detailed, generally preferred by Revenue Officers and Appeals
- **433-A(OIC)** → used only for Doubt as to Collectability and Effective Tax Administration offers in compromise
What collection alternatives may be available?

Brief Overview of options available to T:

• Full Pay liability
  – Use IRS.gov/payments page, or mail 1040-V to IRS with payment
  – Bank account and credit card payments accepted
What collection alternatives may be available?

- **Offer in Compromise** – several types:
  - Doubt as to Collectibility, Doubt as to Collectibility with Special Circumstances, Effective Tax Administration

- **Currently Not Collectible Status**

- **Installment Agreements** – several types:
  - Full pay, partial pay, streamlined, tiered
Consider Equity in Assets

Most common sources of equity:
• Real estate (including vacant land)
• Vehicles (including those that no longer run)
• Retirement accounts (401Ks, IRAs)
• Whole life insurance policies with a cash value
  – Subtract value of mortgages and non-personal loans against all items

Other things to ask about:
• Is your client a trust beneficiary, owner of an LLC or S corp?
• Have they given gifts (which IRS may consider to be dissipated assets)
Income vs. Expenses – Quick Rundown


- Standards change periodically
- Develop understanding of the standards
- Some are national (e.g., Food, clothing, miscellaneous & Out of Pocket Health Care)
- Some are regional (Transportation)
- Some are local (Housing and Utilities)
- Also want to know if you can use the standard amount no questions asked, or are you limited to lesser of standard or actual amount spent per month?
- Identify which expenses require substantiation

Rate the Small Business and Self-Employed Website
An Analytical Model for Determining the Best Resolution for Your Client

Step 1: Would an Offer in Compromise work?

• Try to determine the approximate offer amount based on equity in assets and remaining monthly income.

• For Offers in Compromise, consider that offer amount includes all cash (less $1,000 exemption) plus asset values discounted to 80% from fair market value. Consider vehicle and business tools of the trade exemptions too.

• Consider that remaining monthly income is multiplied out, usually by 12.
An Analytical Model:

**Step 2**: If, on the numbers, an OIC would not work...

- Consider if special circumstances exists for an OIC. The client may qualify for a Doubt as to Collectibility with Special Circumstances OIC or an Effective Tax Administration OIC.

- For example, is the taxpayer on a fixed income but has equity in a home? Is she or a family member disabled or in poor health
An Analytical Model

Step 3: If no type of OIC will work...

• Consider if Currently Not Collectible (CNC) is the best resolution. Often it’s best if there is equity in assets, but no remaining monthly income or in other unique instances:
  – Collection Statute will expire within 18 months (or so)
  – Waiting for additional assessments on additional years
  – Demonstrated lack of compliance with estimated tax payments
An Analytical Model- Step 4: If all else fails, consider an Installment Agreement...

• Consider amount owed and remaining monthly income
  – If remaining income could pay the entire liability within 72 months (or number of months remaining on the statute), then this may be best option
  – Also best for client who does not wish to complete financial disclosure forms
  – Consider whether direct debit is best
    • If client owes less than $25,000 and makes three direct debit payments, IRS will release the Notice of Federal Tax Lien
Transcripts – What are they?

• A record of actions that have taken place and/or documents provided to the IRS
• Each taxpayer has a Master File where information is stored for each tax year
• Transcripts show information from the Master File
• Can help you figure out:
  – What the taxpayer originally reported on their return
  – What information the IRS received from third-parties (e.g. banks)
  – What the IRS did to change the taxpayer’s liability
  – What the IRS has done to collect any unpaid liability from the taxpayer
  – What appeal rights the taxpayer may have available
  – If the taxpayer qualifies for first-time penalty abatement
Transcripts – What types are available?

• Account Transcripts (1990-Present)
• Tax Return Transcripts (3 prior years)
• Record of Account (3 prior years)
• Verification on Non-Filing (current year)
• Wage and Income (10 years)
### Account Transcript

- **Form Number:** 1060A  
- **Tax Period:** Dec. 31, 2013  
- **Recommended Action:**

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

<table>
<thead>
<tr>
<th>ACCOUNT BALANCE</th>
<th>AS OF: Dec. 13, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCOUNT INTEREST</td>
<td></td>
</tr>
<tr>
<td>ACCOUNT PENALTY</td>
<td></td>
</tr>
</tbody>
</table>

**ACCOUNT BALANCE**  
PLUS ACCREEDS
(this is not a payoff amount):

** INFORMATION FROM THE RETURN OR AS ADJUSTED **

<table>
<thead>
<tr>
<th>EXEMPTIONS:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>FILING STATUS:</td>
<td></td>
</tr>
<tr>
<td>ADJUSTED GROSS INCOME:</td>
<td></td>
</tr>
<tr>
<td>TAXABLE INCOME:</td>
<td></td>
</tr>
<tr>
<td>TAX PER RETURN:</td>
<td></td>
</tr>
<tr>
<td>SE TAXABLE INCOME:</td>
<td></td>
</tr>
<tr>
<td>TAXPAYER:</td>
<td></td>
</tr>
<tr>
<td>SE TAXABLE INCOME SPOUSE:</td>
<td></td>
</tr>
<tr>
<td>TOTAL SELF EMPLOYMENT TAX:</td>
<td></td>
</tr>
</tbody>
</table>
Using FOIA for Information

• Can request records created or obtained by the IRS in their possession and control

• Types of requests:
  – Revenue agent or officer time sheets, reports, and workpapers
  – Third-party contacts
  – Written determinations
  – Substitute-for-returns
  – Master File transcripts
  – Non-Master File transcripts

    • Non-processed items
    • Special fax to 859-669-2959
      – Accounting Operations Dept., Cincinnati Submission Processing Center
      – 201 W. Rivercenter Blvd
      – Covington, Kentucky 41011
Key Transcript Codes

- 150 – Return filed and tax liability assessed
- 166 – Delinquency penalty
- 290 – Additional tax assessed
- 291 – Abatement of prior tax assessment
- 320 – Fraud penalty
- 388 – Statute expiration clearance to zero balance and removal
- 389 – Reversal of statute expiration
- 420 – Audit indicator
- 450 – Transferee liability assessment
- 550 – Waiver extension of date collection statute expires
- 560 – Waiver extension of date assessment statute expires
- 570 – Additional liability pending
- 582 – Federal tax lien
- 768 – Earned income credit
- 826 – Overpayment transferred
- Cycle Codes – Date return information posted to master file
  - First four digits equal year, next two digits week, and last two digits day of week (e.g., 20160505)
Passport Revocation

• IRS will certify to State Department seriously delinquent tax debt where
  – Debt has been assessed, is unpaid, and is enforceable
  – IRS has imposed levy or Notice of Federal Tax Lien has been filed, and taxpayer has exhausted administrative rights or rights have expired
  – The debt is in excess of $50,000
• Seriously delinquent debt does not include
  – Debt paid under installment agreement
  – Debt paid under Offer in Compromise
  – Debt subject to pending collection due process hearing
  – Debt subject to claim for innocent spouse
• Notice required to taxpayer
  – Notice CP508C
  – Transaction code TC 971 AC 640 (levy occurred)
  – Transaction code TC 971 AC 641 (certified)
  – Transaction code TC 972 AC 641 (decertified)
Software Programs

- Canopy
- Pitbull
- Tax Help Software
- Considerations:
  - Who owns data?
  - IRC 6713, 7216
  - ABA MRPC 1.6, 1.1, 1.4, 4.4, 5.3.
New Box on Form 2848

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):
- Access my IRS records via an Intermediate Service Provider;
- Authorize disclosure to third parties;
- Substitute or add representative(s);
- Sign a return;

Other acts authorized: ____________________________

For Privacy Act and Paperwork Reduction Act Notice, see the instructions.
Assessment Statute Expiration Date (ASED)

• IRS may assess tax liability up to 3 years from the date the return was filed.
  – A return is considered filed on the later of: the due date or the actual filing date.

• Exceptions include:
  – Fraud
  – Failure to file a return
  – Omission of more than 25% of gross income
Tolling ASED

• Agreements to extend (Form 872)
  – If so, signed before expiration of prior ASED?
• Notice of Deficiency
  – Time IRS barred from collection plus 60 days
• Tax Court petition
• Designated summons
• Action to quash summons
Tolling ASED Example

- The taxpayers timely filed their 2011 income tax return. The taxpayers and the IRS timely executed a Form 872, extending the time to assess tax to December 31, 2016. The IRS proceeded to issue a statutory notice of deficiency to the taxpayers on December 28, 2016. The taxpayers timely filed a Tax Court petition on February 9, 2017. The taxpayers and District Counsel executed a stipulated decision on March 20, 2018, and the Tax Court entered its decision in the matter on April 11, 2018.
Substitute for Return

- IRC 6020(b)
  - If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor...the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

- Substitute for return (SFR) does not begin statute of limitation on assessment
- SFR *assessment* begins statute of limitations on collection per IRC 6502(a)(1)
- If taxpayer files return it will start assessment statute but will restart collection statute. IRM 25.6.1.9.4.5 (10-05-2016)
### Substitute for Return

**TRANSACTIONS**

<table>
<thead>
<tr>
<th>CODE</th>
<th>EXPLANATION OF TRANSACTION</th>
<th>CYCLE</th>
<th>DATE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>150</td>
<td>Substitute tax return prepared by IRS</td>
<td></td>
<td>05-01-2017</td>
<td>$0.00</td>
</tr>
<tr>
<td>960</td>
<td>Appointed representative</td>
<td></td>
<td>06-09-2015</td>
<td>$0.00</td>
</tr>
<tr>
<td>961</td>
<td>Removed appointed representative</td>
<td></td>
<td>04-04-2016</td>
<td>$0.00</td>
</tr>
<tr>
<td>430</td>
<td>Estimated tax payment</td>
<td></td>
<td>06-21-2016</td>
<td>-$</td>
</tr>
<tr>
<td>570</td>
<td>Additional account action pending</td>
<td></td>
<td>05-01-2017</td>
<td>$0.00</td>
</tr>
<tr>
<td>420</td>
<td>Examination of tax return</td>
<td></td>
<td>04-14-2017</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

This Product Contains Sensitive Taxpayer Data
Collection Statute of Limitations ("CSOL")

• The IRS collection statute of limitations is generally 10 years from assessment.
  – But the government can take action to extend this period
• Events that can extend the 10 year period are found in section 6503 and elsewhere
• Bankruptcy extends the CSOL for the time in bankruptcy, plus 6 months.
• Time outside the U.S. for 6 continuous months or more extends the CSOL.
• An installment agreement request pending + 30 days + the time any appeal is pending.
  – 30 days is also added when the IRS terminates an IA, plus the time any appeal of such termination is pending.
Collection Statute of Limitations ("CSOL") – Other Extenders

- While an OIC is pending plus 30 days.
- While a Form 911 is pending with TAS.
- While a collection due process request is pending plus the time any appeal is pending.
- While an innocent spouse claim is pending until the date of the Service’s final determination plus appeal period and 60 days.
- While a refund suit is pending until the order is entered and the appeal period expires.
### Example #1 – SFR, Late Return, and Exam

<table>
<thead>
<tr>
<th>CODE</th>
<th>EXPLANATION OF TRANSACTION</th>
<th>CYCLE</th>
<th>DATE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>150</td>
<td>Substitute tax return prepared by IRS 29210-888-00000-4</td>
<td>11-17-2014</td>
<td>$0.00</td>
<td></td>
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<tr>
<td>430</td>
<td>Estimated tax payment</td>
<td>07-07-2014</td>
<td>-$95,890.76</td>
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</tr>
<tr>
<td>570</td>
<td>Additional account action pending</td>
<td>11-17-2014</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>420</td>
<td>Examination of tax return</td>
<td>10-31-2014</td>
<td>$0.00</td>
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<tr>
<td>960</td>
<td>Appointed representative</td>
<td>03-03-2015</td>
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<tr>
<td>976</td>
<td>Duplicate return filed</td>
<td>06-19-2015</td>
<td>$0.00</td>
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<tr>
<td>300</td>
<td>Additional tax assessed by examination 20154505 11-30-2015</td>
<td>11-30-2015</td>
<td>$111,679.00</td>
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Example #2 – Self-Reported, Late Payment

<table>
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<tr>
<th>Date</th>
<th>Description</th>
<th>Amount</th>
<th>Date</th>
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<tbody>
<tr>
<td>07-17-2014</td>
<td>RETURN FILED &amp; TAX ASSESSED</td>
<td>72,348.00</td>
<td>08-18-2014</td>
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<td>04-15-2013</td>
<td>WITHHOLDING</td>
<td>9,607.00</td>
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<td>04-15-2012</td>
<td>OVERPAID CREDIT FROM PRIOR TAX PERIOD</td>
<td>5,380.00</td>
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<td>07-17-2014</td>
<td>PAYMENT WITH RETURN</td>
<td>60,045.00</td>
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<td>LATE FILING PENALTY 20143105</td>
<td>12,906.22</td>
<td>08-18-2014</td>
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<td>FAILURE TO PAY TAX PENALTY 20143105</td>
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<td>09-22-2014</td>
<td>CLAIM DISALLOWED</td>
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<td>09-08-2014</td>
<td>SUBSEQUENT PAYMENT</td>
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<td>10-06-2014</td>
<td>CLAIM DISALLOWED</td>
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<tr>
<td>11-03-2014</td>
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<td>08</td>
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<td>FORM 4340 (REV. 01-2002)</td>
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