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# Client Guide to IRS Assessment and Collection

## A Quick Compendium of Facts You Need to Know

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## What are assessments and collections?

An assessment starts with the audit of your tax return. The IRS selects your return and performs and audit, which ensures all income your income is reported, and you've complied with all relevant tax laws. If during the course of the audit tax relevant information is discovered that affects your tax return, an assessment is conducted. For example, if it is discovered that $1,000 was not reported on the return, the IRS will calculate the amount of tax that should have been owed, and is therefore outstanding. They will also add various penalties and interest to the outstanding tax. The final result of the assessment is the sum of the tax owed, penalties, and interest. After an assessment, the collection process begins.

The collection process is the method used by the IRS to collect outstanding taxes, penalties and interest. The process consists of two main parts: notices and collections. These two methods will be discussed in detail in later sections.

## When do assessments and collections happen?

Assessments and collections happen after an audit. What is helpful to understand is when the IRS can perform an audit, and when it cannot. The table below summarizes how long the IRS has the ability to audit your return, also known as the statute of limitations. After this time has passed, the IRS may not audit that tax return. An important fact to realize is that the clock starts when the return is filed, or the due date of the return (April 15$^{th}$), whichever is later.

| | Descriptions | Statute of Limitations |
|---|---|---|
| Correct Return | Return accurately reports all income, and complies with all relevant tax laws | 3 years from filing |
| Fraudulent Return/Willful Attempt To Evade | Return is false or fraudulent and displays an attempt to evade tax on the part of the taxpayer | Unlimited |
| Substantial Omission | Return omits from gross income an amount either a) 25% of gross income, or b) more than $5,000 | 6 years from filing |
| Failure to File | Tax return has not been filed, and the due date for said return has passed | Unlimited |

If your tax return is still within the statue of limitations, the IRS may perform an audit. Due to this, it is suggested that taxpayers retain tax related information for at least 6 years.

There are situations where an audit is in progress, and the statute of limitations is about to expire for your return. At this point, the IRS may ask you to extend the statute of limitations. If this occurs, consult with your CPA before proceeding. There are three key points to remember when extending a statute of limitations:

1. The IRS cannot extend the statute without your written consent on Form 872
2. The length of time the statute is extended can be specific, or open-ended. It is highly recommended that you specify when the extended statute expires. An open-ended extension gives the IRS the right to audit indefinitely.
3. Extending the statute of limitations can be in your best interest. If you deny the IRS the extension, they will be forced to perform an assessment before they are ready. This early assessment may not be in your favor, as the IRS has not had time to evaluate all the necessary information relevant to your case. The result may be a higher assessment than if the audit had been extended. Consult with your CPA before accepting or denying an extension.

## How will I know if I'm being assessed, or the IRS is performing a collection?

The first step to the assessment is the audit. You will receive a notice in the mail if your return has been selected for audit. There are two ways your return is selected: randomly, or by an IRS computer algorithm that identifies "high risk returns" (i.e. returns that have a greater risk of being fraudulent or inaccurate). If your return is found to be in error, the IRS will perform an assessment to determine how much tax is still owed, and the various penalties and interest associated with the outstanding tax. When the assessment is completed, the IRS will mail a notice to you, informing you of the outstanding tax, and requesting payment.

The individual will commonly receive 4 notices, each 30 days apart. A business will typically receive 2 notices. After the final notice (marked "final notice and demand") the IRS will begin the collection process. When the collection process begins, the IRS will send you a notice marked "Notice of a Federal Tax Lien" or "Notice of Intent to Levy." You will have 30 days to respond to these notices before collection begins. If the final notice passes without the IRS receiving a response from you, you lose your right to a court review/appeal. It is highly recommended that after the first notice, you contact your CPA. The sooner your CPA knows of the notice, the sooner they can begin discussions with the IRS.

## How does the IRS perform collections?

There are two methods the IRS uses during collections: liens and levies.

### Liens

Liens are a passive form of collection. They are put in affect 30 days after the "Notice of a Federal Tax Lien" is sent by the IRS, and the outstanding tax has still not been paid. The IRS will issue a lien on your property that will allow the U.S. government to seize the property before any other creditor, if the debt is not paid. Please note this lien can apply to property currently owned, property you have a right to, and any future property. Any liens will appear on public record, such as your credit report. It is extremely difficult to obtain credit or a loan with a lien on your record – it is recommended you take steps to remove the lien as soon as possible.

There are two ways to approach a lien: lien release and lien withdrawal. In a lien release, you pay the outstanding tax, and are release from the obligations of the lien. However, it stays on public record that you owed a tax lien, even if it was paid. This can have long-lasting effects on your credit score. Due to this, it is recommended that you also have a lien withdrawal. In this case, the lien is purged from public record. There are instances where a lien is withdrawn and tax is still owed. This is typically because the outstanding tax cannot be paid with the lien on record. Contact your CPA to determine if lien withdrawal or release is better for you. Please note that the IRS is willing to negotiate the best terms for you and the government. Beginning discussions with the IRS as soon as possible is highly recommended.

### Levies

Levies are an active and aggressive form of collection. The IRS uses this method when all others have failed. Essentially, the IRS collects the outstanding tax by directly seizing your property, whether it is bank accounts, wages, real property, or so on. A levy will begin 30 days after a final notice marked "Intent to Levy" is sent from the IRS. It is critical that you contact your CPA at this point, if you have not already done so. After the 30 days, it becomes very difficult to negotiate with the IRS over a levy, and you forfeit your rights to a court review/appeal. If discussions begin sooner levies will often be postponed as negotiations proceed.

There are some items that the IRS is not permitted to seize during a levy:

- A portion of your wages – calculations will be performed that will withhold all of your wages except what is deemed necessary for basic living expenses
- Real property – typically the IRS cannot seize real property without the permission of a court judge. However, if the 30 day period after the "Intent to Levy" notice has expired, you have forfeited your right to present your case to the court judge, and there is little preventing the judge from granting permission.
- Retirement benefits
- Child support
- Unemployment compensation, etc.

For a more comprehensive list, please consult with your CPA, or go to www.irs.gov.

## What are my rights during an assessment or collection?

The IRS has issued a taxpayer bill of rights, which is summarized below. For more detail, please consult with your CPA, or go to www.irs.gov.

Taxpayer Bill of Rights:

1. The Right to Be Informed
2. The Right to Quality Service
3. The Right to Pay No More than that Correct Amount of Tax
4. The Right to Challenge the IRS's Position and Be Heard
5. The Right to Appeal an IRS Decision in an Independent Forum
6. The Right to Finality
7. The Right to Privacy
8. The Right to Confidentiality
9. The Right to Retain Representation
10. The Right to a Fair and Just Tax System

Please note that as with any other system some of these rights can be forfeited if steps are not taken to preserve them. Consult with your CPA to best protect your rights.

## What should I do when an assessment or collection starts?

The first step is to inform your CPA. If you do not have a CPA or tax consultant, it is recommended that you obtain one.

Ideally, your CPA should be informed when your return is selected for audit. If this is not the case, inform your CPA upon receiving your first notice. It is highly recommended that when your return is selected for audit, you grant your CPA Power of Attorney via Form 2848. This allows your CPA to discuss your financial matters with the IRS. Without this, your CPA's negotiating abilities are limited. This power can be revoke by you at any time, should you become dissatisfied with your CPA.

Keep your CPA informed of all communications you receive from the IRS, and be sure your CPA does the same with you. More often than not, if a CPA is informed early and provided the necessary information, a favorable outcome will be achieved. Please be aware that this process does take time. The IRS is an extremely large agency; it is not uncommon for the audit/negotiation process to take months. Be patient, and stay in communication with your CPA.

## What are my options if I can't pay?

There are multiple options available to you if you cannot pay the outstanding tax. The main goal of the IRS is to collect as much tax as possible, which means setting up payments that you can afford and keep. Consult with your CPA to determine the best option for you.

**Installment Agreements (IA)**

This option treats the outstanding tax as a loan - regular payments are made until the outstanding balance is met. There are restrictions on when installment agreements can be used, but the IRS has been lessening these restrictions.

**Currently Not Collectible (CNC)**

If your financial situation is such that you cannot pay the outstanding tax, the IRS may choose to mark your return "Currently Not Collectible." All collecting activities will stop, and your return will be shelved. The IRS will send an annual reminder of your outstanding balance. Should your financial situation change so that you are able to pay the outstanding tax, your return will be taken out of CNC status.

**Offers in Compromise (OIC)**

During assessment and collection process, your CPA can negotiate with the IRS. This is the time to present your case of why the tax wasn't paid, and propose a compromise with the IRS.

Roughly 30% of OIC's are accepted by the IRS. However, this process must begin before the 30 window after the Intent to Levy or Intent to Lien notices expire.

## What are my options if I believe the IRS is wrong?

If you believe the IRS made an unfair or inaccurate assessment of your return, you have the right to challenge the IRS in a court of law. The legal process is lengthy and costly. Consult with your CPA and attorney before taking any legal action. It is recommended that an attempt be made to resolve any tax issue outside of court.

## Other helpful tips…

- Always remember to communicate with your CPA or tax consultant. Ignoring the IRS will never make them go away – allow your CPA to help you before the collection process starts.
- Never fall behind on taxes. Always make sure to file on time, and pay the full amount owed. If you cannot pay, begin discussions with the IRS instead of hoping your return isn't audited.
- The IRS will only communicate with you via mail or a field agent. If you receive an e-mail, phone call, or other communication supposedly from the IRS, do not respond, and contact your CPA. If a field agent arrives, ask to see their credentials, and contact their manager to confirm identity.
- See if your CPA offers tax planning. This may help you avoid or reduce future tax payments, and can help you with current tax payments.
- See if your CPA offers an audit protection plan. Having this protection means your CPA will stand by you during an audit, and any subsequent assessments. This can offer great peace of mind.
- Be informed. Your CPA is a wonderful reference tool, but it doesn't hurt to do your own research. The IRS website at www.irs.gov is a comprehensive site that gives you access to all the relevant forms, publications, and instructions you need.
- Remember that the IRS is a collection of people like you. Cooperation, reasonableness and courtesy will go a long way to getting you a favorable outcome.