# **TABLE OF CONTENTS**

## Volume 1

## **CHAPTER 1**

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

§ 1.01	Intro	duction	1-11
	[1]	Application of Law	1-12
		[a] Breakdown of the Internal	
		Revenue Code	1-13
		[b] Legislative History	1-13
		[c] Role and Status of Treasury Regulations	
		after Loper Bright Decision	1-17
		[d] Regulations: Legislative or Substantive,	
		Interpretative, and Procedural	1-18
		[e] Proposed Regulations, Temporary	
		Regulations and Final Regulations	1-19
		[i] Proposed Regulations	1-19
		[ii] Temporary Regulations	1-19
		[iii] Final Regulations	1-19
	[2]	Revenue Rulings, Private Letter Rulings and	
		Revenue Procedures	1-20
		[a] Definitions	1-22
		[b] Judicial Status	1-22
		[c] IRS Pilot Program to Fast-Track	
		Corporate Letter Rulings	1-23
	[3]	Code of Federal Regulations	1-29
	[4]	Internal Revenue Bulletin and	
		Cumulative Bulletin	1-29
	[5]	General Counsel Memoranda	1-30
	[6]	Technical Advice Memoranda	1-30
	[7]	Generic Legal Advice Memoranda	1-30
	[8]	Action of Decision	1-31
	[9]	Chief Counsel Notices	1-32
	[10]	Compliance Officer Memoranda	1-32

[11]	District Counsel Advice	1-32
[12]	Field Directives	1-32
[13]	Field Service Advice	1-32
[14]	Information Letters	1-33
[15]	Legal Memoranda	1-33
[16]	Litigation Guideline Memoranda	1-34
[17]	Office Memoranda	1-34
[18]	Reviewed Briefs	1-34
[19]	Service Center Advice	1-34
[20]	Closing Agreements	1-34
[21]	Advance Pricing and Mutual Agreements	
	Program	1-34.1
[22]	Internal Revenue Service Publications	1-34.2
[23]	Case Law	1-34.2
	[a] Tax Court	1-34.2
	[i] The Effect of Ballard	1-34.3
	[ii] Rule 183	1-34.5
	[b] U.S. District Court and U.S. Court of	
	Federal Claims	1-34.5
	[c] Electronic Filing	1-34.7
[24]	General Rules Concerning Deference	1-34.7
	[a] Administrative Procedure Act	1-34.7
	[b] Loper Bright Standard	1-34.7
	[c] No Deference	1-34.10
[25]	Circular 230.	1-34.10
	[a] Circular 230 Regulations	1-34.12
	[i] Individuals Authorized to Practice	1-34.12
	[ii] Contingent Fees	1-34.14
	[iii] Conflicting Interests	1-34.14
	[iv] Sanctions	1-34.14
	[v] Duty of Oversight	1-34.15
	[vi] Disciplinary Proceedings Are	
	Subject to the Administrative	
	Procedure Act	1-34.16
	[b] Category of Reportable Transaction for	1 2 4 10
	Patented Transactions	1-34.18
F2 (7	[c] Form 2848, Power of Attorney	1-34.18
[26]	Privileged Communication and Work	1 24 10
	Product Doctrine.	1-34.19
	[a] Confidentiality versus Attorney-Client	1 24 10
	Privilege	1-34.19
	[b] Attorney-Client Privilege	1-34.19
	[i] Legal Advice versus  Business Advice	1-34.23
		1-34.23
	[ii] Tax Return Preparation	1-34.24
	L 3	
	[iv] Implied Waiver of the Privilege	1-34.25
	[v] Crime Fraud Exception	1-34.27
	[c] Work Product Doctrine	1-34.28

		TABLE OF CONTENTS	1X
§ 1.02	Ta: [1] [2]	[d] Tax Practitioner and Client Privilege  [e] Accountant or Audit Workpapers  [i] Tax Reconciliation Workpapers  [ii] Rule 301, AICPA  [iii] Tax Accrual Workpapers  [iv] Uncertainties After Textron  [v] Practice Suggestions  [f] Attorney Communications With  Experts  [g] In Camera Inspection  Adjustments without Audit  ayer Advocates, Problems Resolution,  xpayer Services, and Identity Theft Unit  Problems Resolution  Taxpayer Services	1-34.29 1-34.31 1-34.31 1-34.32 1-34.34 1-34.36 1-34.37 1-34.38 1-34.40 1-34.41
	[3]	Taxpayer Advocate and Form 911	1-34.41
	[4]	Identity Theft Unit	1-34.42
		<ul><li>[a] Form 14039, Identity Theft Affidavit</li><li>[b] IRS Basics of Cyber Security and</li></ul>	1-34.43
0 1 02	TD.	Data Protections	1-34.44
§ 1.03		ayer Selection and Processing a Tax Return	1-34.46
	[1]	Filing a Return with the Proper Campus	1-34.46
		[a] Campuses, Formerly Known as	1 24 46
		Service Centers	1-34.46 1-34.47
		[c] Electronic Filing of Returns and Forms	1-34.47
	[2]	Discriminant Inventory Function System	1-34.50
	[3]	Unreported Income	1-34.50
	[4]	How to Obtain Copies of Documents Taxpayers Have Filed with the IRS	1-34.51
		[a] Tax Returns	1-34.51
		[b] Types of Transcripts	1-34.53
		[i] Account Transcript	1-34.54
		[ii] Master File Transcripts,  "Tax Mod"	1-34.54
		[iii] W2/1099 Wage and Income Transcript	1-34.55
		[iv] Backup Withholding	1-34.55
		[c] Immediate Transcripts	1-34.56
		[i] Online Transcript Delivery	1-34.56
		System (TDS)	
		Hotline	1-34.57
		[d] Home Affordable Mortgage Program	1 24 50
		Transcript Needs	1-34.58
		[e] Copies of Form W-2	1-34.59
		[f] How IRS Credits Payments	1-34.59 1-34.59
	[5]	[g] Cash Payment Option	1-34.59
	[5]	IRS Data Analytics, Generally	1-34.00

		[a]	Data	Mining and Predictive Analytics	1-34.62
		[b]		payer Cautions	1-34.64
	[6]			gital	1-34.65
	[7]			nal Information Return	1 000
	r. 1			ic Assessment	1-34.65
§ 1.03A	The S			f the IRS Follows a	1 0
0				ssification System	1-34.67
	[1]			Operating Divisions	1-34.69
	[2]			onsibilities and Structure of the	
	[-]			Business and International	
				on (LB&I)	1-34.72
		[a]		Organizational Structure of LB&I	1-34.73
		[]	[i]	Industry Director	1-34.76
			[ii]	Directors of Field Operations	1-34.77
			[iii]	Territory Managers	1-34.77
			[iv]	Team Managers	1-34.77
			[v]	Revenue Agents, Auditors,	1 3 1.77
			[,]	Revenue Officers	1-34.77
		[b]	Indu	stry Issue Focus (IIF)	1-34.78
		[c]		al High Wealth Industry Group	1-34.70
		[d]		prehensive Case Resolution	1-34.00
		լայ		rogram (CCR)	1-34.80
			[i]	Eligibility Requirements for	1-34.00
			[1]	CCR Participation	1-34.81
			F##1	Taxpayer Risks Associated	1-34.61
			[ii]	with CCR	1 24 01
		[a]	In du		1-34.81
		[e]		stry Issue Resolution	1.26
		Γ£Ί		rogram (IIR)	1-36
		[f]		ling Agreement Program (PFA)	1-36
			[i]	Eligibility Requirements to	1 27
			E3	Participate in PFA Program	1-37
			[ii]	Content of the LMSB PFA	1 27
			r	Request	1-37
			[iii]	Filing the PFA	1-41
			[iv]	How the PFA Process Works	1-41
			[v]	Taxpayer Risks Associated	1 41
		г 1	<i>C</i>	with PFA	1-41
		[g]		pliance Assurance Process (CAP)	1-43
		[h]	Muti	al Accelerated Appeals	1 44
				rocess (MAAP)	1-44
			[i]	Eligibility Requirements to	1 44
			r	Participate in MAAP	1-44
			[ii]	The MAAP Process	1-44
		F13	[iii]	Risks Associated with MAAP	1-44
		[i]		ertain Tax Positions, "Schedule	1 15
	[2]	Dage		TP"	1-45
	[3]			oilities and Structure of the Small ss/Self-Employed Operating	
				on (SB/SE)	1-46
		L	71 V 191C	и (ор/ор)	1-40

		TABLE OF CONTENTS	xi
		[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		essment and Audit Examination Level	1-57
	[1]	Campus Conducts Correspondence Audits	1-57
	[2]	Unreported Income	1-58
		[a] Automated Information Statements	
		Reconciliation	1-59
		[b] Balance Sheet Financial Analysis	1-60
		[c] Bank Deposit Analysis	1-60
		[d] e-Commerce Analysis	1-60
		[e] Industry or Market Specific Ratio	
		Analysis	1-61
	[3]	Random Audits via National Research	
	F 43	Program	1-61
	[4]	Examination Division in Each of the	
		Four Divisions Conducts Office and	
		Field Audits	1-62
		[a] General Nature of Agents and Auditors	1-63
		[b] Practical Considerations Concerning	
		Internal Revenue Service	
		Examinations	1-64

	[5]	What to Expect During an Examination	1-64
		[a] Substantiation and Recordkeeping	
		Requirements	1-65
		[b] Information Document Requests ("IDR")	1-65
		[c] Electronic Records	1-66
	[6]	Top Five Things to Keep in Mind During	
		an Audit	1-68
		[a] Waiver	1-68
		[b] Kovel Doctrine	1-68
		[c] Attorney Invoices	1-69
		[d] Tax Opinions	1-69
		[e] Accountant Work Papers	1-69
	[7]	Industry Issue Resolution Program	1-70
	[8]	Market Segment Specialization Program	1-70
	[9]	Internal Revenue Service Information	1-70
	[7]	Gathering Resources	1-71
	[10]		1-71
	[10]	Meeting with Agents/Auditors	
		[a] Agent/Auditor Disposition	1-76
		[b] Recording Interviews	1-77
	F4 4 7	[c] Non-Lawyer Privilege	1-77
	[11]	"No Change" Letters Versus Adjustments	1-77
	[12]	Statute of Limitations	1-78
		[a] Financial Disability	1-79
		[b] Collection	1-80
		[c] Interest and Penalties	1-80
		[d] Suspension of Interest on	
		Underpayments	1-80
	[13]	Extending the Statute of Limitations for	
		Tax Assessment	1-80.1
		[a] Form 872-A, Special Consent to Extend	
		Time to Assess Tax, Compared to	
		Form 872, Consent to Extend Time to	
		Assess Tax	1-80.2
		[b] Situations Triggering Six-Year Statute	1 00.2
		of Limitations	1-80.3
	F1 47		1-80.3
	[14]	Revenue Agent Report	
		[a] Adjustments	1-80.4
		[b] Agreeing to Adjustments	1-80.4
		[c] Disputing an Adjustment	1-80.5
		[d] Notice of Deficiency/Ninety-Day Letter	1-80.6
		[e] Rescission of Notice of Deficiency	1-80.7
§ 1.05		ection 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		Referral Program: Examination/Collection to	
		Appeals Division	1-82.6
		11	

	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	1 00 11
	Offer-in-Compromise	1-82.11
	[g] Doubt as to Collection Potential of	1 02 14
	Tax Liability[i] Verification of Form	1-82.14
	433-A OIC/433-B OIC	1-82.14
	[ii] Calculating Value	1-82.14
	[iii] Calculating Future Income and	1-02.10
	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	1 00 00
	443-A OIC/Form 443-B OIC	1-82.20
	[a] Missing or Additional Information	1-82.21
[5]	[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
[0]	[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
	eals Division	1-82.31
[1]	Structure of the Appeals Division Under	
	the 2018 Reorganization	1-82.31
		(Rel. 45)

[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 Golsen 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	1 00 55
	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	1 00 76
	Division	1-82.76
	[i] Case Where Fast-Track Mediation	1 00 77
	Should Be Considered	1-82.77
	[ii] Initiating Fast-Track Mediation	1-82.78
	[iii] Authority of the Fast Track	1 00 70
	Mediator	1-82.78
	[c] Arbitration and the Appeals Division	1-82.79

		[2]	2010	Codification and Penalties	1-82.106
		[3]	Notio	ce 2014	1-82.109
§	1.08A	Shan	Trans	saction Doctrine	1-82.110
§	1.08B	Subs	tance (	Over Form Doctrine	1-82.112
§	1.08C	Step-	Transa	action Doctrine	1-82.114
		[1]	Bind	ing-Commitment Test	1-82.114
		[2]	Inter	dependence Test	1-82.115
		[3]	End-	Result Test	1-82.115
		[4]	Relat	tionship of the Parties	1-82.116
§	1.09	Othe		ces	1-82.117
		[1]	Prob	lem Resolution Contacts	1-82.117
		[2]	Acco	ount Related Inquiries	1-86
		[3]		nizational Charts	1-88
		[4]	MSS	P Audit Technique Guides	1-91
§	1.10	Form			1-92
		[1]		i 872: Consent to Extend Time to	
			A	ssess Tax	1-92
		[2]		a 872A: Special Consent to Extend	
			Ti	me to Assess Tax	1-94
	1.11				1-96
§	1.12	Digit		ets Compliance	1-97
		[1]	"Edu	cational" and Outreach Efforts	1-97
		[2]	Digit	al Assets as Income	1-106
§	1.13	Coro	naviru	s Aid and Relief	1-108
		[1]	Dead	llines Regarding Returns Extended	1-108
		[2]	IRS	Operation Adjustments	1-111
				Taxpayer Assistance	1-111
				Get Transcripts Tools	1-112
		[3]		neous or Suspicious Refunds	1-112
		[4]		ections	1-112
				Offers in Compromise and Installment	
				Agreements	1-112
			[b]	Taxpayer Hardship	1-112
		[5]		navirus Relief, and Economic	
				ecurity Act ("CARES Act")	1-112
				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
				Payroll Tax Deferment	1-120
				Expanded Use of Net Operating Losses	1-120
				Increased Deduction for Business	
				Interest Expense	1-121

	TABLE OF CONTENTS	xvii
	<ul><li>[f] Refund for Corporate AMT</li><li>[g] Correction via Technical Amendment Regarding Qualified Improvement</li></ul>	1-121
	Property ("QIP")	1-121
	Hand Sanitizer	1-122
	Stimulus Payments	1-122
	[a] Ineligible	1-122
	[b] Refund Anticipation Loans ("RAL")	1-122
	[c] "Inadvertent" Payments	1-123
	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	1 124
	Year 2021	1-124
	CHAPTER 1A	
	Litigation	
§ 1A.01		1A-4
	[1] Filing Deadline	1A-6
0.14.02	[2] Sealed Records	1A-7
§ 1A.02		1A-8
	[1] Credible Evidence	1A-8 1A-10
8 1 4 03	[2] Standard of Review	1A-10 1A-11
	Federal Rules of Evidence	1A-11
y 171.04	[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	1 4 17
	Statements	1A-17
	<ul><li>[7] Judicial Notice</li><li>[8] Presumptions in General in Civil Actions</li></ul>	1A-18
	and Proceedings	1A-23
	[a] Burden of Production and Burden of	
	Persuasion	1A-24
	[b] Effect of Burden of Proof	1A-25

[9]	Applicability of State Law in Civil Actions	
	and Proceedings	1A-28
[10]	Relevant Evidence	1A-28
[11]	Relevant Evidence Generally Admissible;	
[11]	Irrelevant Evidence Inadmissible	1A-30
[12]		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,	111 00
[10]	and Related Statements	1A-35
F1.77		
[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	111 10
		1A-40
	Attorney	
	[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	171-40
		1 4 50
F227	Conduct of Witness	1A-50
[23]	Rule 609: Impeachment by Evidence of	1 4 50
	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	171 50
		1 A 61
	by Experts	1A-61
	[c] Rule 704: Opinion on Ultimate Issue	1A-62
	[d] Rule 705: Disclosure of Facts or Data	4
	Underlying Expert Opinion	1A-63
	[e] Rule 706: Court Appointed Experts	1A-64
	[f] Expert Report Requirements	1A-64

		TABLE OF CONTENTS	X12
§ 1A.05	Hear	say	1A-6
3	[1]	Why Hearsay Is Generally Not Admissible as	
		Evidence; Exceptions to the Hearsay Rule	1A-6
		[a] Prior Statement by Witness	1A-6
		[b] Admissions by a Party Opponent	1A-70
		[c] Co-Conspirator Statements	1A-7
	[2]	Rule 802: Hearsay Rule	1A-72
	[3]	Rule 803: Hearsay Exceptions Commonly	
		Raised in Tax Court Cases; Availability of	
		Declarant Immaterial	1A-7.
		[a] State of Mind	1A-7.
		[b] Recorded Recollection	1A-7
		[c] Business Record Exception	1A-7
		[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-8
		[i] Judgment of Previous Conviction	1A-8
	[4]	Rule 804: Hearsay Exceptions, Declarant	
		Unavailable	1A-82
	[5]	Rule 804(3): Statement Against Interest	1A-8:
	[6]	Rule 805: Hearsay Within Hearsay	1A-80
	[7]	Rule 806: Attacking and Supporting	
	507	Credibility of Defendant	1A-86.
	[8]	Rule 807: Residual Exception	1A-86.2
§ 1A.06		entication	1A-90
	[1]	Rule 901: Requirement of Authentication	1 4 0
	F0.7	or Identification	1A-90
	[2]	Rule 902: Self-Authentication	1A-9
		[a] Affidavit or Declaration	1A-9
	F2.7	[b] Electronically Stored Information	1A-92
	[3]	Originals Versus Duplicates	1A-9
	[4]	Rule 1001: Definitions, Writings,	1 4 0
	Γ <i>Ε</i> 1	Recording and Photographs	1A-93 1A-94
	[5]	Rule 1002: Requirement of Original	
	[6]	Rule 1003: Admissibility of Duplicates	1A-9:
	[7]	Rule 1004: Admissibility of Other Evidence of Contents	1A-9:
	[8]	Rule 1006: Summaries	1A-9.
	[9]	Rule 1007: Testimony or Written Admission	1A-30
	[7]	of Party	1A-9′
	[10]	Rule 1101: Applicability of Rules	1A-9
8 1A 07		nd Versus Protest Routes	1A-99
y 171.07	[1]	Subjective Application of Variance Doctrine	1A-9
	[2]	Tax Court Gives the IRS Ability to Raise	111 9
	[~]	Additional Items of Deficiency	1A-10

		[3]	Delegated Authority Concerning Tax Court	
			Litigation	1A-101
§ 1A.08		Bene	fits and Burdens of Tax Court Versus	
			deral District Court	1A-103
			ral District Court and Claims Court	1A-105
§	1A.10	Unite	ed 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	1 1 110
			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	1 4 116
			Computer/Hard Drive	1A-116
			[e] Evidence Supporting Sanctions for Failure to Conduct Reasonable	
			Inquiry and Intentionally Withholding Documents	1A-117
				1A-117 1A-119
			[f] Expert Testimony     [g] Cautionary Examples	1A-119
8	1A.11	Rule	30(b)(6) Deposition	1A-120
8	17.11	[1]	Background	1A-123
		[2]	Obligations	1A-123
		[2]	[a] Party Issuing Rule 30(b)(6) Notice	1A-123
			[b] Entity Responding to the Notice	1A-123
		[3]	Designation of Witness(es)	1A-123
		[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

§ 1	1A.13	[b] The Unprepared Witness [c] The Kitchen Sink Deposition. [d] Manipulating Time Restrictions. [e] Uncooperative Parties.  Sample Notice of Deposition Checklist, Rule 30(b)(6) Deposition Outline.  Sample Memorandum Regarding Preservation	1A-130 1A-131 1A-131 1A-132 1A-135 1A-139 1A-145
		CHAPTER 2	
	Emp	ployment Taxes and the Trust Fund Recovery P	enalty
	2.01	Introduction	2-4
§ 2	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	2.03	Collection Division	2-22
Ü		[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	2 20
		Responsible Persons	2-26
		[5] When Third Parties Direct Payments to a	2-20
		Company's Employees: Surety, Lender,	
		Contractor	2-28
			2-28
		<ul><li>[6] Trust Fund Recovery Interviews</li></ul>	2-29
		Recommendation to Assess	
		Section 6672 Penalty	2-30
8 -	2.04	Defenses to the Section 6672 Penalty	2-30
8 2	2.04		2-32
		[1] Transferring the Blame	2-32
			2-32
			2-32
		[4] Contributory Liability	
٠ -	0.6	[5] The Amount of the Assessment is Incorrect	2-33
8 4	2.05	Success of Collecting a Section 6672 Penalty	2-34

TABLE OF CONTENTS

xxi

xxii	FEDERAL TAX LITIGATION	

§ 2.06	Revenue Officer's Recommendation of Trust Fund	
Ü	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	2 3 1
8 2.07	Penalty	2-39
§ 2.08	Installment Agreements	2-39
g 2.08		<b>∠-4</b> 1
	[1] Considerations for Installment Agreement	2 42
	with a Non-Business Taxpayer	2-42
	[2] Considerations for an In Business Trust Fund	2 42
	Installment Agreement	2-43
	[3] Taxpayer Compliance with the Installment	2 42 2
	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
8 2.14	[1] Procedures for Claim for Abatement	2-43
	[2] Grounds for Abatement	2-43
e 2 15		2-43
§ 2.15	Claim for Refund	Z <b>-44</b>
	[1] The Procedures for Filing a Claim	2.44
	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	<u>.</u>
0.011	Division Attorney	2-45
§ 2.16	Litigating the Trust Fund Recovery Penalty	2-46
	[1] Burden of Proof	2-46

		TABLE OF CONTI	ENTS	XX111
	[2]	Mediation Jurisdictions		2-47
	[3]	Factual Inquires Made by the	e Court in	
		Determining Whether Lia		2-47
	[4]	Defining a Responsible Pers		2-47
		[a] Scenarios of Persons V		
		Found Responsible		2-49
		[b] Delegation of Responsi		2 40
		a Defense		2-49
		[c] Bankruptcy Does Not I		2.50
		Liability		2-50
		[d] Significant Control Det		2.50
		Authority to Pay Ta		2-50 2-51
			ol	2-51
	[5]	Defining Willfulness Under		2-51
		[a] What Constitutes Know		2-51
		[b] The Judicially Created		2-31
		Cause Exception in		2-54
		[c] Reckless Conduct May		20.
		Under Section 6672		2-54.1
		[d] Developments in Court		
		Claims		2-57
	[6]	Liability for Delinquent Tax		2-57
	[7]	Conducting Discovery		2-58
	[8]	Electronic Discovery Plan .		2-64
		[a] Document Retention Po		2-64.1
		[i] Taxpayer's Prese		
				2-64.1
		[ii] Consequences of		
			rds	2-64.2
		[b] Departing Employees'		2-64.2
		[c] Expenses of Electronic		2-64.3
		[i] General Rule Reg		2 (4 2
				2-64.3
			Expenses	2-64.3
		[d] Some Courts Have Ad- Regarding Electroni		2-64.4
		0 0	•	2-04.4
		[e] Sanctions for Breaches Discovery Obligatio		2-64.5
			on	2-64.6
		[ii] Inadvertent Produ		2 0 1.0
		Waiver		2-64.6
		[iii] Imposition of Civ		2 0 1.0
			tions	2-64.7
	[9]	Confusing Calculations Befo		2-64.7
	[10]	Injunctive Relief		2-64.8
§ 2.17		e a Practitioner May Give a		
		imize the Section 6672 Pena		2-65

xxiv	FEDERAL TAX LITIGATION	
§ 2.17A	Criminal Prosecution	2-66
O	[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] Form 433-D: Installment Agreement	2-71
	[3] Form 911: Application for Taxpayer	
	Assistance Order (ATAO)	2-72.4
	[4] Form 4181: Questionnaire Relating to Federal	
	Trust Fund Tax Matters of Employees	2-73
	[5] Form 2674: Report of Trust Fund	2.74
	Tax Violations.	2-74
	[6] Form 4183: Recommendation re Trust Fund	2.76
	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	3-9
	Division	3-9
	Information Sources	3-9
	[c] Surprise Visits from the Collection	3-7
	Division	3-9
	[d] Filing Form SS-8	3-9
§ 3.02	How to determine a Worker's Status	3-11
3	[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	
0	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
y 5.00	[1] Four Steps to Agent's Analysis	3-31
	[a] Categories of Employees	3-31
	[i] Common Law Standard	3-31
	[ii] Corporate Officer	3-32
	[iii] Statutory Employees	3-32.1
		3-32.1
		3-32.2
		3-32.2
	[a] Qualifications for CSP Eligibility	3-32.3 3-32.4
	[b] Computing CSP Standard Offer	
	[c] Prospective Worker Classification	3-32.6
	[d] Exceptions to the Filing Requirements:	2 22 6
	Form 940/941 Non-filers	3-32.6
	[e] Negotiating a CSP Settlement Offer	3-32.6
	[i] Ensuring Future Compliance is	2 22 7
	a Consideration	3-32.7
	[ii] Other Factors Affecting Agent's	2 22 7
	Ability to Extend CSP Offer	3-32.7
	[f] More than One Offer	3-32.8
	[g] CSP Standard Closing Agreement	3-32.8
0.2.07	[h] CSP Offer Rejected or not Applicable	3-32.8
§ 3.07	Audit Techniques Used to Determine if a Worker	2.22
	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

xxvi	FEDERAL TAX LITIGATION	
	[3] Expert Testimony	3-40
	Defeating the Government's Case	3-40
	[a] Taxicab Industry Example	3-41
	[b] Summary Judgment Possibilities	3-41
§ 3.09	[c] Examination Before the Court Action Planning to Survive Independent Contractor	3-42
	Scrutiny by the IRS	3-44
	[1] Written Agreement	3-44
	<ul><li>[2] Competitor/Industry Information</li></ul>	3-45
	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] Form 4667	3-50
	CHAPTER 4	
	Jeopardy and Termination Assessments	
§ 4.01	Introduction to Jeopardy and Termination	4.2
	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	4-4
8 4.02	[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	. 0
	Focus of the Audit	4-8
	[7] Checklists of Issues for Which to Prepare	4.0
	the Client	4-8
e 4.02	[8] Agent's Analysis	4-12
§ 4.03	Procedures for Making a Jeopardy or Termination	4 12
	Assessment	4-13 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	4-14
	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
Ü	[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
	<ul> <li>[2] Time Period Governing Judicial Review</li> <li>[3] Standard for Judicial Review Under Code Section 7429 is the "Reasonableness"</li> </ul>	4-23
	of the Assessment	4-23
	<ul><li>[a] Defining Reasonableness</li><li>[b] Admissible Evidence for Purposes of Summary Review Under Code</li></ul>	4-24
	Section 7429[c] Example Illustrating Jeopardy	4-25
	Assessment Prerequisites	4-26
	[d] Suggestions for Refuting Anticipated	4-20
	Government Arguments	4-27
	[4] Second Inquiry of Code Section 7429	
	Summary Review is the Amount of	4.20
	the Assessment	4-28
	[a] Taxpayer has the Burden of Establishing	4-28
	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	4-29
	Not Open to Appeal	4-30
§ 4.07	Complaint for Review of Jeopardy Assessment	4-30
3	r r r r r r r r r r r r r r r r r r r	
	CHAPTER 5	
	Refunds, Credits, and Abatements	
§ 5.01	Introduction	5-4
§ 5.01	Procedural Requirements of Seeking a Refund	3 1
3 0.02	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

## xxviii 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	5.04
F. 7.3	Filing Claim	5-24
[5]	Limitations on Amount Allowed for the	5-24
Γ <b>4</b> 1	Refund or Credit	3-24
[6]	Determining when Payment of Taxes	5-24
[7]	Occurred	3-24
[/]	or Credit	5-25
	[a] Campus Processing	5-26
	[b] Division Review	5-26
[8]	Jurisdictional Requirements of Initiating a	5 20
[o]	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] Form 4340: 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	Abat	ement 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	0 .0
		Notification of Claim	
		Disallowance	5-46
		[v] Pending Case in Appeals	2 10
		Division	5-46
		[vi] Letter Sustaining Full	2 10
		Disallowance of Service	
		Center Claim	5-46
		[vii] Regional Director Involvement	5-47
		[e] Tax Court Jurisdiction	5-47
§ 5.04	Doct	rines Which May Be Invoked to Effect the	3 47
8 3.04		riod of Limitations	5-49
	[1]	Equitable Recoupment or Setoff	5-49
	[1]	[a] Factors Necessary for Equitable	5-47
		Recoupment Doctrine to Apply	5-51
		[b] Recoupment as a Counterclaim	5-51
			5-52
	[2]		5-52
	[2]	Equitable Estoppel	
		[a] Elements of Estoppel	5-53
		[b] Government Employee's Actions	E
		or Representations	5-54
		[c] Utilizing Accountant as Witness	5-59
		[d] Asserting All Doctrines to Refute	5.50
		Statute of Limitations Bar	5-59
		[e] Court's Interest Is Not to Undermine	5.60
		Correct Enforcement of the Law	5-60
		[f] Pre-Merger Doctrine Between Law	5.60
	F0.7	and Equity	5-60
	[3]	Equitable Tolling of Statute of Limitations	5-61

	[4]	Miti	gation	Provisions, Sections 1311	
				th 1314	5-62.1
		[a]	Defii	nition 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
				Finality of Closing Agreement	5-62.4
			[v]	Finality of Claim for Refund	5-62.4
		[b]		ection of an Error in a Closed Year	5-62.5
		[c]		ion of the Successful Party	5-62.5
		[d]		rmination According to One of	
				e Seven Circumstances in	
			Se	ection 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	
			r . J	Disallowance of a Deduction	
				or Credit	5-62.9
			[v]	Section 1312(5) Trusts, Estates,	0 02.5
			F. J	Legatees, Beneficiaries,	
				and Heirs	5-62.10
			[vi]	Section 1312(6) Related	0 02.10
			[,,]	Corporations	5-62.10
			[vii]	Section 1312(7) Basis	0 02.10
			[111]	Problems	5-62.11
		[e]	Relat	ted Taxpayer	5-62.11
		[f]		rmining the Amount of Adjustment	0 02.11
		[I]		fter Mitigation Is Established	5-62.12
		[g]		edure to Follow for	3 02.12
		LSJ		btaining Adjustment	5-62.13
§ 5.05	Proc	edural		irements for the IRS to Recover	3-02.13
8 5.05			-	Refund	5-62.14
	[1]			Limitations for Bringing Suit	5-62.14
				of Interest	5-62.14
	[2] [3]		-	676 Penalty	5-62.14
	[4]	Bur	don of	Proof	5-62.15
	[5]			y Procedures in Lieu of Erroneous	3-02.13
				Suit	5-62.16
8 5 06	Com			ax Refund	
§ 5.06 § 5.07		1		ax Relund	5-63 5-65
8 3.07				ns for Form 843	5-65
	[1]				3-03
	[2]			: Claim for Refund and Request	5 67
		10	or Au	atement	5-67

# TABLE OF CONTENTS CHAPTER 6

#### xxxi

# Wrongful Levy

§ 6.01 § 6.02	Introduction	6-2
8 0.02		6-5
	Two Years of Date of Levy	0-3
	[1] Two Year Period Applicable After	6-5
	December 22, 2017	6-6
e ( 02	[2] Pre-December 22, 2017, Extension Period	0-0
§ 6.03	Legal Standards Governing Adjudication of	( 0
	Wrongful Levy Action	6-8
	[1] Burden of Proof	6-8
0 ( 0 4	[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

xxxii	FEDERAL TAX LITIGATION	
	[d] State Law's Assessment Period May also Affect the Expiration of the Statute of Limitations for	
	Assessment	6-25
	of Transferor	6-25
	of Limitation for Transferee Spouse	6-25
	<ul><li>[g] Tolling the Statute of Limitation</li><li>[h] Statute of Limitations for Actions Under</li></ul>	6-25
	Trust Fund Doctrine	6-26
§ 6.06	Liability  Defenses for Refuting an Assessment Based on Alter Ego/Nominee and Fraudulent Conveyance	6-26
	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
§ 6.07	[4] Relief Available	6-29
	Section 7426	6-30
	[1] The Decision of <i>United States v. Williams</i> [2] Wrongful Levy Exclusivity After <i>Williams</i>	6-30 6-33
	[a] Lien Versus Levy Distinction [b] Non-Voluntary Payment of Tax	6-33
	Liability	6-34
	Activity	6-34
0.600	[4] Post-Williams 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 7-8
	[iii] Bookkeeper's Negligence	7-8 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
	[1] 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	
. <b>.</b>	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		eent Spouse Defense and Duress and	
	For	gery 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	Admi	inistrative 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		ries 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	0.40
		Proportion to Knowledge	8-19
		[d] Indications of Unfairness	8-20
		[e] Significant Benefit Received by the	0.20
		Spouse from the Wrongdoing Spouse	8-20
		[f] Exception for Spousal Abuse or	0.21
		Domestic Violence	8-21

	[2]	Separation of Liability	8-21
		[a] Consequences of Tax Avoidance Conduct	8-22
		[b] Effective Date of Election and	0-22
		Planning	8-22
		[c] Practical Example of Application of	0
		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	0.20
		Ordinarily Be Granted	8-28
		[d] Factors for Determining Whether	0.20
		Equitable Relief Will Be Granted [e] Streamlined Procedures Under Rev.	8-29
		LJ	0.20
		Proc. 2013-34, Section 4.02	8-30 8-31
		<ul><li>[f] Legislative History of Equitable Relief</li><li>[g] Summary of Requirements for the Three</li></ul>	8-31
		[g] Summary of Requirements for the Three Alternative Forms of Innocent	
		Spouse Relief	8-31
§ 8.04	Alter	natives to Litigation	8-34
8 0.01	[1]	CDP Hearing	8-34
	[2]	Economic Hardship for Release of Levy	8-35
§ 8.05		ation	8-36
Ü	[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	0.25
	F2.7	Spouse	8-37
	[3]	Bankruptcy Court	8-38
		CHAPTER 9	
		Collection Activities Via the Tools of	
		Liens and Levies	
§ 9.01		duction	9-5
§ 9.02	Creat	ion 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	V
	[4] T	'axpayer's Failure to Pay Liability	9-9
		filing of the Notice of Federal Tax Lien	9-9
		cope of the Federal Tax Lien	9-13
		The Government Stands in the	
	L	Taxpayer's Shoes	9-13
	ſŀ	The Federal Tax Lien Attaches to	
	-	After-Acquired Property	9-13
	[0	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		Issues	9-18.4
		wo Step Inquiry	9-18.4
		dederal Tax Lien Act of 1966	9-19
		tate Law Considerations	9-20
		ederal Law	9-21
	[5] S	uperpriorities and Instances Where Federal	0.21
	Γ.	Tax Lien May Be Defeated	9-21
	[2	a] Statutory Prescribed Notice Must	0.22
		Be Given	9-22
		[i] Determining Priority of Interest	0.22
		in Securities	9-23
		[ii] Determining Priority of a "Purchaser"	9-24
		[iii] Determining Priority of a	7-24
		Judgment Lien Creditor	9-25
		[iv] Determining Priority of a Security	7 23
		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	Certifica	ate of Subordination of Federal Tax Lien	9-33
	[1] P	rerequisites for Certificate of Subordination	9-33
		Obtaining Certificate of Discharge	
		or Subordination	9-33
	[3] Ir	nvestigation of Application for Discharge	
		or Subordination	9-34

	[4]	Issuing the Certificate of Discharge	
		or Subordination	9-36
§ 9.05	Revo	ocation of Certificates of Release of Federal	
Ü	Та	ax Lien	9-37
§ 9.06		ificate of Nonattachment of Federal Tax Lien	9-39
§ 9.07	With	ndrawal of the Filed Notice of Federal Tax Lien	9-40
Ü	[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	
	F 6.3	Summons Appearance Date	9-56
	[5]	Property Exempt from Levy	9-56
		[a] List of Property Evennt 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		ure and Sale of Property Subject to Federal Tax	
		en 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	Judio	cial Proceedings of Tax Liens or Levies	9-74
o	[1]	Reducing Assessments to Judgment and	, , ,
	r.1	Government Foreclosure Action	9-74

		[a] Reduce Assessments to Judgment [b] Judicial Foreclosure	9-74 9-74
	[2]	Non-government Lienholder Seeking Foreclosure and Discharge of Property	9-14
		from Lien	9-74.1
		Property	9-74.1
		<ul><li>[b] Procedures for Sale of Property</li><li>[c] Request to Release Right to Redeem</li></ul>	9-74.2
		Property	9-74.2
	[3]	Interpleader	9-74.2
	[4]	Declaratory Judgment	9-75
	[5]	Quiet Title	9-76
		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	Chal	lenging the Validity of a Federal Tax Lien Checklist of Issues on IRS Procedures for	9-82
		Issuing a Federal Tax Lien	9-82
	[2]	Record Retention.	9-82
		CHAPTER 10	
		Tax Return Preparers and Tax Shelter Promoters	
§ 10.01	Intro	duction	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		rview of Preparer Penalties and Standards of	
		onduct	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	10.12
	F 4 7	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
	Procedures	10-16.4
	Penalties	10-16.4
	Examination and Assessment	10-16.6
	[3] Evaluation of Whether Substantial Authority	10 10.0
	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	10.2
	Multiple Penalties	10-24
0.10.04	[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	10.20
	Recordkeeping	10-29
	[2] Return Sampling	10-29
	[3] Interviews with the Clients of the Subject	10.20
	Tax Preparer	10-30
	[4] Accuracy Related Penalty and Reasonable	10.21
0 10 06	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
	i ossionity Standard	10-34

	[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	10 50
	Penalties Under Sections 6694(a) and	
	6694(b) Apply	10-38
§ 10.07	Electronic Filing Program	10-39
y 10.07	[1] What is the Electronic Program?	10-40
	[2] Obligations of an Electronic Filer Participant	10-40
	[3] Penalties for Preparer's Noncompliance with	10-40
	the Electronic Filing Program	
	Obligations	10-41
	[a] Disclosure or Use of Information	10-41
	[b] Preparer Penalties Against Electronic	10-42
	Filers Under Sections 6694, 6695,	
	and 6713	10-43
	[c] Penalty in Connection with Refund	10-43
	Anticipation Loans	10-43
	[4] IRS Monitoring of Electronic Filers	10-43
	[a] Electronic Filer Activities Monitored	10-44
	by the IRS	10-44
	[b] Procedures for Suspending Electronic	10-44
	Filer from the Electronic Filing	
	Program	10-45
	[c] Administrative Appeals of Suspension,	10-43
	Revocation, or Denial of Participation	
	in Electronic Filing Program	10-45
	[5] Director of Practice	10-45
§ 10.08	Litigation Involving the Preparer Penalties	10-43
y 10.00	[1] Injunction	10-47
	[2] Refund Suits and Burden of Proof	10-47
		10-49
§ 10.09	Practical Methods for Developing a Defense in a	10-30
g 10.03	Preparer Case	10-51
	1	10-51
		10-31
	[2] Checklist of Criteria for Imposing the	10-52
	Section 6694(a) Penalty	10-32
	[3] Summary Checklist of Criteria for Imposing	10.52
8 10 10	the Section 6694(b) Penalty	10-52
§ 10.10	Promoters	10-54

	TABLE OF CONTENTS			
	[1]	Registration Responsibilities, In General  [a] Registration Procedures  [b] Definition of Tax Shelter  [i] Tax Shelter, Generally  [ii] Section 6112, Potentially Abusive	10-55 10-55 10-56 10-57	
		Tax Shelter	10-58	
		Developments	10-59	
		Shelter [v] Examples of Criminal	10-60	
		Investigation	10-60	
		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	
		a Transaction	10-67	
		Disclosure	10-69	
		Listed Transactions	10-70	
	[4]	Communications  Promoters Have Affirmative Duty Not to	10-70	
		Provide False Information	10-71	
	[5]	Fees	10-71	
	[6]	Automated Process for Certain Penalties in		
	L-3	Listed Transaction Situations	10-71	
§ 10.11		lties for Failing to Comply with		
	[1]	de Requirements	10-73	
		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	

		٠	
17	1	1	
А			

§ 10.12	[3] Protective Registration	10-74 10-76
3 10.12	[1] General Rule: Seven Year	10 70
	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	11.6
	Information	11-6
	[3] Disclosure Made in Good Faith Is Not Actionable	11-9
§ 11.03	Actual Damages.	11-10
y 11.05	[1] Overview	11-10
	[2] Establishing a Causal Relationship Between	11 10
	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	11 17
	Distress	11-15
	[b] Circumstances Where Taxpayer Has	
	Been Denied Damages for Emotional Distress	11-16
	[6] Physical Harm as an Element of Actual	11-10
	Damages	11-17
		1111

TABLE OF CONTENTS				
§ 11.04	Punitive Damages	11-18		
y 11.01	[1] In General	11-18		
	[2] View that Punitive Damages Are Recoverable	11 10		
	Only When Actual Damages Are Proven	11-18		
	[3] View that Punitive Damages Award Does Not	11 10		
	Require a Showing of Actual Damages	11-19		
	[4] Defining What Constitutes a Willful	11 17		
	Disclosure	11-20		
	[5] Defining What Constitutes Gross Negligence	11-20		
	[6] Establishing Willful Disclosure and Gross	11 20		
	Negligence for Punitive Damage Award	11-21		
§ 11.05		11-27		
	Government's Right of Set-Off	11-28		
	A Whistleblower Awards	11-28.1		
y 11.001	[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	11-20.4		
8 11.07	a Federal Tax Lien	11-29		
e 11 00		11-29		
§ 11.08		11 21		
§ 11.09	Actions	11-31		
		11-34		
§ 11.10		11-35		
	[1] Qualified Immunity Defense of Government	11 25		
	Employees for Constitutional Violations	11-35		
	[2] No Relief When Other Remedies Are	11 27		
	Available	11-37		
	[3] No Relief for Torts in the Assessment and	11 27		
	Collection Context	11-37		
	[4] Factual Circumstances Where Relief Was	11 27		
0 11 11	Afforded for a Constitutional Tort	11-37		
§ 11.11	Recovery Pursuant to the Federal Tort Claims	11.20		
0 11 10	Act (FTCA)	11-39		
§ 11.12		11 11		
	Sections 7432 and 7433	11-41		
	CHAPTER 12			
	Recovering Administrative and			
	Litigation Expenses from the Government			
§ 12.01	Introduction	12-2		
§ 12.01		12-4		
3 12.02	[1] Recovery of Costs Incurred	12-4		
	[2] Jurisdiction	12-5		
	[3] Procedures for Recovering Administrative	12 3		
	Costs	12-5		
	Ουσω	12-3		

	[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		ealing the IRS' Disallowance or Partial	
		sallowance of an Award	12-17
	[1]	Procedures for Appeal	12-17
0.10.04	[2]	Section 6673	12-17
§ 12.04		-Litigation: Seeking Reasonable Litigation and	10 10
		dministrative 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	12-22
		"Substantially Justified" Position by	
		the Government?	12-23
	[6]	Who Can Qualify as a Prevailing "Party" for	12-23
	լսյ	Purposes of Recovering Litigation	
		Expenses?	12-24
		[a] Estate as a Party	12-24
		[b] Debtor-in-Possession as a Party	12-25
		[c] Creditor of Delinquent or Challenging	12 23
		Taxpayer Is Not a Party	12-26
	[7]	Exhausting Administrative Remedies	12-26.1
	Γ,]	[a] Participating in the Appeals Division	12 20.1
		Conference	12-26.2
		[b] Statement from IRS that Pursuit of	12 20.2
		Administrative Remedies	
		Unnecessary	12-28
	[8]		12-31

	TABLE (	OF CONTENTS	XV
	[9] Determining Whe	ether a Party is a Prevailing	
			12-32
		in Award	12-38
	[11] Evidence Support	ting Reasonable Litigation	10.20
	Fees Award		12-38 12-39
	[13] Suits Where Reco	overy of Reasonable Litigation	
	[14] Determining Whe	the Soughtether the United States Can	12-39
	[15] Recovering Attor	neys' Fees in	12-41
		ourt	12-42
§ 12.05			12-42.1
	2 3	ard of Fees as Sanction	10 10 1
		yer	12-42.1
		ed Sanctions Against	10 40
			12-43
e 12.06	LJ	ırt	12-44
§ 12.06			12-45 12-47
§ 12.07		klist for Recovery of Fees	12-4/
		ive Proceeding	12-47
		klist for Recovery of Fees in	12-4/
		gation	12-47
	CH	APTER 13	
	Сп	AFIER IS	
	Criminal '	<b>Tax Investigations</b>	
§ 13.01	Introduction		13-10
3 15.01		Investigation Structure	13-11
		sure Practice	13-12
§ 13.02		CID Investigation	13-15
y 13.02		·····	13-15
			13-16
			13-17
			13-18
		n or Direct Method	13-18
		it Method	13-18
		and Expenditures Method	13-19
		ould Be Given an Opportunity	
		e Needed Information	13-20
			13-21
§ 13.03		ose of CI	13-22
			13-22
		esses	13-24
		ated by CI	13-26
	[a] Fraud		13-26

	[b]	Tax Evasion	13-27
		[i] Defining Evasion of Tax	
		[ii] Proving Existence of a Tax	
		Deficiency	13-29
		[iii] Boulware v. United States	
		[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]		13-35
	[d]		
		Information, or Pay Taxes	13-36
	[e]	Failure to Collect or Pay Over	
		Taxes	
	[f]	Fraud and False Statements	
	[g]		
		[i] Alleged Fraudulent Offers	
		[ii] Joint Investigations	13-40
		[iii] Offers in Pending Criminal	
		Investigations	
		[iv] Offer Post-Conviction	
	[h]		
		[i] IRS Role	
	5.43 m :	[ii] Treasury Summons	
		ggers for Criminal Investigation	13-41
§ 13.04		dit/Assessment Pending Criminal	
		gations	
		e Process Concerns	
		vil Versus Criminal Violations	13-45
		vil Penalties that May Arise During	12.46
		Criminal Investigation	
e 12.05		rallel Civil and Criminal Investigations	13-49
§ 13.05		Information that May Be Disclosed by Agent in Conducting Investigation	13-51
§ 13.06		es Special Agent Must Follow in	13-31
g 13.00		eting Investigation	13-53
§ 13.07	Fifth Am	endment Privilege	13-55
§ 13.07 § 13.08	Miranda	Warning	13-58
§ 13.08 § 13.09		mendment	
g 13.07		bable Cause	
		quirement of Particularity	
		amination of the Scope and Execution	15 01
		Method	13-62
	[a]	Mandated Recordings	13-62
	[b]		13-62
		tice, Inventory Return	
		ppression and Standing	
		plicability of "Good Faith" Exception	

			TA	ABLE OF CONTENTS	xvii
§ 13.09A	A Privi	leged	Com	munications/Documentation	13-65
3	[1]			Client Privilege	13-65
	[2]			nt/Client Privilege	13-66
	[-]	[a]		ion 7525 of the Internal Revenue	
			C	ode	13-66
		[b]		nsion of Attorney/Client Privilege to	
			A	ccountants	13-67
		[c]		ountant/Client Privilege Recognized	
				y State Law	13-70
	[3]			Work Product	13-70
	[4]	Corp	orate	Privileges	13-71
	[5]			m or Taint Team	13-71
§ 13.10				ering Tools Used by Special Agent	13-73
	[1]	Sum	mons	Power, Generally	13-73
	[2]	Thir	d Par	ty Record-Keeper Summons	13-74
		[a]	Moti	on to Quash Summons	13-75
			[i]	Standing	13-75
			[ii]	Grounds for Seeking to Quash	
				Summons	13-75
	[3]	John	n Doe	Summons	13-80
		[a]	Use	of John Doe Summons for Offshore	
			A	ccounts	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]	Repo	orting Requirements for Use of	
		F - J		ffshore Account	13-84
		[c]		hore Voluntary Compliance	
		[-]		iitiative	13-86
		[d]	Colle	ection from Offshore Accounts	13-87
		[4]	[i]	The Government Must Establish	10 07
			[-]	Jurisdiction over the	
				Taxpayer	13-87
			[ii]	Methods for Collecting the Tax	15 07
			[11]	Debt from Offshore Assets or	
				Taxpayer Overseas	13-88
			[iii]	Defenses to Collection of	15 00
			[111]	Offshore Assets	13-90
		[e]	Hea	of John Doe Summons for Gift or	13-70
		[و]		state Tax	13-91
		Γ£Ί		of John Doe Summons Involving	13-71
		[f]			13-92
	[4]	Gar	ornm	irtual Currencyent Enforcement of Summons	13-92
	[4]	GOV	CHIIII	an emolection of summons	13-93

# xviii 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	10 ,0
	Order During Investigation	13-96
		13-70
	[b] Procedures for When a Witness Reappears	
	in Response to an Adjourned	12.00
	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	15 100
	Compulsion in Civil Matters	13-100
		13-100
	[h] Denial of Compulsion Order Request by	12 100
F 63	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	13-107
	Particularity Items to Be Seized	
	and the Criminal Conduct	12 100
	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
[0]		13-111
[9]	Electronic Tracking Devices (Beepers)	13-113
[10]	Pen Registers and Trap and Trace Devices	10 110
F1 1 3	(Grabbers)	13-113
[11]	Informants	13-113

TABLE OF CONTENTS			
	[12]	Mail Covers	13-115
	[13]	Hardware and Software Evidence	13-115
§ 13.11	Reco	rd-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
	F1.53	[ii] Appeals Division	13-139
	[15]	FinCEN, Financial Institutions, and the USA	12 142
		PATRIOT Act	13-142
		[a] Certification Must Be Completed	12 142
		by IRS	13-143
		[b] Financial Institution's Discovery of	12 144
		Suspicious Account or Transaction	13-144
		[c] Protecting Information that Is Shared	13-144
		[d] Likelihood of Suspicious Activity	13-144
	[17]	Report	13-144
	[16]	Foreign Corrupt Practices Act (FCPA)	13-144
	[17]	Hiring Incentives to Restore Employment	
		("HIRE") Act/ Foreign Account Tax	12 145
	F1 03	Compliance Act ("FATCA")	13-145
	[18]	Ransomware and Potential OFAC	10146
		Sanctions for Facilitation	13146

§ 13.12	Spec	ial Agent's Prosecution Report	13-147
§ 13.13		payer Conferences with the Government	13-150
3 10.10	[1]	Conference with the Special Field Agent and	10 100
	[-]	Group Manager	13-150
	[2]	Conference with Field Counsel	13-150
	[-]	[a] Items the Practitioner Should Address at	15 150
		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	13-134
	[4]	Office	13-155
§ 13.14	Evno	edited Plea	13-156
8 13.14	-	Taxpayer's Representative Must Initiate Plea	13-130
	[1]		12 156
	[2]	Discussion.	13-156
	[2]	Justice Department Authority and	12 157
	F2.1	Jurisdiction	13-157
	[3]	Evidentiary Analysis	13-158
	[4]	Affect of Plea Negotiations on	12 150
	5.53	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		Secrecy Act: Title 31 Referral Guidelines for	
		vil 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	Gran	d 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	15 175
	r^1	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	12 170
		Γ£Ί	Is Actually Necessary	13-178
		[f]	Retain Separate Counsel for the Company	13-179
		[g]	Preparation of Witnesses for Testimony	13-179
		[6]	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]		nunity	13-183
		[a]	Application of the Fifth Amendment	
			Privilege	13-184
		[b]	Timing	13-186
			[i] Burden	13-186
		[c]	[ii] Adverse Inference	13-188
		[	Immunity of a Witness	13-188
		[d]	Transactional Immunity Automatically	13-100
		լայ	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]		ormants	13-192
	[9]		nd Jury and the Corporate Taxpayer	13-192
		[a]	Avoid Destruction of Evidence by	12 102
		Γh]	Sending Freeze Letter	13-192 13-193
		[b] [c]	Advise Employees of Their Rights Initial Conference with the Prosecutor	13-193
		[d]	In-House Investigations	13-194
		լայ	[i] Conducting an Investigation via	15 17 1
			Outside Counsel	13-195
			[ii] Conducting an Internal	
			Investigation Without Outside	
			Counsel	13-195
	[10]		Final Report on Grand Jury	13-196
	[11]		opropriate Prosecutorial Actions	13-196
e 12 17	[12]		tencing Guidelines	13-197
§ 13.17			Fax Prosecution	13-199
	[1] [2]		as After Arrests	13-199 13-200
	[3]		ctment	13-200
	[4]		ormation	13-202
		0		

	[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	
	r. 1	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	10 210
		Impede Discovery of Offense	13-210
		[iv] Defendant Derived Substantial	10 210
		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	Taxp	ayer Defenses	13-214
3	[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	
	r .1	Misconduct	13-224
	[11]	Under Seal.	13-227
	[12]	Appeal of Conviction or New Trial	13-227

		TABLE OF CONTENTS	xxiii
§ 13.19	Forfeitures		
3	[1]	Seizures	13-228 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	Mult	iple 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		vering Attorney Fees in a Criminal Case	13-244
		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	12 250
		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	12.052
		Wrongful Purpose	13-253

xxiv	FEDERAL TAX LITIGATION	
	<ul><li>[8] Deadline for Filing Claim.</li><li>[9] Common Government Arguments to Refute</li></ul>	13-253
	Award Under Hyde Amendment [10] Statutory Loophole of Special Circumstances	13-255
	Making an Award Unjust	13-256
	[11] Practical Advice	13-256
	[a] Build a Record	13-256
	Conduct	13-256
	[c] Track the Government's Conduct with its Policies	13-256
	[d] Extract a Concession Not to	13-230
	Reindict/Reprosecute	13-257
§ 13.21 § 13.22	Title 18 Bootstrap	13-258
§ 13.22	Accompanying Declaration of Revenue Agents	13-260
§ 13.23	Form 8300: Report of Cash Payments Over \$10,000	15 200
3	in a Trade or Business	13-288
	CHAPTER 14	
	Bankruptcy and the IRS	
§ 14.01	Introduction	14-4
O	[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
0.14.02	[3] Bankruptcy Rules	14-11
§ 14.02	Government Players in the Bankruptcy Process	14-14
	<ul><li>[1] Special Procedures Function</li><li>[2] United States Department of Justice</li></ul>	14-14 14-14
	[2] United States Department of Justice	14-14
§ 14.03	Bankruptcy: The Process.	14-14
g 14.03	[1] Automatic Stay	14-15
	[a] Adequate Protection	14-15
	[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

	XXV	
	[i] "Three-Year Look-Back Period" [ii] Offer in Compromise ("OIC")	14-18
	Tolling Circumstances [iii] Collection Actions and	14-19
	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 43	[e] Dismissal Due to Failure to File Returns	14-24.8
[4]	What Is the Effect, If Any, of a Federal	14.25
F.6.1	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
L' J	[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	
F4	Immunity	14-36.6
[13]	Damages for Violations of the Automatic	
	Stay	14-36.8
	[a] Establishing a Violation of the	14.26.0
	Automatic Stay	14-36.8

		[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	
		[e] "Non-Willful" Violation of Automatic	
		Stay	. 14-36.13
	[14]	Effect of Confirmation	
		[a] Chapter 11 and Confirmation	
		[b] Chapter 13 and Confirmation	. 14-36.15
	[15]	Effect of an Order of Discharge from	
		the Bankruptcy Court	
		[a] Effect of Discharge on Lien Holders	
		[i] General Rule for Lien Holders	
		[ii] Providing for Lien Holders	
	_	[b] A Federal Tax Lien Survives <i>In Rem</i>	. 14-36.18
§ 14.04		erminations by Bankruptcy Courts of Income	
		x Consequences	
	[1]	In General	
	[2]	Case or Controversy	. 14-38
	[3]	Analysis of Short-Year Election in	11.00
		Chapters 7 and 11	
		[a] Mechanics	
	F 4 T	[b] Tangible Benefits	
	[4]	General Requirements for Confirmation	
		[a] Chapter 11, Generally	
		[b] Chapter 13, Generally	
		[c] Chapter 7, Generally	. 14-44
		[d] Internal Jurisdiction and Settlement	. 14-44
		Authority	. 14-44
		[i] Chapter 7 and Chapter 13 cases	. 14-44.1
		[ii] Chapter V cases	
		[iii] Payment Protection Plan	. 14-44.2
		Challenges by Debtors in	
		Bankruptcy	. 14-44.2
§ 14.05	Inter	rnal Jurisdiction and Settlement Authority	. 17 77.2
y 14.03		etween the IRS and the Department	
		1	. 14-44.3
	[1]	Justice	. 14-44.3
	[1]	Claim Is Filed	. 14-44.3
	[2]	Before an Objection to a Proof of	. 14-44.3
	[2]	Claim Is Filed	. 14-44.3
	[2]		. 14-44.3
	[3]	After an Objection to a Proof of Claim	. 14-44.3
	Γ <b>/</b> 1	Has Been Filed	
	[4]	Assistant United States Attorneys	
	[5]	Department of Justice, Tax Division	
	[6] [7]	Burden of Proof	. 14-44.4 14-44.5
	1/1	Service Of Process	14-44 7

\$ 14.06 Practical Considerations		TABLE OF CONTENTS	xxvii
\$ 14.07 Complaint to Determine Tax Lien Priorities.   14-48	§ 14.06	Practical Considerations	14-45
14.52	§ 14.07		14-48
1   Using the Taxpayer Advocate to Avoid Unreasonable Revenue Officer			14-52
Unreasonable Revenue Officer	Ü		
[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   [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   [11]   Post-Petition Interest in Chapter 13   14-56.1   [14-56.1]   Retirement Plan Exemptions   14-57   [2]   Education IRAs   14-57   [2]   Education IRAs   14-57   [2]   Education IRAs   14-57   [2]   Education IRAs   14-57   [3]   Notice of Request for Determination of Taxes   14-58   [4]   Discharge of Estate's Liability for Unpaid Taxes   14-58   [6]   Repeat Bankruptcy Filers   14-58   [6]   Repeat Bankruptcy Filers   14-58   [7]   Chapter 13 Discharge   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   14-61   [15]   Return Defined, "Hanging Paragraph"   14-61   [15]   Return Must Be Filed to Confirm Chapter 13 Plans   14-61   [15]   Return Must Be Filed to Confirm Chapter 13 Plans   14-61   [16]   Tax Disclosure Standards   14-62   [18]   Dismissal for Failure to Timely File Returns   14-62   [18]   Dismissal for Failure to Timely File Returns   14-62   [19]   Homestead Exemption   14-62   [20] "Means" Test.   14-63   [20]   [20] "Means" Test.   24-62   [20] "Means" Test.   24-62   [20] "Means" Test.   24-62   [20] "Means"			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   [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   [8]   14-59   [11]   Post-Petition Interest in Chapter 13   14-56.1   [12]   Education IRAs   14-57   [13]   Notice of Request for Determination of Taxes   14-57   [14]   Discharge of Estate's Liability for Unpaid Taxes   14-58   [15]   Rate of Interest on Tax Claims   14-58   [16]   Repeat Bankruptcy Filers   14-58   [16]   Repeat Bankruptcy Filers   14-58   [16]   Repeat Bankruptcy Filers   14-58   [17]   Chapter 13 Discharge   14-59   [19]   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   14-61   [15]   Return Defined, "Hanging Paragraph"   14-61   [15]   Return Must Be Filed to Confirm Chapter 13 Plans   14-61   [15]   Return Must Be Filed to Confirm Chapter 13 Plans   14-61   [16]   Tax Disclosure Standards   14-62   [18]   Dismissal for Failure to Timely File Returns   14-62   [18]   Dismissal for Failure to Timely File Returns   14-62   [19]   Homestead Exemption   14-62   [19]   Homestead Exemption   14-62   [19]   Homestead Exemption   14-62   [19]   Homestead Exemption   14-63   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [14-65]   [			
[4] Innocent Spouse Relief May Allow Debtor/ Spouse to Escape Liability			
Spouse to Escape Liability			1.02
5			14-53
Bankruptcy Filing.			1100
[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   [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   [11]   Post-Petition Interest in Chapter 13   14-56.1   [11]   Post-Petition Interest in Chapter 13   14-56.1   [11]   Retirement Plan Exemptions   14-57   [1]   Retirement Plan Exemptions   14-57   [2]   Education IRAs   14-57   [3]   Notice of Request for Determination of Taxes   14-58   [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   [10]   Periodic Payment of Taxes Under Chapter 11   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   14-61   [15]   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   [20] "Means" Test   14-63   [4-63]   [4-63]   [4-63]   [4-63]   [4-61]   [4-62]   [4-63]   [4-61]   [4-62]   [4-62]   [4-63]   [4-64]   [4-64]   [4-64]   [4-65]   [4			14-53
Purchase			14 33
Table			14-53
Accounts/Periods			14-33
[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         [8]       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         [6]       Repeat Bankruptcy Filers       14-58         [7]       Chapter 13 Discharge       14-58         [8]       Chapter 11 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]       Paym			14.54
Consequences			14-54
[9] Asserting the Fifth Amendment       14-56         [10] Divorced or Divorcing Couples, Only       0ne 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       14-61         [15] Return Must Be Filed to Confirm			14 54
10   Divorced or Divorcing Couples, Only One Spouse in Bankruptcy   14-56.1			
One Spouse in Bankruptcy			14-30
[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       <			14.56.1
§ 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         14-58           [5]         Rate of Interest on Tax Claims         14-58           [6]         Repeat Bankruptcy Filers         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           [			
Protection Act of 2005	0 1400		14-56.1
[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       14-58         [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	§ 14.09		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			
[3] Notice of Request for Determination of Taxes. [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 14-63 [14-63] 14-10 Dischargeability Checklists 14-63			
[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			
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			14-37
[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       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       14-63         [14.10       Dischargeability Checklists       14-63         [14.11       Recovering Attorney's Fees       14-65			14 50
[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       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       14-63         § 14.10       Dischargeability Checklists       14-63         § 14.11       Recovering Attorney's Fees       14-65			
[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       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       14-63         § 14.10       Dischargeability Checklists       14-63         § 14.11       Recovering Attorney's Fees       14-65			
[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       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       14-63         § 14.10 Dischargeability Checklists       14-63         § 14.11 Recovering Attorney's Fees       14-65			
[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       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       14-63         § 14.10       Dischargeability Checklists       14-63         § 14.11       Recovering Attorney's Fees       14-65			
[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       14-63         § 14.10 Dischargeability Checklists       14-63         § 14.11 Recovering Attorney's Fees       14-65			
[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       14-61         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       14-63         § 14.10 Dischargeability Checklists       14-63         § 14.11 Recovering Attorney's Fees       14-65			
[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			
[13] Tardily Filed Priority Tax Claims       14-60         [14] Return Defined, "Hanging Paragraph"       14-61         [15] Return Must Be Filed to Confirm       14-61         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] 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			
[15] Return Must Be Filed to Confirm       14-61         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			
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			1101
[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			14-61
[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		[16] Tax Disclosure Standards	
[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			
[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			
[20] "Means" Test. 14-62.1 § 14.10 Dischargeability Checklists 14-63 § 14.11 Recovering Attorney's Fees 14-65			
<ul> <li>§ 14.10 Dischargeability Checklists</li> <li>§ 14.11 Recovering Attorney's Fees</li> <li>14-63</li> <li>14-65</li> </ul>			
§ 14.11 Recovering Attorney's Fees	§ 14.10	Dischargeability Checklists	
		Recovering Attorney's Fees	
			14-66

xxviii	FEDERAL TAX LITIGATION	
	<ul><li>[1] Outside of Bankruptcy</li><li>[2] Debtor in Bankruptcy</li><li>[3] When to Use the Form 982</li></ul>	14-66 14-67 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
	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	15 10
	Certain Laws Other Than FOIA [i] Application of FOIA Exemption 3	15-10
	with Section 6103	15-11
	[ii] Haskell Amendment Exception	15-11
	[iii] Grand Jury Information Also Falls	13 11
	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	15 14
	Privilege	15-14
	[ii] Attorney-Client Privilege	15-18 15-19
	[e] Exemption 7: Investigatory Files	15-19
§ 15.02	The Privacy Act.	15-22
3 10.02	[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	15.06
	Request	15-26
	[i] Verification of the Requester's	15 26
	Identity[ii] Verification That Request	15-26
	Complies with Regulations and	
	Description of Records Sought	
	Is Sufficient	15-27

		TABLE OF CONTENTS	xxix
		[iii] Tracking Down Records Sought and/or Initiating Action on	
		Request	15-28.1
		[c] IRS Response Granting Request Under the	13 20.1
		Privacy Act	15-28.1
		[d] IRS Response Denying Request Under the	10 20.1
		Privacy Act.	15-29
		[e] Evaluation of Request for Amendment of	10 29
		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	Secti	ion 6110: Access to Government	
	Do	ocuments	15-33
§ 15.04		cial 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			T_1