

The American Society of Tax Problem Solvers
“THE NOTICE OF DEFICIENCY”

LG Brooks, EA, CTRS, NTPI Fellow



“The Taxpayer’s Ticket to Tax Litigation”

LG Brooks, BA, EA, CTRS, NTPI Fellow

BIOGRAPHY

LG Brooks is an Enrolled Agent and is the CEO and Senior Consultant of The Tax Practice. LG has been in the field of taxation for more than 25 years and has been in practice full time since 1990. LG is a member of several tax-related organizations and his tax practice includes Tax Representation, Tax Consulting, Tax Preparation, and Pre-Tax Court Litigation Support Services.

LG received a Bachelor of Arts degree from Bishop College at Dallas, Texas in 1977 and is a Fellow of the National Tax Practice Institute (NTPI).

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INTRODUCTION & OVERVIEW

It is not unusual for taxpayers and/or their representatives to disagree with formal determinations of the Internal Revenue Service (IRS). Typically, the procedure invoked regarding any “un-agreed” tax case that involves a “tax deficiency” requires the IRS to issue a “Notice of Deficiency”.

The issuance of the Notice of Deficiency entitles the taxpayer to certain “rights” with respect to potential litigation and/or further judicial resolution of the tax matter. Whether a taxpayer should pursue the tax matter subsequent to the issuance of the “Notice of Deficiency” is a judgmental position that should be influenced by the numerous issues such as previous evidence, substantiation, documentation, and viable arguments presented during the pre-Notice of Deficiency proceedings.

This presentation is designed to first discuss and explain the provisions and requirements of the Notice of Deficiency, then to further provide guidance with respect to the representation of taxpayers subsequent to the issuance of the Notice of Deficiency. This should include legal or appropriate defenses, legal arguments, and adequate presentation and production documents.

“The Notice of Deficiency-Definition”:

A “Notice of Deficiency” (NOD) is a formal letter or correspondence issued by the IRS informing a taxpayer of a proposed tax deficiency and which legally informs a taxpayer of their right to petition the United States Tax Court. This “legal notice” is required by law to be issued to any taxpayer where a “tax deficiency” has been determined and generally, must also be mailed to the taxpayer’s “last known address” to be effective (however see “last known address” below for more information).

Via the legal tax community, the NOD is also known as:

- ❑ A “*Statutory Notice of Deficiency*”
- ❑ A “*Stat Notice*”, or a
- ❑ A “*90-Day Notice*”

“The Law & The Notice of Deficiency”:

A “Notice of Deficiency” (NOD) is a formal letter or correspondence issued by the IRS informing a taxpayer of a proposed tax deficiency. The NOD is considered a “legal notice” and is required by federal law as follows:

- ❑ “*Notice of Deficiency*”¹, which states-
“If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitle A or B or chapter 41, 42, 43 or 44, he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer’s right to contact a local office of the Taxpayer Advocate and the location and phone number of the appropriate office”.

¹ Internal Revenue Code (IRC) §6212(a)

❑ **“Official Response Deadlines”**²:

“Within “90-days”, or “150 days” if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in IRC §6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day) the taxpayer may file a petition with the United States Tax Court (Tax Court) for re-determination of the deficiency.”³

❑ **“Presumption of Correctness”**-

“As a general rule, the deficiency determinations of the Commissioner are presumptively correct”⁴, and the taxpayer bears the “burden of proving” otherwise⁵. This provision also requires the taxpayer to prove that the Government’s determination is “erroneous or arbitrary”.⁶

However, where the Commissioner pleads in his answer “new matters, increases in deficiencies, and affirmative defenses”, the Commissioner bears the burden of proving such allegations.⁷

“The IRM & The Notice of Deficiency”:

Effective “September 27, 2013” a significant revision and reorganization of the Internal Revenue Manual (IRM) was performed with respect to the guidelines pertaining to the issuance of a “Notice of Deficiency”. The IRS **modified, added, and or clarified 85 provisions** of Section 8 of the IRM to enhance the procedural content of NOD tax matters.

² Internal Revenue Code (IRC) §6212(a)

³ IRC §6213(a)

⁴ Welch v. Helvering [3 USTC, 290 U.S. 111, 115 (1933)]

⁵ Rule 142, Tax Court (TC) Rules of Practice & Procedure

⁶ Kearns v. Commissioner [92-2 USTC, 979 F.2d 1176, 1178 (6th Cir. 1992)]

⁷ Rule 142(a), TC Rules of Practice & Procedure

Last Known Address:⁸

Furthermore to be legally valid, the NOD must be mailed to the taxpayer's "last known address" via **certified or registered mail**. The taxpayer's last known address is determined by several means. The most effective method is where a taxpayer executes a **Form 8822**, "Change of Address". Nonetheless, the method predominately utilized to determine the taxpayer's "last known address" is the address noted via the taxpayer's last filed income tax return. However, this latter procedure is usually problematic for the following taxpayers:

- Non-filers
- Taxpayers where "*Substitute for Returns*" (SFRs) have been filed
- Divorced or Separated taxpayers
- Deceased taxpayers
- Taxpayers with a legal disability, or a
- Corporation that has terminated its existence
- Incarcerated Taxpayers
- Military Personnel

Last Known Address-General Rule:⁹

As the "general rule" and unless otherwise indicated, a taxpayer's last known address is the address that:

- Appears on the most recently & properly processed Federal tax return, unless
- The IRS is given *clear & concise notification* of a different address
- A clear & concise written notification of a change of address will be considered properly processed after a "45-day" processing period which begins the day after the date of receipt by the IRS¹⁰

⁸ IRC §6212(b)

⁹ Treasury Regulation (Treas. Reg.) §301.6212(a)

¹⁰ Rev. Proc. 2010-16 (April 16, 2010)

Last Known Address-Clear & Concise Notification:¹¹

With respect to this matter, any taxpayer, tax representative or legally authorized tax practitioner should be concerned with what legally constitutes “clear & concise” notification.

- Clear & concise written notification is a statement signed by the taxpayer informing the Service that a taxpayer wishes the address of record changed to a new address. In addition to the new address, this notification must contain the taxpayer’s full name, signature, old address, and social security numbers, and/or employer identification number.¹²
- Additionally, Form 4868, “Applications for Automatic Extension of Time to File” **or Form 2848**, “Power of Attorney”, will not be used by the Service to update the taxpayer’s address of record.¹³

COMMENTARY-Last Known Address Issue:

Please note that the “last known” address is critical with respect to the issuance and validity of the NOD. A NOD will be deemed “invalid” if not mailed to the “last known address”. Also, although the IRS has stated via their position of not recognizing a “Power of Attorney” via the Rev. Proc.’s referenced above, the Courts have consistently issued decisions contrary to the positions noted via these Rev. Proc.’s as follows:

- “Before the notice was issued, the taxpayer submitted a Form 2848, Power of Attorney, with his current address. The form provided the IRS with “*clear & concise*” notice of the taxpayer’s current address. The *Tax Court rejected the government’s argument* that the form failed to indicate that the taxpayer wanted the address listed to replace his previous address.”¹⁴

¹¹ Revenue Procedure (Rev. Proc.) 90-18 (1990-1 C.B. 491)

¹² Rev. Proc. 2010 16 (April 16, 2010)

¹³ *ibid*

¹⁴ Thomas Hunter, Jr. v. Commissioner, T. C. Memo 2004-81, 87 T.C.M 1143 (March 23, 2004)

- The Court found (*at the Government's insistence*) that the taxpayer's Form 2848 established a "last known address" different from the one appearing on the taxpayer's most recently filed return.¹⁵

Issuance of "The NOD":

A NOD is usually issued via the "**Letter 3219**" or a "**Notice CP3219A**" (see the appendix or Power Point presentation). The Letter 3219 (or the Notice CP3219A) is required to include the specific information and language to be considered valid NOD as follows:

- The "*Letter 3219*" or "*Notice CP3219A*" must contain the purpose of the notice
- The tax periods involved
- The amount of the deficiency
- The taxpayer's option
- An agreement form (waiver) which allows the taxpayer to agree to the additional tax liability
- A statement indicating the computation of the deficiency
- An explanation of the adjustments (if any), and
- A notification of the "last day"(or final date) to petition the Tax Court

Practitioner Pointer:

It should be noted that failure by the IRS to specify the last day on which to file a Tax Court petition, would not invalidate an otherwise valid NOD if the taxpayer(s) were not prejudiced by the omission.¹⁶

¹⁵ Rizzo v. Davis, 43 AFTR 2d 985, 79-1 USTC par. 9310 (W.D. Pa. 1979)

¹⁶ Eric & Dorothy Smith v. Commissioner, U. S. Court of Appeals, 10th Cir., 2002-1 U.S.T.C

The Thirty-Day (30) Letter Issue:

Thirty-day letters, commonly referred to as a “30-day Letter”, can have a profound effect upon the issuance, or proposed issuance of a “90-day Letter”. A 30-day letter is usually issued subsequent to an examination or audit and allows the taxpayer 30 days to pursue a formal Appeal with the Appeals Division of the IRS because the taxpayer has a “right” to a formal Appeal.

New 30-Day Letter Required¹⁷

- If the new report substantially increases the proposed deficiency or raises new technical issues, a new 30-day letter is required. The reviewer will forward the case back to the group for the new 30-day letter and the case will be suspended for 30 additional days at the group level, **if** sufficient time remains on the statute of limitations.
- For this purpose, “substantial” is defined by reference to the return case criteria in IRM 4.8.2, *Case Processing*.
- Automatic adjustments inadvertently omitted from the 30-day letter report are not considered new technical issues. Similarly, correction of the categorization of an issue (e.g., a prepayment credit incorrectly categorized as an “other credit”) is not considered a new technical issue that would require a new 30-day letter.
- If the corrected report raises a new technical issue, a new 30-day letter should be issued regardless of the amount of the tax increase.
- The objective behind issuing a new 30-day letter is to ensure the taxpayer is provided the opportunity to appeal all issues administratively before a **notice of deficiency** is issued.

¹⁷ IRM §4.8.9.7.5.2

- Cases that meet the above requirements will be returned to the group by Technical Services for issuance of a new 30-day letter prior to preparation and issuance of the **notice of deficiency**. If the statute of limitations is imminent (*less than 210 days*), the case **will not require a new 30-day letter** and the reviewer will proceed to prepare and issue the **notice of deficiency**.

Benefits of Filing a Timely Petition:¹⁸

If the taxpayer files a timely petition with the Tax Court, the Government is legally prohibited from performing the following actions:

- “**Assessment**”, no assessment of the deficiency is allowed while the case is pending before the court
- “**Levy**”, no levy or proceeding in court for collection of the tax shall be made
- No “**prosecution**” of the taxpayer is allowed until the expiration of the “90-day” or “150-day” period (which ever applies), or until a decision of the Court becomes final

As noted above, the filing of a timely Tax Court petition prevents the premature assessment and immediate collection of any tax determined to be correct as a matter of the final decision of the Court. Right or wrong, this “*due process*” procedure allows the taxpayer to:

- Seek/engage legal counsel
- Develop additional legal arguments
- Review & research legal defenses, and
- Obtain any additional exculpatory evidence (if available)

¹⁸ IRC §6213(a)

Exceptions to Restrictions on Assessment:¹⁹

If the taxpayer is notified of any assessments arising out of *mathematical or clerical errors* appearing on the tax return, an amount of tax in excess of that shown on the return is due, and that an assessment of the tax has been or will be made on the basis of “*what would have been the correct amount of tax*” but for the mathematical or clerical error, such notice *shall not be considered* a “Notice of Deficiency”. Therefore, the IRS is legally allowed to the immediate assessment and collection of such tax; and the taxpayer shall not have the right to file a valid petition with the Tax Court.

Other Exceptions to Restrictions on Assessment:²⁰

Certain penalties and additions to tax are NOT subject to the “deficiency procedures” as promulgated via IRC §6212 & IRC §6213 as follows:

- IRC §6651, “Failure to File” & “Failure to Pay”
- IRC §6651(f), “Fraud Delinquency Penalty”
- IRC §6721-6724, “Information Reporting”
- IRC §6700-6701, “Promoter Penalties”
- IRC §6707-6708, “Tax Shelter Penalties”

Employment Tax Cases:²¹

A Notice of Deficiency *is NOT* issued for employment tax cases (including cases with Form 945 backup withholding adjustments). Un-agreed employment tax cases may require **immediate assessment** of the tax. As an alternative the Examiner or Appeals Officer will usually issue a “**Notice of Determination of Worker Classification**” as authorized by the Code.²² Additionally, the case may be transferred to Chief Counsel for trial preparation based upon the type case and employment tax issues involved.

¹⁹ IRC §6213(b)

²⁰ IRC §6213(b)

²¹ Internal Revenue Manual (IRM) §8.17.4.2

²² IRC §7436, “Proceedings for Determination of Employment Status”

If the taxpayer is issued a “*Notice of Determination of Worker Classification*” (NDWC), they are also informed of their right to file a petition with the Tax Court. Please note that the language is slightly different with respect to the time frame for filing a petition with the Court. For example, instead of stating “90 days” as the limit, the NDWC states “*before the 91st day after the letter is mailed*”. Additionally, there is “**no mention**” of the “*150-day*” time period, if the taxpayer is outside of the United States or mailed to a foreign address. (See appendix for a copy of the NDWC).

Based upon the issues noted above regarding employment tax cases (potential immediate assessment, possible referral to Chief Counsel), these type cases may require special attention or control.

Representative & Practitioner Issues:²³

Not all practitioners are entitled to notification of the issuance of the “Notice of Deficiency”. Extreme care should be taken when an “unlicensed” practitioner is representing a taxpayer before the IRS. Formal notification provisions apply as follows:

- “If a taxpayer is represented by a duly authorized Power of Attorney (POA) and the Form 2848 is appropriately annotated, a copy of the notice to the taxpayer(s) will be sent to the representative by **regular** mail”.²⁴
- Unrolled return preparers and Registered Tax Return Preparers (RTRPs) are authorized to represent taxpayers only before Revenue Agents, Customer Service Representatives or Similar IRS employees and only in connection with an examination of the taxable year or period covered by a return prepared and signed by the un-enrolled return preparer or RTRP.²⁵
- If the representative’s POA does not cover

²³ Internal Revenue Manual (IRM) §8.17.4.2

²⁴ IRM §8.17.4.8.8

²⁵ IRM §8.17.4.8.9

Letter 4368:²⁶

Please note that if a duly authorized representative's POA is not all inclusive of the tax years in question with respect to the NOD, the POA ***will not receive a copy*** of the NOD. Instead, the IRS is instructed to send the taxpayer (*not the representative*) a “**Letter 4368**”, “*Statutory Notice Not Sent to Representative*”. This letter explains to the taxpayer, why a copy of the NOD was not provided to their representative and the steps that are required to address the issue.

Tax Practitioner Pointer:

If the duly authorized representative was an “Unenrolled Preparer” or a RTRP, a **Letter 4369**, “*Statutory Notice Not Sent to Representative-Limitations to Practice Before the IRS*” will be issued instead of the Letter 4368.

Review of Notices of Deficiency and Claim Disallowance:

- ❑ The authority to issue a deficiency notice rests with the Commissioner, Area Directors, Field Territory Managers, Service Campus Directors, and Appeals Team Managers. The role of the Field Counsel is to advise whether a deficiency notice should be issued, and if so, to make recommendations concerning the issues to be asserted and the wording of the discrimination. The criteria for submitting a **Notice of Deficiency** to Field Counsel for review are in IRM 4.8.9.9, Reviewing the **Notice of Deficiency**.

²⁶ IRM §8.17.4.8.8-6

- ❑ The review must verify the adequacy of the evidence in support of the proposed determination. The attorney should evaluate the validity of the proposed issues, gauge the extent to which the prospective Service challenge has been developed, and consider whether any additional matters should be noted. The standard for factual review is one of reasonableness, such as:
 - ✓ Have the key witnesses been interviewed and all appropriate statements obtained?
 - ✓ Are the documents necessary to the issue in the file?
 - ✓ Have any essential areas of inquiry been ignored?

Occasionally, there are instances in which all that needs to be done is to show that the taxpayer has failed to substantiate deductions or exemptions.

- ❑ When the Service has the burden of proof, the factual and evidentiary development should be complete. The Service should be able to present a prima facie case from the contents of the administrative file. The material should include a discussion of:
 - ✓ The nature and scope of the evidence and its expected effect on the taxpayer's anticipated defenses.
 - ✓ The factual development is critical; the answer will have to make allegations sufficient to support any affirmative relief sought.
- ❑ If further investigation is required, the Field Territory Manager or Appeals Team Manager should be requested to have it made. The request should specify the remaining problems, identify the specific area of the inquiry as well as the documents required and the people to be interviewed, and offer consultation. When appropriate, use of summonses should be recommended.

- ❑ Field Counsel should review the proposed deficiency in light of the pertinent law and purported facts without limitation to the particular theory proposed. If there is doubt as to Service position or disagreement with the issuing official over the stand to be made, advice should be sought from the appropriate Associate office.
- ❑ Upon the receipt of a request for legal advice for a non-docketed case, the technical assistant, the attorney’s supervisor, and the docket attorney, will each verify the statutory bar date.
- ❑ The proposed explanatory paragraphs should be carefully reviewed to make sure that the taxpayer will be adequately apprised of the nature of the adjustment and that all of the grounds necessary to support the determination are included. Citations to Internal Revenue Code sections are not required but, if provided, should be comprehensive.

The deficiency shown should be the “statutory deficiency” and the notice should not refer to any years for which there has been an over-assessment.

- ❑ Only those alternative theories that result in smaller deficiencies than the primary theory may be mentioned in the notice. An intended alternative resulting in more deficiency than the primary theory could be switched to become the primary theory, or could be introduced in the answer, with respect for a larger deficiency.
- ❑ Conflicting determinations may raise a question as to the presumptive correctness of the determination, particularly if made for the same taxable year of the same taxpayer. Some conflicting determinations do have to be made. For example, the determination that the income is includable for a taxpayer in each of two years or in respect of each of two taxpayers may be necessary to protect the revenue. It is a case-by-case decision. Field Counsel should resolve any existing or potential doubtful instances.

Substitute for Return (SFR):

The ASFR program extracts wage and income information from Information Return Program (IRP) documents to create and calculate delinquent tax returns. A **Letter 2566** “*Proposed Individual Income Tax Assessment*” is usually issued. However, if the delinquent tax returns are not eventually filed by the taxpayer, the IRS to issue a Notice of Deficiency. And if the IRS ultimately issues a “Statutory Notice of Deficiency” and the non-filer does not comply within approximately 90 to 120 days subsequent to the issuance of the “stat-Notice” (150 days if the taxpayer is overseas or otherwise out of the country) the IRS will typically invoke the ASFR procedures noted above to prepare returns and assess any tax due based upon the ASFR results.

Statute of Limitations:

If you expect a detailed explanation under ***IRC §§6212 or 6213***, of “how the issuance of a 90-Day Notice” affects the “statute of limitations” (SOL), you won’t find it there. Ironically, the SOL with respect to the issuance of a “Stat-Notice” is identified and explained via the Code as follows:

Upon the issuance of a Notice of Deficiency:²⁷

*“the running of the period of limitations provided in section 6501, 6502 or 6229, on the making of assessments or the collection by levy or a proceeding in court, in respect of any deficiency as defined in section 6211 (relating to income, estate, gift and certain excise taxes) **shall** (after the mailing of a notice under section 6212(a)), **be suspended** for the period during which the Secretary is prohibited from making the assessment or from collecting by levy or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, **until the decision of the Tax Court becomes final**) and for **60 days thereafter**”.*

²⁷ IRC §6503, “Suspension of Running of Period of Limitation”

Description	Period of Limitations
ASED	<p>Is calculated three (3) years from the due date of the return or three years from the day after the return is filed, whichever is later.²⁸, or possibly;</p> <p>Six (6) years from the due date of the return or six years from the day after the return is filed (whichever is later) if an omission of greater than 25% of the amount required to be reported on the tax return is present.²⁹</p>
CSED	Is calculated ten (10) years after the day the tax liability is assessed. ³⁰ The statute of limitation is also 10 years with respect to the filing of a Notice of Federal Tax Lien (NFTL)
RSED	Is calculated three (3) years from the due date of the return or two years from the date the tax is considered paid, whichever is later. If no return was filed the period is two years from the date the tax was paid. ³¹
Fraudulent Return Filed	No statute of limitation. ³²
No Return Filed.	No statute of limitation. ³³

Authority to Rescind the NOD:³⁴

The Secretary may, *with the consent of the taxpayer*, rescind any notice of deficiency mailed to the taxpayer. Any notice so rescinded ***shall not be treated as a notice of deficiency***, and the *taxpayer shall have no right to file a petition* with the Tax Court based on such notice. Also, please note that the *SOL is not affected* until the NOD is actually rescinded.

²⁸ IRC §6501(a)

²⁹ IRC §6501(e)(2)

³⁰ IRC §6502(a)

³¹ IRC §6511(a)

³² IRC §6501(c)(1)

³³ IRC §6501(c)(3)

³⁴ IRC §6212(d)

Proper Managerial Involvement³⁵

- ❑ Managerial involvement during an examination is a significant contributor to case quality and efficiency. In the following situations, written managerial involvement **must** be included in the file prior to issuance of the statutory **notice of deficiency**.
 - Assertion of any penalty other than failure to file, failure to pay, and estimated tax penalties.
 - Imposition of the 2 or 10 year EITC ban per IRC 32(k)(1)(B)(ii).

Proper Completion of All Procedural Requirements³⁶

- ❑ The *reviewer should ensure a 30-day letter was issued* and was suspended at the group level to allow the taxpayer time to file a protest **if** sufficient time remained on the statute of limitations. The date of the 30-day letter should also be annotated on the Form 3198 to ensure the proper calculation of interest per IRC 6621(c), “*Determination of Rate of Interest*”.

Taxpayer Options Subsequent to the Issuance of the NOD:

Taxpayers have been informed that subsequent to the issuance of a “90-Day Notice”, nothing can be done. However, noted below are a few options available to the taxpayer. It is incumbent upon the representative to explain, review, and recommend the appropriate course of action with respect to this issue.

NOD Options:

- 1) “Do nothing”, allow the IRS to assess the tax and subsequently pursue the matter via CDP procedures (for collection alternatives *only*).
- 2) “Do nothing”, however subsequent to assessment of the tax the taxpayer can “pay the tax” and then seek judicial review.
- 3) Request a formal “Audit Reconsideration”, prior to the expiration of the “90-Day” period.
- 4) File a timely Tax Court Petition (pre or post-appeals)

³⁵ IRM 4.8.9.7.7

³⁶ IRM 4.8.9.7.6

Appendix: The Notice of Deficiency

Related Tax Law References

- Anthony Teong-Chan Gaw v. Commissioner, U.S. Court of Appeals, District of Columbia (Jan 31, 1995)
- Thomas W. Hunter, Jr. v. Comm. T. C. Memo 2004-81, 87 T.C.M 1143 (Mar 23, 2004)
- St. Joseph Lease Capital Corporation v. Commissioner, U. S. Court of Appeals, 4th Cir, 2001-1 U.S.T.C. (Dec 20, 2000)
- National Taxpayer Advocate-2012 Annual Report to Congress (Jan 10, 2013)
- NOD Letters (noted below)

7105 5478 7165 2182 3427

Taxpayer Identification Number:

Tax Form: 1040

Tax Year Ended and Deficiency

DECEMBER 31, 2011 \$179,751.00

Contact Person:

TAX EXAMINER

Contact Telephone Number:

(866) 897-0177

(TOLL FREE NUMBER)

Hours to Call:

8:00 AM TO 6:00 PM - F

Last Date to Petition Tax Court:

March 17, 2014

Penalties/Additions to Tax

IRC Section 6651(a)(1)	40,443.98
IRC Section 6654(a)	3,558.67
IRC Section 6651(a)(2)	16,177.59



ARTHUR [REDACTED]
XLG BROOKS
PO BOX 381691
DURICANVILLE, TX 75138-1691919

CR1292

DEC 16 2013

Dear Taxpayer:

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is your NOTICE OF DEFICIENCY, as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this determination in court before making any payment, you have until the Last Date to Petition Tax Court (90 days from the date of this letter or 150 days if the letter is addressed to you outside the United States) to file a petition with the United States Tax Court for a redetermination of the amount of your tax. You can get a petition form and the rules for filing a petition from the Tax Court. You should file the petition with the United States Tax Court, 400 Second Street NW, Washington D.C. 20217. Attach a copy of this letter to the petition.

The time in which you must file a petition with the court (90 days or 150 days as the case may be) is fixed by law and the Court cannot consider your case if the petition is filed late. As required by law, separate notices are sent to spouses. If this letter is addressed to both a husband and wife, and both want to petition the Tax Court, both must sign the petition or each must file a separate, signed petition.

The Tax Court has a simplified procedure for small tax cases when the amount in dispute is \$50,000 or less for any one tax year. You can also get information about this procedure, as well as a petition form you can use, by writing to the Clerk of the United States Tax Court at 400 Second Street, NW, Washington, D.C. 20217. You should write promptly if you intend to file a petition with the Tax Court.

If you decide not to file a petition with the Tax Court, please sign and return the enclosed waiver form to us. This will permit us to assess the deficiency quickly and will limit the accumulation of interest. We've enclosed an envelope you can use. If you decide not to sign and return the waiver and you do not petition the Tax Court, the law requires us to assess and bill you for the deficiency after 90 days from the date of this letter (150 days if this letter is addressed to you outside the United States).

If you have questions about this letter, you may call the Contact Person whose name and telephone number are shown in the heading of this letter. If this number is outside your local calling area, there will be a long distance charge to you. If you prefer, you can call the Internal Revenue Service (IRS) telephone number in your local directory. An IRS employee there may be able to help you, but the office at the address shown on this letter is most familiar with your case.

When you send information we requested or if you write to us about this letter, please provide a telephone number and the best time to call you if we need more information. Please attach this letter to your correspondence to help us identify your case. Keep the copy for your records.

The person whose name and telephone number are shown in the heading of this letter can access your tax information and help get you answers. You also have the right to contact the Taxpayer Advocate. You can call 1-877-777-4778 and ask for Taxpayer Advocate Assistance. Or you can contact the Taxpayer Advocate for the IRS Office that issued this Notice of Deficiency by calling (978) 474-5549 or writing to:

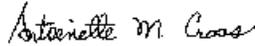
ANDOVER SERVICE CENTER
TAXPAYER ADVOCATE
310 LOWELL STREET STOP 120
ANDOVER, MA 01810-4544

Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate is not able to reverse legally correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

Thank you for your cooperation.

Sincerely yours,

Commissioner
By



ANTOINETTE M. CROSS
COMPLIANCE CENTER
Andover Service Center

Enclosures:
Copy of this letter
Waiver
Envelope

Cat. No. 27500P

Letter 3218(SC/CC) (08-1999)

FORM 5564 Department of the Treasury — Internal Revenue Service Symbols
 (Rev. June 1992) NOTICE OF DEFICIENCY - WAIVER Andover 0826
 Name and Address of Taxpayer(s) December 16, 2013
 ARTHUR [REDACTED]
 % LD BROOKS
 PO BOX 381691
 DUNCANVILLE, TX 75138-16919

Kind of Tax	<input checked="" type="checkbox"/> Copy to Authorized Representative		
INDIVIDUAL INCOME	LD BROOKS		
Tax Year Ended	DEFICIENCY		
DECEMBER 31, 2011	Increase in tax	\$179,751.00	Penalties
	IRC Section 4451(a)(1)		40,443.96
	IRC Section 6654(a)		3,558.67
	IRC Section 6651(a)(2)		16,177.59

001292

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest. Also, I waive the requirement under section 6532(a)(1) of the Internal Revenue Code that a notice of claim disallowance be sent to me by certified mail for any overpayment shown on the attached report. I understand that the filing of this waiver is irrevocable and it will begin the 2-year period for filing suit for refund of the claims disallowed as if the notice of disallowance had been sent by certified or registered mail.

Signature	_____	Date
	_____	Date
	By _____ Title _____	Date _____

Note: If you consent to the assessment of the deficiencies shown in this waiver, please sign and return this form to limit the interest charge and expedite our bill to you. Please do not sign and return any prior notices you may have received. Your consent signature is required on this waiver, even if fully paid.

If you later file a claim and the Service disallows it, you may file suit for refund in a District Court or in the United States Claims Court, but you may not file a petition with the United States Tax Court.

Who Must Sign: If you filed jointly, both you and your spouse must sign. Your attorney or agent may sign this waiver provided that actor is specifically authorized by a power of attorney which, if not previously filed, must accompany this form.

Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are so entitled; nor prevent us from later determining, if necessary, that you owe additional tax; nor extend the time provided by law for such action.

If this waiver is signed by a person acting in a fiduciary capacity (for example, an executor, administrator, or a trustee), Form 56, Notice Concerning Fiduciary Relationship, should, unless previously filed, accompany this form.

If you agree, please sign and return this form; keep one copy for your records.



Department of Treasury
Internal Revenue Service
SICP MSJ/MSL
AUSTIN TX 73301-0001

000827 254092 68724 2043 8 NW O.ood 1113
[Barcode]
[Redacted]
DALLAS TX 75232-0969

Notice 1192186
Tax Year 2012
Notice date May 19, 2014
Social Security number [Redacted]
AUR control number 70166257
To contact us Phone 1 800 829 1099
Fax 1 877 477 0557
Last date to petition August 18, 2014
Tax Court
Page 1 of 2

000827

Notice of Deficiency
Increase in tax and notice of your right to challenge

We have determined that there is a deficiency (overpayment) in your 2012 income tax. You have the right to challenge the increase in U.S. Tax Court. This notice explains how the additional amount was calculated and how you can challenge the increase in U.S. Tax Court.

Summary

Increase in tax (deficiency) \$1,511

What you need to do immediately

Review this notice, and compare our changes to the information on your 2012 tax return. **NOTE:** The amounts shown above may differ from your previous return because not all items can be challenged in tax court.

If you agree with the changes we made

- Sign the enclosed Form 5164—Notice of Deficiency Waiver and mail it to us in the envelope provided.
- You can send a payment with Form 5164. Otherwise, you'll receive a bill for the amount due (including any interest and applicable penalties).

If you don't agree with the changes

- You have the right to challenge the increase in tax by filing a petition with the U.S. Tax Court by August 18, 2014. The Court can't consider your case if the petition is filed late. You can download a petition form and rules from www.uscourts.gov or contact:

Clerk of the U.S. Tax Court
400 Second Street, NW
Washington, DC 20212
1-802-521-0700

Continued on back...



Notice 053215A
 Tax Year 2012
 Notice date May 13, 2014
 Social Security number [Redacted]
 Page 3 of 7

Changes to your 2012 tax return

Your income and deductions

	Shown on return	As corrected by IRS	Difference
Social Security (below retirement)	\$0	\$8,991	\$8,991
Minimum wage compensation	\$0	\$719	\$719
Retirement income taxable	\$0	\$6,139	\$6,139
Income net difference			\$15,849
Change to taxable income			\$15,849

900827

Your tax computations

	Shown on return	As corrected by IRS	Difference
Employer's portion, line 43	\$1,206	\$15,943	\$14,737
Tax, line 44	\$443	\$2,731	\$2,288
Child tax credit, line 51	\$432	\$1,751	\$1,319
Tax, line 52	\$0	\$0	\$0
Foreign source credit, line 60	\$1,186	\$596	-\$590
Additional child tax credit, line 63	\$2,267	\$2,001	-\$266
Tax you owe **			\$2,888

Explanation of changes to your 2012 Form 1040

This section tells you specifically what income information the IRS received about you from others for using your employees, banks, mortgage holders, etc. This information does not match the information you reported on your tax return.

Use the table to compare the data the IRS received from others to the information you reported on your tax return to understand where the difference(s) occurred. To assist you in reviewing your income amounts, the table may include both reported and corrected amounts.

Nonemployee Compensation

Source	Account Information	Amount reported	Reported to IRS by others	Difference
COLUMBIAN MUTUAL LIFE INSURANCE COMPANY	VESTAL PASQUALE ERASMI PO BOX 1201 BIRMINGHAM NY 139021361	\$0	\$219	\$219

Retirement Income Taxable

Source	Account Information	Amount reported	Reported to IRS by others	Difference
TEACHERS RETIREMENT SYSTEM OF TEXAS	1000 RED RIVER ST AUSTIN TX 787032698	\$0	\$6,139	\$6,139

Social Security/Railroad Retirement

Source	Account Information	Amount reported	Reported to IRS by others	Difference
SOCIAL SECURITY ADMINISTRATION	514 [Redacted] Paw 1190-55A	\$0	\$8,991	\$8,991

Additional Child Tax Credit adjusted - Schedule 8812

Since we changed your income and tax, we adjusted the allowable amount of Additional Child Tax Credit.

Continued on back.



Notice CP32196
Tax Year 2012
Notice date May 10, 2014
Social Security number ██████████
Page 5 of 7

Social Security or Tier 1 Railroad Retirement benefits.

Our notice includes Social Security or Railroad Retirement benefits. These benefits are partially taxable if your modified adjusted gross income, plus 50% of the gross benefits, exceeds the following:

- \$25,000 if filing Single, Head of Household, Qualifying Widow(er), or Married Filing Separately and you did not live with your spouse at any time during the year.
- \$32,000 if Married Filing Jointly; or
- \$40 if Married Filing Separately and you lived with your spouse at any time during the year.

If the exclusive, partial basis that cause the adjusted gross income to increase are found to be reported, the taxable Social Security or Tier 1 Railroad Retirement benefits will be adjusted accordingly.

Retirement distributions

We need more information for the distribution shown on this notice. We need to know if the income is a pension or an annuity, an IRA or lump sum rollover, or an employee savings plan.

If the income is from a pension/annuity or an Employee Savings Plan and you are recovering your contributions using the General Rule or the Simplified General Rule, please send us a signed statement with the date of your first pension payment, the amount you receive monthly, and the total amount you contributed.

If the income is an IRA or lump sum and was rolled over, please send us Form 5498, IRA Contribution Information or similar documentation.

If the income is an employee savings plan, please send us a copy of the document showing the total distribution amount you received for 2012 and the taxable amount of the distribution.

Penalties

We are required by law to charge any applicable penalties.

Failure-to-pay penalty

When you pay your taxes after the due date, we charge a penalty of 0.5% of the unpaid amount due per month, up to 25% of the amount due. We count part of a month as a full month. (Internal Revenue Code section 6651.)

If this penalty applies, we will bill you for this amount at a later date. The bill may reflect the amount as unpaid interest. Payments will be applied first to the tax you owe, then penalties, and then interest.

Interest charges

We are required by law to charge interest on unpaid tax from the date the tax return was due to the date the tax is paid in full. The interest is charged as long as there is an unpaid amount due, including penalties, if applicable. (Internal Revenue Code section 6601.)

Continued on back...

FORM 5564 (Rev. 08-13-11)

Department of the Treasury - Internal Revenue Service

NOTICE OF DEFICIENCY - WAIVER

Symbol: AUSTON TX 6092 AISC May 19, 2014

Name and Address of Taxpayer

20445 TX 75232-4964

Kind of Tax

Individual Income

For the Period

December 31, 2012

Income in Tax 53,583

DEFICIENCY

990829

To avoid the automatic assessment and collection of the deficiency discussed above and possible interest thereon, please sign and return this form to the Internal Revenue Service...

You understand that the filing of this waiver is irrevocable and it will begin the 90-day period for filing suit for refund of the amount of the deficiency...

Signature section with fields for Name, Date, and Title.

Note: If you consent to the assessment of a deficiency based on this waiver, please sign and return this form to the Internal Revenue Service...

Your consent will not prevent you from filing a claim for refund later you have filed the tax, if you later realize you are entitled to a refund...

If you agree, please sign and return this form; keep one copy for your records.

FORM 5564 (Rev. 08-13-11)

Internal Revenue Service
Small Business/Self Employed
30 East Seventh Street, Suite 1222
Stop 4020STP
Saint Paul, MN 55101

Enterprises, Incorporated
Regency Circle -
Omaha, NE 68114-3738

Department of the Treasury

Date: JAN 07 2014

Person to Contact:

Telephone Number:

Employer Identification Number:

Location Symbol:
Stop 4020STP

Last Day to File a Petition With the
United States Tax Court: APR 07 2014

Taxpayer Identification Number:

Notice of Determination of Worker Classification

Dear Taxpayer,

This letter is your Notice of Determination of Worker Classification ("Notice"), as required by law, to notify you (before assessment) that we have determined that you owe additional employment tax, additions to tax, and/or penalties for the tax periods identified below.

We have made three determinations:

- We have determined that for purposes of federal employment taxes, the individual(s) described or listed in Table 1 below are to be legally classified as employees for the tax periods indicated;
- We have determined that with respect to such individual(s) you are not entitled to relief from employment tax under the treatment described in section 530(a) of the Revenue Act of 1978; and
- We have determined that for the tax periods indicated, you owe additional employment tax, additions to tax, and/or penalties in the amounts set forth in Table 2 following the list of re-classified individuals. Please be aware that the figures on Table 2 do not include the interest that is required by law to be imposed on underpayments of tax.

RECEIVED

JAN 13 2014

The Post Office

Letter 3523 (Rev. 11-2010)
OMB Number 931708

If you want to contest any or all of our three determinations in the United States Tax Court, you must file a petition with the United States Tax Court by the date indicated on the first page of this letter as the "Last Day to File a Petition With the United States Tax Court." You may mail the petition to the Tax Court (and/or write to the court with questions about the Tax Court proceedings) at the following address:

United States Tax Court
400 Second Street, N.W.
Washington, DC 20217

The time you have to file a petition with the Tax Court (that is, before the 91st day after the letter is mailed) is set by law and cannot be extended or suspended. Therefore, contacting the Internal Revenue Service (IRS) or contacting the Tax Court for more information, or receiving other correspondence from the IRS, will not change the period for filing a petition with the Tax Court. Note that if you are a debtor in a bankruptcy case, you may be prohibited from petitioning the Tax Court. If so, your time to file a Tax Court petition is suspended for the time you are prohibited from petitioning the Tax Court by reason of the bankruptcy case, plus 60 days (see I.R.C. § 6213(f)).

We have enclosed several documents with this Notice of Determination of Worker Classification. Form 4666, *Summary of Employment Tax Examination*, Form 4667, *Examination Changes - Federal Unemployment Tax*, and/or Form 4668, *Employment Tax Examination Changes Report*, provide details on how we calculated the amount of your additional employment tax liability. Form 2504-WC, *Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification Cases*, is a waiver form that you may use if you decide not to file a petition in the Tax Court. Sending us a signed Form 2504-WC gives us permission to assess the proposed amounts quickly and can help limit the accumulation of interest. Publication 3953, *Questions and Answers About Tax Court Proceedings for Determination of Employment Status Under I.R.C. § 7436*, provides details about this Notice and Tax Court and bankruptcy proceedings.

If you have any questions about this letter, you may write to the person whose name and address are shown on the front of this letter. If you write, please include your telephone number, the best time for us to call you if we need more information, and a copy of this letter to help us identify your account. Keep the original letter for your records.

If you prefer, you may call the IRS contact person at the telephone number shown on the front page of this letter. If this number is outside your local calling area, there may be a long distance charge to you. You may also call the Business and Specialty Tax line 1-800-829-4933 or call or visit your local IRS office to obtain general information, but the contact person at the telephone number on the front page of this letter is most familiar with your case.

You also have the right to contact a Taxpayer Advocate. If you believe that your tax matter is not being resolved through established IRS procedures or you are suffering or about to suffer a significant hardship, a Taxpayer Advocate may assist you in getting your tax matter addressed in a prompt and proper manner. A Taxpayer Advocate, however, does not have the ability to reverse legally correct tax determinations, extend

Letter 3623 (Rev. 11-2010)
Catalog Number 331108

the time fixed by law for filing a petition in the United States Tax Court, or act as a substitute for established IRS procedures, such as the formal appeals process. If you would like to contact a Taxpayer Advocate for assistance, please refer to section 12 of the enclosed Publication 3953 for the address and telephone number of your local Taxpayer Advocate.

Thank you for your cooperation.

Sincerely,

Daniel L. Werfel, Acting
Commissioner
by M. Preston Chandler *M. Preston Chandler (R)*
Acting Technical Services Territory Manager

Enclosures;
Form 2504-WC
Form 4666
Form 4667
Form 4668
Publication 3953

Letter 3523 (Rev. 11-2010)
Catalog Number 351706