Economic Hardship

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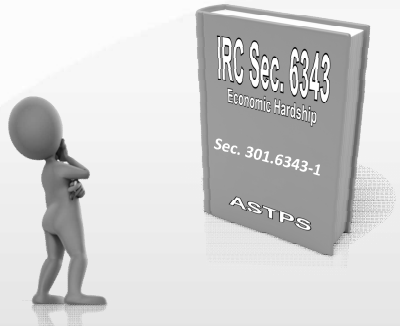
Levy & Economic Hardship

Reference Sources



Conditions Requiring Release

Satisfied or Unenforceable

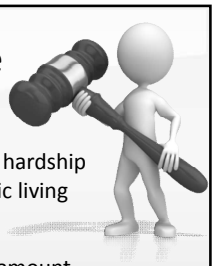
Facilitate Collection

Installment Agreement

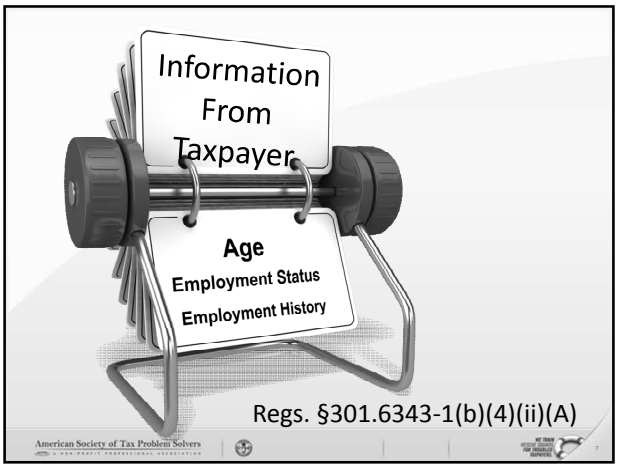
Economic Hardship

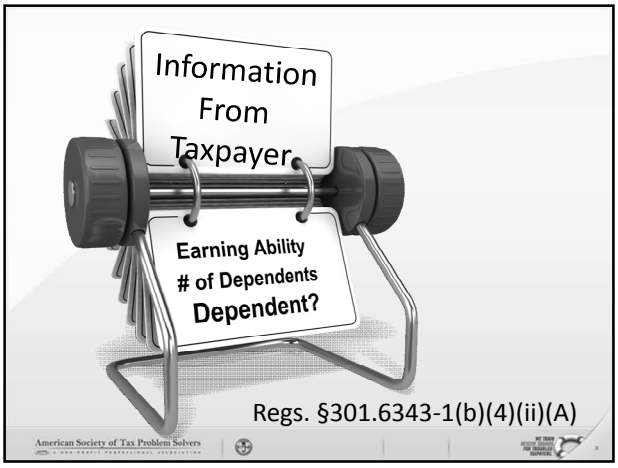
Request in writing or by telephone
To District Director in place filed

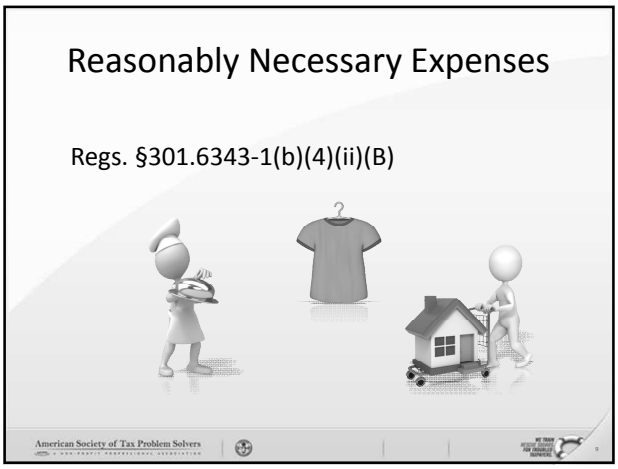
General Rule



- Regs. §301.6343-1(b)(4)(i)
  - The levy is creating an economic hardship
    - Unable to pay reasonable basic living expenses
  - Director determines reasonable amount
  - Unique circumstances of individual taxpayer
  - Affluent or luxurious standard of living


Information From Taxpayer
Age
Employment Status
Employment History
Regs. §301.6343-1(b)(4)(ii)(A)
American Society of Tax Problem Solvers


Information From Taxpayer
Earning Ability
# of Dependents
Dependent?
Regs. §301.6343-1(b)(4)(ii)(A)
American Society of Tax Problem Solvers


Reasonably Necessary Expenses
Regs. §301.6343-1(b)(4)(ii)(B)
American Society of Tax Problem Solvers

Reasonably Necessary Expenses

Regs. §301.6343-1(b)(4)(ii)(B)

Reasonably Necessary Expenses

Regs. §301.6343-1(b)(4)(ii)(B)

Other Considerations

- Regs. §301.6343-1(b)(4)(ii)…
  - (C) The cost of living in taxpayers' area;
  - (D) Property exempt from levy;
  - (E) Extraordinary circumstances; and
  - (F) Other factors that the taxpayer claims bear on economic hardship.

Good Faith Requirement

- Regs. §301.6343-1(b)(4)(iii)

CNC & Economic Hardship

CNC & Economic Hardship

- Revenue Officer or ACS can determine CNC
  - (a)inability to locate the taxpayer or assets;
  - (b)partial or complete expiration of the statutory period for collection;
  - (c)death of an individual with no collection potential from the estate;
  - (d)business entity that is inactive and defunct with no assets, or liquidated in bankruptcy; or
  - **(e)collection of the liability would create a hardship by leaving the taxpayer unable to meet necessary living expenses.**

Non-Filer & Economic Hardship

Vinatieri v. Comr., 133 T.C. 392 (2009)

IRS Appeals abused discretion in upholding levy after determining that taxpayer would suffer economic hardship merely because taxpayer had unfiled tax returns

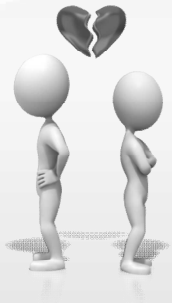
CC-2011-005 (11/22/10)

Equitable Relief & Economic Hardship

IRC §66(c) & §6015(f)

One Factor:
Requesting spouse suffers EH?

"Streamlined Determination"

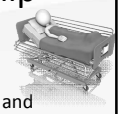


ETA OIC & Economic Hardship

IRM 5.8.11.2.1

ETA OIC & Economic Hardship

IRM 5.8.11.2.1



- Incapable of earning a living because of:
  - Long-term illness, medical condition, or disability, and
  - Reasonably foreseeable that the taxpayer's financial resources will be exhausted providing for condition;

- Has assets, but liquidation would render t/p unable to meet basic living expenses; and
- Has assets, but unable to borrow against equity, and seizure or sale would have sufficient adverse consequences such that enforced collection is unlikely.

PPIA & Economic Hardship

EH caused by payment of tax through:

- Sale of property
- Borrow on Equity
  - Payment exceeds disposable income
- Use of liquid asset

Mediation/Arbitration & Economic Hardship

- Testing in OIC cases
- Mediation on legal & factual issues
- Arbitration on factual issues only
- EH is exception when taxpayer has ability to pay

Delinquent Return/Refund Hold & EH

IRM 25.12.1.1

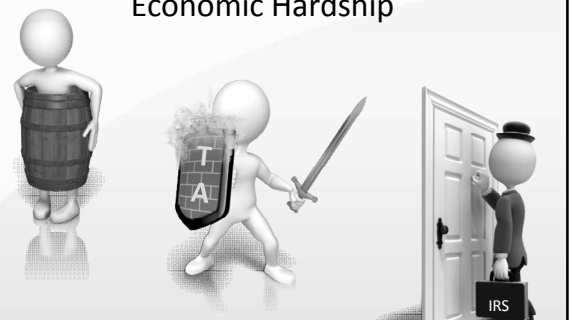
Conditions for EH release or partial release – proof required

- Foreclosure or eviction notice,
- Unable to meet basic living expenses, or
- Health care prepayment required

Payment Extension & EH

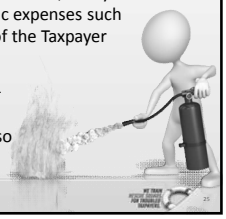
- Reasonable period up to six months
- Form 1127
  - Application for Extension of Time for Payment of Tax Due to Undue Hardship
- Income, gift, and Excise Taxes
- More than an inconvenience
  - Substantial financial loss
    - Ex. Sale of asset at sacrifice price to pay by due date

Taxpayer Advocate and Economic Hardship



Who May Use the Taxpayer Advocate Service?

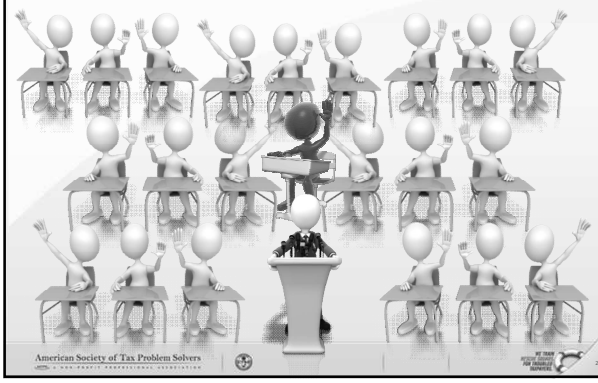
- If you have tried to resolve a tax problem with the IRS and are still experiencing delays or are facing economic harm, you may request the assistance of the Taxpayer Advocate Service. Service is available to businesses as well as individuals.
- In situations where IRS actions prevent you from providing for necessities such as housing, transportation, or food; or if you own a business and are unable to meet basic expenses such as payroll, you may request the assistance of the Taxpayer Advocate Service.
- Delay of more than 30 days to resolve a tax-related problem, or are not receiving a response by the date promised, you may also request assistance from TAS.



Sample EH Analysis

Description	Annual	Monthly	
Earnings (Most recent 12 Months)	$ 200,000	$ 16,667	Family size: 4
			Local: Erie Co. NYS
Living Expenses			Vehicles: 2@$500 ea.
Food, etc (Nat'l Std.)	$ 17,580	$ 1,465	
Housing			
Mortgage	24,000	2,000	
Utilities	6,000	500	
Property Tax	7,800	650	
Total housing	$ 37,800	$ 3,150	Standard $1,813
Transportation			
Ownership	12,000	1,000	
Operating Exp.	12,000	1,000	
Total transportation	$ 24,000	$ 2,000	Below standard
Health Care			
Insurance	16,000	1,333	
Out-of-Pocket	4,000	333	
Total health care	$ 20,000	$ 1,667	Actual
Taxes			
FWT	36,000	3,000	Actual
FICA	12,400	1,033	Actual
Medicare	4,900	408	Actual
SWT	8,000	667	Actual
Total taxes	$ 61,300	$ 5,108	
Total living expenses	$ 160,680	$ 13,390	
Excess Income	$ 39,320	$ 3,277	
Initial levy		$ 14,350	
Revised levy		$ 3,200	

We Appreciate You Being Here



Economic Hardship Super-Advanced Las Vegas 10/2013

Sunday, August 18, 2013 8:24 AM

Regulation on Release of Levy Based on IRC Sec. 6343

Sec. 301.6343-1 Requirement to release levy and notice of release.

(a) In general.

A district director, service center director, or compliance center director (director) must promptly release a levy upon all, or part of, property or rights to property levied upon and must promptly notify the person upon whom the levy was made of such a release, if the director determines that any of the conditions in paragraph (b) of this section (conditions requiring release) exist. The director must make a determination whether any of the conditions requiring release exist if a taxpayer submits a request for release of levy in accordance with paragraph (c) or (d) of this section; however, the director may make this determination based upon information received from a source other than the taxpayer. The director may require any supporting documentation as is reasonably necessary to determine whether a condition requiring release exists.

(b) Conditions requiring release.

The director must release the levy upon all or a part of the property or rights to property levied upon if he or she determines that one of the following conditions exists --

(1) Liability satisfied or unenforceable.

(i) General rule.

The liability for which the levy was made is satisfied or the period of limitations provided in section 6502 (and any period during which the period of limitations is suspended as provided by law) has lapsed. A levy is considered made on the date on which the notice of seizure provided in section 6335(a) is given. A levy that is made within the period of limitations provided in section 6502 does not become unenforceable simply because the person who receives the levy does not surrender the subject property within the period of limitations. In this case, the liability remains enforceable to the extent of the value of the levied upon property. However, a levy made outside the period of limitations (normally ten years without suspensions) must be released unless --

(A) The taxpayer agreed in writing to extend the period of limitations as provided in section 6502(a)(2) and section 301.6502-1; or

(B) A proceeding in court to collect the liability has begun within the period of limitations.

(ii) Special situations.

A continuing levy on salary or wages made under section 6331(e) must be released at the end of the period of limitations in section 6502. However, a levy on a fixed and determinable right to payment which right includes payments to be made after the period of limitations expires does not become unenforceable upon the expiration of the period of limitations and will not be released under this condition unless the liability is satisfied.

(2) Release will facilitate collection.

The release of the levy will facilitate collection of the liability. A director has the discretion to release the levy in all situations, including those where the proceeds from the sale will not fully satisfy the tax liabilities of the taxpayer, under terms and conditions as he or she determines are warranted.

(i) Example.

The following example illustrates the provisions of this paragraph (b)(2):

Example. A and B each own machines which, when used together, produce widgets. A owes delinquent federal taxes. A notice of federal tax lien is properly filed against all property or rights to property belonging to A. A's machine is seized to satisfy A's delinquent tax liability. The fair market value of A's property is greater than the expenses of seizure and sale, but less than the amount of A's tax liability. A and B find a buyer who wants to buy both machines together. The buyer will only buy the machines together. A's property has a greater value as part of the package than it does by itself. The larger value, as shown in the sale contract, is enough to pay A's tax liability in full. In this situation a release of the levy will facilitate collection because the sale of both machines can be completed and A's liability will be paid in full at the settlement.

(ii) Compliance with other conditions.

The director may find that collection willbefacilitated by the taxpayer's compliance with conditions other than immediate payment, such as:

(A) The delinquent taxpayer delivers a satisfactory arrangement, which is accepted by the director, for placing property in escrow to secure the payment of the liability (including the expenses of the levy) which is the basis of the levy.

(B) The delinquent taxpayer delivers an acceptable bond to the director conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. This bond shall be in the form provided in section 7101 and section 301.7101-1.

(C) There is paid to the director an amount determined by the director to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(D) The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with section 6502(a)(2) and section 301.6502-1.

(iii) Expenses of sale exceed the government's interest.

If the director determines that the value of the United States' interest in the seized property does not exceed the expenses of sale of the property, a release of the levy will be deemed to facilitate collection of the liability even though the fair market value of property which has been seized exceeds the expenses of seizure and sale.

(3) Installment agreement.

The taxpayer has entered into an agreement under section 6159 to satisfy the liability by means of installment payments, unless the agreement provides otherwise. However, the director is not required to release the levy under this condition if a release of the levy will jeopardize the secured creditor status of the United States, e.g., where there is an intervening judgment lien creditor and a notice of tax lien has not been filed.

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(4) Economic hardship.

(i) General rule.

The levy is creating an economic hardship due to the financial condition of an individual taxpayer. This condition applies if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses. The determination of a reasonable amount for basic living expenses will be made by the director and will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living.

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(ii) Information from taxpayer.

In determining a reasonable amount for basic living expenses the director will consider any information provided by the taxpayer including --

(A) The taxpayer's age, employment status and history, ability to earn, number of dependents, and status as a dependent of someone else;

(B) The amount reasonably necessary for food, clothing, housing (including utilities, home-owner insurance, home-owner dues, and the like), medical expenses (including health insurance), transportation, current tax payments (including federal, state, and local), alimony, child support, or other court-ordered payments, and expenses necessary to the taxpayer's production of income (such as dues for a trade union or professional organization, or child care payments which allow the taxpayer to be gainfully employed);

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(C) The cost of living in the geographic area in which the taxpayer resides;

(D) The amount of property exempt from levy which is available to pay the taxpayer's expenses;

(E) Any extraordinary circumstances such as special education expenses, a medical catastrophe, or natural disaster; and

(F) Any other factor that the taxpayer claims bears on economic hardship and brings to the attention of the director.

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(iii) Good faith requirement.

In addition, in order to obtain a release of a levy under this subparagraph, the taxpayer must act in good faith. Examples of failure to act in good faith include, but are not limited to, falsifying financial information, inflating actual expenses or costs, or failing to make full disclosure of assets.

(5) Fair market value exceeds liability.

The fair market value of the property exceeds the liability for which the levy was made and release of the levy on a part of the property can be made without hindering the collection of the liability. The following example illustrates the provisions of this paragraph (b)(5):

Example. The Internal Revenue Service levies upon ten widgets which belong to the taxpayer to satisfy the taxpayer's outstanding tax liabilities. Subsequent to the levy, the taxpayer establishes that market conditions have increased the aggregate fair market value of widgets so that the value of seven widgets equals the aggregate anticipated expenses of sale and seizure and the tax liabilities for which the levy was made. The director must release three widgets from the levy and return them to the taxpayer.

(c) Request for release of levy.

(1) Information to be submitted by taxpayer.

A taxpayer who wishes to obtain a release of a levy must submit a request for release in writing or by telephone to the district director for the Internal Revenue district in which the levy was made. The taxpayer making the request must provide the following information --

(i) The name, address, and taxpayer identification number of the taxpayer;

(ii) A description of the property levied upon;

(iii) The type of tax and the period for which the tax is due;

(iv) The date of the levy and the originating Internal Revenue district, if known; and

(v) A statement of the grounds upon which the request for release of the levy is based.

(2) Time for submission.

Except in extraordinary circumstances, a request for release of a levy must be made more than five days prior to a scheduled sale of the property to which the levy relates.

(3) Determination by director.

(i) When required.

The director must promptly make a determination concerning release prior to sale in all cases where a request for release of a levy is made except those where the request for release is made five or fewer days prior to a scheduled sale of the property to which the levy relates.

(ii) Time for making required determination.

The determination will be made, generally, within 30 days of a request for release made 30 or more days prior to a scheduled sale of the property to which the levy relates. If a request for release is made less than 30 days prior to the scheduled sale but more than 5 days before the scheduled sale, a determination must be made prior to the scheduled sale. If necessary the director may postpone the scheduled sale in order to make this determination.

(iii) Discretionary determination.

The director has the discretion, but is not required, to make a determination concerning release prior to sale in cases where a request for release of a levy is made five or fewer days prior to a scheduled sale of the property to which the levy relates.

(4) Notification to taxpayer of determination.

The director must promptly notify the taxpayer if the levy is released. If the director determines that none of the conditions requiring release of the levy exist, the director must promptly notify the taxpayer of the decision not to release the levy and the reason why the levy is not being released.

(d) Expedited determination with respect to certain business property.

(1) General procedure.

(i) Submission by taxpayer.

If a levy is made on essential business property as is described in paragraph (d)(2) of this section, the taxpayer may obtain an expedited determination of whether any of the conditions requiring release of the levy exist. In order to obtain an expedited determination, the taxpayer must submit, within the time frame specified in paragraph (c)(2) of this section, the information required in paragraph (c)(1) of this section and include with the information an explanation of why the property levied upon qualifies for an expedited determination of whether a condition requiring release of the levy exists.

(ii) Time for making required determination.

The director must make such a determination by the later of 10 business days from the time the director receives the request for release, or 10 business days from the time the director receives any necessary supporting documentation, if 10 or more business days remain before a scheduled sale of the property to which the levy relates. An expedited determination concerning release must be made prior to sale in all cases where a request for release of a levy is made within the time frame specified in paragraph (c)(2) of this section. If necessary the director may postpone the scheduled sale in order to make this determination.

(iii) Discretionary determination.

The director has the discretion, but is not required, to make an expedited determination concerning release in cases where the taxpayer does not submit, within the time frame specified in paragraph (c)(2) of this section, the information required in paragraph (c)(1) of this section and include with the information an explanation of why the property levied upon qualifies for an expedited determination of whether a condition requiring release of the levy exists.

(2) Essential business property defined.

For purposes of this section, essential business property means tangible personal property used in carrying on the trade or business of the taxpayer which when levied upon prevents the taxpayer from continuing to carry on the trade or business.

(3) Seizure of perishable goods.

The provisions of this paragraph do not apply in the case of a seizure of perishable goods. Those seizures are governed by the provisions of section 6336 and section 301.6336-1.

(e) Effect of a release of levy.

If property has not yet been surrendered to the director in response to a levy, a release of the levy under section **6343**(a) will relieve the possessor of any obligation to surrender the property. Otherwise, a release of a levy under section **6343**(a) will cause the property to be returned to the custody of the person or persons legally entitled thereto. The release of a levy on any property under this section does not prevent any subsequent levy on the property. Section 301.6343-2, dealing with return of wrongfully levied upon property, is subject to section 6402 which prohibits the Internal Revenue Service from refunding a payment of money that has been deposited in the Treasury and credited to the taxpayer's liability unless there is an overpayment.

(f) Effective date.

This section is effective as of December 30, 1994.

[T.D. 7180, 37 FR 7320, Apr. 13, 1972; revised by T.D. 8587, 60 FR 33-38, Jan. 3, 1995.]

From <http://research.taxtools.com/cfsBin/trExt.dll/RevReg/subchapter_f--procedure_and_administration_%5Bsecs._300.0--420.0-1%5D/part_301_--_procedure_and_administration_%5Bsecs._301.269b-1--301.9100-21%5D/__sec._301.6343-1_requirement_to_release_levy_and_notice_of_release.?f=templates&fn=document-frame.htm&2.0&t=document-frame.htm&tc=contents.htm&fc=toc&q=6343&x=simple>

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Administrative Release of Levy

1109.4 IRC Sec. 6343(a) provides for the administrative release of levies. The IRS is required to promptly release a levy in the following circumstances [Reg. 301.6343-1(b)]:

a. The liability for which the levy was made is satisfied or has become unenforceable because the 10-year statute of limitations for collection has expired.

b. Release of the levy will facilitate collection. If the levy is released, the taxpayer must comply with each of the following conditions that the IRS chooses to impose:

(1) Agree to place property in escrow to secure payment of the tax liability (including the expenses of levy) that is the basis of the levy.

(2) Deliver an acceptable bond conditioned upon the payment of the tax liability (including the expenses of levy) that is the basis of the levy.

(3) Pay to the IRS an amount determined to be equal to the interest of the government in the seized property or the part of the seized property to be released.

c. The taxpayer has entered into an installment agreement, unless the installment agreement provides that the levy will remain in place.

d. The levy creates an economic hardship because satisfying the levy would prevent the taxpayer from paying basic living expenses such as food, clothing, shelter, and medical expenses.

e. The fair market value of the property exceeds the liability for which the levy was made, and the release of the levy will not hinder collection of the liability.

1109.5 A release of the levy under one of the preceding circumstances does not prevent a later levy on the same property [IRC Sec. 6343(a)(3)].

1109.6 **Observation:** The IRS uses Form 668-D (Release of Levy/Release of Property from Levy) to release property subject to a levy. As a practical matter, most levies are released through negotiation, or in extreme cases by filing Form 911 (Application for Taxpayer Assistance Order). (See section 104.) In most cases levies are served to get the taxpayer's attention. When this happens, the taxpayer by definition is placed in a hardship, since the levy prevents the taxpayer from using the assets levied upon.

1109.7 The regulations state that “economichardship” would apply if partial or complete satisfaction of the levy would prevent the taxpayer from being able to pay “reasonable basic living expenses” [Reg. 301.6343-1(b)(4)]. In determining the reasonable amount of basic living expenses, the IRS considers:

a. The taxpayer's age, employment history, ability to earn, number of dependents, and status as a dependent of someone else.

b. The amount reasonably necessary for food; clothing; housing (including utilities, insurance, homeowner dues, etc.); medical expenses (including health insurance); transportation; federal, state, and local taxes; alimony, child support, or other court-ordered payments; and expenses necessary to the taxpayer's production of income (such as union

dues or child care payments).
c. The cost of living in the geographic area in which the taxpayer resides.
d. The amount of property exempt from levy that is available to pay the taxpayer's expenses.
e. Any extraordinary circumstances, such as special education or medical expenses.

1109.8 **Practice Tip:** The taxpayer must *act in good faith* to obtain a release of levy based on economichardship. Examples of failing to act in good faith include falsifying financial information, inflating expenses, or omitting assets [Reg. 301.6343-1(b)(4)].
1109.9 To obtain a release of levy based on a circumstance previously listed, the taxpayer must submit a request in writing or by telephone to the Area Director where the levy was made. The request must include the information listed in Reg. 301.6343-1(c)(1).
1109.10 Except in *extraordinary circumstances*, a request for release must be made more than five days before the scheduled date of sale of the property [Reg. 301.6343-1(c)(2)]. The IRS generally makes its determination within 30 days, and is required to promptly notify the taxpayer if the levy is released, and if not released, the reasons why [Reg. 301.6343-1(c)(3) and (4)]. However, for levies on tangible trade or business personal property, the IRS must make an expedited determination of whether the levy prevents the taxpayer from carrying on the trade or business [IRC Sec. 6343(a)(2) and Reg. 301.6343-1(d)].

1109.11 **Observation:** In a recent case, the taxpayer's Collection Information Statement showed monthly income of $800, monthly expenses of $800, $14 cash, and a 1996 Toyota Corolla worth $300. While "verification received by the settlement officer was consistent with the information [taxpayer] provided in the Form 433-A," the IRS refused to release the levy until taxpayer filed her 2005 and 2007 tax returns. The Tax Court responded that IRC Sec. 6343(a)(1)(D) requires the release of a levy that creates an economic hardship regardless of the taxpayer's past return filing compliance (*Vinatieri*). In response, Chief Counsel stated that if the taxpayer provides adequate financial information that a levy will create an economic hardship, it is not appropriate to proceed with the levy, even if the taxpayer has unfiled tax returns (CC-2011-005).

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Non-Filer

1001.18 The IRS is no longer allowed to deny a hardship determination when a taxpayer has failed to file all required tax returns. In *Vinatieri*, the Tax Court determined that there was no authority requiring that a taxpayer must be current with filing requirements before the IRS may report an account as a currently uncollectible due to hardship. Thereafter, IRS Chief Counsel provided instructions for handling cases where the taxpayer alleges that a levy should not proceed because it would cause an economic hardship (Chief Counsel Notice 2011-005).

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The IRS must release a levy if economic hardship is determined, regardless of whether the taxpayer has unfiled tax returns. *See Vinatieri v. Comr.*, 133 T.C. No. 16 (2009) (IRS Appeals abused discretion in upholding levy after determining that taxpayer would suffer economic hardship merely because taxpayer had unfiled tax returns; neither §6343(a)(1)(D) nor Regs. §301.6343-1(b)(4) specify that taxpayer must be in compliance with return filing requirements to qualify for levy release); and CC-2011-005 (11/22/10) (Agreeing with Tax Court in *Vinatieri*, IRS Chief Counsel provides guidance to IRS attorneys when taxpayer alleges in appeal to Tax Court that levy should not proceed due to economic hardship).

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Determinations Granting Equitable Relief

1204.3 If a requesting spouse satisfies the following threshold conditions, the IRS will consider whether the requesting spouse is entitled to a so-called "streamlined determination" of equitable relief under IRC Secs. 66(c) and 6015(f):

a. The requesting spouse is no longer married to, is legally separated from, or has lived apart for more than 12 months from the nonrequesting spouse.

b. The requesting spouse would suffer economichardship if relief were not granted.

c. The requesting spouse did not know or have reason to know that there was an understatement or underpayment of tax on the joint tax return. However, if the nonrequesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information and the requesting spouse was not able to challenge the treatment of any item or question the payment of taxes for fear of retaliation, the abuse or financial control will result in this factor being satisfied, even if the requesting spouse had knowledge or reason to know of the items giving rise to the understatement or deficiency or that the nonrequesting spouse would not pay the tax liability.

1204.4 Following is a nonexclusive list of factors that may be relevant for determining whether to grant equitable relief under IRC Secs. 66(c) and 6015(f). No single factor will be determinative. Rather, the IRS will consider and weigh all relevant factors, regardless of whether the factor is listed. (See Appendix 12E for a quick reference summary of these factors in table format.)

a. *Marital Status.* Whether the requesting spouse is no longer married to the nonrequesting spouse on the date the IRS makes its determination. If the requesting spouse is still married to the nonrequesting spouse, this factor is neutral. If the requesting spouse is no longer married, this factor will weigh in favor of relief. For these purposes, a requesting spouse will be treated as no longer married to the nonrequesting spouse in the following situations:

(1) The requesting spouse is divorced or legally separated from the nonrequesting spouse.

(2) The requesting spouse is a widow or widower and is not an heir to the nonrequesting spouse's estate, which would have sufficient assets to pay the tax liability; or

(3) The requesting spouse has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date relief was requested. For this purpose, a temporary absence due to incarceration, illness, business, military service, or college is not considered to be a separation if the absent spouse is expected to return.

b. *EconomicHardship.* Whether the requesting spouse will suffer economichardship if relief is not granted, which occurs if payment of part or all of the tax liability will cause the requesting spouse to be unable to pay basic living expenses. If denying relief will cause the requesting spouse to suffer economichardship, this factor weighs in favor of relief. If denying relief will not cause the requesting spouse to suffer economichardship, this factor will be neutral.

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Offer in Compromise

1301.13 According to Rev. Proc. 2003-71, the IRS will consider an OIC on the following grounds:

• *Doubt as to Liability.* For this ground to apply, there must be a genuine doubt to the validity of the liability. Since an OIC is a "compromise," a client making an OIC on doubt as to liability is required to make some payment, even if he or she believes that no tax liability exists. In deciding what amount to accept, the IRS will weigh the hazards of litigation. The greater the hazard, the greater likelihood that the IRS will accept a smaller payment. See Appendix 13E for excerpts from a filled-in Form 656-L based on doubt as to liability.
• *Doubt as to Collectibility.* An OIC filed on this ground must demonstrate that (a) it is unlikely that the tax can be collected in full within the collection statute of limitations and (b) the OIC reasonably reflects the amount the IRS could collect through other means, including administrative collection remedies. This will require a detailed analysis of the taxpayer's net worth and future income potential. See a sample completed Form 656 at Appendix 22D.
• *Promotion of Effective Tax Administration.* This option is the most subjective ground for filing an OIC. The IRS may compromise a tax liability on this ground if (a) full collection is possible but would cause the client an economichardship; or (b) there are no other grounds of compromise, but public policy or equity considerations provide a sufficient basis for compromising the liability.

1301.14 In *Mitchell Skrizowski*, the Tax Court held it was an abuse of discretion for the IRS to reject a taxpayer's OIC without a full investigation of the taxpayer's ability to pay. To the same extent, courts have held the IRS did not abuse its discretion in rejecting an offer (*Johnson Home Care Services, Inc.*; *Fargo*). However, in *Jerry Joe Kerr*, the Tax Court held that the IRS could reject an OIC if the taxpayer failed to provide sufficient information so that the OIC could be evaluated.

1301.15 **Practice Tip:** In submitting an OIC, the representative should fully prepare and organize the information presented. This includes complete, accurate, and current financial information as well as any documents that might be relevant in having the OIC processed. A detailed factual statement as to the taxpayer's situation and the circumstances why the taxpayer owes taxes should also be included.

Effective Tax Administration

1301.16 The IRS can enter into an OIC to promote effective tax administration if collection of the full liability would cause the taxpayer economichardship, or if the OIC is based on compelling public policy or equity considerations identified by the taxpayer. IRM 5.8.11.2.1 defines an *economichardship* as an inability to meet reasonable basic living expenses. The IRM goes on to indicate that certain circumstances, such as a long-term illness or disability, that cause a client to be incapable of earning a living constitute an economichardship. In practice, however, the IRS has been extremely reluctant to use this basis as grounds for approving an OIC. Regarding public policy or equity considerations, Rev. Proc. 2003-71 states that: "Compromise will be justified only where, due to exceptional circumstances, collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner."

1301.17 In rare cases, an OIC will be rejected for public policy reasons, even if the amount offered exceeds what could otherwise be collected. According to IRM 5.8.7.7.2, examples of situations that may warrant rejection based on a public policy decision are (a) the taxpayer has openly encouraged others to refuse to comply with the tax laws, (b) suspicion exists that the financial benefits of a criminal activity are concealed or the criminal activity is continuing, or (c) the taxpayer engaged in a pattern of conduct suggesting intentional dissipation of assets. Conversely, an OIC will not be rejected because (a) it would generate considerable public interest, or (b) a taxpayer was prosecuted for a tax or non-tax crime.

1302.7 **Step 4—Developing the Basis of the Offer.**

To submit a doubt-as-to-collectibility OIC that the IRS will process, the taxpayer must offer an amount that is equal to or exceeds the sum calculated on Form 433-A (OIC) or 433-B (OIC). (See Step 6, Calculating the Amount to Offer.) An OIC based on doubt as to liability simply presents a legal analysis of why the taxpayer does not owe all or a part of the tax liability assessed by the IRS. OICs based on effective tax administration (i.e., economichardship) will be considered first under the traditional criteria (i.e., doubt as to liability or collectibility). If the taxpayer is ineligible for an OIC under these criteria, the IRS will consider the application under the economichardship guidelines.

1302.8 **Step 5—Preparing Forms 433-A (OIC) and 433-B (OIC).**
For OICs based on doubt as to collectibility, preparation of Forms 433-A (OIC) and/or 433-B (OIC) is the starting point in determining whether an OIC should be made. One or both forms must also be completed for OICs based on effective administration (e.g., economichardship). Many OICs are returned as incomplete or denied because the taxpayer has failed to fully complete Form 433-A (OIC) or Form 433-B (OIC), and include all required or necessary attachments. A written statement should be included explaining how the taxpayer got to this point.

OICs Based on Other Factors—Effective Tax Administration
1303.41 RRA '98 authorized the Secretary of the Treasury to prescribe alternative guidelines for the IRS to determine whether an OIC is adequate and should be accepted to resolve a dispute [IRC Sec. 7122(d)(1)]. The regulations were expanded to permit the IRS, in certain circumstances, to consider additional factors (i.e., other than doubt as to liability or collectibility) when determining whether to compromise the income tax liabilities of individual taxpayers (Reg. 301.7122-1).
1303.42 If there are no grounds for compromise based on doubt as to collectibility or liability, a compromise may be entered into to promote effective tax administration when:

a. the taxpayer's equity in assets plus future income exceeds the tax liability, but collection of the full amount would create an economichardship; or
b. regardless of the taxpayer's financial circumstances, exceptional circumstances exist such that collection of the full liability will be detrimental to voluntary compliance by taxpayers; and
c. compromise of the liability will not undermine compliance by taxpayers with the tax laws.

1303.43 When evaluating offers to promote effective tax administration [Reg. 301.7122-1(c)(3)]:

a. The determination to accept or reject an OIC made on the grounds that acceptance would promote effective tax administration will be based upon consideration of all the facts and circumstances, including the taxpayer's record of overall compliance with the tax laws.
b. Factors supporting (but not conclusive of) a determination of economichardship include:

(1) the taxpayer is incapable of earning a living because of a long-term illness, medical condition, or disability, and it is reasonably foreseeable that the taxpayer's financial resources will be exhausted providing for care and support during the course of the condition;
(2) although the taxpayer has assets, liquidation of those assets to pay outstanding tax liabilities would render the taxpayer unable to meet basic living expenses; and
(3) although the taxpayer has assets, the taxpayer is unable to borrow against the equity in those assets, and disposition by seizure or sale of the assets would have sufficient adverse consequences such that enforced collection is unlikely.

c. Factors supporting (but not conclusive of) a determination that compromise would undermine compliance by taxpayers with the tax laws include:

(1) the taxpayer has a history of noncompliance with the Code's filing and payment requirements;
(2) the taxpayer has taken deliberate actions to avoid the payment of taxes; and
(3) the taxpayer has encouraged others to refuse to comply with the tax laws.

1303.44 In the following cases, collection of the tax will create an economichardship (IRM 5.8.11.2.1):

a. The taxpayer is disabled and lives on a fixed income that will not, after allowance of adequate basic living expenses, permit full payment of his or her tax liability under an

installment agreement. The taxpayer also owns a modest house that has been especially equipped to accommodate his or her disability. The taxpayer's equity in the house is sufficient to permit payment of the liability he or she owes. However, because of his disability and limited earning potential, the taxpayer is unable to obtain a mortgage or otherwise borrow against this equity. In addition, because the taxpayer's home has been specially equipped to accommodate his or her disability, forced sale of the taxpayer's residence would create severe adverse consequences for the taxpayer, making such a sale unlikely. The taxpayer's overall compliance history does not weigh against compromise.

b. The taxpayer has assets sufficient to satisfy the tax liability. The taxpayer provides full-time care and assistance to a dependent child, who has a serious long-term illness. The taxpayer will need to use the equity in assets to provide for adequate basic living expenses and medical care for the child. The taxpayer's overall compliance history does not weigh against compromise.

c. The taxpayer is retired and has only pension income. The taxpayer's only asset is a retirement account, and the funds in the account are sufficient to satisfy the tax liability. Liquidation of the retirement account would leave the taxpayer without an adequate means to pay living expenses. The taxpayer's overall compliance history does not weigh against compromise.

1303.45 The existence of economichardship does not require that the amount of a requested OIC must be accepted. An acceptable offer amount is based on a full financial analysis and negotiation with the taxpayer. For example, assume that the taxpayer has an illness that eventually will hinder his ability to work. Although currently employed, the taxpayer will soon be forced to quit his job and use personal funds for basic living expenses. The taxpayer owes $100,000 and has a reasonable collection potential of $150,000. An offer was submitted for $35,000. Through the offer investigation, it is determined that collecting more than $50,000 would cause an economichardship for the taxpayer. The minimum offer amount is $50,000, since it is the amount the IRS can collect without creating an economichardship.

1303.46 The preamble to the Section 7122 regulations notes that compromise under the nonhardship effective tax administration standard is appropriate “only in those rare cases where collection would adversely affect the overall tax system.” In applying this standard, the IRS will “presume that the correct application of the tax laws produces a fair and equitable result, absent exceptional circumstances.”

1303.47 With this in mind, the Tax Court upheld the IRS's rejection of an OIC submitted by a couple who reported an AMT liability of $206,191 from their exercise of incentive stock options. Thereafter, the value of the stock “dropped precipitously,” causing them to owe tax on value they no longer owned. The Tax Court found no intent by Congress, in enacting IRC Sec. 7122, to “override application of specific provisions of the tax laws in every instance in which the liability is perceived to be unfair or inequitable” (*Speltz*).

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Agreements Providing for Partial Payment

1006.17 The IRS has the authority to enter into installment agreements that do not provide for full payment of the taxpayer's liability [IRC Sec. 6159(a)]. IRC Sec. 6159(c), which requires the IRS to enter into an installment agreement with an individual if certain conditions are met (e.g., the total tax liability does not exceed $10,000 and the agreement requires full payment of the liability within three years), only applies if the agreement provides for full payment of the tax liability.

1006.18 A partial payment installment agreement (PPIA) is available to taxpayers who cannot fully pay the liability prior to the expiration of the collection limitations period but have some ability to pay. As a condition to the PPIA, taxpayers are expected to fully pay their tax liabilities immediately, equity in assets must be addressed and used to fully pay or reduce the amount of the liability, allowable expense guidelines will be applied immediately (no transition period, no conditional expenses will be allowed) as in some installment agreements, and the taxpayer must have the ability to make monthly payments.

1006.19 There are two types of partial payment installment agreements:

a. *No Asset/No Equity*—Under this PPIA the taxpayer has no assets and/or no equity in assets, or the taxpayer has liquidated available assets to make a partial payment.

b. *Asset/Equity*—Under this PPIA the taxpayer has minimal equity, is unable to utilize equity, or is unable to sell the asset because it is unmarketable despite a high book value, or the asset is necessary to generate income for the PPIA and the government will receive more from the future income generated by the asset than from the sale of the asset.

1006.20 If it would impose an economichardship on the taxpayer to sell property, borrow on equity in property, or use a liquid asset to pay the taxes, the taxpayer will not be required to sell. If the loan payment would exceed the taxpayer's disposable income, the taxpayer will not be required to borrow to pay the taxes.

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Mediation and Arbitration

1304.19 The IRS is testing mediation and arbitration for OIC cases (IRS Ann. 2011-6). Mediation is available to settle disputes on legal and factual issues. The mediator facilitates discussions between the parties so they may reach their own agreement. Arbitration is available for factual issues only. The arbitrator hears both sides of a disputed issue and renders a decision.

1304.20 In addition to the exclusions contained in Rev. Proc. 2002-44 (Appeals mediation procedures) and Rev. Proc. 2006-44 (Appeals arbitration procedures), neither mediation nor arbitration is available where:

- The taxpayer has the ability to pay in full based on the unadjusted financial information submitted by the taxpayer, except when economichardship exists;
- The taxpayer declines to amend the offer without specifically disagreeing with the valuations, figures, or methodology used by Appeals in determining reasonable collection potential;
- The disputed issue is explicitly addressed in established guidance [for example, in the instructions for Form 656 (Offer in Compromise), such as unsecured debt or college expenses];
- The issue of liability was previously determined by Appeals; or
- An OIC is submitted as a collection alternative in a Collection Due Process or equivalent hearing.

1304.21 Some of the appropriate issues for mediation or arbitration in OIC cases include the value of dissipated assets, a taxpayer's proportionate interest in jointly held assets, or a taxpayer's future ability to pay when living expenses are shared with a nonliable person.

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Delinquent Return Refund Hold Program

1602.4 The Delinquent Return Refund Hold Program was developed to identify and withhold nonfilers' refunds until delinquent tax returns are filed. Under this program, the IRS holds individual income tax refunds and credit elects when a current year tax return is filed resulting in a refund and the taxpayer has at least one unfiled tax return within the prior five-year period (IRM 25.12.1.1). The intent is to get the nonfiler to file the delinquent tax return(s) and offset any tax owed on the delinquent tax return(s).

1602.5 When a refund meets the hold criteria, the nonfiler is notified and instructed to file the delinquent tax return or contact the IRS to explain why a return need not be filed. Otherwise, a return will be filed for the taxpayer (IRM 25.12.1.6). The refund will be released if (a) the delinquent return(s) being filed reflects a refund or no balance due and results in all delinquencies being resolved, (b) there is no filing requirement for the delinquent year(s), (c) the taxpayer is in a declared disaster/emergency

area, or (d) the taxpayer establishes that an economichardship exists (IRM 25.12.1.1).
1602.6 Examples of economichardship include (a) foreclosure or eviction notice, (b) financial information showing the taxpayer is unable to meet basic living expenses, or (c) a statement from a health care provider that services will not be provided without prepayment (IRM 25.12.1.9). In certain circumstances (due to the urgency or the nature of the hardship), oral or written testimony explaining the hardship may be accepted. For example, the economichardship can be validated by contacting a landlord or utility company, or by contacting a homeless shelter to verify the taxpayer does not have housing.
1602.7 From the practitioner's perspective, withholding a current-year refund will result in a significant hardship because the refund would help the nonfiler meet current living expenses. When faced with such a case, the practitioner should ask that the refund be released. If the IRS refuses to release the refund, the practitioner can file Form 911 (Request for a Taxpayer Assistance Order) according to the procedures described in section 104. However, the practitioner may have to settle for less than the entire refund amount.

Example 16-1: When significant hardship exists but the refund is withheld.
Noel Nonfiler's refund has been withheld, and Noel states that he is delinquent in rent payments and has received an eviction notice. Although the refund is for $3,000, only $1,200 is needed to avoid eviction. The IRS employee should recommend a manual refund of $1,200.

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Use of the Taxpayer Advocate and EH

A. In General
The Taxpayer Advocate Service (TAS) is a special program instituted by the IRS to handle taxpayers' complaints and to represent within the IRS the interests and concerns of taxpayers. The TAS is directed by the National Taxpayer Advocate (NTA), who operates independently within the IRS. The National Taxpayer Advocate has the authority to issue a Taxpayer Assistance Order (TAO) when the taxpayer is suffering or is about to suffer a significant hardship as a result of the manner of the administration of the tax laws, including action or inaction on the part of the IRS. §7811(a); 7811(a)(1)(B); Regs. § 301.7811-1(a)(1) In issuing a TAO, the National Taxpayer Advocate can require the IRS to release a levy against the taxpayer's property, to stop other collection or audit actions, to take any action permitted by law, or to stop any other action, as listed in the TAO. §7811(b).

B. Significant Hardship
A TAO can be issued to address a variety of collection issues. First, the Taxpayer Advocate determines whether the taxpayer is suffering or about to suffer a significant hardship. Second, if such hardship exists, the Taxpayer Advocate decides whether the IRS action should be changed. *See* Regs. § 301.7811-1(a)(1) and (a)(5).
Temporary TAS Limits on Case Acceptances: In June 2012, TAS announced that it was temporarily limiting the types of cases that it would handle to the following:
• Where a taxpayer is experiencing some financial difficulty, emergency, or hardship, and the IRS needs to move much faster than it usually does (or even can) under its normal procedures. In those cases, time is of the essence. If the IRS doesn't act quickly (for example, to remove a levy or release a lien), the taxpayer will experience even more financial harm.
• Where many different IRS units and steps are involved, and the case needs a "coordinator" or "traffic cop" from TAS to make sure everyone does their part.
• Where the taxpayer has tried to resolve a problem through normal IRS channels but those channels have broken down.
• Where the taxpayer is presenting unique facts or issues (including legal issues), and the IRS is applying

a “one size fits all” approach, isn't listening to the taxpayer, or doesn't recognize that it needs new guidance for those circumstances.
Accordingly, TAS generally will not accept cases involving pure processing issues, i.e., the processing of original tax returns, amended returns, rejected and unpostable returns, and injured (but not innocent) spouse claims. However, there are exceptions to this announced policy under which TAS will take the case (e.g., if the taxpayer is suffering an economic burden, if the case involves other issues, if the taxpayer is referred by a congressional office, and if the taxpayer specifically requests and insists).
A “significant hardship” means a serious deprivation caused or about to be caused to the taxpayer as a result of the particular manner in which the tax laws are being administered. Significant hardship includes situations in which a system or procedure fails to operate as intended or fails to resolve the taxpayer's problem or dispute with the IRS. §7811(a)(2); Regs. §301.7811-1(a)(4)(ii).
A “significant hardship” also includes, but is not limited to:
• an immediate threat of adverse action;
• a delay of more than 30 days in resolving taxpayer account problems;
• the incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or
• irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.
See Regs. §301.7811-1(a)(4)(ii). A delay of more than 30 days in resolving a taxpayer account problem exists when (1) a taxpayer does not receive a response by the date promised by the IRS; or (2) when the IRS has established a normal processing time for taking an action and the taxpayer experiences a delay of more than 30 days beyond the normal processing time. Regs. §301.7811-1(a)(4)(iii).

Example 1—*Immediate Threat of Adverse Action*
The IRS serves a levy on X's bank account. X needs the bank funds to pay for a medically necessary surgical procedure that is scheduled to take place in one week. If the levy is not released, X will lack the funds necessary to have the procedure. X is experiencing an immediate threat of adverse action.

Example 2—*Significant Costs*
The IRS sends XYZ, Inc. a notice requesting payment of the outstanding employment taxes and penalties owed by XYZ, Inc. The notice indicates that XYZ, Inc. has small employment tax balances with respect to 12 employment tax quarters totaling $10x. XYZ, Inc. provides documentation to the IRS that it contends shows that if all payments were applied to each quarter correctly, there would be no balance due. The IRS requests additional records and documentation. Because there are 12 quarters involved, to comply with this request XYZ, Inc. asserts that it will need to hire an accountant, who estimates he will charge at least $5x to organize all the records and provide a detailed analysis of how to apply the deposits and payments. XYZ, Inc. is facing significant costs.

Example 3—*Irreparable Injury*
Taxpayer (T) has arranged with a bank to refinance his mortgage to lower his monthly payment. T is unable to make the current monthly payment. Unless the monthly payment amount is lowered, T will lose his residence to foreclosure. The IRS refuses to subordinate the Federal tax lien, as permitted by § 6325(d), or discharge the property subject to the lien, as permitted by §6325(b). As a result, the bank will not allow T to refinance. T is facing an irreparable injury if relief is not granted.

A finding that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the IRS will not automatically result in the issuance of a TAO. After making a determination of significant hardship, the NTA must determine whether the facts and the law support relief for the taxpayer. In cases where any IRS employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the NTA must construe the factors taken into account in determining whether to issue a TAO in the manner most favorable to the taxpayer. See Regs. §301.7811-1(a)(5).

C. Issuance of Taxpayer Assistance Order (TAO)

To request a TAO, a taxpayer or the taxpayer's representative must use Form 911, Request for Taxpayer Advocate Assistance (And Application for Taxpayer Assistance Order) or submit a written statement containing information sufficient for the Advocate to determine the nature of the harm or the need for assistance. Regs. §301.7811-1(b). If the National Taxpayer Advocate determines that the taxpayer is facing significant hardship and that the facts and the law support relief, the NTA may issue a TAO ordering the IRS to:

• release levied property (to the extent permitted by law);
• cease any action, take any action, or refrain from taking any action with respect to a taxpayer involving collection, bankruptcy, receivership, title enforcement, or any other provision of the internal revenue laws; or
• expedite, reconsider, or review at a higher level an action taken with respect to a determination or collection of a tax liability.

Regs. §301.7811-1(c).

A TAO may be issued to any office, division, or IRS function, but may not be issued to the IRS Criminal Investigation Division if the action ordered could reasonably be suspected to impede a criminal investigation. Regs. §301.7811-1(d). Any order issued or action taken by the National Taxpayer Advocate applies to persons performing services under a qualified collection contract. §7811(g). A TAO generally may not be issued to the IRS Office of Chief Counsel. *Id.*

Once issued, a TAO cannot be modified or rescinded unless approved by the National Taxpayer Advocate, Commissioner, or Deputy Commissioner. §7811(c).

D. Suspension of Collection and Other Limitations Periods

The running of any limitations period is suspended with respect to a release of levied upon property or the taking or ceasing of an action related to the taxpayer regarding collection, receivership, bankruptcy, discovery of liability, enforcement of title, or any other provision of law specifically described in a TAO for:

• the period beginning on the date of the taxpayer's application for assistance and ending on the date of the National Taxpayer Advocate's decision; and
• any period specified in a TAO issued pursuant to such application.

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