NATIONAL SOCIETY of TAX PROFESSIONALS

The Federal Tax Alert

Fall Issue 2026

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MAILING ADDRESS:
8513 NE Hazel Dell Ave., Suite 204
Vancouver, WA 98665
TELEPHONE: 800–367–8130
EDITOR: Nina Tross, MBA, EA nina@nstp.org
SUBSCRIPTION SERVICES: taxes@nstp.org
Opinions expressed in The Federal Tax Alert are those of the editor and contributors.

IN THE NEWS

TRUMP ACCOUNTS REVISITED – ONE MORE TIME!

The ongoing changes to the Trump Accounts now include an update on the automatic enrollment of all eligible children by the Treasury. This new process now includes the enrollment process and subsequent steps to be taken by the child's parent or guardian.

The U.S. Department of the Treasury announced the completion of automatic enrollment on October 1, 2026, of Trump Accounts for all eligible children. By expanding access and creating a pathway for philanthropic contributions to invest in the financial futures of millions of American children, this assures that all children will have access to available donations. With automatic enrollment complete, every eligible child under the age of eighteen with a valid Social Security number now has a Trump Account.

"Millions of children have already enrolled in Trump Accounts. With automatic enrollment, over 60 million more eligible children now have an account ready to be claimed," said Treasury Secretary Scott Bessent. "This is a transformative milestone in the Trump Administration's effort to give every American child the opportunity to build generational wealth and jump-start their financial future."

A parent or guardian must claim the child's automatically enrolled Trump Account to manage it and allow for family members, friends, and employers to contribute. To claim the child's Trump Account, a parent or authorized person should download the official Trump Accounts app, available for iOS and Android. During the claiming process, a parent or guardian will verify their identity and relationship to their child, review the child's information, and accept the account terms.

Eligible children must also have their Trump Account claimed to receive the one-time $1,000 seed contribution from Treasury.

Because account details remain protected return information under IRC Section 6103, the mobile app requires the parent or authorized person to complete a rigorous three-step legal verification:

1. Identity Authentication: The claimant must independently authenticate their personal identity.
2. Proof of Legal Authority: The claimant must establish legal entitlement under applicable state law to act on behalf of the minor beneficiary.
3. IRC Section 6103 Disclosure Consents: The claimant must establish statutory entitlement to inspect decedent or minor tax records under Section 6103(e) and execute formal written consents under Section 6103(c) authorizing Treasury to disclose return information to the designated receiving trustee.

As Treasury explained in the preamble to TD 10056:

"In addition, a person seeking to claim an auto account must independently submit the information required by the Secretary, authenticate the person's identity, establish the person's legal authority to act with respect to the account and to receive the account beneficiary's return information, and execute any consent required for disclosures necessary to process the claim and transfer the account balance. This process permits an authorized person to claim and control the account without disclosing protected account information before the person's legal authority to that information has been established."

For tax practitioners, CPAs, and Estate Planning attorneys, the announcement shifts the focus from initial account establishment to the technical administrative procedures governing how authorized parties claim these auto accounts, unlock the one-time $1,000 government seed contribution under IRC Section 6434, and enable tax-free employer contributions under IRC Section 128.

How the issue of disclosure was addressed:

To execute bulk enrollment while respecting strict statutory tax privacy mandates, Treasury established a master group trust architecture under Revenue Ruling 81-100, 1981-1 C.B. 326. Under IRC Section 6103, identifying details regarding eligible children obtained from tax

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FROM THE **EDITOR**



I value education and enjoy researching new ideas and digging for more information. It has driven my career in providing education for tax professionals, small business owners, and individual clients. I love a good conversation that helps someone understand a tax concept that provides a solution to a problem they are experiencing.

The Courage to Say “I Don't Know”

There are three words that many tax professionals find difficult to say: “I don't know.”

After all, we are supposed to have the answers. Our clients come to us expecting guidance, our colleagues look to us for advice, and we spend countless hours studying an ever-changing tax code. Admitting that we don't know something can sometimes feel like admitting that we aren't quite as knowledgeable as we should be.

But I have come to believe that those three words may be among the most important in our professional vocabulary.

Think about how much our profession has changed. New legislation, court decisions, regulations, and IRS guidance continually challenge what we thought we knew. Just when we become comfortable with one set of rules, Congress changes them, the IRS interprets them, or a court gives us a new perspective.

How could anyone possibly know it all?

Perhaps the real measure of a good tax professional is not how many answers we have memorized, but how willing we are to acknowledge what we do not know—and then find the answer.

There is also something liberating about admitting uncertainty. It gives us permission to ask questions, consult colleagues, conduct research, and consider viewpoints we might otherwise overlook. Some of the most valuable professional conversations begin with someone saying, “I'm not sure. What do you think?”

And perhaps that is one of the things I appreciate most about our profession. No matter how many years we have practiced, there is always something new to learn. A challenging client situation, an unexpected court decision, or a conversation with another practitioner can remind us that experience doesn't eliminate the need for curiosity.

I sometimes wonder whether we place too much emphasis on appearing knowledgeable and too little on being willing to learn. In a world where technology can produce an answer in seconds, the ability to recognize when an answer needs further investigation may be more valuable than ever.

Our clients do not need us to be infallible. They need us to be thoughtful, careful, and willing to do the work necessary to give them sound advice.

So perhaps we should become a little more comfortable with those three words.

“I don't know.”

Of course, they should always be followed by four more:

“But I'll find out.”

And isn't that what being a professional is really about?

This is the benefit of taking advantage of all the education opportunities provided by NSTP. Our summer tax seminars, fall update seminars, webinars, and publications all strive to provide the information tax professionals need.

The Taxpayer Assistance and Service Act (TAS) of 2026 which is winding its way through the Congressional approval process contains enhancements for the profession by requiring continuing education and improving services to all taxpayers.

Specifically, it would significantly expand IRS authority towards tax return preparers who are not otherwise credentialed.

The legislation would authorize:

- Background checks and reviews of preparers' personal tax compliance.
- Continuing education requirements of up to 18 hours annually.
- Denial, suspension, or revocation of a preparer's PTIN for specified misconduct.
- Administrative appeal rights for adverse PTIN decisions.
- Recognition of certain qualifying state licensing programs.

However, the legislation generally prohibits requiring a competency examination as a prerequisite to obtaining or renewing a PTIN, although education programs must verify participation and understanding.

The IRS has always understood the value of an educated tax professional community. Congress is now undertaking legislative action to require regular education and training for tax professionals.

National Taxpayer Advocate Erin M. Collins has publicly and strongly supported the bipartisan Taxpayer Assistance and Service (TAS) Act, praising it as a major step toward improving taxpayer rights and IRS efficiency. Erin Collins’ endorsement underscores the TAS Act’s broad bipartisan consensus and its potential to deliver practical, taxpayer focused improvements to the IRS. Her statement frames the bill as both a rights protecting measure and a modernization initiative that, if passed, would be a significant legislative achievement for U.S. taxpayers.

The NSTP instructors and staff look forward to seeing you during one of our upcoming education sessions, whether online or in-person. We appreciate your support of NSTP activities and value your membership.

Nina Tross, MBA, EA

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TRUMP ACCOUNTS REVISITED

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returns or Social Security Administration records constitute highly protected tax return information. Disclosing this information to commercial financial institutions or nonbank trustees prior to identity authentication would violate Section 6103.

Treasury resolved this conflict by structuring auto accounts under 26 CFR §1.530A-1T(e)(3) such that each individual auto account holds an undivided proportionate beneficial interest in a master group trust established by the Secretary, which is tax-exempt under IRC Section 408(e). In the preamble to TD 10056, the IRS detailed the legal justification for this structure:

"The master group trust addresses the concerns reflected in the prior §1.530A-1 NPRM about disclosure of return information because investments are held and administered at the master-group-trust level. Thus, the trustee of the master group trust can execute transactions for the trust without receiving or disclosing account-identifying return information for each account beneficiary in connection with each transaction. Return information used to identify eligible individuals and establish auto accounts is retained in a safeguarded environment by the Secretary and his financial agent authorized to receive that information on the Secretary's behalf."

Becoming Responsible Party and Managing Multiple Claims

Upon activation of the receiving account, the claiming guardian becomes the official "responsible party". In this capacity, the guardian obtains statutory authority to select among eligible index-tracking equity funds (IRC §530A(b)(3)), direct future trustee-to-trustee qualified rollovers (§530A(e)), authorize qualified ABLE account rollovers during the year the beneficiary turns age 17 (§530A(d)(4)), and designate successor responsible parties.

If competing claims are submitted by different individuals for the same child's auto account, the legal responsible party is determined by order of activation: the responsible party will be the first authorized claimant who successfully activates the receiving account with the trustee.



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FORM 5498-TA: TRUMP ACCOUNT CONTRIBUTION INFORMATION:

Form 5498-TA is a new IRS information return designed specifically for Trump Accounts established under IRC §530A. Its purpose is to give the IRS and the account beneficiary an annual record of Trump Account activity, including contributions and other information needed to administer the special tax rules.

It is comparable in purpose to Form 5498, IRA Contribution Information, but it is tailored to Trump Accounts, which have different contribution sources, limits, and tax-basis rules.

An important distinction for tax preparers: Form 5498-TA is generally filed by the Trump Account trustee or custodian, not by the child's parents or the tax return preparer.

1. What does Form 5498-TA report?

The IRS released a draft December 2026 version of Form 5498-TA and its instructions. The form contains six principal reporting boxes.

Box	Information reported
1	Federal $1,000 pilot contributions and qualified general contributions
2	Qualified rollover contributions
3	Employer contributions under IRC §128
4	Other contributions, including contributions from parents, grandparents, and other individuals
5	Basis or investment in the contract
6	Fair market value (FMV) of the account at year-end

The form distinguishes contribution sources because they do not all receive the same tax treatment.

2. Why Box 5 is particularly important

Box 5 — Basis or investment in the contract — may be the most important box for future tax preparation.

Trump Accounts are unusual because some contributions are made with after-tax dollars while others receive special tax treatment.

For example:

- Personal contributions by parents or grandparents generally create tax basis.
- Employer contributions excluded from income under §128 generally do not create basis.
- The $1,000 federal pilot contribution does not create basis.
- Qualified general contributions generally do not create basis.

Maintaining the correct basis will matter when distributions become available under the IRA rules.

3. Example of a completed Form 5498-TA

Assume a qualifying child receives the following contributions during 2026:

Contribution source	Amount
Federal pilot contribution	$1,000
Employer contribution under §128	$2,500
Grandparent contribution	$1,500
Qualified rollover contributions	$0
Total contributions	$5,000

Assume the account has investment earnings of $200 by December 31.

The Form 5498-TA would generally report:

Form 5498-TA	Amount
Box 1 — Pilot and qualified general contributions	$1,000
Box 2 — Qualified rollovers	$0
Box 3 — Employer contributions	$2,500
Box 4 — Other contributions	$1,500
Box 5 — Basis	$1,500
Box 6 — Fair market value	$5,200

The child's basis is $1,500, not $5,000. The earnings do not increase tax basis.

Also, the $1,000 pilot contribution is excluded from the regular $5,000 annual contribution limit. In this example, the employer and grandparent contributions use $4,000 of that limit.

4. Who files the form, and when?

The trustee or custodian is responsible for filing Form 5498-TA with the IRS and furnishing it to the beneficiary.

The draft instructions provide that:

- Form 5498-TA applies during the beneficiary's Trump Account growth period.
- Reporting may be required even when no contributions are made.
- The December 2026 revision is intended for reporting 2026 activity in 2027.
- After the growth period ends, the trustee generally switches to regular Form 5498 reporting.

The growth period ends December 31 of the year the beneficiary turns 17.

5. How does Form 5498-TA relate to other tax forms?

Form	Purpose
Form 4547	Election to establish a Trump Account and request the federal pilot contribution
Form W-2, Box 12, Code TA	Reports qualifying employer contributions under §128
Form 5498-TA	Annual trustee reporting of contributions, basis, and account value
Form 1099-R	Reports distributions, including applicable Trump Account distributions
Form 5498	Regular IRA information reporting after the Trump Account growth period

The 2026 Form W-2 instructions identify Code TA for employer contributions, while the 2026 Form 1099-R instructions include specific Trump Account distribution reporting fields.

What you need to know:

For tax professionals, the biggest issue will be tracking basis accurately over the life of the account.

It is recommended that tax professionals retain all annual Form 5498-TA and reconcile Box 3 employer contributions to any corresponding W-2 Code TA reporting. Because the account eventually becomes subject to traditional IRA rules, the contribution history may be important many years later.

LIMITED PARTNER SELF-EMPLOYMENT TAX EXCEPTION:

The Fifth Circuit has withdrawn its January opinion in a closely watched partnership tax case. In its place is a significantly different interpretation of who qualifies as a "limited partner" for purposes of the self-employment tax exception.

In *K Alain, L.L.L.P. v. Commissioner*, formerly known as *Sirius Solutions, L.L.L.P. v. Commissioner*, the Fifth Circuit Court of Appeals addressed whether limited partners' distributive shares of partnership income are subject to self-employment tax under IRC §1402(a)(13).

The IRS argued that the partners were not entitled to the limited-partner exception because of their involvement in the partnership's business activities. The Tax Court had applied a functional analysis focusing on whether the partners were passive investors.

The Fifth Circuit rejected the Tax Court's standard, holding that a limited partner for purposes of §1402(a)(13) is one who plays no significant role in managing or running the business. The court vacated the Tax Court's decision and remanded the case for further consideration under this standard.

Why the case matters: The decision clarifies that a partner's actual management responsibilities, rather than simply the partner's formal designation or level of business activity, are central to determining eligibility for the self-employment tax exclusion. It is particularly important for professional service firms, investment partnerships, and other businesses organized as limited partnerships.

The ruling does not automatically exempt all limited partners from self-employment tax. Eligibility depends on the individual partner's role in managing or operating the partnership.

Background and Procedure

In January, the U.S. Court of Appeals for the Fifth Circuit held in Sirius Solutions, L.L.L.P. v. Commissioner that the term "limited partner" under section 1402(a)(13) of the tax code meant a state-law limited partner with limited liability. Under that approach, what a partner actually did for the business did not determine whether the exception applied—that was a very different take from the IRS's view.

On August 12, 2026, the court withdrew its January opinion in its entirety and issued a substitute opinion in the case (now captioned K Alain L.L.L.P. v. Commissioner). The court now holds that a limited partner for purposes of section 1402(a)(13) is a partner who plays "no significant role in managing or running a business."

After that January ruling, the government asked for an en banc rehearing. That means it asked the Fifth Circuit to reconsider the January decision. En banc rehearing requires action by the eligible active judges of the circuit and is considered extraordinary.

The Fifth Circuit denied the request. But the original three-judge panel treated the en banc petition as also asking for panel rehearing. A panel rehearing asks the original three-judge appellate panel to reconsider its own decision because it allegedly overlooked or misapprehended a material point of law or fact.

Ordinarily, the Fifth Circuit requires separate petitions for panel and en banc rehearing. But here, the original panel granted rehearing, meaning that the judges who decided Sirius in January agreed to reconsider their own decision. On reconsideration, the panel withdrew the original opinion and substituted a new one.

It also vacated the Tax Court's decision and remanded for the Tax Court to determine whether the partners satisfy the new standard. That means that the Tax Court now has work to do.

The Tax Significance

Generally, a partner's share of partnership trade or business income is included in net earnings from self-employment and subject to self-employment tax. But there's an exception for "the distributive share of any item of income or loss of a limited partner, as such," other than certain guaranteed payments for services under section 707(c).

For years, taxpayers and the IRS have disagreed over what Congress meant by a limited partner. The IRS has generally argued that the exception should not shelter earnings attributable to a partner's services. The Tax Court adopted a version of that approach in a case currently pending in another circuit. In Soroban Capital Partners LP v. Commissioner, 161 T.C. 310 (2023), the court concluded that determining whether someone is a "limited partner, as such" requires looking beyond state-law status and considering whether the partner is functioning as a passive investor.

However, the Fifth Circuit rejected that approach in its original January opinion. There, the court treated a limited partner largely as a legal status. If a person was a partner in a state-law limited partnership and enjoyed limited liability, the court concluded that person was a limited partner for purposes of section 1402(a)(13).

That produced a relatively straightforward rule: limited liability, rather than participation in the business, controlled. The substitute opinion takes a different approach.

The New Opinion

In the new opinion, the Court held that the meaning of limited partner under section 1402(a)(13) is "a partner who plays no significant role in managing or running a business." The new opinion does not provide much guidance for determining when a management role becomes "significant," instead leaving the Tax Court to apply the new test on remand.

The court still rejects the Tax Court's "functional analysis" from Soroban, which focused on whether a partner was functioning as a passive investor. But the Fifth Circuit has also abandoned the bright-line limited-liability rule it adopted in January.

The Fifth Circuit focused on what the term "limited partner" would have meant when Congress enacted section 1402(a)(13) in 1977. Looking to contemporary legal dictionaries, partnership statutes, and treatises, the court concluded that the term historically described a partner who did not play a significant role in managing or running the partnership. That means limited liability, standing alone, is no longer enough.

But neither, according to the Fifth Circuit, is the Tax Court's passive-investor test.

The new opinion does not offer a bright-line rule. Instead, the result looks much more like the kind of facts-and-circumstances inquiry familiar throughout tax law. That means facts bearing on a partner's role in managing or running the business may now matter. Simply providing services, however, does not necessarily answer the question—the court expressly rejected a rule that equates limited partner status with pure passivity.

What About Partners Wearing Two Hats?

The new standard also raises questions for partners who act in more than one capacity. A partner, for example, might hold both a general partner interest and a limited partner interest, participating in management through the former while receiving a distributive share through the latter. Section 1402(a)(13) excludes the distributive share of a "limited partner, as such," and the Fifth Circuit does not explain how its new management-based test applies when the same person wears both hats.

Does significant management activity in one capacity prevent the exception from applying to income received in another? Or

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does the statutory phrase “as such” require those interests to be considered separately? For dual-capacity partners, that remains an open question.

What Happens Next?

A Fifth Circuit decision is binding precedent for federal courts within that circuit, which includes Louisiana, Mississippi, and Texas. Elsewhere, the broader dispute over section 1402(a)(13) remains unsettled.

LIMITED PARTNER SELF-EMPLOYMENT TAX EXCEPTION

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For taxpayers, the takeaway from the Fifth Circuit is no longer the simple rule announced in January. Limited liability alone is not enough. But participation in the partnership does not automatically disqualify a partner, either. The question now is whether the partner plays a significant role in managing or running the business.

A TIMELY TIP FROM ENNIS T. PEA

WHAT IS THE ACCUMULATED EARNINGS TAX?



While it is considered the Accumulated Earnings Tax ("AET"), it is not really a tax. It is a penalty, one that can only be levied by the IRS during an audit.

The Accumulated Earnings Tax (AET)

The AET is a 20% penalty assessed on corporations who hold "unreasonable" amounts of cash inside the business instead of paying out as a dividend.

There are a few basic guidelines:

- A corporation can hold $250,000 inside the business without being considered unreasonable. For service-based businesses, it's only $150,000.
- Only the amount that exceeds $250,000 (or $150,000) may be subject to AET.
- Despite the name, the tax can only be assessed on current year earnings. For example, a corporation accumulated $1,000,000 in earnings as of January 1, 2024, and had a profit of $500,000 in 2024. If the IRS audited their 2024 return, only the $500,000 could be potentially subject to AET.
- Money that is earmarked for a specific purpose (for example, buying a new factory) is not considered unreasonable. However, the corporation has to have a specific, contemporaneous plan for how the money is going to be used. It can't be a vague idea of using the money at some indeterminate point in the future, and the corporation can't come up with a plan during an IRS audit.
- Loans made to corporate shareholders may be considered by the IRS to be an attempt to avoid paying dividends.

Who does the AET apply to?

The AET can only be assessed on C-Corporations. It does not apply to S-Corporations, partnerships, or sole proprietorships (reported on Schedule C of Form 1040).

Why does the AET exist?

The AET was created to discourage corporations who attempt to indefinitely defer paying taxes on dividends by retaining money inside the business. In theory, a shareholder of a corporation could completely avoid double taxation by never paying out dividends. The shareholder would not be subject to any tax at all until the stock is disposed of, and there are various mechanisms in the tax code to avoid capital gains tax on the sale of stock. This goes against the Congressional intent of subjecting corporations to double taxation.

How can corporations avoid the AET?

Corporations can do any combination of the following:

- Pay out earnings as dividends, tax planning with the shareholders may provide a strategy based on their individual tax situation
- Have a specific plan for how to spend money for reasonable business needs
- Defer income and accelerate expenses as appropriate for the business activities

What are reasonable business needs?

Under IRC §537 and Treasury Regulation §1.537-1, reasonable business needs can include reasonably anticipated future needs.

Examples include:

- Purchasing equipment or expanding facilities.
- Acquiring property for business operations.
- Financing expansion into new markets.
- Maintaining reasonable working capital.
- Paying down business debt.
- Establishing reserves for identifiable business risks or contingencies.

The IRS expects specific, definite, and feasible plans to support future business needs. Vague intentions to expand someday generally are insufficient.

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SMITH V. COMMISSIONER, T.C. MEMO. 2026-25

The Tax Court reviewed the 2022 individual income tax return of Michael Smith. During the 2022 tax year, Mr. Smith held jobs with two separate employers, receiving wages totaling $16,535, which he appropriately reported on his Form 1040. However, claiming a disabling injury, Mr. Smith applied for Social Security Disability Insurance (SSDI) benefits in April 2022.

In November 2022, the Social Security Administration (SSA) issued an award letter granting retroactive benefits, and Mr. Smith subsequently received SSDI payments spanning from March 2022 through March 2023. In total, the SSA paid Mr. Smith $26,802 in SSDI benefits during the 2022 tax year, which the agency reported to the IRS on Form SSA-1099. Mr. Smith did not report any of these benefits on his 2022 Form 1040.

In April 2023, the SSA ceased making disability payments after discovering Mr. Smith had been employed since April 2022. The SSA informed him that he "should never have been entitled to receive [a] Social Security disability benefit". Consequently, Mr. Smith was required to reimburse the SSA. He repaid $31,116 in May 2023 and fulfilled the remaining balance via monthly payments across 2023 and 2024. Upon examining his 2022 return, the IRS determined that 85% of the 2022 SSDI benefits ($22,782) should have been included in his gross income pursuant to IRC Sec. 86(a), resulting in a tax deficiency of $5,454.

Taxpayer's Request for Relief

Mr. Smith petitioned the Tax Court for redetermination, arguing that the $26,802 he received in 2022 was an "accidental overpayment" and was "repaid . . . in full". The taxpayer did not contest the mechanical calculation of the taxable portion of his benefits. Instead, he asserted that the SSDI benefits should be completely excluded from his 2022 gross income due to his subsequent obligation to return the funds, contending that the benefits were "tantamount to loan proceeds that should be excluded from his income".

Court's Analysis of the Law

The Tax Court evaluated the case under standard summary judgment principles, analyzing the evidentiary foundation of the IRS's deficiency determination. As the court noted, gross income broadly "includes all income from whatever source derived" under IRC Sec. 61(a), and specifically "includes social security benefits" under IRC Sec. 86(a)(1). The court outlined that up to 85% of Social Security benefits are includible in gross income depending on income thresholds, as dictated by IRC Sec. 86(a)-(c).

Addressing the impact of a repayment, the court analyzed IRC Sec. 86(d)(2)(A), which states that the amount of Social Security benefits received during a taxable year is "reduced by any repayment made by the taxpayer during the taxable year of a social security benefit previously received by the taxpayer".

The court heavily leaned on the "annual accounting principle" codified in IRC Sec. 451(a) and Treas. Reg. Sec. 1.451-1(a), which requires cash basis taxpayers to include items of gross income in the taxable year they are received. To address the taxpayer's argument regarding his obligation to repay the funds, the court cited the foundational "claim of right" doctrine established in *North American Oil Consolidated v. Burnet*, 286 U.S. 417 (1932). The court quoted the Supreme Court's ruling: "If a taxpayer receives earnings under a claim of right and without restriction as to its disposition, he has received income which he is required to [report], even though he might later be required to refund the money".

Application of the Law to the Facts

Applying the law to Mr. Smith's situation, the Tax Court rejected the taxpayer's attempt to offset his 2022 income with repayments made in 2023 and 2024. The court stressed that under IRC Sec. 86(d)(2)(A), benefits are reduced only by "any repayment made by the taxpayer during the taxable year". Because no repayment was made in 2022, his 2022 tax liability could not be adjusted.

The court further dismantled the taxpayer's argument that the overpayment was akin to a loan. Utilizing the claim of right doctrine, the court observed that Mr. Smith "clearly did receive the 2022 benefits under 'a claim of right,' because he applied for those benefits and SSA issued him a letter affirming his entitlement to the benefits". The restriction on the funds only arose the following year when the SSA reversed its decision upon learning of his ongoing employment.

Conclusions of the Court

Finding no material facts in genuine dispute, the Tax Court granted the Commissioner's Motion for Summary Judgment. The court concluded that it was "bound by the provisions of the Code" and lacked jurisdiction to consider the tax effects of repayments made outside of the 2022 tax year. The judge firmly ruled, "Any relief to which petitioner may be entitled must be determined for the tax year in which the repayment was made".

Practice Note: Claim of Right Relief Under Section 1341

Although not discussed extensively by the judge in this 2022 deficiency opinion, tax professionals should note how the taxpayer could have used the claim of right statute (IRC Sec. 1341) and its corresponding regulations to obtain relief in the year of repayment.

Under IRC Sec. 1341(a)(1) and Treas. Reg. Sec. 1.1341-1(a)(2), a taxpayer who includes an item in gross income because it "appeared from all the facts available in the year of inclusion that the taxpayer had an unrestricted right to such item," but later establishes that they did not have such a right, may be entitled to targeted relief if the deduction for the repayment exceeds $3,000. Because Mr. Smith repaid $31,116 to the SSA in 2023, he comfortably cleared the $3,000 statutory threshold.

In the year of repayment, Treas. Reg. Sec. 1.1341-1(b)(1) dictates that the taxpayer's liability is the lesser of:

1. The tax for the repayment year computed with the deduction taken into account (IRC Sec. 1341(a)(4)), or
2. The tax for the repayment year computed without the deduction, minus the decrease in tax for the prior taxable year that results solely from excluding the item from the prior year's gross income (IRC Sec. 1341(a)(5)).

Unfortunately for the taxpayer, while he could have utilized IRC Sec. 1341 and Treas. Reg. Sec. 1.1341-1 to recover the tax paid on the $22,782 inclusion, it seems likely he lost the right to recover the tax paid in 2022 on his benefits (or at least a portion of it) in 2023 due to the closing of the statute of limitations on filing a claim for refund for the repayment year (2023). Because relief must be claimed on the return for the year the actual restoration of funds occurred (2023 in this case), the failure to timely file or amend the return for the repayment year permanently forecloses the taxpayer's ability to be made whole.

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HOW TAX PRACTITIONERS CAN SPOT AND SOLVE CONFLICTS OF INTEREST

All practitioners, regardless of the size or scope of their practice, need to be aware of conflicts of interest that can occur during the representation of taxpayers.

Conflicts of interest are the subject of Circular 230 section 10.29, which has three main pieces. This article starts with what a conflict of interest means in Circular 230 and then moves on to practitioners' options for dealing with them.

The IRS business unit responsible for administration and enforcement of the Regulations Governing Practice before the Internal Revenue Service in Circular 230, is the Office of Professional Responsibility (OPR).

Definition

Paragraph (a) of section 10.29 defines a conflict of interest as when:

- A practitioner's "representation of one client before the IRS will be directly adverse to another client" whom the practitioner represents ((a)(1)); or
- A "significant risk" exists "that the practitioner's representation of one individual or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner." ((a)(2))

NOTE: paragraphs (b) and (c) of section 10.29, provide, a waiver-and-consent based exception (allowing for representation despite a conflict of interest) and, the required method of waiver and consent.

As to the definition's key phrases of "directly adverse," "significant risk," and "materially limited," the circular's definition is far from being distinctly unique; rather, it is the prevailing one applicable to attorneys nationwide. When the Treasury Department and the IRS added what are substantively the current conflict-of-interest provisions to Circular 230 in 2002 (tweaked in 2004 and 2007), the drafters intentionally modeled them on American Bar Association (ABA) Model Rule of Professional Responsibility 1.7, "Conflict of Interest: Current Clients."

Treasury and IRS in large part adopted the ABA rule almost verbatim; the only difference in their respective conflict definitions is the use of "lawyer" and "practitioner." That background furnishes a useful insight for interpreting and applying section 10.29. Such that practitioners, and IRS personnel reporting suspected violations of the section to the OPR, have available to them as sources of guidance, the ABA comments and annotations to Rule 1.7 and to other extrinsic authorities and aides (like case law and formal ethics opinions).

Common Scenarios

The following are situations in which conflicts often arise:

- Related taxpayers: Representing a married couple during an IRS examination where one spouse seeks innocent spouse relief, under IRC 6015.
- Entities and owners: Representing a corporation and its shareholders, or a partnership and its partners.
- Personal interests: Undertaking the representation of a taxpayer whose prosperity or financial interests are (or seem to be) counter to the practitioner's interests.
    - Suppose the taxpayer is the small business rival, in a tightly competitive local market, of another company at which the practitioner is an occasional, part-time employee. Any sizeable reduction in the taxpayer's working capital, due to increased tax liabilities or otherwise, tends to indirectly benefit the practitioner's employer. The practitioner therefore may experience divided loyalties, even if only mild ones, that could impair the representation. Whether there is a substantial risk of the representation being materially limited is unclear, but the practitioner needs to at least recognize the risk and consider it.
    - The scenario of conflict with financial interests includes any imputed to the practitioner, usually those of a spouse.
- Competing positions before the IRS / Professional vs. personal: Preparing and filing a client's federal tax return that reports questionable tax benefits and afterwards defending them.
    - A fact pattern resembling ones familiar to the OPR would be where the practitioner advised the taxpayer that they were eligible to claim certain deductions from individual income tax. The practitioner then later represents the taxpayer when the deductions are selected items in an IRS examination of the return. The examiner disallows the deductions, asserts an IRC 6662 accuracy related penalty against the taxpayer, and sends a return preparer referral on the practitioner to the responsible IRS group for consideration of a preparer examination. At that point, the practitioner's representation of the taxpayer may become materially limited by the practitioner's own interest in deflecting liability for any penalties.
    - The predicament worsens if the taxpayer has a viable reasonable cause defense to the penalty based on advice from a professional.

Prevention and Elimination Remedies

To avoid conflicts of interest, practitioners should proactively identify potential conflicts before they arise. When a current or prospective client approaches requests representation in a matter before the IRS, the practitioner should assess whether going forward with the representation is likely to conflict with their existing commitments. Particularly those owed to other clients. As to clients under active representation, the concern to be considered is that by agreeing to represent the person, the practitioner would be advocating and acting concurrently for clients whose apparent interests are directly adverse to each other.

One strategy to deter potential conflicts, short of fully declining a new client opportunity, is to limit at the outset the scope of representation, so that the practitioner only represents the client in matters that do not overlap with the matters handled for other clients.

Conflicts arising from the practitioner's responsibilities to third parties (beyond just former clients) can occur in various ways. For example, as a fiduciary, including a trustee of a trust or an appointed administrator or representative of the estate of a decedent who died intestate, or as an uncompensated officer or board member of a tax-exempt charitable organization or private foundation. Situations like these are susceptible to suspending or reassigning the responsibilities of the role. When the practitioner who would be conflicted out of the representation works in a firm of other practitioners, another possibility is for a different member of the firm to represent the client before the IRS, with appropriate protective measures implemented, including fully screening the first practitioner off from any involvement in the representation. (For attorneys and CPAs, the professional responsibility and conduct rules and any official, formal interpretations or ethical opinions of the relevant jurisdiction should be consulted.)

An Alternative Resolution

Finally, in circumstances that meet all of section 10.29(b)'s three elements, a practitioner can continue to represent one or more clients affected by the conflict:

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1. The practitioner reasonably believes that they will be able to provide competent and diligent representation to each affected client.
2. The representation is not prohibited by law.
3. Each affected client waives the conflict of interest and gives their informed consent, confirmed in writing by the client, at the time the conflict of interest is known to the practitioner.

The confirmation may be made within a reasonable period, but no more than 30 days after the time the practitioner knows of the conflict. Further, the practitioner must retain copies of the written consents for 36 months after the representation ends and provide them to the IRS upon request.

It is the responsibility of all practitioners to ensure that their representations align with and do not violate Circular 230's conflict-of-interest requirements. Effective handling of conflicts (whether they're foreseeable or actual) involves a structured, ongoing strategy that begins with systematic screening procedures at client intake. Practitioners should establish clear protocols for initial consultations, information gathering, and risk assessment to detect probable conflicts early. The process then continues with regular reviews conducted throughout the practitioner-client relationship that was formed for the represented IRS matter(s). Additionally, comprehensive documentation at all stages is a key step in maintaining and demonstrating (if needed) section 10.29 compliance.

Being diligent when it comes to conflicts of interest will benefit not only your clients but also you and your practice.

FROM THE BENCH

TAX COURT GRANTS INDIVIDUAL INNOCENT SPOUSE RELIEF:

TRISHA D. ANDERSON, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Background

Petitioner and her former spouse, Quentin D. Anderson, were married on December 29, 1991. In July of 2016, the year in issue, they separated after selling their house. Petitioner filed for divorce in November of 2017, and the divorce was finalized on August 24, 2021. In petitioner's and Mr. Anderson's divorce decree, the parties agreed that Mr. Anderson would pay the 2016 federal tax liability that is in issue in this case.

During their marriage and through 2016, petitioner and Mr. Anderson maintained a joint bank account. Petitioner did not have a separate bank account until 2017, after she and Mr. Anderson separated. During 2016 Mr. Anderson earned all the couple's income. Mr. Anderson primarily managed the finances and financial decision-making during their marriage, including preparing and filing the joint federal income tax returns.

Petitioner is a college graduate with a degree in psychology. Mr. Anderson received an undergraduate degree in finance and a Master of Business Administration degree. During their marriage he worked as an accountant, banker, and stockbroker. Petitioner was a stay-at-home mother for her and Mr. Anderson's children.

After separating from Mr. Anderson, petitioner filed separate federal tax returns for tax years 2017 and 2018. For tax year 2017 she claimed the filing status of married filing separately and reported that she was unemployed and did not earn any income. For tax year 2018 she claimed the filing status of Head of Household, claimed her son as a dependent, and reported adjusted gross income of $6,400. During 2018 petitioner worked as a retail clerk. On her 2017 and 2018 tax returns she listed her then-address, which was different from Mr. Anderson's.

Petitioner is currently unemployed without any monthly income. She is currently supported by a friend to whom she is neither engaged nor married. Because of her current health problems, petitioner is unable to work. She has a vehicle but does not currently have any personal bank accounts, investments, or other assets.

The Deficiency, Tax Reporting, and Examination of Tax Return

On July 18, 2016, petitioner and Mr. Anderson, through the Anderson Family Trust, sold their house. Petitioner did not receive any proceeds from the sale. She does not know what happened to any net proceeds from the sale. After selling the house, petitioner and Mr. Anderson separated and moved to separate residences.

The documents from the sale of the house were mailed to petitioners and Mr. Anderson's separate residences. The Seller's Final Settlement Statement attached to those documents lists interest paid on July 15, 2016, from the sale of the house to "Citibank" in the amount of $92,371.41 and to "Wells Fargo Home Mortgage" in the amount of $16,036.42, totaling $108,407.83. Although the property was owned by The Anderson Family Trust, Forms 1098 listed Mr. Anderson as the only borrower on the two mortgages. The taxpayer is seeking innocent spouse relief under IRC §6015(c) for a tax deficiency arising from a disallowed $108,220 mortgage interest deduction on the couple's 2016 joint income tax return.

The petitioner is seeking innocent spouse relief under IRC §6015(c) for a tax deficiency arising from a disallowed $108,220 mortgage interest deduction on the couple's 2016 joint income tax return.

Petitioner filed Form 8857, Request for Innocent Spouse Relief, which the IRS received on April 18, 2023. After reviewing her claim, the IRS issued petitioner a Notice of Determination Concerning Relief From Joint and Several Liability Under Section 6015 dated April 10, 2024, denying her request for relief under section 6015(b), (c), and (f) for tax year 2016. Petitioner timely filed a Petition with the Court on July 8, 2024, challenging the April 10, 2024, Notice of Determination, upon which this case is based.

Discussion

To qualify for relief under section 6015(c), the requesting spouse must satisfy all of the following conditions: (1) a joint return was filed for the taxable year; (2) at the time of the election, the requesting spouse was separated or divorced from the nonrequesting spouse or was not a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date of the request for relief; and (3) the requesting spouse made a timely election for relief.

The burden of proof normally is with the Commissioner to demonstrate that the electing spouse had actual knowledge. *Id.* subpara. (2)(i). To preclude relief for actual knowledge under section 6015(c), the Commissioner must prove by a preponderance of the evidence that the requesting spouse had actual knowledge of any item giving rise to a deficiency. *Cheshire v. Commissioner*, 282 F.3d at 335; *Culver v. Commissioner*, 116 T.C. 189, 196 (2001).

Analysis

The Court considers the conditions for section 6015(c) relief as follows:

1. A joint return was filed for the taxable year.

Yes, petitioner filed a joint return for tax year 2016.

2. At the time of the election, the requesting spouse was separated or divorced from the nonrequesting spouse or was

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not a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date of the request for relief.

Yes, petitioner requested relief by filing Form 8857, which the IRS received on April 18, 2023, after her divorce from the nonrequesting spouse was finalized on August 24, 2021.

3. The requesting spouse made a timely election for relief.

Yes, the parties agree that petitioner timely filed Form 8857.

4. Did the requesting spouse have actual knowledge of the item giving rise to the deficiency?

In her testimony, which the Court found credible, petitioner stated that she thought the mortgage interest was paid. In the Notice of Deficiency, which petitioner never received, it appears that the

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IRS's reason for disallowing the mortgage interest deduction for petitioner and Mr. Anderson's tax year 2016 is that Mr. Anderson did not respond to the IRS with supporting documentation for the claimed home mortgage interest deduction.

Accordingly, the Court finds that petitioner is entitled to relief from the deficiency under section 6015(c).

The Court has considered all the other contentions of the parties and, to the extent not discussed above, finds those arguments to be irrelevant, moot, or without merit.

Decision will be entered for petitioner.

PRACTICE MANAGEMENT

WHAT IS THE DIFFERENCE BETWEEN TAX COURT AND THE IRS INDEPENDENT OFFICE OF APPEALS?

Know Your NSTP Member Benefits

- **NSTP Tax Research Service**: Member rate for expanded research services.
- **Tax Helpline**: Full membership includes 6 questions to our Tax Helpline.
- **Educational Discount**: Members receive exclusive pricing for NSTP education.
- **Federal Tax Update Seminars**: To prepare for the upcoming tax season.
- **Webinars & Streaming Courses**: Weekly offerings of courses on current key industry topics.
- **NSTP Dividend Rewards Points**: Earn one Dividend Reward Point for every dollar spent on NSTP purchases.
- **The Federal Tax Alert**: Technical publication issued 4 times a year.
- **Tax Client Newsletter**: Regularly published newsletter with tax industry insights for members to brand with their logo and share with clients.
- **Tax Tidbits**: A weekly channel of communication highlighting current and relevant tax topics emailed right to your inbox!
- **And More**
  - Membership Certificate
  - Partner Discounts
  - Exclusive Online Engagement
  - Opportunities to be Involved

The IRS Independent Office of Appeals is a division within the IRS that hears and settles tax disputes that are not resolved in Exam, Collections, or certain other departments. An appeal is opened by filing a protest letter laying out your issues with the underlying decision the IRS made, and your matter is heard at a conference by an IRS Appeals Officer. An Appeals Officer is an IRS employee who acts independently from the rest of the IRS. Section 7803(e) establishes Appeals' independence within the IRS, and the ex parte rules of Rev. Proc. 2012-18 restrict communications between Appeals and the originating IRS function.

The United States Tax Court is a federal court established by Congress under Article I of the Constitution. Tax Court functions much like any other federal court, and it hears disputes between taxpayers and the IRS before the disputed tax is paid. Importantly, Tax Court judges are presidentially appointed and are not employees of the IRS. A taxpayer who receives a notice of deficiency, a notice of determination in a collection due process matter, or certain other statutory notices may petition the Tax Court within the applicable statutory period.

Tax Court is subject to important jurisdictional limits set by Congress. Under Section 6215, the Tax Court may hear cases where tax has been assessed and not yet paid. If a taxpayer is seeking a refund of tax it already paid, it must bring suit in U.S. District Court or the Court of Federal Claims instead. Beyond deficiency cases, Tax Court jurisdiction is limited to a short list of matters specified by statute, such as claims arising out of collection due process hearings or innocent spouse relief claims.

Cost

Going straight to Appeals is usually the less expensive path, and cost is a significant factor for many taxpayers. The Tax Court filing fee is $60, but bringing a case before the Tax Court takes time and should be handled by skilled legal representation, which is costly. Going straight to Appeals involves drafting a written protest and one or two conferences with the Appeals Officer. Filing in Tax Court, by contrast, involves a petition and answer, conferences with counsel, informal and then formal discovery, and trial preparation. Most of those steps happen even in cases that settle, because settlement leverage in Tax Court largely comes from being ready to try the case.

The likelihood of settling in Appeals is also an important part of the cost analysis. A client who spends nine months in Appeals, does not settle, and then petitions the Tax Court has paid for both tracks. Going to Appeals first is only the cheaper path when it resolves the case.

Access to the qualified offer requires seeking an appeal

A qualified offer is a written settlement offer made under Section 7430(g) that can shift the taxpayer's litigation and administrative costs onto the government if the determination in the case is less than the amount offered. The offer must be made during the qualified offer period, which begins on the date the IRS sends a 30-day letter or, if none is sent, the date of the first letter proposing a deficiency that gives the taxpayer an opportunity for administrative review, and ends 30 days before the case is first set for trial. To qualify, the taxpayer must be below the net worth threshold ($2 million for individuals; $7 million and no more than 500 employees for entities), the offer must be in writing, it must state the specific amount the taxpayer proposes to pay, it must be designated as a qualified offer made under Section 7430(g), and it must remain open for at least 90 days or until the IRS rejects it, whichever comes first.

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For the taxpayer to be treated as the prevailing party for purposes of recovering litigation costs, the case must go to Tax Court and reach a determination equal to or less than the qualified offer. If the case settles before that point, the government will not have to pay the taxpayer's litigation costs, no matter how low the settlement. Even so, a qualified offer may be worth serving in a case the practitioner expects to settle; it costs nothing to make, and qualified offers can be a compelling tool to convince the IRS to settle early.

But the exhaustion requirement under Section 7430 limits who can use it. To recover fees under a qualified offer, a taxpayer must exhaust administrative remedies, generally by participating in an Appeals conference or seeking one and being denied. A taxpayer who bypasses Appeals entirely forfeits fee recovery altogether, regardless of how favorable the ultimate result. The Seventh Circuit made that concrete in Veal-Hill v. Commissioner, 812 Fed. Appx. 387 (7th Cir. 2020), where a taxpayer who cut her assessment from roughly $84,000 to $500 recovered nothing because she had neither participated in an Appeals conference before petitioning nor requested one before the notice issued.

Ultimately, the decision to skip Appeals entirely can determine whether fee recovery under a qualified offer remains available at all.

The clock

An appeal filed before a Tax Court petition (a non-docketed appeal) runs on an administrative timeline with no external deadline. Appeals leadership reported an average non-docketed cycle time of 274 days during fiscal year 2025, and that average is expected to increase in fiscal year 2026 as the Appeals workforce shrinks. Appeals began FY 2025 with approximately 1,777 employees and projected ending near 1,324, and the National Taxpayer Advocate reported the IRS overall fell from roughly 102,000 employees to roughly 74,000 during 2025.

When a taxpayer files in Tax Court without having had an Appeals conference, the IRS will usually refer the case to the Office of Appeals to attempt settlement (a docketed appeal). Docketed appeals run on the court's calendar: once settlement appears unlikely, or ten calendar days after the case appears on a trial calendar, Appeals returns the case for further proceedings. As a result, taxpayers who believe they can settle at Appeals may get their case in front of Appeals much faster by filing a Tax Court petition first.

Who decides your case matters

An Appeals Officer is an IRS employee. A Tax Court judge is not. Although the Office of Appeals intends to be independent, many taxpayers have misgivings about whether it is truly independent of the IRS. Knowing that the person deciding the case is fully independent can be a significant factor for some taxpayers, and in those situations, going to Tax Court may be preferred.

Other factors matter here too. Depending on the underlying issues, it may be preferable to have a decisionmaker who understands the inner workings of the IRS and proper IRS procedure. Alternatively, for particularly complicated tax matters, a Tax Court judge with an academic understanding of tax law may be the better audience. Taxpayers should carefully consider how presenting their case to an IRS Appeals Officer versus a Tax Court judge may affect the outcome they want.

Publicity

Appeals conferences are private. Tax Court proceedings are not. Once a petition is filed, the case becomes a matter of public record: the petition, the IRS's answer, stipulated facts, motions, and the eventual opinion are all available on the Tax Court's public docket, and litigated tax opinions are routinely picked up and indexed by commercial legal databases and outlets that cover tax controversy. For licensed professionals, closely held businesses with lenders or acquirers, and any client whose dispute involves facts they would not want searchable, that visibility may be undesirable.

Cases in Appeals, by contrast, are protected from disclosure by law. The Appeals Officer cannot discuss your case with anyone outside the IRS, and the file is not public record. For taxpayers who highly value privacy, this aspect of Appeals can be very attractive.

Conclusion

Choosing between Appeals and Tax Court is mostly a question of strategy, and making the wrong choice can foreclose important options or be unnecessarily costly. Appeals will often be the faster and less expensive route when a taxpayer is concerned about privacy or cost, or has no concerns about the impartiality of Appeals. A Tax Court petition may make more sense when independence, the ability to seek litigation costs under a qualified offer, or a complex legal issue drives the dispute. There is no default answer that fits every case. Before deciding how to proceed, taxpayers should consider all aspects of their tax situation.

PRACTICE MANAGEMENT

WHAT IS AN EXPEDITED SUSPENSION: UNDERSTANDING ITS USE AND IMPLICATIONS FOR TAX PRACTITIONERS

Expedited suspension is a critical process employed by the Office of Professional Responsibility (OPR) in the office's administration and enforcement of Circular 230, *Regulations Governing Practice before the Internal Revenue Service*. An expedited suspension under section 10.82 of Circular 230 serves as a swift action to protect the interests of taxpayers and federal tax administration by suspending tax professionals from practice when particular conditions specified in the section are met. Circular 230 practitioners are attorneys, certified public accountants (CPAs), enrolled agents (EAs), enrolled retirement plan agents (ERPAs), and enrolled actuaries. This article explains what an expedited suspension is, what the necessary bases are for its use, and what tax practitioners should know about the overall process and its applicable procedures.

Availability and Use of Expedited Suspension

An expedited suspension can be enforced by the OPR's Director following notice and an opportunity to respond. The grounds that warrant such a suspension are stringent (with a high degree of factual certainty) and aim to address significant concerns about a practitioner's professional and ethical fitness to practice. The five bases for an expedited suspension are:

- Suspension or Revocation of a Credential (sec. 10.82(b)(1)): A state bar, board of accountancy, or other licensing authority or a federal court or agency suspended or revoked a practitioner's license to practice as an attorney, CPA, or actuary for cause.
- Conviction of Certain Crimes (10.82(b)(2)): A practitioner was convicted of any federal tax crime under the Internal Revenue Code, any crime involving dishonesty or breach of trust, or any felony involving conduct that makes the practitioner unfit to practice before the IRS.

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- Violation of Sanctions ((b)(3)): A practitioner violated any conditions imposed by the OPR, under Circular 230 section 10.79(d),[1] after being sanctioned with a censure or suspension.
- Judicial Sanctions ((b)(4)): A court imposed a sanction on a practitioner in a civil or criminal proceeding that related to a third person's tax liability or the practitioner's own tax liability for:
  - Conducting the proceeding primarily for delay,
  - Advancing frivolous or groundless arguments in the proceeding, or
  - Failing to pursue available administrative remedies before commencing the proceeding.

Court-imposed sanctions are discussed more below (go to the footnote).[2]

- Unfiled Tax Returns ((b)(5)): A practitioner "demonstrated a pattern of willful disreputable conduct" by failing to file required federal tax returns for four of the last five consecutive tax years or failing to file required returns due less than annually (e.g., quarterly) for five of the last seven consecutive tax periods.

Each basis for the expedited suspension, such as a conviction or loss of license, must have occurred within five years of the OPR initiating the expedited suspension.

Implementing an Expedited Suspension

The process begins with the OPR serving on the practitioner an Order to Show Cause (OSC) why they should not be suspended from practice before the IRS. The practitioner then has 30 days to submit a written response and request a conference with the OPR. See section 10.82(c) (*Expedited suspension procedures*) and, in particular, paragraphs (c)(1) and (c)(3). Here are the key steps and events:

- Show Cause Order: The OSC is a formal document that outlines the specific reasons and evidence for suspending the practitioner. "The show cause order must give a plain and concise description of the allegations that constitute the basis for the proposed suspension."

  NOTE: An OSC often alleges multiple bases. For example, suppose an IRS revenue agent assigned to an examination of a taxpayer's tax returns learned that the CPA certificate of the taxpayer's appointed representative was currently suspended for cause and referred the information to the OPR. Then, as part of its investigation into the referred information, the OPR's routinely conducted research revealed the practitioner's history of serial non-filing of personal income tax returns, within the scope of section 10.82(b)(5). Under those facts, an OSC sent to the practitioner would include both the license suspension and the tax noncompliance.
- Response Period: The practitioner – the "respondent"[3] – has 30 days from receiving the OSC to provide a written response and request a conference with the OPR to contest the proposed suspension (per section 10.82(c)(3), "a conference to address the merits of the shoe cause order"). The 30-day window affords an opportunity to present any defense, including countervailing, extenuating, or mitigating facts and circumstances or documentary evidence and information the practitioner has to offer.
- Conference with the OPR: During the conference, the practitioner has an opportunity to present their case. If the practitioner can demonstrate that the basis for the OSC is incorrect or show other good cause why they should not be suspended, the OPR Director will notify the practitioner of the decision not to suspend them in an order "regarding" suspension.
- Issuance of Suspension: The OPR Director will proceed with suspension if the practitioner fails to show, through their written response and any conference with the OPR, why they should not be suspended; fails to respond timely to the OSC (despite any agreed upon extensions); or does not respond at all. The Director will execute the suspension, in an order of suspension.

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Post-Suspension Rights and Reinstatement

Once a practitioner is suspended, the suspension remains in effect indefinitely, under section 10.82(f)(2), unless superseded by certain later actions specified in paragraph (f)(2) . However, the practitioner is not left without recourse. They have the following rights and options:

- Formal Disciplinary Proceeding: The suspended practitioner has the right to submit to the OPR a written "demand" that the OPR commence a formal disciplinary proceeding before an administrative law judge (ALJ) for the practitioner to challenge the suspension (section 10.82(g)). The practitioner has two years after the effective date of the suspension to do so.
  - The OPR must file a complaint against the individual within 60 days of receiving a timely demand, or the suspension is automatically lifted. Note that the OPR, as the complainant, can request the ALJ:
    - Continue the current, indefinite suspension, or
    - "Modify" it by replacing the open-ended duration with a term suspension, such as one-year or 18 months, or replacing it with an overriding sanction, possibly a disbarment.
  - The OPR can, and generally does, include additional counts in the complaint alleging violations that were not in the OSC. Specifically, those that do not qualify as section 10.82 suspension bases, such as:
    - Violations of Circular 230's Subpart B (Duties and Restrictions Relating to Practice Before the Internal Revenue Service),[4] like failure to exercise due diligence under section 10.22,
    - Other disreputable conduct prohibited in section 10.51, which among its 18-item list includes advising taxpayers to use an unlawful transaction or plan to evade federal taxes, or
    - Willfully failing to file required tax returns (also in sec. 10.51), but in a pattern other than the one in section 10.82(b)(5) (e.g., unfiled income tax returns for three of the last five years and unfiled employment tax returns for multiple quarters but not five consecutively).
  - The presiding ALJ has the authority in a decision and order to lift or alter the suspension based on the evident and arguments presented by parties.
- Alternative to Disciplinary Proceeding: Instead of initiating a proceeding in response to a demand, the OPR can lift "the suspension after determining that the practitioner is no longer described in paragraph (b) of this section or for any other reason[.]" See section 10.82(f)(2)(I).

For purposes of the phrase "no longer described," there can be instances where the basis for the suspension is retroactively abolished. For example, a criminal conviction that was the basis is later reversed on appeal. Or, similarly, a penalty that a trial court imposed on an attorney for advancing frivolous arguments was appealed and overturned by a higher court. Or a board of accountancy or other state agency's license suspension or revocation was, upon the practitioner's (licensee's) judicial challenge, set aside by the reviewing court.

If the OPR opts to lift the suspension, whether the individual can resume practice before the IRS is dependent on the reinstatement determination described below.

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- Petition for Reinstatement: The suspended practitioner can petition the OPR for reinstatement to practice under section 10.81. The practitioner can petition at any time after the effective date of suspension and irrespective of the two-year deadline to demand review in ALJ proceeding. The OPR will evaluate the petition and issue a reinstatement decision grating or denying the petition. The section contains the applicable criterion, stating, "Reinstatement will not be granted unless the Internal Revenue Service is satisfied that the petitioner is not likely to engage thereafter in conduct contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest."

The OPR may grant reinstatement subject to conditions that are acceptable to the petitioner, pursuant to section 10.79(d) ("After being subject to the sanction of . . . suspension . . . the future representations of a practitioner . . . shall be subject to specified conditions designed to promote high standards of conduct."). See also par. (a).[5]

Implications of Expedited Suspension

Finally, expedited suspension can have profound implications for credentialed tax professionals and their practice. It underscores the seriousness with which the IRS and the OPR view practitioner conduct and compliance, with rippling effects that can spread far beyond the agency. An expedited suspension can significantly impact a practitioner's reputation and credibility within their local tax-services community. Consider also client trust. Clients rely on tax professionals for advice and assistance in navigating a highly complex tax system of intertwined laws; regulations; other published guidance, such as revenue rulings and revenue procedures; and publications, forms, and instructions. A suspension can erode that trust. Further, as alluded to above, an expedited suspension can have legal and attendant financial ramifications, including potential fines and additional sanctions levied at the state-level.

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[1] Section 10.79(d) states:

After being subject to the sanction of either suspension or censure, the future [taxpayer] representations of . . . [the] practitioner . . . shall be subject to specified conditions designed to promote high standards of conduct. These conditions can be imposed for a reasonable period in light of the gravity of the practitioner's violations.

[2] According to one legal treatise (Federal Practice and Procedure):

> All courts have inherent authority, as well as authority conferred by applicable law or rules, to sanction a party's counsel for improper conduct in their practice before the court. . . . Although the imposition of sanctions by . . . [a federal] district court most often . . . [is conceived of in the context of] a violation of Federal Rule of Civil Procedure 11 *[Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions*], in actual practice federal judges often rely on a variety of other sources of judicial power. Included among these are the sanction rules of the forum state, judicial sanction powers incorporated in local district court rules, or [other] Federal Rule[s] . . . [or sections] of the United States Code . . . , or a federal district judge's historic inherent power to impose sanctions, which is employed on many occasions to discipline inappropriate lawyer behavior . . . .

5A Fed. Prac. & Proc. Civ. (Wright & Miller) §1336, *Consequences of Litigation Misconduct—In General* (4th ed. 2025 Update) (internal footnotes and citations omitted). See also *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45 (1991) ("Because of their very potency, inherent powers must be exercised with restraint and discretion. . . . A primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process.").

An example of a section 10.82(b)(4) sanction in a judicial proceeding "relating to the practitioner's own tax liability" is one imposed by the U.S. Tax Court using the authority of IRC 6673, Sanctions and Costs Awarded. It states:

A. Tax court proceedings—

1. Procedures instituted primarily for delay, etc. Whenever it appears to the Tax Court that—
   a. proceedings before it have been instituted or maintained by the taxpayer primarily for delay,
   b. the taxpayer's position in such proceeding is frivolous or groundless, or
   c. the taxpayer unreasonably failed to pursue available administrative remedies,

The Tax Court, in its decision, may require the taxpayer to pay to the United States a penalty not in excess of $25,000.

[3] All of the procedural provisions in section 10.82 use the term "respondent."

[4] The circular is divided into five subparts; section 10.82 is in Subpart D, Rules Applicable to Disciplinary Proceedings.

[5] "For periods after the suspension, the practitioner's future representations may be subject to conditions as authorized by paragraph (d) of this section."

TAX HELPLINE — DIRECT LINE: 360–695–0556

Technical Tax advice provided by NSTP Helpline representative is based upon specific information conveyed by the member. Members should take special care in relying upon recommendations and opinions that reflect the understanding of the Helpline representative. NSTP and the Helpline representatives are not responsible for misapplication of information given. Members are responsible for the ultimate verification and application of any information provided by NSTP.

April 16 – January 31	
Monday	Wednesday & Friday
9:00 am - 1:00 pm PT (Voicemails are returned from 1:00-2:00 PM)	9:00 AM–2:00 PM PT
10:00 am - 3:00 pm MT (Voicemails are returned from 2:00-3:00 PM)	10:00 AM–3:00 PM MT
11:00 am - 4:00 pm CT (Voicemails are returned from 3:00-4:00 PM)	11:00 AM–4:00 PM CT
12:00 - 5:00 pm ET (Voicemails are returned from 4:00-5:00 PM)	12:00 PM–5:00 PM ET
Tax Season: February 1 – April 15	
Monday, Tuesday & Thursday	Wednesday & Friday
6:00 AM–2:00 PM PT	9:00 AM–5:00 PM PT
7:00 AM–3:00 PM MT	10:00 AM–6:00 PM MT
8:00 AM–4:00 PM CT	11:00 AM–7:00 PM CT
9:00 AM–5:00 PM ET	12:00 PM–8:00 PM ET

Education Map

2026 FEDERAL TAX UPDATE & REVIEW COURSES

Location	Date	Member	Non-Member	CE
New York, NY	11/30/26	$325	$475	8
Seattle, WA	11/30/26	$325	$475	8
Boston, MA	12/1/26	$325	$475	8
Denver, CO	12/2/26	$325	$475	8
Altanta, GA	12/4/26	$325	$475	8
Atlantic City, NJ	12/4/26	$325	$475	8
Chicago, IL	12/4/26	$325	$475	8
Tampa, FL	12/10/26	$325	$475	8
Ft. Lauderdale, FL	12/11/26	$325	$475	8
Houston, TX	12/11/26	$325	$475	8
Dallas, TX	12/14/26	$325	$475	8
Long Beach, CA	12/15/26	$325	$475	8
San Antonio, TX	12/16/26	$325	$475	8
College Park, MD	12/18/26	$325	$475	8
Phoenix, AZ	12/18/26	$325	$475	8

ADVANCED TAX FORUMS

Location	Date	Member	Non-Member	CE
Natchitoches, LA	December 7-8, 2026	$510	$650	16
Springfield, VA	December 7-8, 2026	$420	$570	12
Orlando, FL	December 14-15, 2026	$520	$670	16
Las Vegas, NV	January 4-6, 2027	$725	$950	20

BUSINESS ENTITY SERIES (STREAMING)

Course	Date	Member	Non-Member	CE
Partnership Update & Review	11/11/26	$69	$99	2
The Sole Proprietor	11/12/26	$69	$99	2
Fiduciary Form 1041	11/13/26	$69	$99	2
Subchapter S Corporation	11/18/26	$69	$99	2
Form 1120 Update & Review	11/19/26	$69	$99	2
Tax-Emept Organizations	11/26/26	$69	$99	2

2027 TAX EDUCATION FORUMS

Location	Date	CE
Punta Cana, Dominican Republic	May 4-6, 2027	15
Williamsburg, VA	June 28-July 1, 2027	15
Nashville, TN	July 12-14, 2027	15

ONLINE EDUCATION

WEBINARS, ON DEMAND, & VIEW ONLY COURSES

MEMBERSHIP OPTIONS

Executive	1 Year	$1,699
Full	1 Year	$199
Associate	1 Year	$149

*Associate Membership is only available under a Full NSTP Member. Contact the NSTP office to register.

IN PERSON COURSE REGISTRATION

MEMBERSHIP REGISTRATION

MEMBERSHIP RENEWAL