

Notice of Deficiency

Presented by: LG Brooks, EA, CTRS, NTPI Fellow

The American Society of Tax Problem Solvers

"The Notice of Deficiency"

ASTPS

The Notice of Deficiency

Definition:

- A "Notice of Deficiency" (NOD) is a legal notice issued by the Government informing the taxpayer of a proposed tax deficiency and providing the taxpayers their "right" to petition the United States Tax Court.
- The NOD is also known as:
 - ✓ A "Statutory Notice of Deficiency"
 - ✓ A "Stat Notice"
 - ✓ A "90-Day Notice"

ASTPS-"The Notice of Deficiency" ASTPS

"The Law & The NOD"

- Notice must be remitted by Certified or Registered Mail
- Notice must advise the taxpayer of their right to file a Tax Court Petition within "90-Days" or (150 days if the notice is addressed to a person outside the U. S.
- As a general rule, a NOD is "presumptively correct" and requires the taxpayer to prove that it is "erroneous or arbitrary".
- The "burden of proof" is shifted upon new matters, increase in deficiencies or affirmative defenses raised by the Government

ASTPS-"The Notice of Deficiency" ASTPS

Notice of Deficiency

Presented by: LG Brooks, EA, CTRS, NTPI Fellow

“The IRM & The NOD”

- The Internal Revenue Manual (IRM) plays a significant role to support the administration and implementation of the NOD
- Effective “**September 27, 2013**” the IRS modified, added and/or clarified “**85 provisions**” of Section 8 of the IRM to enhance the procedural content of the guidelines pertaining to the issuance & defense of a NOD

ASTPS-“The Notice of Deficiency”

ASTPS

“Last Known Address Issues”

- The NOD is required to be remitted via certified or registered mail to the taxpayer’s “***last known address***”
- Taxpayer’s last known address is *usually* determined by the taxpayer’s *last filed income tax return*, unless
- The IRS is given “***clear & concise notification***” of a different address
- Notification considered processed after a 45 day processing period

ASTPS-“The Notice of Deficiency”

ASTPS

“Issuance of the NOD”

- Issued via a “Letter 3219”, or
- “Notice CP3219A”, to include
 - The tax periods involved
 - The amount of the deficiency
 - The taxpayer’s option
 - A “waiver” (consent to assessment & collection)
 - A statement indicating the computation of the deficiency
 - An explanation of any adjustments, and
 - A notification of the “***last day***” to file a Tax Court petition

ASTPS-“The Notice of Deficiency”

ASTPS

Notice of Deficiency

Presented by: LG Brooks, EA, CTRS, NTPI Fellow

“30-Day Letter Matters”

- “30-Day Letter” required prior to “90-Day” letter
- A new 30-Day required for “substantial increases”
- Inadvertent omissions of “automatic adjustments” not critical
- New “technical issues” require a “new 30-day” letter
- Objective is to protect the taxpayer’s right to Appeal

ASTPS-“The Notice of Deficiency”



“Benefits of a Timely Petition”

- Legally delays “formal assessment”
- Prevents “enforced collection” actions of assets
- Prevents “premature” prosecution
- Allows taxpayer to seek legal counsel, and
- Develop legal arguments/provide exculpatory evidence

ASTPS-“The Notice of Deficiency”



“Exceptions-Restriction on Assessment”

- Mathematical or clerical errors
- FTF & FTP Penalties
- Fraud Penalties
- Information Reporting Penalties
- Promoter & Tax Shelter Penalties

ASTPS-“The Notice of Deficiency”



Notice of Deficiency

Presented by: LG Brooks, EA, CTRS, NTPI Fellow

“Employment Tax Cases”

- NOD not issued
- Immediate assessment may occur regarding “un-agreed” tax cases
- “Notice of Determination of Worker Classification” (NODWC) is issued instead
- Language of NODWC states “before 91st day”, not the standard “90 days” (See Appendix)

ASTPS-“The Notice of Deficiency”

ASTPS

“Representatives & Practitioners”

- Copy of NOD generally issued to FATP (by *regular mail* only)
- “**Letter 4368**” remitted to taxpayer when FATP POA does not cover all tax years in questions
- “**Letter 4369**” remitted to taxpayer when non-FATP POA does not cover all tax years in questions

ASTPS-“The Notice of Deficiency”

ASTPS

“Review of NOD & Claim Disallowance”

- Authority to issue
- Must be reviewed for accuracy
- Government may bear the “burden of proof”
- NOD should not refer to over-assessments
- Conflicting determinations may challenge the “presumptive correctness” of NOD

ASTPS-“The Notice of Deficiency”

ASTPS

Notice of Deficiency

Presented by: LG Brooks, EA, CTRS, NTPI Fellow

“Other NOD Issues”

- Substitute for Returns (SFR)
- Statute of Limitations
- Authority to Rescind
- Proper Managerial Involvement
- Completion of Procedural Requirements
- Taxpayer Options subsequent to NOD

ASTPS-“The Notice of Deficiency”



“Related Tax Law References”

- Teong-Chan Gaw vs. Commissioner
- Thomas Hunter vs. Commissioner
- St. Joseph Lease Capital Corp. vs. Commissioner
- National Taxpayer Advocate-2012 Report
- Letter 3219, Notice CP3219A & NODWC

ASTPS-“The Notice of Deficiency”



The Notice of Deficiency

- The Notice of Deficiency-Q & A:

- _____
- _____
- _____
- _____
- _____

ASTPS-“The Notice of Deficiency”



Notice of Deficiency

Presented by: LG Brooks, EA, CTRS, NTPI Fellow

The Notice of Deficiency

- *The Notice of Deficiency*

LG Brooks, EA, CTRS

3102 Maple Ave., Suite 450 Dallas, TX 75201

215 Dalton Dr. Suite E, De Soto, TX 75115

(972) 223-4000 voice (972) 223-2636 facsimile

website: www.thetaxpractice.net

ASTPS-"The Notice of Deficiency"

ASTPS
