

TABLE OF CONTENTS

Volume 1

CHAPTER 1

Assessment, Collection, Settlement and Litigation: An Overview of the Players and the Process

§ 1.01	Introduction	1-11
[1]	Application of Law	1-12
	[a] Breakdown of the Internal Revenue Code	1-12
	[b] Legislative Process	1-12
	[c] Regulations: Legislative or Substantive, Interpretative, and Procedural	1-16
	[i] Proposed Regulations	1-17
	[ii] Temporary Regulations	1-17
	[iii] Final Regulations	1-17
[2]	Revenue Rulings, Private Letter Rulings and Revenue Procedures	1-17
	[a] Definitions	1-19
	[b] Judicial Deference	1-20
	[c] IRS Pilot Program to Fast-Track Corporate Letter Rulings	1-21
[3]	Code of Federal Regulations	1-24
[4]	Internal Revenue Bulletin and Cumulative Bulletin	1-24
[5]	General Counsel Memoranda	1-25
[6]	Technical Advice Memoranda	1-25
[7]	Generic Legal Advice Memoranda	1-26
[8]	Action of Decision	1-26
[9]	Chief Counsel Notices	1-27
[10]	Compliance Officer Memoranda	1-27
[11]	District Counsel Advice	1-28
[12]	Field Directives	1-28
[13]	Field Service Advice	1-28
[14]	Information Letters	1-28

FEDERAL TAX LITIGATION

[15]	Legal Memoranda	1-28
[16]	Litigation Guideline Memoranda	1-29
[17]	Office Memoranda	1-29
[18]	Reviewed Briefs	1-30
[19]	Service Center Advice	1-30
[20]	Closing Agreements	1-30
[21]	Advance Pricing and Mutual Agreements Program	1-30
[22]	Internal Revenue Service Publications	1-31
[23]	Case Law	1-31
	[a] Tax Court	1-31
	[i] The Effect of Ballard	1-32
	[ii] Rule 183	1-34
	[b] U.S. District Court and U.S. Court of Federal Claims	1-34
	[c] Electronic Filing	1-34.1
[24]	General Rules Concerning Deference	1-34.2
	[a] Administrative Procedure Act	1-34.2
	[b] <i>Mayo</i> Standard	1-34.2
	[i] Administrative Procedure Act, Anti-Injunction Act, and IRS Reporting Requirement Notices	1-34.5
	[c] History of Deference	1-34.7
	[d] No Deference	1-34.9
[25]	Circular 230	1-34.9
	[a] Circular 230 Regulations	1-34.10
	[i] Individuals Authorized to Practice	1-34.11
	[ii] Contingent Fees	1-34.12
	[iii] Conflicting Interests	1-34.13
	[iv] Sanctions	1-34.13
	[v] Duty of Oversight	1-34.14
	[vi] Disciplinary Proceedings Are Subject to the Administrative Procedure Act	1-34.14
	[b] Category of Reportable Transaction for Patented Transactions	1-34.16
	[c] Transitional Penalty Relief Provided to Tax Return Preparers	1-34.17
	[d] Form 2848, Power of Attorney	1-34.18
[26]	Privileged Communication and Work Product Doctrine	1-34.19
	[a] Attorney-Client Privilege	1-34.19
	[i] Legal Advice versus Business Advice	1-34.23
	[ii] Tax Return Preparation	1-34.23
	[iii] The Kovel Doctrine	1-34.24
	[iv] Implied Waiver of the Privilege	1-34.24
	[v] Crime Fraud Exception	1-34.26

TABLE OF CONTENTS

ix

	[b] Work Product Doctrine	1-34.27
	[c] Tax Practitioner and Client Privilege	1-34.29
	[d] Accountant or Audit Workpapers	1-34.29
	[i] Tax Reconciliation Workpapers	1-34.30
	[ii] Rule 301, AICPA	1-34.31
	[iii] Tax Accrual Workpapers	1-34.31
	[iv] Uncertainties After Textron	1-34.33
	[v] Practice Suggestions	1-34.36
	[e] Attorney Communications With Experts	1-34.37
	[f] <i>In Camera</i> Inspection	1-34.37
	[27] Adjustments without Audit	1-34.38
§ 1.02	Taxpayer Advocates, Problems Resolution, Taxpayer Services, and Identity Theft Unit	1-34.39
	[1] Problems Resolution	1-34.40
	[2] Taxpayer Services	1-34.40
	[3] Taxpayer Advocate and Form 911	1-34.40
	[4] Identity Theft Unit	1-34.42
	[a] Form 14039, Identity Theft Affidavit	1-34.42
	[b] IRS Basics of Cyber Security and Data Protections	1-34.43
§ 1.03	Taxpayer Selection and Processing a Tax Return	1-34.45
	[1] Filing a Return with the Proper Campus	1-34.45
	[a] Campuses, Formerly Known as Service Centers	1-34.45
	[b] Where to File a Return	1-34.46
	[c] Electronic Filing of Returns and Forms	1-34.50
	[2] Discriminant Inventory Function System	1-34.51
	[3] Unreported Income	1-34.51
	[4] How to Obtain Copies of Documents Taxpayers Have Filed with the IRS	1-34.52
	[a] Tax Returns	1-34.53
	[b] Types of Transcripts	1-34.54
	[i] Account Transcript	1-34.55
	[ii] Master File Transcripts, “Tax Mod”	1-34.55
	[iii] W2/1099 Wage and Income Transcript	1-34.56
	[iv] Backup Withholding	1-34.56
	[c] Immediate Transcripts	1-34.57
	[i] Online Transcript Delivery System (TDS)	1-34.57
	[ii] Practitioner Priority Service Hotline	1-34.58
	[d] Home Affordable Mortgage Program Transcript Needs	1-34.58
	[e] Copies of Form W-2	1-34.59
	[f] How IRS Credits Payments	1-34.60
	[g] Cash Payment Option	1-34.60

FEDERAL TAX LITIGATION

[5]	IRS Data Analytics, Generally	1-34.60
	[a] Data Mining and Predictive Analytics . . .	1-34.63
	[b] Taxpayer Cautions	1-34.65
[6]	Going Digital	1-34.66
[7]	International Information Return Systemic Assessment	1-34.66
§ 1.03A	The Structure of the IRS Follows a Taxpayer Classification System	1-34.68
[1]	The Four Operating Divisions	1-34.71
[2]	The Responsibilities and Structure of the Large Business and International Division (LB&I)	1-34.73
	[a] The Organizational Structure of LB&I . . .	1-34.74
	[i] Industry Director	1-34.77
	[ii] Directors of Field Operations	1-34.78
	[iii] Territory Managers	1-34.78
	[iv] Team Managers	1-34.78
	[v] Revenue Agents, Auditors, Revenue Officers	1-34.78
	[b] Industry Issue Focus (IIF)	1-34.79
	[c] Global High Wealth Industry Group	1-34.81
	[d] Comprehensive Case Resolution Program (CCR)	1-34.81
	[i] Eligibility Requirements for CCR Participation	1-34.82
	[ii] Taxpayer Risks Associated with CCR	1-34.82
	[e] Industry Issue Resolution Program (IIR)	1-36
	[f] Prefiling Agreement Program (PFA)	1-36
	[i] Eligibility Requirements to Participate in PFA Program	1-37
	[ii] Content of the LMSB PFA Request	1-37
	[iii] Filing the PFA	1-41
	[iv] How the PFA Process Works	1-41
	[v] Taxpayer Risks Associated with PFA	1-41
	[g] Compliance Assurance Process (CAP)	1-43
	[h] Mutual Accelerated Appeals Process (MAAP)	1-44
	[i] Eligibility Requirements to Participate in MAAP	1-44
	[ii] The MAAP Process	1-44
	[iii] Risks Associated with MAAP	1-44
	[i] Uncertain Tax Positions, “Schedule UTP”	1-45
[3]	Responsibilities and Structure of the Small Business/Self-Employed Operating Division (SB/SE)	1-46

TABLE OF CONTENTS

	[a]	Taxpayer Education and Communication (TEC)	1-46
	[b]	Customer Account Services (CAS)	1-46
	[c]	Compliance	1-46
	[d]	Structure	1-47
	[e]	Comparison of Small Business/ Self-Employed (SB/SE) Taxpayers to Large Business and International Taxpayers (LB&I)	1-47
	[f]	Contact Information for SB/SE Personnel	1-48
	[4]	The Responsibilities and Structure of the Wage and Investment Operating Division (W&I)	1-49
	[a]	Communications, Assistance, Research, and Education (CARE)	1-49
	[i]	Media and Publications	1-49
	[ii]	Stakeholder Partnership Education and Communications (SPEC)	1-49
	[iii]	Field Assistance	1-50
	[b]	Customer Account Services (CAS)	1-50
	[c]	Compliance	1-50
	[d]	Contact Information for W&I Personnel	1-50
	[5]	The Responsibilities and Structure of the Tax Exempt and Government Entities Division (TE/GE)	1-50
	[a]	Employee Plans (EP)	1-51
	[b]	Exempt Organizations (EO)	1-52
	[c]	Government Entities (GE)	1-53
	[6]	Office of Chief Counsel	1-53
§ 1.04		Assessment and Audit Examination Level	1-57
	[1]	Campus Conducts Correspondence Audits	1-57
	[2]	Unreported Income	1-58
	[a]	Automated Information Statements Reconciliation	1-58
	[b]	Balance Sheet Financial Analysis	1-59
	[c]	Bank Deposit Analysis	1-59
	[d]	e-Commerce Analysis	1-59
	[e]	Industry or Market Specific Ratio Analysis	1-59
	[3]	Random Audits via National Research Program	1-60
	[4]	Examination Division in Each of the Four Divisions Conducts Office and Field Audits	1-60.1
	[a]	General Nature of Agents and Auditors	1-61
	[b]	Practical Considerations Concerning Internal Revenue Service Employee Operations	1-62

FEDERAL TAX LITIGATION

[5]	What to Expect During an Examination	1-62
	[a] Substantiation and Recordkeeping Requirements	1-62
	[b] Information Document Requests (“IDR”)	1-63
	[c] Electronic Records	1-64
[6]	Top Five Things to Keep in Mind During an Audit	1-66
	[a] Waiver	1-66
	[b] <i>Kovel</i> Doctrine	1-66
	[c] Attorney Invoices	1-66
	[d] Tax Opinions	1-67
	[e] Accountant Work Papers	1-67
[7]	Industry Specialization Program	1-67
[8]	Market Segment Specialization Program	1-68
[9]	Internal Revenue Service Information Gathering Resources	1-69
[10]	Meeting with Agents/Auditors	1-70.3
	[a] Agent/Auditor Disposition	1-70.3
	[b] Recording Interviews	1-71
	[c] Non-Lawyer Privilege	1-71
[11]	“No Change” Letters Versus Adjustments	1-72
[12]	Statute of Limitations	1-72
	[a] Financial Disability	1-73
	[b] Collection	1-73
	[c] Interest and Penalties	1-74
	[d] Suspension of Interest on Underpayments	1-74
[13]	Extending the Statute of Limitations for Tax Assessment	1-75
	[a] Form 872-A, Special Consent to Extend Time to Assess	1-75
	[b] Situations Triggering Six-Year Statute of Limitations	1-76
[14]	Revenue Agent Report	1-77
	[a] Adjustments	1-77
	[b] Conference with Team Manager	1-77
	[c] Disputing an Adjustment	1-78
	[i] Thirty-Day Letter	1-78
	[ii] Formal Protest to District Director	1-79
	[d] Notice of Deficiency/Ninety-Day Letter	1-80
	[e] Rescission of Notice of Deficiency	1-80
§ 1.05	Collection Division	1-82
	[1] Special Procedures Staff	1-82
	[2] Revenue Officers	1-82
	[3] Private Debt Collectors	1-82.2
	[4] Passport Revocation	1-82.4
§ 1.06	Early Referral Program: Examination/Collection to the Appeals Division	1-82.6

TABLE OF CONTENTS

xiii

	[1] Mechanics of the Early Referral Program	1-82.6
	[a] Written Request	1-82.6
	[b] Instances Where Early Referral Request Will Be Rejected	1-82.7
	[2] Procedures After Internal Revenue Service Approval of Early Referral Request	1-82.7
	[3] Offer in Compromise, Form 656	1-82.8
	[a] Initial Offer Payment	1-82.9
	[b] Partial Payments with Submission of Offers-in-Compromise	1-82.9
	[c] Lump-Sum Offer	1-82.10
	[d] Periodic Payment Offer	1-82.10
	[e] Compliance a Prerequisite	1-82.10
	[f] Requirements for Submission of Offer-in-Compromise	1-82.11
	[g] Doubt as to Collection Potential of Tax Liability	1-82.14
	[i] Verification of Form 433-A OIC/433-B OIC	1-82.14
	[ii] Calculating Value	1-82.16
	[iii] Calculating Future Income and Basic Living Expenses	1-82.16
	[iv] Dissipation of Assets Rule	1-82.17
	[h] Doubt About Existence of Liability and/or Correct Amount of Tax Liability	1-82.18
	[i] Promotion of Effective Tax Administration	1-82.18
	[j] Fresh Start Initiatives	1-82.19
	[4] Review of Form 656 and Form 443-A OIC/Form 443-B OIC	1-82.20
	[a] Missing or Additional Information	1-82.21
	[b] Evaluation of an Offer	1-82.21
	[5] IRS View Regarding Negotiation of an Acceptable Offer	1-82.22
	[6] Combination Offers	1-82.25
	[7] “Currently Not Collectible” Status	1-82.25
	[8] Streamlining the Processing of an Offer	1-82.26
	[a] Analysis of Information	1-82.26
	[b] Amendments to Offer	1-82.27
	[c] Procedures for Acceptance/Rejection of the Offer	1-82.28
	[9] IRS Reopening Case Post-Acceptance	1-82.28
	[a] Not in the Best Interest of the Government	1-82.28
	[10] Appealing a Denied OIC	1-82.29
	[11] Criminal Tax Convictions	1-82.30
§ 1.07	Appeals Division	1-82.31
	[1] Structure of the Appeals Division Under the 2018 Reorganization	1-82.31

FEDERAL TAX LITIGATION

[2]	Authority of Appeals Division	1-82.62
[3]	Submitting a Written Protest to the Appeals Division	1-82.63
[4]	Handling the Appeals Conference	1-82.65
	[a] Presenting Evidence	1-82.65
	[b] Participants	1-82.66
	[c] Appeals Officer Preparation Prior to Conference	1-82.66
	[i] Communication Between Agent and Appeals Officer	1-82.67
	[ii] Documentation of Appeals and Agent Communication	1-82.68
	[iii] Appeals Judicial Approach and Culture (“AJAC”) Project.	1-82.68
	[d] Recording the Conference with the Appeals Officer	1-82.69
	[e] Virtual Appeals Pilot Program.	1-82.69
[5]	Settlement Positions in Negotiating with the Appeals Division	1-82.70
	[a] Matters Where Settlement Is Not Possible	1-82.70
	[b] Arguments and Concessions for Successful Negotiation.	1-82.70
	[i] Mutual Concession Settlement	1-82.71
	[ii] Split Issue Settlement.	1-82.71
	[iii] Nuisance Value.	1-82.71
	[iv] Fast Track Settlement.	1-82.71
[6]	Evaluation of Settlement Prospects by Appeals	1-82.72
	[a] Issue Orientation.	1-82.72
	[b] The <i>Golsen</i> Rule.	1-82.72
	[c] Hazards of Litigation	1-82.73
[7]	Tactics to Follow Upon Tentative Agreement	1-82.73
[8]	Alternative Dispute Resolution.	1-82.74
	[a] Mediation and the Appeals Division	1-82.74
	[i] Cases Where Mediation Should Be Considered.	1-82.75
	[ii] Initiating Mediation.	1-82.75
	[iii] Authority of Mediator.	1-82.76
	[iv] Preparation for Mediation.	1-82.76
	[b] Fast Track Mediation and the Appeals Division	1-82.76
	[i] Case Where Fast-Track Mediation Should Be Considered	1-82.77
	[ii] Initiating Fast-Track Mediation.	1-82.78
	[iii] Authority of the Fast Track Mediator	1-82.78
	[c] Arbitration and the Appeals Division	1-82.79

TABLE OF CONTENTS

xv

	[i] Case Where Arbitration Should Be Considered	1-82.79
	[ii] Initiating Arbitration	1-82.80
	[iii] Authority of the Arbitrator	1-82.81
	[d] Appeals Mediation Program	1-82.81
[9]	Collection Due Process Hearings	1-82.82
	[a] Administrative Procedures and Requirements	1-82.82
	[b] Hearing Procedures	1-82.83
	[i] Taxpayer Challenges	1-82.84
	[ii] Notice of Determination	1-82.85
	[iii] Seeking Judicial Review of a CDP Notice of Determination	1-82.86
	[c] Consequences of Frivolous CDP Hearing Requests	1-82.86
[10]	CDP Hearing Appeals to Tax Court	1-82.87
	[a] Jurisdictional Requirements	1-82.87
	[b] Abuse of Discretion Standard: Procedural and Substantive IRS Errors	1-82.87
	[c] Request for Reconsideration of Assessment(s)	1-82.89
[11]	Installment Agreements	1-82.90
	[a] Form 9465-FS, Installment Agreement Request	1-82.93
	[b] Full Payment within 120 Days	1-82.93
	[c] Guaranteed Installment Agreement	1-82.94
	[d] Processing Time and Agreement Terms	1-82.94
	[e] Installment Agreements and Small Businesses	1-82.94
	[f] Modifying or Terminating an Installment Agreement	1-82.95
	[g] The Job Creation and Worker Assistance Act Amendment Suspends Collection	1-82.95
	[h] Effect of Bankruptcy	1-82.95
	[i] Abuse of Discretion	1-82.96
[12]	Streamlined Online Payment Agreement Application	1-82.96
	[a] Process	1-82.97
	[b] Fees	1-82.97
	[c] Changes to Tax Lien Thresholds	1-82.98
	[i] Direct Debit Installment Agreements and Liens	1-82.99
	[ii] Fresh Start Initiative Adjustments to IRS Lien Polices	1-82.99
	[d] Passport Applicants	1-82.99
§ 1.07A	IRS Independent Office of Appeals	1-82.101
§ 1.08	Economic Substance Doctrine	1-82.103
	[1] Judicial History	1-82.103

FEDERAL TAX LITIGATION

	[2]	2010 Codification and Penalties	1-82.106
	[3]	Notice 2014	1-82.109
§ 1.08A		Sham Transaction Doctrine	1-82.110
§ 1.08B		Substance Over Form Doctrine	1-82.112
§ 1.08C		Step-Transaction Doctrine	1-82.114
	[1]	Binding-Commitment Test	1-82.114
	[2]	Interdependence Test	1-82.115
	[3]	End-Result Test	1-82.115
	[4]	Relationship of the Parties	1-82.116
§ 1.09		Other Sources	1-82.117
	[1]	Problem Resolution Contacts	1-82.117
	[2]	Account Related Inquiries	1-86
	[3]	Organizational Charts	1-88
	[4]	MSSP Audit Technique Guides	1-91
§ 1.10		Forms	1-92
	[1]	<i>Form 872</i> : Consent to Extend Time to Assess Tax	1-92
	[2]	<i>Form 872A</i> : Special Consent to Extend Time to Assess Tax	1-94
§ 1.11		“Fast” Act	1-96
§ 1.12		Digital Assets Compliance	1-97
	[1]	“Educational” and Outreach Efforts	1-97
	[2]	Digital Assets as Income	1-106
§ 1.13		Coronavirus Aid and Relief	1-108
	[1]	Deadlines Regarding Returns Extended	1-108
	[2]	IRS Operation Adjustments	1-111
		[a] Taxpayer Assistance	1-111
		[b] Get Transcripts Tools	1-112
	[3]	Erroneous or Suspicious Refunds	1-112
	[4]	Collections	1-112
		[a] Offers in Compromise and Installment Agreements	1-112
		[b] Taxpayer Hardship	1-112
	[5]	Coronavirus Relief, and Economic Security Act (“CARES Act”)	1-112
		[a] Paycheck Protection Program (“PPP”)	1-112.1
		[i] Eligibility	1-113
		[ii] Summary of PPP Loan Forgiveness Process	1-114
		[iii] Audit of PPP Application and Loan Use	1-117
		[iv] DOJ Prosecutions Regarding PPP loans	1-118
		[b] Employee Retention Credit	1-119
		[c] Payroll Tax Deferment	1-120
		[d] Expanded Use of Net Operating Losses	1-120
		[e] Increased Deduction for Business Interest Expense	1-121

TABLE OF CONTENTS

xvii

[f]	Refund for Corporate AMT	1-121
[g]	Correction via Technical Amendment Regarding Qualified Improvement Property (“QIP”)	1-121
[h]	Excise Tax Exemption for Hand Sanitizer	1-122
[6]	“Economic Income Payments” aka Stimulus Payments	1-122
[a]	Ineligible	1-122
[b]	Refund Anticipation Loans (“RAL”)	1-122
[c]	“Inadvertent” Payments	1-123
[d]	Check the Status of Economic Impact Payments	1-123
[7]	Retirement Withdrawals	1-123
[a]	Mandatory Retirement Distribution	1-123
[b]	Charitable Contributions	1-123
[c]	Student Loan Repayment Benefits	1-123
[8]	Simplified Federal Income Tax Return Filing Procedure For Individuals Not Required To File for Taxable Year 2021	1-124

CHAPTER 1A

Litigation

§ 1A.01	Introduction	1A-4
[1]	Filing Deadline	1A-6
[2]	Sealed Records	1A-7
§ 1A.02	Burden of Proof	1A-8
[1]	Credible Evidence	1A-8
[2]	Standard of Review	1A-10
§ 1A.03	Prohibited Positions for the Government	1A-11
§ 1A.04	Federal Rules of Evidence	1A-12
[1]	Scope	1A-12
[2]	Purpose and Construction	1A-14
[3]	Rulings on Evidence	1A-14
[a]	Stipulation	1A-15
[b]	Offer of Proof	1A-15
[4]	Preliminary Questions	1A-16
[5]	Limited Admissibility	1A-16
[6]	Remainder of Related Writings or Recorded Statements	1A-17
[7]	Judicial Notice	1A-18
[8]	Presumptions in General in Civil Actions and Proceedings	1A-23
[a]	Burden of Production and Burden of Persuasion	1A-24
[b]	Effect of Burden of Proof	1A-25

FEDERAL TAX LITIGATION

[9]	Applicability of State Law in Civil Actions and Proceedings	1A-28
[10]	Relevant Evidence	1A-28
[11]	Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible	1A-30
[12]	Rule 403: Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time	1A-30
[13]	Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes	1A-31
[14]	Habit; Routine Practice	1A-33
[15]	Compromise and Offers to Compromise	1A-33
[16]	Inadmissibility of Pleas, Plea Discussions, and Related Statements	1A-35
[17]	Privileges	1A-36
	[a] Mechanics	1A-36
	[b] Spoliation	1A-36
	[c] Informer Privilege	1A-37
	[d] Marital Privilege	1A-37
	[e] Fifth Amendment	1A-37
	[f] Attorney-Client Privilege	1A-40
	[i] Corporations	1A-40
	[ii] Others Employed by the Attorney	1A-40
	[g] Waivers of the Attorney-Client Privilege	1A-41
	[h] Non-Lawyer Privilege	1A-42
	[i] Work Product Privilege	1A-43
	[j] Governmental Deliberative Process Privilege	1A-44.1
[18]	Rule 502: Inadvertent Disclosure	1A-46
[19]	Rule 602: Lack of Personal Knowledge	1A-47
[20]	Rule 603: Oath or Affirmation	1A-48
[21]	Rule 607: Individuals Who May Impeach	1A-48
[22]	Rule 608: Evidence of Character and Conduct of Witness	1A-50
[23]	Rule 609: Impeachment by Evidence of Conviction of Crime	1A-50
[24]	Rule 610: Religious Beliefs or Opinions	1A-52
[25]	Rule 612: Writing Used to Refresh Memory	1A-52
[26]	Rule 615: Exclusion of Witnesses	1A-53
[27]	Rule 701: Opinion Testimony by Lay Witnesses	1A-56
	[a] Rule 702: Testimony by Experts	1A-58
	[b] Rule 703: Bases of Opinion Testimony by Experts	1A-61
	[c] Rule 704: Opinion on Ultimate Issue	1A-62
	[d] Rule 705: Disclosure of Facts or Data Underlying Expert Opinion	1A-63
	[e] Rule 706: Court Appointed Experts	1A-64
	[f] Expert Report Requirements	1A-64

TABLE OF CONTENTS

xix

§ 1A.05	Hearsay	1A-67
	[1] Why Hearsay Is Generally Not Admissible as Evidence; Exceptions to the Hearsay Rule . . .	1A-68
	[a] Prior Statement by Witness	1A-68
	[b] Admissions by a Party Opponent	1A-70
	[c] Co-Conspirator Statements	1A-71
	[2] Rule 802: Hearsay Rule	1A-72
	[3] Rule 803: Hearsay Exceptions Commonly Raised in Tax Court Cases; Availability of Declarant Immaterial	1A-73
	[a] State of Mind	1A-73
	[b] Recorded Recollection	1A-74
	[c] Business Record Exception	1A-74
	[d] Absence of Record	1A-78
	[e] Public Reports	1A-78
	[f] Absence of Public Record or Entry	1A-80
	[g] Statements in Documents Affecting an Interest in Property	1A-80
	[h] Reputation as to Character	1A-81
	[i] Judgment of Previous Conviction	1A-81
	[4] Rule 804: Hearsay Exceptions, Declarant Unavailable	1A-82
	[5] Rule 804(3): Statement Against Interest	1A-85
	[6] Rule 805: Hearsay Within Hearsay	1A-86
	[7] Rule 806: Attacking and Supporting Credibility of Defendant	1A-86.1
	[8] Rule 807: Residual Exception	1A-86.2
§ 1A.06	Authentication	1A-90
	[1] Rule 901: Requirement of Authentication or Identification	1A-90
	[2] Rule 902: Self-Authentication	1A-91
	[a] Affidavit or Declaration	1A-91
	[b] Electronically Stored Information	1A-92
	[3] Originals Versus Duplicates	1A-93
	[4] Rule 1001: Definitions, Writings, Recording and Photographs	1A-93
	[5] Rule 1002: Requirement of Original	1A-94
	[6] Rule 1003: Admissibility of Duplicates	1A-95
	[7] Rule 1004: Admissibility of Other Evidence of Contents	1A-95
	[8] Rule 1006: Summaries	1A-96
	[9] Rule 1007: Testimony or Written Admission of Party	1A-97
	[10] Rule 1101: Applicability of Rules	1A-98
§ 1A.07	Refund Versus Protest Routes	1A-99
	[1] Subjective Application of Variance Doctrine	1A-99
	[2] Tax Court Gives the IRS Ability to Raise Additional Items of Deficiency	1A-101

FEDERAL TAX LITIGATION

	[3]	Delegated Authority Concerning Tax Court Litigation	1A-101
§ 1A.08		Benefits and Burdens of Tax Court Versus Federal District Court	1A-103
§ 1A.09		Federal District Court and Claims Court	1A-105
§ 1A.10		United States Department of Justice Involvement	1A-106
	[1]	Settlement Possibilities	1A-106
	[2]	Delegation of Settlement Authority	1A-106
	[3]	Classification of Settlement Option Procedure or Standard	1A-107
	[4]	Amount at Issue Is Factor in Determining Level of Review	1A-107
	[5]	Path of an Offer at the Tax Division	1A-109
	[a]	Authority of Trial Section and Appellate Section Chief	1A-109
	[b]	Authority of Solicitor General	1A-110
	[c]	Authority of Assistant Attorney General	1A-110
	[d]	Authority of Deputy Attorney General	1A-111
	[e]	Involvement of the Joint Committee on Taxation	1A-111
	[f]	Authority of Office of Review	1A-112
	[6]	Submitting an Offer	1A-112
	[7]	Preservation of Evidence	1A-112
	[a]	Sanctions for Loss of Electronically Stored Information in Nonparty's Possession	1A-113
	[b]	Sanctions for Client's Spoliation	1A-114
	[c]	Form of Production	1A-115
	[d]	Requests to, and Motions to Compel, Inspection of Opponent's Computer/Hard Drive	1A-116
	[e]	Evidence Supporting Sanctions for Failure to Conduct Reasonable Inquiry and Intentionally Withholding Documents	1A-117
	[f]	Expert Testimony	1A-119
	[g]	Cautionary Examples	1A-120
§ 1A.11		Rule 30(b)(6) Deposition	1A-123
	[1]	Background	1A-123
	[2]	Obligations	1A-123
	[a]	Party Issuing Rule 30(b)(6) Notice	1A-123
	[b]	Entity Responding to the Notice	1A-123
	[3]	Designation of Witness(es)	1A-124
	[4]	Witness Preparation Required	1A-126
	[5]	E-Discovery	1A-127
	[6]	The Deposition	1A-127
	[7]	Privileged Communications	1A-128
	[8]	Potential Problems	1A-129
	[a]	Location	1A-129

TABLE OF CONTENTS

xxi

	[b] The Unprepared Witness	1A-130
	[c] The Kitchen Sink Deposition.	1A-131
	[d] Manipulating Time Restrictions.	1A-131
	[e] Uncooperative Parties.	1A-132
§ 1A.12	Sample Notice of Deposition	1A-135
§ 1A.13	Checklist, Rule 30(b)(6) Deposition Outline	1A-139
§ 1A.14	Sample Memorandum Regarding Preservation	1A-145

CHAPTER 2

Employment Taxes and the Trust Fund Recovery Penalty

§ 2.01	Introduction	2-4
§ 2.02	Statutory Background	2-7
	[1] Form 941 and Federal Tax Deposit.	2-7
	[2] Trust Fund.	2-10
	[3] Personal Liability	2-10
	[4] Standard for Imposing Liability Under Section 6672.	2-12
	[5] Limited Liability Company Members	2-13
	[6] Non-Tax Business Purpose to Planning.	2-13
	[7] Immigration issues in Employment Tax	2-14
	[a] Form I-9 “Employment Eligibility Verification”	2-14
	[b] Penalties	2-14
	[c] Reckless Indifference	2-21
§ 2.03	Collection Division	2-22
	[1] IRS Monitoring of Delinquent Businesses.	2-22
	[2] Investigation of Delinquent Trust Fund Taxes and/or Non-Compliance.	2-25
	[3] Procedures for Investigating Potential Section 6672 Penalty Assessment.	2-26
	[4] Preliminarily Establishing Who Are Responsible Persons.	2-26
	[5] When Third Parties Direct Payments to a Company’s Employees: Surety, Lender, Contractor	2-28
	[6] Trust Fund Recovery Interviews	2-29
	[7] Evidence that may Support a Recommendation to Assess Section 6672 Penalty	2-30
§ 2.04	Defenses to the Section 6672 Penalty	2-32
	[1] Transferring the Blame.	2-32
	[2] Lack of Authority	2-32
	[3] Liability no Longer Exists	2-32
	[4] Contributory Liability	2-33
	[5] The Amount of the Assessment is Incorrect.	2-33
§ 2.05	Success of Collecting a Section 6672 Penalty.	2-34

FEDERAL TAX LITIGATION

§ 2.06	Revenue Officer's Recommendation of Trust Fund Recovery Penalty Assessment	2-36
	[1] Practitioner's Preliminary Analysis of the Recommendation	2-36
	[2] Procedure Following Recommendation	2-36
	[3] Form 656, Offer in Compromise	2-37
	[4] Appeals Post-Mediation for Offer in Compromise and Trust Fund Recovery Penalty	2-37
§ 2.07	Delaying an Investigation of Section 6672 Penalty	2-39
§ 2.08	Installment Agreements	2-41
	[1] Considerations for Installment Agreement with a Non-Business Taxpayer	2-42
	[2] Considerations for an In Business Trust Fund Installment Agreement	2-43
	[3] Taxpayer Compliance with the Installment Agreement	2-42.3
§ 2.09	Collateral Agreement	2-42.4
	[1] Purpose of Collateral Agreement	2-42.4
	[2] Guidelines for Securing Collateral Agreements	2-42.5
§ 2.10	Form 911, Application for a Taxpayer Assistance Order	2-42.7
§ 2.11	Appeals Consideration	2-42.8
§ 2.12	Procedures for Examination Division	2-42.10
§ 2.13	Application of Payments and Collection of the Penalty	2-42.11
	[1] Designated Payments	2-42.11
	[2] Installment Agreements or Offers in Compromise	2-42.11
	[3] Accounting for Payments, Abatements, and Adjustments	2-42.13
	[a] Payments	2-42.13
	[b] Involuntary or Undesignated Payments Involving Trust Fund Taxes	2-42.13
	[c] Abatements and Adjustments	2-42.13
§ 2.14	Claim for Abatement	2-43
	[1] Procedures for Claim for Abatement	2-43
	[2] Grounds for Abatement	2-43
§ 2.15	Claim for Refund	2-44
	[1] The Procedures for Filing a Claim for Refund	2-44
	[2] Protective Claim for Refund	2-44
	[3] Collection Activities Should Be Halted	2-44
	[4] Discussing Settlement with the Tax Division Attorney	2-45
§ 2.16	Litigating the Trust Fund Recovery Penalty	2-46
	[1] Burden of Proof	2-46

TABLE OF CONTENTS

xxiii

	[2] Mediation Jurisdictions	2-47
	[3] Factual Inquires Made by the Court in Determining Whether Liability Exists.	2-47
	[4] Defining a Responsible Person.	2-47
	[a] Scenarios of Persons Who Have Been Found Responsible by the Courts.	2-49
	[b] Delegation of Responsibility Is Not a Defense	2-49
	[c] Bankruptcy Does Not Relieve Liability	2-50
	[d] Significant Control Determines the Authority to Pay Taxes	2-50
	[i] Significant Control	2-51
	[ii] Embezzled Funds	2-51
	[5] Defining Willfulness Under Section 6672.	2-51
	[a] What Constitutes Knowledge.	2-51
	[b] The Judicially Created Reasonable Cause Exception in Tenth Circuit.	2-54
	[c] Reckless Conduct May Equal Willfulness Under Section 6672	2-54.1
	[d] Developments in Court of Federal Claims.	2-57
	[6] Liability for Delinquent Taxes.	2-57
	[7] Conducting Discovery.	2-58
	[8] Electronic Discovery Plan	2-64
	[a] Document Retention Policy	2-64.1
	[i] Taxpayer’s Preservation of Records	2-64.1
	[ii] Consequences of Failing to Preserve Records.	2-64.2
	[b] Departing Employees’ Records	2-64.2
	[c] Expenses of Electronic Discovery.	2-64.3
	[i] General Rule Regarding Expenses	2-64.3
	[ii] Cost-Shifting of Expenses	2-64.3
	[d] Some Courts Have Adopted Rules Regarding Electronic Discovery	2-64.4
	[e] Sanctions for Breaches of Discovery Obligations	2-64.5
	[i] Timely Production.	2-64.6
	[ii] Inadvertent Production and Waiver	2-64.6
	[iii] Imposition of Civil and Criminal Sanctions	2-64.7
	[9] Confusing Calculations Before a Jury.	2-64.7
	[10] Injunctive Relief	2-64.8
§ 2.17	Advice a Practitioner May Give a Client to Minimize the Section 6672 Penalty	2-65

§ 2.17A	Criminal Prosecution	2-66
	[1] Standard for Criminal Prosecution	2-66
	[2] Pyramiding	2-67
§ 2.17B	Reasonable Compensation	2-68
§ 2.18	Forms	2-68.2
	[1] Collateral Agreement	2-68.2
	[2] <i>Form 433-D</i> : Installment Agreement	2-71
	[3] <i>Form 911</i> : Application for Taxpayer Assistance Order (ATAO)	2-72.4
	[4] <i>Form 4181</i> : Questionnaire Relating to Federal Trust Fund Tax Matters of Employees	2-73
	[5] <i>Form 2674</i> : Report of Trust Fund Tax Violations	2-74
	[6] <i>Form 4183</i> : Recommendation re Trust Fund Recovery Penalty Assessment	2-76

CHAPTER 3

Worker Classification: Independent Contractor Versus Employee

§ 3.01	Introduction to Independent Contractor Misclassification	3-3	
	[1] IRS Motivational Factors	3-5	
		[a] The “Tax Gap”	3-5
		[b] Information from Random Audits	3-5
	[2] Substance of the Relationship is Key	3-6	
	[3] Consequences of Misclassifying a Worker	3-7	
	[4] IRS Discovery of a Misclassification	3-9	
		[a] Ongoing Audit in the Examination Division	3-9
		[b] Competitors and Former Workers as Information Sources	3-9
		[c] Surprise Visits from the Collection Division	3-9
		[d] Filing Form SS-8	3-9
§ 3.02	How to determine a Worker’s Status	3-11	
	[1] Service Industries are Often Targets for Worker Classification Scrutiny	3-12	
	[2] Attorneys and CPAs	3-12	
	[3] Twenty Factor Test	3-13	
		[a] Behavioral Control	3-14
		[b] Financial Control	3-15
		[c] Relationship of the Parties	3-15
	[4] Judicial Scrutiny	3-16	
§ 3.03	Establishing Relief Under the Safe Harbor of Section 530	3-18	
	[1] Legislative History of Section 530	3-19	

TABLE OF CONTENTS

xxv

	[2] Safe Harbor’s Filing Requirement	3-19
	[3] Workers in Substantially Similar Positions	3-20
	[4] Published Rulings or Judicial Precedent	3-20
	[5] Prior IRS Examination of the Business	3-21
	[6] Industry Practice	3-22
	[a] Defining “Significant”	3-22
	[b] Defining “Long-Standing”	3-23
	[c] Landlord-Tenant Analogy	3-23
	[7] Other Reasonable Basis	3-24
§ 3.04	Effect of Section 530 on Employees	3-26
§ 3.05	Preliminary Procedures During an Audit Examination of the Worker Classification Issue	3-27
	[1] Scheduling a Meeting with the Agent	3-27
	[2] Settlement Negotiations with the Agent	3-27
	[3] Negotiations with the Appeals Division	3-29
	[4] Worker Reclassification Determination	3-29
§ 3.06	Audit Examination Techniques	3-31
	[1] Four Steps to Agent’s Analysis	3-31
	[a] Categories of Employees	3-31
	[i] Common Law Standard	3-32
	[ii] Corporate Officer	3-32
	[iii] Statutory Employees	3-32.1
	[b] Analysis of Information	3-32.2
	[c] Inquiries to Prepare for in Audit	3-32.2
	[2] Classification Settlement Program	3-32.3
	[a] Qualifications for CSP Eligibility	3-32.3
	[b] Computing CSP Standard Offer	3-32.4
	[c] Prospective Worker Classification	3-32.6
	[d] Exceptions to the Filing Requirements: Form 940/941 Non-filers	3-32.6
	[e] Negotiating a CSP Settlement Offer	3-32.6
	[i] Ensuring Future Compliance is a Consideration	3-32.7
	[ii] Other Factors Affecting Agent’s Ability to Extend CSP Offer	3-32.7
	[f] More than One Offer	3-32.8
	[g] CSP Standard Closing Agreement	3-32.8
	[h] CSP Offer Rejected or not Applicable	3-32.8
§ 3.07	Audit Techniques Used to Determine if a Worker is an Employee or Independent Contractor	3-33
	[1] Does the Business Qualify for Safe Harbor?	3-33
	[2] Fact-Finding Investigation	3-34
	[3] Adapting the Twenty Factor Test to the Case	3-34
§ 3.08	Choosing a Forum for Litigation	3-37
	[1] Preliminary Considerations of Litigation	3-37
	[2] United States Tax Court	3-38
	[a] Field Counsel and Appeals Division Authority over Cases	3-38
	[b] Pleadings	3-39

FEDERAL TAX LITIGATION

	[3]	Expert Testimony	3-40
	[4]	Factual Development is Most Important to Defeating the Government's Case	3-40
	[a]	Taxicab Industry Example	3-41
	[b]	Summary Judgment Possibilities	3-41
	[c]	Examination Before the Court Action	3-42
§ 3.09		Planning to Survive Independent Contractor Scrutiny by the IRS	3-44
	[1]	Written Agreement	3-44
	[2]	Competitor/Industry Information	3-45
	[3]	Form 4667, Examination Changes—Federal Unemployment Tax	3-45
	[4]	Record Keeping	3-45
	[5]	Document Practice Points	3-46
§ 3.10		Source Material	3-48
	[1]	Petition to United States Tax Court	3-48
	[2]	<i>Form 4667</i>	3-50

CHAPTER 4**Jeopardy and Termination Assessments**

§ 4.01		Introduction to Jeopardy and Termination Assessments	4-2
	[1]	Judicial Review	4-3
	[2]	Taxes Subject to Jeopardy and Termination Assessments	4-4
§ 4.02		IRS Investigation Prior to Making Assessment	4-5
	[1]	Areas of Inquiry	4-5
	[2]	Methods for Verification of Income	4-5
	[3]	Review of Books and Records	4-7
	[4]	Accounting Method	4-7
	[5]	Mark-Up	4-8
	[6]	Initial Interview Is Crucial to Setting the Focus of the Audit	4-8
	[7]	Checklists of Issues for Which to Prepare the Client	4-8
	[8]	Agent's Analysis	4-12
§ 4.03		Procedures for Making a Jeopardy or Termination Assessment	4-13
	[1]	Approval Authority	4-13
	[2]	Recommendation for Jeopardy Assessment	4-13
	[3]	Informing the Taxpayer of Assessment and Levying Assets	4-14
	[a]	Jeopardy and Termination Assessment Notices	4-14
	[b]	Jeopardy Levy Notice	4-16
	[c]	Collection Action	4-18
	[4]	Service of the Notice	4-18

TABLE OF CONTENTS

xxvii

§ 4.04	Appeal Process	4-19
	[1] Exhaust Administrative Remedy Requirement	4-19
	[2] Appeals Division	4-19
	[3] Arguments in Support of Abatement	4-20
§ 4.05	Posting Bond to Stay Collection	4-21
§ 4.06	Summary Judicial Review of Assessment	4-22
	[1] Arranging Payment Pending Judicial Review	4-22
	[2] Time Period Governing Judicial Review	4-23
	[3] Standard for Judicial Review Under Code Section 7429 is the “Reasonableness” of the Assessment	4-23
	[a] Defining Reasonableness	4-24
	[b] Admissible Evidence for Purposes of Summary Review Under Code Section 7429	4-25
	[c] Example Illustrating Jeopardy Assessment Prerequisites	4-26
	[d] Suggestions for Refuting Anticipated Government Arguments	4-27
	[4] Second Inquiry of Code Section 7429 Summary Review is the Amount of the Assessment	4-28
	[a] Taxpayer has the Burden of Establishing That the Amount Is Inappropriate	4-28
	[b] Method Used by the IRS in Computing Assessment Amount	4-29
	[5] District Court’s Determination Is Final and Not Open to Appeal	4-30
§ 4.07	Complaint for Review of Jeopardy Assessment	4-32

CHAPTER 5

Refunds, Credits, and Abatements

§ 5.01	Introduction	5-4
§ 5.02	Procedural Requirements of Seeking a Refund or Credit	5-5
	[1] Establishing the Existence of an Overpayment	5-5
	[a] Re-Audit/Audit Reconsideration to Verify Overpayment	5-6
	[b] Quick Refund or Credit Based on Tentative Carryback Adjustment	5-7
	[2] Claim for Refund or Credit of Overpayment	5-8
	[a] Formal Claim for Refund or Credit	5-9
	[b] Informal Claim for Refund or Credit	5-10
	[c] Protective Claims	5-12
	[i] Refund or Credit	5-13
	[ii] Capital Loss Carryovers	5-14

FEDERAL TAX LITIGATION

[d]	Content of Claim for Refund or Credit (Formal, Informal, or Protective)	5-14
	[i] Setting Forth the Grounds Supporting the Claim for Refund or Credit	5-15
	[ii] Computations	5-16
[e]	Amendments to Claim for Refund or Credit	5-17
[3]	Time Period Limitation on Filing Administrative Claim	5-19
	[a] Calculating the Time Period with Weekends	5-19
	[b] Proof of Mailing	5-20
	[c] Bad Debts and Worthless Securities	5-21
	[d] Loss Carrybacks	5-21
	[e] “Black Hole” Overpayments in the Second Circuit	5-22
[4]	Determining When a Return is Considered Filed	5-23
	[a] Agreement to Extend Limitations Period	5-23
	[b] Suspension of Limitations for Filing Claim	5-24
[5]	Limitations on Amount Allowed for the Refund or Credit	5-24
[6]	Determining when Payment of Taxes Occurred	5-24
[7]	IRS Processing of Claim for Refund or Credit	5-25
	[a] Campus Processing	5-26
	[b] Division Review	5-26
[8]	Jurisdictional Requirements of Initiating a Refund Suit	5-27
	[a] Establishing a Waiver of Sovereign Immunity	5-29
	[b] Doctrine of Variance	5-31
	[i] Taxpayer Need Not Raise All Arguments	5-32
	[ii] Omitted Matter Affects the Amount of Recovery	5-33
	[iii] Penalties or Interest Intertwined with Underlying Tax	5-33
	[iv] Amending the Claim for Refund	5-34
	[v] Government Has Waived Its Right to Assert the Variance Doctrine	5-34
[c]	Burden of Proof	5-35
[d]	<i>Form 4340</i> : Certificate of Assessment and Payments	5-36

TABLE OF CONTENTS

xxix

	[e] Service of Process	5-36
	[f] Overpayment Interest	5-37
	[g] Interest Netting	5-37
	[9] Application of Judicially-Created Doctrines	5-37
	[a] Economic Substance Doctrine	5-38
	[b] Federal Circuit and Economic Substance Doctrine	5-39
	[10] The Tucker Act and Tax Refund Suits	5-41
§ 5.03	Abatement Claims	5-42
	[1] Abatement of Taxes and Penalties	5-42
	[2] Requirements for Abatement of Interest Claims.	5-43
	[a] Defining a Ministerial Act	5-43
	[b] Time Period of Abatement	5-44
	[c] Location for Filing Claim for Abatement	5-44
	[d] Appeals Division	5-45
	[i] Reconsideration of Claim Disallowed by Campus	5-45
	[ii] Interest Abatement Coordinator	5-45
	[iii] Method of Resolution of Claim for Abatement	5-45
	[iv] Form 2297, Waiver of Statutory Notification of Claim Disallowance	5-46
	[v] Pending Case in Appeals Division	5-46
	[vi] Letter Sustaining Full Disallowance of Service Center Claim	5-46
	[vii] Regional Director Involvement	5-47
	[e] Tax Court Jurisdiction	5-47
§ 5.04	Doctrines Which May Be Invoked to Effect the Period of Limitations	5-49
	[1] Equitable Recoupment or Setoff	5-49
	[a] Factors Necessary for Equitable Recoupment Doctrine to Apply	5-51
	[b] Recoupment as a Counterclaim	5-51
	[c] Doctrine of Unclean Hands	5-52
	[2] Equitable Estoppel	5-52
	[a] Elements of Estoppel	5-53
	[b] Government Employee’s Actions or Representations	5-54
	[c] Utilizing Accountant as Witness	5-59
	[d] Asserting All Doctrines to Refute Statute of Limitations Bar	5-59
	[e] Court’s Interest Is Not to Undermine Correct Enforcement of the Law	5-60
	[f] Pre-Merger Doctrine Between Law and Equity	5-60
	[3] Equitable Tolling of Statute of Limitations.	5-61

FEDERAL TAX LITIGATION

[4]	Mitigation Provisions, Sections 1311 Through 1314	5-62.1
[a]	Definition of Final Determination	5-62.2
	[i] Four Types of Actions	5-62.2
	[ii] Date of Final Determination	5-62.3
	[iii] Finality of a Court Decision	5-62.4
	[iv] Finality of Closing Agreement	5-62.4
	[v] Finality of Claim for Refund	5-62.4
[b]	Correction of an Error in a Closed Year	5-62.5
[c]	Position of the Successful Party	5-62.5
[d]	Determination According to One of the Seven Circumstances in Section 1312	5-62.7
	[i] Section 1312(1) Double Inclusion of an Item of Income	5-62.7
	[ii] Section 1312(2) Double Allowance of a Deduction or Credit	5-62.8
	[iii] Section 1312(3) Double Exclusion of an Item of Gross Income	5-62.8
	[iv] Section 1312(4) Double Disallowance of a Deduction or Credit	5-62.9
	[v] Section 1312(5) Trusts, Estates, Legatees, Beneficiaries, and Heirs	5-62.10
	[vi] Section 1312(6) Related Corporations	5-62.10
	[vii] Section 1312(7) Basis Problems	5-62.11
[e]	Related Taxpayer	5-62.11
[f]	Determining the Amount of Adjustment After Mitigation Is Established	5-62.12
[g]	Procedure to Follow for Obtaining Adjustment	5-62.13
§ 5.05	Procedural Requirements for the IRS to Recover an Erroneous Refund	5-62.14
	[1] Statute of Limitations for Bringing Suit	5-62.14
	[2] Recovery of Interest	5-62.14
	[3] Section 6676 Penalty	5-62.15
	[4] Burden of Proof	5-62.15
	[5] Deficiency Procedures in Lieu of Erroneous Refund Suit	5-62.16
§ 5.06	Complaint for Tax Refund	5-63
§ 5.07	Forms	5-65
	[1] Instructions for Form 843	5-65
	[2] <i>Form 843: Claim for Refund and Request for Abatement.</i>	5-67

CHAPTER 6

Wrongful Levy

§ 6.01	Introduction	6-2
§ 6.02	Third Party must Initiate Challenge Within Two Years of Date of Levy	6-5
	[1] Two Year Period Applicable After December 22, 2017	6-5
	[2] Pre-December 22, 2017, Extension Period	6-6
§ 6.03	Legal Standards Governing Adjudication of Wrongful Levy Action.	6-8
	[1] Burden of Proof	6-8
	[2] Interpleader	6-9
§ 6.04	Nominee and Alter Ego Theories.	6-10
	[1] Nominee Situations.	6-10
	[2] Alter Ego Situations	6-10.2
	[3] Fraudulent Conveyance Situation.	6-12
§ 6.05	Transferee Theory of Liability	6-16
	[1] Elements of Transferee Liability	6-16
	[2] Proving Transferee Liability at Law	6-17
	[a] Asserting Transferee Liability for Federal Estate Tax Liability	6-18
	[b] Asserting Transferee Liability Under State Law	6-18
	[c] Asserting Transferee Liability Under Contract.	6-18.1
	[d] Asserting Transferee Liability Based on Federal Statutory Law	6-19
	[3] Asserting Transferee Liability at Equity	6-20
	[a] Differences Between Elements of Proof for Action at Law Versus at Equity.	6-20.1
	[b] Additional Equity Remedy: Trust Fund Doctrine	6-21
	[4] Definition of Transferee Under the Internal Revenue Code.	6-21
	[5] Transferee Acting as Fiduciary Can Be Liable for a Personal Penalty	6-22
	[6] Transferee as Limited Liability Company Member	6-22
	[7] Statute of Limitation for Transferee Liability.	6-23
	[a] Initial Transfer	6-23
	[b] Subsequent Transfers and Transferees.	6-23
	[c] Transferor’s Actions Can Affect the Expiration of the Statute of Limitations for Assessment.	6-24

FEDERAL TAX LITIGATION

	[d] State Law's Assessment Period May also Affect the Expiration of the Statute of Limitations for Assessment	6-25
	[e] Death of Transferor or Dissolution of Transferor	6-25
	[f] Joint Tax Return Filing Affects Statute of Limitation for Transferee Spouse	6-25
	[g] Tolling the Statute of Limitation	6-25
	[h] Statute of Limitations for Actions Under Trust Fund Doctrine	6-26
	[8] Procedures for Litigating the Transferee Liability	6-26
§ 6.06	Defenses for Refuting an Assessment Based on Alter Ego/Nominee and Fraudulent Conveyance Theories	6-26.1
	[1] Exercise of Dominion and/or Control	6-26.1
	[2] No Record Assets	6-27
	[3] Developing Evidence	6-27
	[4] Relief Available	6-29
§ 6.07	Third Parties and Section 1346(a)(1) Versus Section 7426	6-30
	[1] The Decision of <i>United States v. Williams</i>	6-30
	[2] Wrongful Levy Exclusivity After <i>Williams</i>	6-33
	[a] Lien Versus Levy Distinction	6-33
	[b] Non-Voluntary Payment of Tax Liability	6-34
	[3] Substance Versus Form of IRS Collection Activity	6-34
	[4] Post- <i>Williams</i> Statutory Relief	6-35
§ 6.08	Quiet Title, Wrongful Levy, and Real Property	6-36

CHAPTER 7**The Reasonable Cause Defense**

§ 7.01	The Reasonable Cause Defense	7-2
	[1] Penalties	7-4
	[a] Negligence Penalty	7-4
	[i] Examples of Conduct That Can Cause Penalty to Be Assessed	7-4
	[ii] Professional Advice, Experts	7-6
	[iii] Bookkeeper's Negligence	7-8
	[b] Frivolous Return Penalty	7-8
	[c] Accuracy-Related Penalty	7-8
	[i] Applicability	7-11
	[ii] Penalty Amount	7-12

TABLE OF CONTENTS

xxxiii

	[d] Substantial Understatement Penalty	7-13
	[e] Civil Fraud Penalty	7-15
	[f] Fraudulent Failure to File Penalty	7-16
	[g] Bad Check Penalty	7-16
	[h] Estimated Tax Penalty	7-16
	[i] Failure to Make Deposit of Taxes	7-17
	[j] Failure to File a Timely Return or Pay Tax Due	7-17
	[k] Failure to File Information Returns	7-18
	[l] Failure to Report Tips	7-27
	[m] Failure to Honor Levy	7-28
	[2] Employment Taxes	7-28
§ 7.02	Administrative Procedure and Assessment	7-29
	[1] Establishing Reasonable Cause at the Revenue Agent/Audit Level	7-31
	[2] Practical Planning for Escaping Assertion of Certain Penalties	7-32
	[a] Techniques	7-32
	[b] Substantial Understatement Penalty	7-33
	[i] Non-Corporate Taxpayer	7-33
	[ii] Corporate Taxpayer	7-34
	[3] Alternatives for Disputing Penalty Recommendation	7-34
	[4] Deductibility of Civil Tax Penalties	7-34
§ 7.03	Establishing Reasonable Cause in Litigation	7-36
	[1] Supreme Court Precedent	7-36
	[2] Being Too Busy Does Not Establish Reasonable Cause	7-37
	[3] Financial Instability May Establish Reasonable Cause	7-39
	[4] Affirmative Action by Taxpayer to Comply with the Law Must Be Evidenced	7-40
	[5] Burden of Proof	7-40
	[6] Abatement	7-41
	[a] Erroneous Written Advice of IRS	7-41
	[b] First-Time Penalty Abatement	7-41
	[7] Disclosure Statement	7-42
§ 7.04	Developing the Case	7-43
	[1] Checklists of Inquiries Concerning the Delinquencies	7-43
	[2] Erroneous Calculation of the Assessment	7-45
	[3] Common Considerations in Reviewing a Client's Case	7-46
§ 7.05	Sample Complaint Requesting Recovery of Employment Tax Penalties	7-47

TABLE OF CONTENTS

Volume 2

CHAPTER 8

The Innocent Spouse Defense

§ 8.01	Innocent Spouse Defense and Duress and Forgery Defenses	8-2
	[1] Duress Defense	8-3
	[2] How to Raise a Duress Defense	8-4
	[3] How to Raise a Forgery Defense	8-6
	[4] Innocent Spouse Relief	8-7
	[5] Code Section 6015(b) Relief	8-7
	[6] Code Section 6015(c) Relief	8-8
	[7] Code Section 6015(f) Relief	8-9
	[8] Requirements for Streamlined Innocent Spouse Determination	8-11
	[9] Definition of Abuse	8-12
	[10] Factors for Determining Whether to Grant In-nocent Spouse Relief	8-13
§ 8.02	Administrative Procedures	8-15
	[1] Filing Deadline	8-15
	[2] Nonrequesting Spouse’s Right to Appeal	8-15
	[3] Collection Due Process Matters	8-15
§ 8.03	Theories of Innocent Spouse Relief	8-17
	[1] Innocent Spouse Relief—Code Section 5015(b)	8-17
	[a] How to Figure the Understatement of Tax?	8-18
	[b] Erroneous Items	8-19
	[c] Knowledge and Partial Relief in Proportion to Knowledge	8-19
	[d] Indications of Unfairness	8-20
	[e] Significant Benefit Received by the Spouse from the Wrongdoing Spouse	8-20
	[f] Exception for Spousal Abuse or Domestic Violence	8-21

FEDERAL TAX LITIGATION

	[2]	Separation of Liability	8-21
		[a] Consequences of Tax Avoidance Conduct	8-22
		[b] Effective Date of Election and Planning	8-22
		[c] Practical Example of Application of Separation of Liability	8-23
		[d] Calculation of Separation of Liability	8-23
		[i] Community Property Laws	8-24
		[ii] Worksheet for Figuring Innocent Spouse Relief Tax	8-25
	[3]	Equitable Relief	8-25
		[a] Requirements of Equitable Relief	8-26
		[b] Application of Equitable Relief	8-27
		[c] Circumstances Under Which Relief Will Ordinarily Be Granted	8-28
		[d] Factors for Determining Whether Equitable Relief Will Be Granted	8-29
		[e] Streamlined Procedures Under Rev. Proc. 2013-34, Section 4.02	8-30
		[f] Legislative History of Equitable Relief	8-31
		[g] Summary of Requirements for the Three Alternative Forms of Innocent Spouse Relief	8-31
§ 8.04		Alternatives to Litigation	8-34
		[1] CDP Hearing	8-34
		[2] Economic Hardship for Release of Levy	8-35
§ 8.05		Litigation	8-36
		[1] Federal District Court and Federal Court of Claims	8-36
		[2] Tax Court Review	8-36
		[a] Acquiring Jurisdiction of the Tax Court	8-36
		[b] Authority of Tax Court Over Collection Activities	8-37
		[c] Notice Requirements to Former Spouse	8-37
	[3]	Bankruptcy Court	8-38

CHAPTER 9**Collection Activities Via the Tools of
Liens and Levies**

§ 9.01		Introduction	9-5
§ 9.02		Creation of the Federal Tax Lien	9-6
		[1] An Overview of the Federal Tax Lien	9-6
		[2] What Constitutes a Proper Assessment?	9-7
		[3] What Constitutes a Proper Notice and Demand for Payment?	9-8

TABLE OF CONTENTS

- [4] Taxpayer’s Failure to Pay Liability 9-9
- [5] Filing of the Notice of Federal Tax Lien 9-9
- [6] Scope of the Federal Tax Lien. 9-13
 - [a] The Government Stands in the Taxpayer’s Shoes. 9-13
 - [b] The Federal Tax Lien Attaches to After-Acquired Property 9-13
 - [c] State Exemptions and the Federal Tax Lien. 9-14
 - [i] Joint Tenancy 9-15
 - [ii] Tenancy by the Entirety 9-15
 - [iii] Marital Property in Community Property State 9-18
 - [iv] Marital Property in Homestead Exemption State 9-18.1
 - [v] Registered Domestic Partners in Community Property States 9-18.1
 - [vi] Trusts 9-18.2
- § 9.03 Priority Issues 9-18.4
 - [1] Two Step Inquiry 9-18.4
 - [2] Federal Tax Lien Act of 1966 9-19
 - [3] State Law Considerations 9-20
 - [4] Federal Law. 9-21
 - [5] Superpriorities and Instances Where Federal Tax Lien May Be Defeated. 9-21
 - [a] Statutory Prescribed Notice Must Be Given 9-22
 - [i] Determining Priority of Interest in Securities. 9-23
 - [ii] Determining Priority of a “Purchaser” 9-24
 - [iii] Determining Priority of a Judgment Lien Creditor 9-25
 - [iv] Determining Priority of a Security Interest 9-28
 - [v] Same-Sex Relationships 9-31
 - [vi] Mechanic’s Lienor 9-31
 - [vii] Miscellaneous Interests Which May Be Entitled to Priority over Federal Tax Lien 9-32
 - [viii] Miscellaneous Interests Which Are Not Entitled to Priority over Federal Tax Lien 9-32.1
- § 9.04 Certificate of Subordination of Federal Tax Lien 9-33
 - [1] Prerequisites for Certificate of Subordination. 9-33
 - [2] Obtaining Certificate of Discharge or Subordination. 9-33
 - [3] Investigation of Application for Discharge or Subordination. 9-34

FEDERAL TAX LITIGATION

	[4]	Issuing the Certificate of Discharge or Subordination	9-36
§ 9.05		Revocation of Certificates of Release of Federal Tax Lien	9-37
§ 9.06		Certificate of Nonattachment of Federal Tax Lien . . .	9-39
§ 9.07		Withdrawal of the Filed Notice of Federal Tax Lien . . .	9-40
	[1]	Content of the Request for a Withdrawal	9-40
	[2]	Instances Where a Request for Withdrawal Should Be Submitted	9-41
	[3]	Notice of Lien Withdrawal Will Facilitate Collection of the Tax Liability	9-42
	[4]	Withdrawal Based on the Best Interests of the Government and Taxpayer	9-42
	[5]	Installment Agreements and the Notice of Withdrawal	9-43
	[6]	Withdrawal May Be Issued Without Taxpayer Intervention	9-43
	[7]	Credit Report Concerns	9-43
§ 9.08		The Special Liens for Estate and Gift Taxes	9-45
	[1]	Special Estate Tax Lien	9-45
		[a] Property Subject to the Special Estate Tax Lien	9-45
		[b] Divestment of Property from the Special Estate Tax Lien	9-46
		[c] Discharge of Property from the Estate Tax Lien	9-47
		[d] Superpriorities and the Special Estate Tax Lien	9-48
	[2]	Special Gift Tax Lien	9-48
§ 9.09		The Levy	9-49
	[1]	IRS Procedures Prior to Issuing Notice of Levy	9-49
		[a] Procedures for Effective Service of the Notice of Levy	9-50
		[b] Notice of Levy Requirements and Pre-Levy Review	9-51
	[2]	Duty and Consequences of the IRS Levy	9-52
	[3]	Two Defenses to Failure to Honor Levy	9-53
	[4]	The Nature and Extent of a Notice of Levy	9-54
		[a] The Effect of a Notice of Levy	9-55
		[b] Attaching the Levy	9-55
		[c] Levy Cannot Be Made During Suspension of Statute of Limitations	9-56
		[d] Levy May Not Be Made When Determined Uneconomical	9-56
		[e] Levy May Not Be Made on Date of Summons Appearance Date	9-56
	[5]	Property Exempt from Levy	9-56
		[a] List of Property Exempt by Statute	9-57

TABLE OF CONTENTS

vii

	[b] Circumstances Allowing Levy on Exempt Property	9-58
[6]	Property Subject to a Levy.	9-58
	[a] Bank Accounts	9-59
	[b] Wages and Salary	9-60
	[c] Retirement Accounts	9-61
	[d] Insurance Policies	9-62
	[e] Vehicles	9-62
	[f] Social Security	9-62
§ 9.10	Seizure and Sale of Property Subject to Federal Tax Lien or Levy.	9-63
	[1] Notice of Seizure	9-63
	[2] Verifying Clear Title and Minimum Bid Price.	9-63
	[3] Notice of Sale	9-64
	[4] Sale Conducted Within Ten to Forty Days of Notice of Sale	9-65
	[5] Sale of Property Co-Owned with a Delinquent Taxpayer.	9-66
	[6] Appealing Seizure of Property	9-66
	[7] Redemption	9-66
	[a] Time Period for Redemption	9-67
	[b] Certificate of Sale, Deed of Real Property After Sale	9-67
	[c] IRS Records of Seizures and Sales	9-67
§ 9.11	The Administrative Appeals Process	9-68
	[1] Overview of the Administrative Appeals Process	9-68
	[2] Collection Appeals Program.	9-69
	[a] Requesting an Appeal Through CAP	9-69
	[b] Jurisdiction of CAP	9-69
	[3] Collection Due Process Hearing.	9-70
	[a] Deadline for Requesting a Collection Due Process Hearing	9-70
	[b] Requesting a Collection Due Process Hearing	9-71
	[c] Hearing Issues.	9-71
	[d] Judicial Review of Determination	9-72
	[e] Suspension of Collection and Statute of Limitation	9-72
	[f] Examples of Taxpayer Situations Where Tax Court Rejected IRS Action	9-72.1
	[i] Business Taxpayer’s Financial Hardship Beyond the Taxpayer’s Control	9-72.1
	[g] Simultaneous CAP and CDP Requests	9-72.2
§ 9.12	Judicial Proceedings of Tax Liens or Levies.	9-74
	[1] Reducing Assessments to Judgment and Government Foreclosure Action	9-74

FEDERAL TAX LITIGATION

	[a] Reduce Assessments to Judgment	9-74
	[b] Judicial Foreclosure	9-74
[2]	Non-government Lienholder Seeking Foreclosure and Discharge of Property from Lien	9-74.1
	[a] Government's Right to Redemption of Property	9-74.1
	[b] Procedures for Sale of Property	9-74.2
	[c] Request to Release Right to Redeem Property	9-74.2
[3]	Interpleader	9-74.2
[4]	Declaratory Judgment	9-75
[5]	Quiet Title	9-76
	[a] Non-Liable Third Party Lienor as Plaintiff	9-76
	[b] Delinquent Taxpayer as Plaintiff	9-77
[6]	Injunctions	9-79
[7]	Writ of Entry	9-81
[8]	United States' Right of Intervention	9-81
§ 9.13	Challenging the Validity of a Federal Tax Lien	9-82
	[1] Checklist of Issues on IRS Procedures for Issuing a Federal Tax Lien	9-82
	[2] Record Retention	9-82

CHAPTER 10**Tax Return Preparers and
Tax Shelter Promoters**

§ 10.01	Introduction	10-4
	[1] Ministerial Violations	10-5
	[a] Preparer Tax Identification Number	10-5
	[b] Best Practices	10-5
	[2] Uncertain Tax Positions	10-6
	[3] Tax Preparer Due Diligence Penalty	10-7
§ 10.02	Overview of Preparer Penalties and Standards of Conduct	10-9
	[1] Who May Qualify as a Return Preparer Under the Internal Revenue Code?	10-9
	[a] Exclusions	10-11
	[b] Four Categories of Potential Liability under Section 6694	10-11
	[2] Disclosure Rules and Standards	10-12
	[3] Preparer Penalty Standards Under the Emergency Economic Stabilization Act of 2008	10-13
	[4] Negligence	10-16

TABLE OF CONTENTS

ix

	[5] Willful Conduct	10-16.1
	[6] Fraud	10-16.2
§ 10.03	Assessment and Appeal Procedures of Preparer Penalties	10-16.4
	[1] Assessment and Appeal Rights	10-16.4
	[a] Preparer Penalty Assessment Procedures	10-16.4
	[b] Appeal Procedures Concerning Preparer Penalties	10-16.4
	[2] IRS Development of the Section 6694 Penalty Examination and Assessment	10-16.6
	[3] Evaluation of Whether Substantial Authority Penalty Applies	10-16.7
	[4] Examples of the Section 6694(a) Penalty Application	10-17
	[5] Reckless or Intentional Disregard	10-20
	[6] Understatement of Liability	10-20
	[a] Degree of Verification of Client Information	10-21
	[b] Abatement of Preparer Penalty	10-22
	[7] Unrealistic Position	10-22
	[a] One-in-Three Rule	10-22
	[b] Correlation to Substantial Authority Test	10-22
	[8] Examples of the Section 6694(b) Penalty Application	10-23
	[9] Circumstances Where Preparer Is Subject to Multiple Penalties	10-24
	[10] Statute of Limitations	10-24
§ 10.04	Overview of the Return Preparer Penalty Program	10-26
	[1] Program Structure	10-26
	[2] Penalty Screening Committee	10-27
	[3] Role of the Return Preparer Coordinator	10-27
	[4] Role of Revenue Agent or Auditor	10-27
§ 10.05	Program Action Cases	10-29
	[1] Return Preparer Coordinator's Recordkeeping	10-29
	[2] Return Sampling	10-29
	[3] Interviews with the Clients of the Subject Tax Preparer	10-30
	[4] Accuracy Related Penalty and Reasonable Cause and Good Faith Defense	10-31
§ 10.06	Preparer Defenses	10-32
	[1] Adequate Disclosure Defense	10-32
	[a] Signing Preparers	10-32
	[b] Nonsigning Preparers	10-34
	[i] Advice to Taxpayer and Disclosure Regarding Realistic Possibility Standard	10-34

FEDERAL TAX LITIGATION

	[ii]	Advice to Another Preparer and Disclosure Regarding Realistic Possibility Standard.	10-35
	[iii]	Advice to Taxpayer and Disclosure Regarding Position Contrary to Rule or Regulation	10-35
	[iv]	Advice to Another Preparer and Disclosure Regarding Position Contrary to Rule or Regulation	10-36
	[2]	Substantial Authority Defense	10-36
	[3]	Reasonable Cause/Good Faith Defense	10-36
	[4]	Reduction of Amount Assessed Where Both Penalties Under Sections 6694(a) and 6694(b) Apply	10-38
§ 10.07		Electronic Filing Program.	10-39
	[1]	What is the Electronic Program?	10-40
	[2]	Obligations of an Electronic Filer Participant.	10-40
	[3]	Penalties for Preparer's Noncompliance with the Electronic Filing Program Obligations	10-41
	[a]	Disclosure or Use of Information	10-42
	[b]	Preparer Penalties Against Electronic Filers Under Sections 6694, 6695, and 6713.	10-43
	[c]	Penalty in Connection with Refund Anticipation Loans.	10-43
	[4]	IRS Monitoring of Electronic Filers	10-44
	[a]	Electronic Filer Activities Monitored by the IRS	10-44
	[b]	Procedures for Suspending Electronic Filer from the Electronic Filing Program	10-45
	[c]	Administrative Appeals of Suspension, Revocation, or Denial of Participation in Electronic Filing Program.	10-45
	[5]	Director of Practice.	10-45
§ 10.08		Litigation Involving the Preparer Penalties	10-47
	[1]	Injunction.	10-47
	[2]	Refund Suits and Burden of Proof.	10-49
	[3]	Disgorgement	10-50
§ 10.09		Practical Methods for Developing a Defense in a Preparer Case	10-51
	[1]	Factual Development	10-51
	[2]	Checklist of Criteria for Imposing the Section 6694(a) Penalty.	10-52
	[3]	Summary Checklist of Criteria for Imposing the Section 6694(b) Penalty.	10-52
§ 10.10		Responsibilities and Penalties of Tax Shelter Promoters	10-54

TABLE OF CONTENTS

xi

[1]	Registration Responsibilities, In General	10-55
	[a] Registration Procedures	10-55
	[b] Definition of Tax Shelter	10-56
	[i] Tax Shelter, Generally	10-57
	[ii] Section 6112, Potentially Abusive Tax Shelter	10-58
	[iii] Summons Enforcement Developments	10-59
	[iv] Special Requirements for Confidential Corporate Tax Shelter	10-60
	[v] Examples of Criminal Investigation	10-60
	[c] Significant Tax Avoidance Purpose	10-63
	[d] Ordinary Course of Business Exception	10-63
	[e] Reliance on Counsel	10-64
[2]	List Retention Requirements of Promoters of Potentially Abusive Tax Shelters	10-64
	[a] List Retention Requirements	10-65
	[b] Organizer, Seller, Promoters	10-65
	[c] Content of List	10-65
[3]	Disclosures Requirements	10-66
	[a] Categories of Reportable Transactions	10-67
	[b] Disclosure Procedures	10-67
	[i] Bad Faith	10-67
	[ii] Penalties for Failing to Disclose a Transaction	10-67
	[iii] Determining the Sufficiency of a Disclosure	10-69
	[iv] Statute of Limitations for Assessments Relating to Listed Transactions	10-70
	[c] Protections Afforded to Privileged Communications	10-70
[4]	Promoters Have Affirmative Duty Not to Provide False Information	10-71
[5]	Fees	10-71
[6]	Automated Process for Certain Penalties in Listed Transaction Situations	10-71
§ 10.11	Penalties for Failing to Comply with Code Requirements	10-73
	[1] Penalty for Failure to Comply with Registration Process	10-73
	[a] Responsibility for the Penalty	10-73
	[b] Others Who May Be Assessed	10-73
	[c] Knowledge of Proper Registration	10-74
	[2] Calculation of the Penalty	10-74

FEDERAL TAX LITIGATION

	[3] Protective Registration	10-74
§ 10.12	Use of Lists by the IRS	10-76
	[1] General Rule: Seven Year Retention Period	10-76
	[2] How the IRS Uses the Lists	10-76
	[3] Consequences of Noncompliance with List Retention Requirements	10-76
§ 10.13	Lawyer As Witness	10-78
§ 10.14	Unreasonable Conduct by the IRS	10-79
§ 10.15	IRS Tax Shelter Controversies and Settlement Offers	10-80
	[1] Syndicated Conservation Easements Transactions	10-80
	[2] Micro-Captive Insurance Companies	10-83

CHAPTER 11**Recovering Monetary Damages from
the Federal Government**

§ 11.01	Introduction	11-2
§ 11.02	Disclosure of Tax Return Information	11-3
	[1] Section 6103	11-4
	[2] Statutory Exceptions to Confidentiality Which Permit Disclosure of Tax Return Information	11-6
	[3] Disclosure Made in Good Faith Is Not Actionable	11-9
§ 11.03	Actual Damages	11-10
	[1] Overview	11-10
	[2] Establishing a Causal Relationship Between the Unauthorized Disclosure and the Actual Damage	11-10
	[3] Establishing Proof of Causation	11-11
	[4] Economic Loss as Element of Actual Damages	11-12
	[5] Emotional Distress as an Element of Actual Damages	11-14
	[a] Circumstances Where Taxpayer Is Awarded Damages for Emotional Distress	11-15
	[b] Circumstances Where Taxpayer Has Been Denied Damages for Emotional Distress	11-16
	[6] Physical Harm as an Element of Actual Damages	11-17

TABLE OF CONTENTS

xiii

§ 11.04	Punitive Damages	11-18
	[1] In General	11-18
	[2] View that Punitive Damages Are Recoverable Only When Actual Damages Are Proven . . .	11-18
	[3] View that Punitive Damages Award Does Not Require a Showing of Actual Damages	11-19
	[4] Defining What Constitutes a Willful Disclosure	11-20
	[5] Defining What Constitutes Gross Negligence . . .	11-20
	[6] Establishing Willful Disclosure and Gross Negligence for Punitive Damage Award . . .	11-21
§ 11.05	Recovery Under the Privacy Act of 1974	11-27
§ 11.06	Government’s Right of Set-Off	11-28
§ 11.06A	Whistleblower Awards	11-28.1
	[1] IRS Processing of Whistleblower Claim	11-28.1
	[2] Amounts of Awards and “Collected Proceeds . . .	11-28.2
	[3] Anonymity	11-28.4
§ 11.07	Recovery for Damages for Failure to Timely Release a Federal Tax Lien	11-29
§ 11.08	Recovery for Damages for Unauthorized Collection Actions	11-31
§ 11.09	United States Must Be Named as a Defendant	11-34
§ 11.10	Constitutional Torts	11-35
	[1] Qualified Immunity Defense of Government Employees for Constitutional Violations . . .	11-35
	[2] No Relief When Other Remedies Are Available	11-37
	[3] No Relief for Torts in the Assessment and Collection Context	11-37
	[4] Factual Circumstances Where Relief Was Afforded for a Constitutional Tort	11-37
§ 11.11	Recovery Pursuant to the Federal Tort Claims Act (FTCA)	11-39
§ 11.12	No Right to Jury Trial in Actions Brought Under Sections 7432 and 7433	11-41

CHAPTER 12

Recovering Administrative and Litigation Expenses from the Government

§ 12.01	Introduction	12-2
§ 12.02	Pre-Suit Review of Award for Administrative Costs . . .	12-4
	[1] Recovery of Costs Incurred	12-4
	[2] Jurisdiction	12-5
	[3] Procedures for Recovering Administrative Costs	12-5

FEDERAL TAX LITIGATION

[4]	Filing Deadline for Recovery of Administrative Costs	12-7
[5]	Time Period During Which Costs Are Recoverable	12-8
	[a] Qualified Offer	12-9
	[b] Qualified Offer Period	12-9
[6]	Appeals Division Determination	12-10
[7]	Settlement of Claims for Attorneys' Fees	12-12
	[a] IRS Processing of Terms of Agreement	12-12
	[b] Example of Agreement on Administrative Cost	12-13
	[c] Computation of the Litigation and Administrative Cost Award	12-14
	[i] Submission of Required Documentation and Information	12-14
	[ii] Non-Attorney Fees	12-16
§ 12.03	Appealing the IRS' Disallowance or Partial Disallowance of an Award	12-17
	[1] Procedures for Appeal	12-17
	[2] Section 6673	12-17
§ 12.04	Post-Litigation: Seeking Reasonable Litigation and Administrative Costs and Fees	12-19
	[1] Section 7430, in General	12-19
	[2] Defining Reasonable Administrative Costs	12-19
	[3] Defining Reasonable Litigation Costs	12-19
	[4] Qualifications for an Award	12-20
	[5] Examples	12-22
	[a] What Constitutes a "Substantially Justified" Position by the Government?	12-22
	[b] What Does Not Constitute a "Substantially Justified" Position by the Government?	12-23
[6]	Who Can Qualify as a Prevailing "Party" for Purposes of Recovering Litigation Expenses?	12-24
	[a] Estate as a Party	12-25
	[b] Debtor-in-Possession as a Party	12-25
	[c] Creditor of Delinquent or Challenging Taxpayer Is Not a Party	12-26
[7]	Exhausting Administrative Remedies	12-26.1
	[a] Participating in the Appeals Division Conference	12-26.2
	[b] Statement from IRS that Pursuit of Administrative Remedies Unnecessary	12-28
[8]	Unreasonably Protracting Proceedings	12-31

TABLE OF CONTENTS

xv

[9]	Determining Whether a Party is a Prevailing Party	12-32
[10]	Court Discretion in Award	12-38
[11]	Evidence Supporting Reasonable Litigation Fees Award	12-38
[12]	Burden of Proof	12-39
[13]	Suits Where Recovery of Reasonable Litigation Fees Should Be Sought	12-39
[14]	Determining Whether the United States Can Offset a Section 7430 Award	12-41
[15]	Recovering Attorneys' Fees in Bankruptcy Court	12-42
§ 12.05	Sanctions	12-42.1
[1]	Government Award of Fees as Sanction Against Taxpayer	12-42.1
[2]	Taxpayer Awarded Sanctions Against Government	12-43
[3]	Fraud on the Court	12-44
§ 12.06	Practical Advice	12-45
§ 12.07	Checklists	12-47
[1]	Evidentiary Checklist for Recovery of Fees in Administrative Proceeding	12-47
[2]	Evidentiary Checklist for Recovery of Fees in Civil Tax Litigation	12-47

CHAPTER 13

Criminal Tax Investigations

§ 13.01	Introduction	13-10
[1]	CI IRS Criminal Investigation Structure	13-11
[2]	Voluntary Disclosure Practice	13-12
§ 13.02	Example of a Typical CID Investigation	13-15
[1]	Phase One	13-15
[2]	Phase Two	13-16
[3]	Phase Three	13-17
[4]	Phase Four	13-18
[a]	Specific Item or Direct Method	13-18
[b]	Bank Deposit Method	13-18
[c]	Net Worth and Expenditures Method	13-19
[d]	Taxpayer Should Be Given an Opportunity to Provide Needed Information	13-20
[5]	Phase Five	13-21
§ 13.03	The Structure and Purpose of CI	13-22
[1]	General Duties	13-22
[2]	Marijuana Businesses	13-24
[3]	Offenses Investigated by CI	13-26
[a]	Fraud	13-26

FEDERAL TAX LITIGATION

	[b] Tax Evasion	13-27
	[i] Defining Evasion of Tax	13-28
	[ii] Proving Existence of a Tax Deficiency	13-29
	[iii] <i>Boulware v. United States</i>	13-31
	[iv] Avoidance of Tax Versus Evasion of Tax	13-33
	[v] 2018 Marinello case: Conviction for Obstruction or Impeding Tax Administration Requires Knowledge Nexus	13-34
	[c] Filing False Income Tax Return	13-35
	[d] Willful Failure to File Return, Supply Information, or Pay Taxes	13-36
	[e] Failure to Collect or Pay Over Taxes	13-37
	[f] Fraud and False Statements	13-38
	[g] Offers in Compromise	13-39
	[i] Alleged Fraudulent Offers	13-39
	[ii] Joint Investigations	13-40
	[iii] Offers in Pending Criminal Investigations	13-40
	[iv] Offer Post-Conviction	13-40
	[h] Bank Secrecy Act Violations	13-41
	[i] IRS Role	13-41
	[ii] Treasury Summons	13-41
	[4] Triggers for Criminal Investigation	13-41
§ 13.04	Civil Audit/Assessment Pending Criminal Investigations	13-44
	[1] Due Process Concerns	13-44
	[2] Civil Versus Criminal Violations	13-45
	[3] Civil Penalties that May Arise During Criminal Investigation	13-46
	[4] Parallel Civil and Criminal Investigations	13-49
§ 13.05	Taxpayer Information that May Be Disclosed by Special Agent in Conducting Investigation	13-51
§ 13.06	Guidelines Special Agent Must Follow in Conducting Investigation	13-53
§ 13.07	Fifth Amendment Privilege	13-55
§ 13.08	Miranda Warning	13-58
§ 13.09	Fourth Amendment	13-60
	[1] Probable Cause	13-61
	[2] Requirement of Particularity	13-61
	[3] Examination of the Scope and Execution Method	13-62
	[a] Mandated Recordings	13-62
	[b] Duration of Recording	13-62
	[4] Notice, Inventory Return	13-63
	[5] Suppression and Standing	13-63
	[6] Applicability of “Good Faith” Exception	13-64

TABLE OF CONTENTS

xvii

§ 13.09A Privileged Communications/Documentation	13-65
[1] Attorney/Client Privilege	13-65
[2] Accountant/Client Privilege	13-66
[a] Section 7525 of the Internal Revenue Code	13-66
[b] Extension of Attorney/Client Privilege to Accountants	13-67
[c] Accountant/Client Privilege Recognized by State Law	13-70
[3] Attorney Work Product	13-70
[4] Corporate Privileges	13-71
[5] Filter Team or Taint Team	13-71
§ 13.10 Information Gathering Tools Used by Special Agent	13-73
[1] Summons Power, Generally	13-73
[2] Third Party Record-Keeper Summons	13-74
[a] Motion to Quash Summons	13-75
[i] Standing	13-75
[ii] Grounds for Seeking to Quash Summons	13-75
[3] John Doe Summons	13-80
[a] Use of John Doe Summons for Offshore Accounts	13-80
[i] The Court's Authority to Compel a United States Bank to Produce Offshore Records	13-82
[ii] John Doe Summons for Records in 2000 Involving Traditional Caribbean Tax Havens	13-83
[iii] John Doe Summons for Records in 2002 Involving more than Thirty Countries	13-83
[b] Reporting Requirements for Use of Offshore Account	13-84
[c] Offshore Voluntary Compliance Initiative	13-86
[d] Collection from Offshore Accounts	13-87
[i] The Government Must Establish Jurisdiction over the Taxpayer	13-87
[ii] Methods for Collecting the Tax Debt from Offshore Assets or Taxpayer Overseas	13-88
[iii] Defenses to Collection of Offshore Assets	13-90
[e] Use of John Doe Summons for Gift or Estate Tax	13-91
[f] Use of John Doe Summons Involving Virtual Currency	13-92
[4] Government Enforcement of Summons	13-93

FEDERAL TAX LITIGATION

	[a] Elements the Government Must Prove to Establish Enforcement Is Proper	13-94
	[b] Taxpayer's Burden After Government Establishes <i>Powell</i> Requirements	13-94
[5]	Compulsion Order	13-96
	[a] Procedures for Obtaining a Compulsion Order During Investigation	13-96
	[b] Procedures for When a Witness Reappears in Response to an Adjourned Summons	13-98
	[c] Summons Enforcement Procedures Prior to Requesting a Compulsion Order	13-99
	[d] Perjury or False Statements Made by Witness	13-99
	[e] Compelled Testimony Should Be Safeguarded by the IRS	13-99
	[f] Prosecution of a Witness Subject to a Compulsion Order	13-100
	[g] Use of Information Obtained Through Compulsion in Civil Matters	13-100
	[h] Denial of Compulsion Order Request by Justice Department	13-100
[6]	Immunity	13-101
	[a] Use and Derivative Immunity	13-102
	[b] Seeking Immunity for a Witness' Act of Production	13-102
[7]	Search Warrants	13-105
	[a] Excluding Evidence Obtained from a Search and Seizure	13-106
	[b] Required Evidence	13-107
	[i] Probable Cause	13-107
	[ii] The Warrant Must Describe with Particularity Items to Be Seized and the Criminal Conduct Alleged	13-108
	[iii] Reckless or Deliberate Material Misrepresentations	13-109
	[iv] Improper Execution of the Search Warrant	13-109
	[c] Contempt	13-109
[8]	Electronic Surveillance and Interception	13-110
	[a] Consensual Monitoring	13-111
	[b] Developing Arguments in Defense of Taxpayers Subject to Federal Wiretaps	13-111
[9]	Electronic Tracking Devices (Beepers)	13-113
[10]	Pen Registers and Trap and Trace Devices (Grabbers)	13-113
[11]	Informants	13-113

TABLE OF CONTENTS

xix

	[12] Mail Covers	13-115
	[13] Hardware and Software Evidence	13-115
§ 13.11	Record-Keeping Resources of Taxpayer Information	13-117
	[1] Currency Transaction Reports	13-118
	[2] Suspicious Activity Report (SAR) Forms	13-118
	[3] Report of Cash Payments Over \$10,000 Received in a Trade or Business on Form 8300	13-119
	[4] Social Security Administration	13-120
	[5] State Department	13-120
	[6] Securities and Exchange Commission (SEC)	13-120
	[7] Comptroller of Currency	13-121
	[8] Customs Records	13-121
	[9] Bureau of Alcohol, Tobacco and Firearms Records	13-121
	[10] Federal Bureau of Investigation Records	13-121
	[11] Drug Enforcement Agency Records	13-122
	[12] United States Postal Service Records	13-122
	[13] Financial Crimes Enforcement Network (FinCEN)	13-122
	[a] Virtual Currency	13-123
	[b] Information Sharing	13-123
	[c] The U.S. Anti-Money Laundering Act of 2020 and Beneficial Ownership Registry	13-124
	[14] Financial Institutions	13-132
	[a] Report of Foreign Bank and Financial Accounts (FBAR)	13-133
	[b] Forms 5471 and 5472	13-134
	[c] Silent or Quiet Disclosures	13-135
	[d] FBAR IRS Examination, Fast Track Settlement, and Appeals	13-136
	[i] Examination	13-136
	[ii] Appeals Division	13-139
	[15] FinCEN, Financial Institutions, and the USA Patriot Act	13-142
	[a] Certification Must Be Completed by IRS	13-143
	[b] Financial Institution’s Discovery of Suspicious Account or Transaction	13-144
	[c] Protecting Information that Is Shared	13-144
	[d] Likelihood of Suspicious Activity Report	13-144
	[16] Foreign Corrupt Practices Act (FCPA)	13-144
	[17] Hiring Incentives to Restore Employment (“HIRE”) Act/ Foreign Account Tax Compliance Act (“FATCA”)	13-145
	[18] Ransomware and Potential OFAC Sanctions for Facilitation	13-146

FEDERAL TAX LITIGATION

§ 13.12	Special Agent’s Prosecution Report	13-147
§ 13.13	Taxpayer Conferences with the Government	13-150
	[1] Conference with the Special Field Agent and Group Manager	13-150
	[2] Conference with Field Counsel	13-150
	[a] Items the Practitioner Should Address at Conference with the Government	13-152
	[b] Field Counsel Referrals for Prosecution	13-153
	[3] Conference with the Tax Division	13-154
	[4] Conference with the United States Attorney’s Office	13-155
§ 13.14	Expedited Plea	13-156
	[1] Taxpayer’s Representative Must Initiate Plea Discussion	13-156
	[2] Justice Department Authority and Jurisdiction	13-157
	[3] Evidentiary Analysis	13-158
	[4] Affect of Plea Negotiations on Civil Liability	13-159
	[5] Citizenship	13-159
	[a] Good Moral Character	13-160
	[b] Tax Conviction as Aggravated Felony	13-161
	[i] Tax Returns Filed Jointly	13-161
	[ii] Spousal Elections	13-161
	[c] “Particularly Serious Crime”	13-161
	[d] Adjustment of Status Tax Scrutiny	13-161
	[e] Expatriates	13-162
§ 13.15	Bank Secrecy Act: Title 31 Referral Guidelines for Civil Penalties	13-164
	[1] Severity of Violations	13-164
	[2] Inconsequential Violations	13-164
	[3] Disclosure of Tax Return Information Based on Related Statute Test	13-165
	[4] Mitigating Factors to Offer in Defense to Bank Secrecy Act Violations	13-166
§ 13.16	Grand Jury Matters	13-167
	[1] Function of a Grand Jury	13-168
	[2] Challenging a Grand Jury Subpoena	13-169
	[3] IRS Initiation of a Grand Jury Investigation	13-169
	[4] Initiation of Grand Jury by Department of Justice	13-171
	[a] Department of Justice Policy	13-171
	[b] CID Assistance in Grand Jury Initiated by Government Attorney	13-172
	[5] Grand Jury Secrecy	13-173
	[6] Use of Subpoenas <i>Duces Tecum</i> in Grand Jury Investigation	13-174
	[a] Testimony and Documents	13-174
	[b] Required Records Doctrine	13-174

TABLE OF CONTENTS

xxi

	[c] Establishing the Scope of the Subpoena Served Upon a Corporation	13-177
	[d] Document Production by Corporation	13-177
	[e] Consider Whether an Appearance Before the Grand Jury to Produce Documents Is Actually Necessary	13-178
	[f] Retain Separate Counsel for the Company	13-179
	[g] Preparation of Witnesses for Testimony Before the Grand Jury	13-179
	[h] Interviews of Witnesses After Their Appearance Are Permitted	13-180
	[i] Waiver of the Attorney Client Privilege and Work Product Doctrines	13-181
[7]	Immunity	13-183
	[a] Application of the Fifth Amendment Privilege	13-184
	[b] Timing	13-186
	[i] Burden	13-186
	[ii] Adverse Inference	13-188
	[c] Informing the Grand Jurors About Immunity of a Witness	13-188
	[d] Transactional Immunity Automatically Denied	13-188
	[e] Criteria for Granting a Request for Immunity	13-189
	[f] Civil and Criminal Contempt	13-190
	[i] Civil Contempt	13-190
	[ii] Criminal Contempt	13-191
[8]	Informants	13-192
[9]	Grand Jury and the Corporate Taxpayer	13-192
	[a] Avoid Destruction of Evidence by Sending Freeze Letter	13-192
	[b] Advise Employees of Their Rights	13-193
	[c] Initial Conference with the Prosecutor	13-194
	[d] In-House Investigations	13-194
	[i] Conducting an Investigation via Outside Counsel	13-195
	[ii] Conducting an Internal Investigation Without Outside Counsel	13-195
[10]	IRS Final Report on Grand Jury	13-196
[11]	Inappropriate Prosecutorial Actions	13-196
[12]	Sentencing Guidelines	13-197
§ 13.17	Criminal Tax Prosecution	13-199
	[1] Dual and Successive Prosecution	13-199
	[2] Pleas After Arrests	13-200
	[3] Indictment	13-200
	[4] Information	13-202

FEDERAL TAX LITIGATION

	[5] Complaint	13-202
	[6] Warrant or Summons	13-202
	[7] Preliminary Hearing	13-203
	[8] Arraignment.	13-203
	[9] Invoking the Fifth Amendment During Discovery and/or Trial.	13-203
	[10] Discovery and Inspection	13-204
	[a] The Brady Doctrine	13-204
	[b] Henthorn Requests	13-205
	[11] Trial Preparation Methods	13-206
	[12] Sentencing in Criminal Tax Prosecutions	13-207
	[a] Federal Sentencing Guidelines.	13-209
	[i] Determining the Offense Level	13-209
	[ii] Defining the Tax Loss	13-210
	[iii] Use of Sophisticated Means to Impede Discovery of Offense.	13-210
	[iv] Defendant Derived Substantial Portion of Income From Tax Offense	13-211
	[b] Good Faith Defense	13-212
	[c] Presentence Investigation	13-212
	[d] Guilty Plea Analysis.	13-212
§ 13.18	Taxpayer Defenses	13-214
	[1] Preparation for the Taxpayer Interview with the Special Agent.	13-214
	[a] Questions to Ask Special Agent	13-214
	[b] Agreement to Produce Records	13-215
	[c] Attending the Taxpayer Interview with the Special Agent.	13-215
	[2] Selective Enforcement	13-215
	[3] Production of Evidence.	13-216
	[4] Cooperation with the Special Agent	13-216
	[5] Affidavits.	13-217
	[6] Voluntary Disclosure Policy.	13-218
	[7] Attacking the Method of Proof Used by CI	13-218
	[a] Net Worth Method	13-218
	[b] Prior Accumulations of Income in Previous Years	13-220
	[c] Gifts, Inheritances, Loans.	13-220
	[d] Use of Forensic Accountants.	13-221
	[8] Statute of Limitations	13-223
	[9] Suppression of Evidence as Remedy for Improper Use of Immunized Testimony During Prosecution.	13-224
	[10] Suppression of Evidence Due to Prosecutorial Misconduct	13-224
	[11] Under Seal.	13-227
	[12] Appeal of Conviction or New Trial.	13-227

TABLE OF CONTENTS

xxiii

§ 13.19	Forfeitures	13-228
	[1] Seizures	13-229
	[2] IRS Internal Forfeiture Procedures.	13-229
	[a] Counsel Assistance Provided in Administrative Forfeiture Cases	13-230
	[b] Advertisement	13-231
	[c] Notice of Seizure Letter	13-231
	[d] Declaration of Forfeiture	13-231
	[e] Inquiries from Parties	13-232
	[f] New Evidence Must Exist to Support Reversal	13-232
	[3] Quick Release of Property Procedures	13-232
	[4] Requirements for Release of Seized Property	13-234
	[5] Judicial Forfeiture	13-235
	[a] Claim of Ownership and Cost Bond	13-235
	[b] Field Counsel Processing and Referral of Claim and Cost Bond	13-235
	[6] Role of the United States Attorney’s Office	13-236
	[a] Settlement Possibilities	13-236
	[b] Authorization to Initiate Judicial Action	13-236
	[7] Judicial Action	13-237
	[a] Venue	13-237
	[b] Burden of Proof	13-237
	[c] Constitutional Concerns	13-237
	[8] Defenses to Forfeiture.	13-238
	[a] Due Process	13-238
	[b] Double Jeopardy	13-238
	[c] Property Reported on Taxpayer’s Tax Return	13-239
§ 13.19A	Multiple or Dual Representation Problems	13-241
	[1] Potential for Ethical Dilemma	13-241
	[2] Disqualification Upon Showing of Conflict of Interest	13-241
	[3] Government Motion to Disqualify Counsel.	13-241
	[4] Conflicts of Interest Resulting in Disqualification.	13-242
§ 13.20	Recovering Attorney Fees in a Criminal Case	13-244
	[1] Defining a “Prevailing Party”.	13-245
	[2] Burden of Proof	13-246
	[3] Final Judgment	13-247
	[4] Net Worth Requirement	13-248
	[5] The “Position of the United States”.	13-249
	[6] Discovery of the Conduct of the Government May Be Allowed	13-250
	[7] Scope of Record	13-252
	[a] Conduct Unsupported by the Law.	13-252
	[b] Conduct Unsupported by the Facts	13-253
	[c] Use of Charge or Prosecution for Wrongful Purpose	13-253

FEDERAL TAX LITIGATION

[8]	Deadline for Filing Claim	13-253
[9]	Common Government Arguments to Refute Award Under Hyde Amendment	13-255
[10]	Statutory Loophole of Special Circumstances Making an Award Unjust	13-256
[11]	Practical Advice	13-256
	[a] Build a Record	13-256
	[b] Alert Court to Government's Improper Conduct	13-256
	[c] Track the Government's Conduct with its Policies	13-256
	[d] Extract a Concession Not to Reindict/Reprosecute	13-257
§ 13.21	Title 18 Bootstrap	13-258
§ 13.22	Sample Petition to Enforce Summons and Accompanying Declaration of Revenue Agents	13-260
§ 13.23	<i>Form 8300</i> : Report of Cash Payments Over \$10,000 in a Trade or Business	13-288

CHAPTER 14**Bankruptcy and the IRS**

§ 14.01	Introduction	14-4
	[1] The Estate	14-6
	[2] Separate Entity in Chapters 5, 7 and 11	14-7
	[a] Defining the Estate	14-8
	[b] The Bankruptcy Estate Tax Liability	14-9
	[c] Filing Applicable Returns and Paying Tax Liability	14-9
	[d] Trustee and the Estate	14-10
	[e] Individual Debtor/Taxpayer	14-11
	[3] Bankruptcy Rules	14-11
§ 14.02	Government Players in the Bankruptcy Process	14-14
	[1] Special Procedures Function	14-14
	[2] United States Department of Justice	14-14
	[3] Field Counsel	14-14
§ 14.03	Bankruptcy: The Process	14-15
	[1] Automatic Stay	14-15
	[a] Adequate Protection	14-16
	[b] Relief from the Automatic Stay	14-16
	[c] Rights of Set Off	14-16
	[2] What May Be Discharged?	14-16.1
	[a] Priority Taxes	14-16.2
	[i] Employment Taxes	14-17
	[ii] Excise Taxes	14-17
	[iii] Affordable Care Act	14-17
	[b] Equitable Tolling	14-18

TABLE OF CONTENTS

xxv

[i]	“Three-Year Look-Back Period”	14-18
[ii]	Offer in Compromise (“OIC”) Tolling Circumstances	14-19
[iii]	Collection Actions and Challenges	14-20
[c]	Penalties	14-21
[i]	Dischargeable Penalties	14-21
[ii]	Non-Dischargeable Penalties	14-22
[d]	Interest.	14-22
[e]	Excise Tax or Penalty?	14-23
[f]	Student Loans and Cancellation of Indebtedness	14-24
[3]	When a Tax Return Is Not a Return for Dischargeability Purposes	14-24.2
[a]	Substitute for Return	14-24.2
[b]	Tax Returns and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005	14-24.4
[c]	Return Filed Within Two Years of Petition	14-24.7
[d]	Fraudulent Tax Returns	14-24.7
[e]	Dismissal Due to Failure to File Returns.	14-24.8
[4]	What Is the Effect, If Any, of a Federal Tax Lien?	14-25
[5]	Exempt Property	14-26
[6]	Notice of Levy Requires Harmonization of Bankruptcy Code and Internal Revenue Code	14-26
[7]	Tenancy by the Entirety	14-28
[a]	Bankruptcy Claims	14-28
[b]	Individual Claims	14-28
[c]	Joint Claims Not Exempt.	14-29
[d]	Sale of the Nondebtor’s Interest	14-29
[e]	Effect of Liens Perfected Prior to Creation of Tenancy by the Entirety	14-30
[8]	Employment Tax Payments	14-30
[9]	Turnover Requirement	14-32
[10]	Implementing an Offer-in-Compromise Prior to and During the Bankruptcy.	14-36
[11]	Determinations of Tax Liabilities.	14-36.3
[a]	Request for Prompt Determination from IRS.	14-36.3
[b]	Bankruptcy Court	14-36.4
[12]	Application of the Doctrine of Sovereign Immunity.	14-36.6
[13]	Damages for Violations of the Automatic Stay	14-36.8
[a]	Establishing a Violation of the Automatic Stay.	14-36.8

FEDERAL TAX LITIGATION

	[b] Two Procedures for Seeking Damages Against the IRS	14-36.9
	[c] Compensatory, Punitive and Actual Damages	14-36.10
	[d] Recovery of Attorneys' Fees	14-36.11
	[e] "Non-Willful" Violation of Automatic Stay	14-36.13
[14]	Effect of Confirmation	14-36.13
	[a] Chapter 11 and Confirmation	14-36.14
	[b] Chapter 13 and Confirmation	14-36.15
[15]	Effect of an Order of Discharge from the Bankruptcy Court	14-36.17
	[a] Effect of Discharge on Lien Holders	14-36.17
	[i] General Rule for Lien Holders	14-36.17
	[ii] Providing for Lien Holders	14-36.17
	[b] A Federal Tax Lien Survives <i>In Rem</i>	14-36.18
§ 14.04	Determinations by Bankruptcy Courts of Income Tax Consequences	14-37
	[1] In General	14-37
	[2] Case or Controversy	14-38
	[3] Analysis of Short-Year Election in Chapters 7 and 11	14-39
	[a] Mechanics	14-39
	[b] Tangible Benefits	14-40
	[4] General Requirements for Confirmation	14-41
	[a] Chapter 11, Generally	14-41
	[b] Chapter 13, Generally	14-42
	[c] Chapter 7, Generally	14-44
	[d] Internal Jurisdiction and Settlement Authority	14-44
	[i] Chapter 7 and Chapter 13 cases	14-44.1
	[ii] Chapter V cases	14-44.2
	[iii] Payment Protection Plan Challenges by Debtors in Bankruptcy	14-44.2
§ 14.05	Internal Jurisdiction and Settlement Authority Between the IRS and the Department of Justice	14-44.3
	[1] Before or After Objection to a Proof of Claim Is Filed	14-44.3
	[2] Before an Objection to a Proof of Claim Is Filed	14-44.3
	[3] After an Objection to a Proof of Claim Has Been Filed	14-44.3
	[4] Assistant United States Attorneys	14-44.3
	[5] Department of Justice, Tax Division	14-44.4
	[6] Burden of Proof	14-44.4
	[7] Service of Process	14-44.5

TABLE OF CONTENTS

xxvii

§ 14.06	Practical Considerations	14-45
§ 14.07	Complaint to Determine Tax Lien Priorities	14-48
§ 14.08	Practice Tips	14-52
	[1] Using the Taxpayer Advocate to Avoid Unreasonable Revenue Officer	14-52
	[2] Post-Bankruptcy Activity	14-52
	[3] Litigating Tax Liabilities	14-52
	[4] Innocent Spouse Relief May Allow Debtor/ Spouse to Escape Liability	14-53
	[5] Counsel Client Regarding Consequence of Bankruptcy Filing	14-53
	[6] Willful Evasion in the Context of Luxury Purchase	14-53
	[7] Ordering Transcripts of Debtors' Tax Accounts/Periods	14-54
	[8] Foreclosure by Lender and Consequences	14-54
	[9] Asserting the Fifth Amendment	14-56
	[10] Divorced or Divorcing Couples, Only One Spouse in Bankruptcy	14-56.1
	[11] Post-Petition Interest in Chapter 13	14-56.1
§ 14.09	Bankruptcy Abuse Prevention and Consumer Protection Act of 2005	14-57
	[1] Retirement Plan Exemptions	14-57
	[2] Education IRAs	14-57
	[3] Notice of Request for Determination of Taxes	14-57
	[4] Discharge of Estate's Liability for Unpaid Taxes	14-58
	[5] Rate of Interest on Tax Claims	14-58
	[6] Repeat Bankruptcy Filers	14-58
	[7] Chapter 13 Discharge	14-58
	[8] Chapter 11 Discharge	14-59
	[9] Tax Court Stay Provision Limited	14-59
	[10] Periodic Payment of Taxes Under Chapter 11	14-59
	[11] Avoidance of Statutory Tax Lien Prohibited	14-60
	[12] Payment of Taxes in the Conduct of Business	14-60
	[13] Tardily Filed Priority Tax Claims	14-60
	[14] Return Defined, "Hanging Paragraph"	14-61
	[15] Return Must Be Filed to Confirm Chapter 13 Plans	14-61
	[16] Tax Disclosure Standards	14-61
	[17] Setoff of Tax Refunds	14-62
	[18] Dismissal for Failure to Timely File Returns	14-62
	[19] Homestead Exemption	14-62
	[20] "Means" Test	14-62.1
§ 14.10	Dischargeability Checklists	14-63
§ 14.11	Recovering Attorney's Fees	14-65
§ 14.12	Debt Forgiveness Situations Creating Tax Debt	14-66

FEDERAL TAX LITIGATION

[1]	Outside of Bankruptcy	14-66
[2]	Debtor in Bankruptcy	14-67
[3]	When to Use the Form 982	14-68

CHAPTER 15**Access to Information from
the Federal Government**

§ 15.01	The Freedom of Information Act	15-2
[1]	FOIA Legislative Structure	15-3
	[a] The “Reading Room” Provision of FOIA	15-3
	[b] FOIA Requests	15-4
[2]	Procedure for Making an FOIA Request	15-5
[3]	FOIA Exemptions	15-8
	[a] Exemption 2: Internal Personnel Rules and Practices	15-9
	[b] Exemption 3: Information Exempt Under Certain Laws Other Than FOIA	15-10
	[i] Application of FOIA Exemption 3 with Section 6103	15-11
	[ii] Haskell Amendment Exception	15-11
	[iii] Grand Jury Information Also Falls Within Exemption 3	15-12
	[c] Exemption 4: Trade Secrets and Commercial or Financial Information	15-13
	[d] Exemption 5: Internal Communications	15-13
	[i] Government Deliberative Process Privilege	15-14
	[ii] Attorney-Client Privilege	15-18
	[iii] Work-Product Privilege	15-19
	[e] Exemption 7: Investigatory Files	15-19
§ 15.02	The Privacy Act	15-22
[1]	Legislative Purpose of the Privacy Act	15-22
[2]	Exemptions Under the Privacy Act	15-23
[3]	Submitting a Privacy Act Request	15-24
	[a] Disclosure Litigation Division	15-26
	[b] IRS Evaluation of Sufficiency of Request	15-26
	[i] Verification of the Requester’s Identity	15-26
	[ii] Verification That Request Complies with Regulations and Description of Records Sought Is Sufficient	15-27

TABLE OF CONTENTS

- [iii] Tracking Down Records Sought and/or Initiating Action on Request 15-28.1
- [c] IRS Response Granting Request Under the Privacy Act. 15-28.1
- [d] IRS Response Denying Request Under the Privacy Act. 15-29
- [e] Evaluation of Request for Amendment of Records Under the Privacy Act 15-30
- [f] Review of Refusal to Amend Record Under the Privacy Act. 15-31
- [4] Advanced Pricing Agreements Between Corporate Taxpayers and the IRS 15-31
- § 15.03 Section 6110: Access to Government Documents 15-33
- § 15.04 Judicial Review of FOIA and Privacy Act Requests. ... 15-34
 - [1] Venue. 15-34
 - [2] Burden of Proof 15-34
 - [3] Complaint 15-35
 - [a] FOIA Action 15-35
 - [b] Privacy Act Action 15-36
 - [4] Tax Division, Department of Justice 15-37
 - [a] Disclosure Litigation 15-37
 - [b] Requests for Tax Division Records. 15-37
 - [5] In Camera Review of Withheld Materials Is Discretionary. 15-37
- INDEX** I-1