

LIST OF SUBSTANTIVE CHANGES AND ADDITIONS:

PPC's Guide to Dealing with the IRS

Twenty-second Edition (June 2014)

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The following are some of the features of this year's update of *PPC's Guide to Dealing with the IRS*:

- Listed the IRS's newly released Taxpayer Bill of Rights, which had been suggested by the National taxpayer Advocate and is now incorporated into a revised Publication 1.
- Added a new section on automated underreporter notices, including how the IRS "builds" underreporter cases and how practitioners should respond on their clients' behalf.
- Explained the June 2014 revisions to the 2012 Offshore Voluntary Disclosure Program and the expansion of the streamlined correction procedures available to "low-risk" taxpayers.
- Cited a new revenue procedure updating the guidelines for taxpayers obtaining equitable innocent spouse relief, including the factors the IRS now uses in granting (or denying) relief.
- Clarified the impact of the 2014 *Loving* Court of Appeals decision—now, merely preparing a federal tax return does not constitute "practice before the IRS."
- Discussed the June 2014 revisions to the Circular 230 provisions governing written tax advice, the negotiation of taxpayer checks, and competence to practice before the IRS.
- Added a discussion of the recently announced Annual Filing Season Program for unenrolled tax return preparers, including the continuing education (CE) requirement.

In addition to these featured items, the 2014 edition of your *Guide* includes the following update items:

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
CHAPTER 1 Overview of IRS Practice	1. Added a discussion on IRS funding issues relative to administering the Affordable Care Act and the Foreign Account Tax Compliance Act.	Section 101
	2. Addressed the realignment of compliance operations within the Wage and Investment Division (W&I) and the Small Business & Self-employed Division (SB/SE).	Section 101
	3. Explained new IRS Commissioner Koskinen's priorities for the IRS.	Section 102
	4. Added a discussion of the IRS Oversight Board's most recent annual report to Congress (the 2013 report).	Section 102
	5. Summarized important portions of the National Taxpayer Advocate's 2014 mid-year report and 2013 annual report to Congress.	Section 102

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
	6. Added a discussion of the newly adopted Taxpayer Bill of Rights.	Section 103
	7. Updated the discussion of the Taxpayer Advocate Service's case coverage for the 2013 annual report.	Section 104
	8. Clarified the IRS e-services available to practitioners.	Section 105
CHAPTER 2 Tax Overpayments and Interest	1. Added a discussion of the Offset Bypass Refund process giving the IRS discretion to bypass unpaid federal taxes and issue a refund.	Section 201
	2. Updated and expanded the discussion of identity theft for TIGTA report findings, proposed limitations on disclosure of the Death Master File (DMF), and replacement of SSNs on notices with bar codes.	Section 201
	3. Expanded the claim for refund statute of limitations discussion for a chief counsel advice on processing an amended S corporation return that makes no change to shareholder's tax liability after expiration of the statute of limitations.	Section 203
	4. Updated the table for computing interest owed on an individual's tax underpayment for quarterly rates that came out since the previous edition of the <i>Guide</i> .	Appendix 2I
CHAPTER 3 Statutes of Limitations	1. Added a discussion of the IRS's position on the three-year assessment period regarding penalties for failure to file payee information return statements.	Section 301
	2. Added a discussion of what constitutes a valid legal signature on a return.	Section 301
	3. Added a discussion of the IRS's position on whether an S corporation return filed after a shareholder's return constitutes adequate disclosure for avoiding the six-year statute of limitations.	Section 301
	4. Added a discussion of a case regarding third-party fraud for purposes of the unlimited statute of limitations.	Section 301
	5. Noted that IRS Publication 1035, "Extending the Tax Assessment Period," is supposed to be provided every time a consent is requested by mail, along with the deadline for the taxpayer to respond to the request.	Section 304
CHAPTER 4 Audit Procedures and Taxpayer Rights	1. Updated information from the IRS Data Book for fiscal year 2013 IRS compliance activity statistics.	Section 400 and Appendix 4H
	2. Updated the discussion for National Taxpayer Advocate's 2013 report to Congress, which proposed grouping taxpayer rights into 10 broad categories.	Section 401
	3. Noted that the IRS is increasingly using automated exams due to growing responsibilities and shrinking resources.	Section 402
	4. Addressed a recent case where the Tax Court determined that the taxpayers waived their attorney-client privilege by asserting they had reasonable cause and acted in good faith by relying on the attorney's opinion letters.	Section 403
	5. Added IRS Publication 1, "Examination of Returns, Appeals Rights and Claims for Refund," which reproduces the newly announced Taxpayer Bill of Rights.	Appendix 4I

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CHAPTER 5 Audits of Individual Returns	1. Updated the section for recent statistics on the number of correspondence audits and the types of issues that are frequently addressed in a correspondence audit.	Section 501
	2. Noted the benefit of providing the examiner with a document listing the amounts per the IRS and per return, and an explanation of the difference.	Section 501
	3. Added a new section on automated underreporter notices, including how the IRS “builds” underreporter cases and how practitioners should respond on their clients’ behalf.	Section 502
	4. Explained why the office auditor and the practitioner should strive to close an office audit in one meeting.	Section 508
	5. Updated coverage of foreign financial asset reporting, comparing Form 8938 (Statement of Foreign Financial Assets) with the Report of Foreign Bank and Financial Accounts (FBAR), and the penalties for not complying.	Section 510
	6. Explained the June 2014 revisions to the 2012 Offshore Voluntary Disclosure Program and the expansion of the streamlined procedures available to taxpayers presenting a low compliance risk.	Section 510
	7. Updated the discussion of data mining for the IRS’s 2014–2017 Strategic Plan, which formally states that the IRS will make better use of data and analytics to combat noncompliance.	Section 511
CHAPTER 6 Audits of Business Returns	1. Added coverage of a 2014 Large Business and International (LB&I) directive for issuing and enforcing Information Document Requests (IDRs).	Section 601
	2. Noted that the IRS now has a business (Form 1120) automated underreporter program, explained the underreporter notices that are commonly sent, and provided tips for responding on the clients’ behalf.	Section 609
	3. Updated the discussion of the Form 1099-K compliance program, noting that the 1099-K often reports sales tax, shipping, and other charges that will cause a mismatch with the business’s income tax return.	Section 609
	4. Noted that the lower filing threshold for the 2014 Schedule UTP (Uncertain Tax Positions) should expand what is reported and thus the IRS’s use of the schedule as an audit tool.	Section 609
CHAPTER 7 Audits of Other Returns	1. Expanded the discussion of the IRS’s National Research Program Employment Audits initiative to include forthcoming actions based on past results of the program.	Section 701
	2. Revised the discussion of filing a Form SS-8 (Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding) for requesting a worker classification ruling.	Section 701
	3. Updated coverage of the Classification Settlement Program for determining worker classification to include new standard closing agreements instituted by the IRS.	Section 703
	4. Expanded the discussion of the IRS’s Employee Plans Examination Process Guide for handling a qualified retirement plan audit.	Section 704
	5. Added a discussion of a new IRS pilot program allowing certain small business retirement plans that have not filed reports to come into current compliance without penalty by filing past due reports.	Section 704
	6. Added a discussion of a new streamlined process allowing eligible tax-exempt organizations to apply for retroactive reinstatement of their exempt status.	Section 707

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
CHAPTER 8 Appeals and Alternative Dispute Resolution	1. Added a practice tip for handling Appeals personnel who bypass the representative and contact the taxpayer directly.	Section 801
	2. Added a discussion of appealing a state marketplace determination that a business may be subject to the employer shared responsibility penalty.	Section 803
	3. Updated the discussion of reopening cases and new issues raised by Appeals for recent IRS policy changes.	Section 804
	4. Expanded the discussion of <i>ex parte</i> communications for a recent Tax Court case involving an offer in compromise.	Section 807
	5. Updated the discussion of scheduling an appeals conference for IRS policy and procedure changes.	Section 807
	6. Updated the discussion of when a taxpayer may request a Collection Due Process (CDP) hearing.	Section 812
	7. Revised the discussion of what actions may be appealed under the Collection Appeals Program (CAP).	Section 812
	8. Added a discussion of a recent Tax Court case addressing the IRS's discretion to levy on particular assets as requested by the taxpayer.	Section 812
CHAPTER 9 Assessments and Abatements	1. Updated the discussion of requesting taxpayer transcripts and other assessment information.	Section 901
	2. Referenced recent program manager technical advice memos addressing the IRS's interaction with the Postal Service to obtain the taxpayer's most recent address.	Section 903
	3. Explained the difference between an abatement of interest and a suspension of interest.	Section 907
	4. Explained IRS procedures upon receiving a return resulting from identity theft, including abatement of the tax and the authority to issue a Notice of Deficiency.	Section 907
CHAPTER 10 Collection Procedures, Installment Agreements, and Third-party Collection Issues	1. Noted that Congress is once again considering the use of private collection agencies, despite disappointing results the last two times this was done.	Section 1000
	2. Explained why the IRS established the Enterprise Collection Strategy and what it hopes to accomplish.	Section 1000
	3. Noted that the Automated Collection Service (ACS) is working in-business trust fund tax cases, despite statistics showing the ACS has been ineffective in doing so in the past.	Section 1003
	4. Updated the discussion of installments agreements for a recent increase in the fees for obtaining an agreement and reinstating a defaulted agreement.	Section 1006
	5. Replaced the sample completed Form 433-D (Installment Agreement) with the November 2013 revision of the form.	Appendix 10J

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
CHAPTER 11 Liens, Levies, Seizures, and Sale of Taxpayer's Property	1. Noted the limitations on the IRS's lien and levy authority to enforce payment of the shared responsibility penalty. Therefore, offsetting credits and refunds may be the only effective way the IRS can collect the penalty.	Sections 1102 and 1107
	2. Updated the discussion of requesting a withdrawal of a filed federal tax lien after it has been released, as a release does not remove references to the lien from the taxpayer's credit history while a withdrawal does.	Section 1103
	3. Noted that there is nothing in the law prohibiting taxpayers from peaceably videotaping a seizure in their home.	Section 1108
	4. Replaced Publication 4235, "Technical Services (Collection Advisory) Group Addresses," with the April 2014 revision of the publication.	Appendix 11E
	5. Replaced Publication 1494, "Tables for Figuring Amount Exempt from Levy on Wages, Salary, and Other Income," with the 2014 revision of the publication.	Appendix 11K
CHAPTER 12 Innocent Spouse Relief	1. Defined two terms that sometimes appear in innocent spouse cases— <i>res judicata</i> and <i>collateral estoppel</i> .	Section 1201
	2. Cited a new revenue procedure updating the guidelines for when taxpayers can obtain equitable relief. The guidelines adopt a revised filing timeframe and modify the factors the IRS uses in determining whether to grant relief.	Section 1204
	3. Cited a recent Tax Court case holding that a spouse not receiving a significant benefit from an unpaid tax liability was not a neutral factor but weighed in favor of granting relief.	Section 1204
	4. Replaced the sample completed Form 8857 (Request for Innocent Spouse Relief) with the January 2014 revision of the form.	Appendix 12C
CHAPTER 13 Offers in Compromise	1. Noted the recent increase in the offer in compromise (OIC) application fee.	Section 1301
	2. Cited a case holding that the IRS erroneously rejected the taxpayer's effective tax administration OIC because it only considered economic hardship and not whether there were exceptional circumstance under public policy or equitable grounds.	Section 1303
	3. Referenced a 2014 chief counsel advice that taxpayers do not have administrative appeal rights if their OIC is rescinded due to fraud.	Section 1304
	4. Updated the checklist for what to submit with an OIC.	Appendix 13A
CHAPTER 14 The Trust Fund Recovery Penalty	1. Discussed an unusual case where the taxpayer was found liable for the trust fund and the non-trust fund portions of the unpaid employment taxes owed by a failed business.	Section 1403
	2. Added guidance on how practitioners should handle a case that has potential criminal exposure.	Section 1405
	3. Noted that the IRS has started issuing special Personal Identification Numbers (PINs) to employers that use third-party providers to make their employment tax deposits.	Section 1405
	4. Also noted how employers can use the Electronic Federal Tax Payment System (EFTPS) to monitor the amount and timeliness of their employment tax deposits.	Section 1405

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
CHAPTER 15 Bankruptcy	1. Cited a case where the automatic stay was modified to allow the IRS to offset a postpetition tax overpayment under the Code's setoff authority (i.e., the IRS should not be forced to issue a refund when taxes are owed).	Section 1501
	2. Since the dischargeability of taxes reported on a late tax return is constantly evolving, cited a case presenting three approaches that various courts have taken on this issue.	Section 1505
	3. Added a table listing the tax considerations for individual bankruptcy cases.	Appendix 15A
	4. Added a table listing the tax considerations for business bankruptcy cases.	Appendix 15B
CHAPTER 16 Representing Nonfilers	1. Summarized changes the IRS recently made to a 2012 streamlined compliance program intended for taxpayers who failed to disclose their foreign financial accounts.	Section 1601
	2. Cited a 2014 IRS news release stating that \$760 million in unclaimed refunds await 918,600 taxpayers who failed to file a 2010 federal income tax return, and explaining what these taxpayers lose by not filing a return.	Section 1601
CHAPTER 17 Taxpayer and Preparer Penalties	1. Cited a Tax Court case regarding the validity of the IRS's method of calculating the "underpayment" for purposes of the accuracy-related penalty.	Section 1701
	2. Cited a Tax Court case determining the amount of refundable credits to reduce tax for determining the "underpayment" relating to an accuracy-related penalty.	Section 1701
	3. Referenced a new revenue procedure updating the rules for when the disclosure of an item on a tax return is adequate for avoiding the accuracy-related penalty.	Section 1701
	4. Expanded the discussion of the "reasonable cause/good faith" defense against the accuracy-related penalty.	Section 1701
	5. Added a discussion of how the negligence penalty can affect taxpayers applying for health insurance in a state marketplace under the Affordable Care Act.	Section 1701
	6. Clarified when (and which) failure to file penalty can apply to partnership and S corporation returns.	Section 1703
	7. Referenced a program manager technical advice whereby the Appeals Officer will consider certain preparer penalty refund claims, even if the claim was denied by the IRS.	Section 1709
CHAPTER 18 Criminal Penalties	1. Updated the Criminal Investigation Division's statistical information for the most recent statistics (the fiscal year ending September 30, 2013).	Section 1801
	2. Updated the list of Criminal Investigation Division priorities.	Section 1801
	3. Updated the discussion of foreign financial asset reporting for changes in the FBAR filing requirement.	Section 1801
	4. Noted that individuals who fail to pay the penalty for carrying minimum essential health insurance coverage will not be subject to criminal prosecution or penalty.	Section 1801
	5. Expanded the discussion of the whistleblower program.	Section 1802

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
CHAPTER 19 Rules of Practice	6. Updated and expanded the list for badges of fraud based on recent changes in the Internal Revenue Manual.	Appendix 18B
	1. Clarified the impact of the 2014 <i>Loving</i> Court of Appeals decision—now, merely preparing a federal tax return does not constitute “practice before the IRS.”	Section 1900
	2. Noted that in June 2014, the IRS issued final revisions to the Circular 230 rules of practice.	Section 1901
	3. Noted that due to the <i>Loving</i> Court of Appeals decision, the registered tax return preparer (RTRP) program no longer exists.	Section 1901
	4. Quoted Office of Professional Responsibility (OPR) Director Karen Hawkins’s response to the <i>Loving</i> decision.	Section 1901
	5. Noted that the June 2014 revisions to Circular 230 clarified that the Office of Professional Responsibility has exclusive responsibility for practitioner discipline.	Section 1901
	6. Updated the discussion of the Preparer Tax Identification Number (PTIN) requirement.	Section 1902
	7. Added a discussion of the recently announced Annual Filing Season Program for unenrolled tax return preparers, including the continuing education (CE) requirement.	Section 1902
	8. Explained the June 2014 revisions to the Circular 230 rules governing the negotiation of taxpayer checks, including the fact that the rules apply to electronic payments.	Section 1904
	9. Added coverage of the revised written tax advice rules, which replaced the former covered opinion rules (and in doing so removed the need to append disclaimers to the end of emails and other correspondence).	Section 1904
	10. Noted that the June 2014 Circular 230 revisions added a competence requirement to the rules of practice, which can be met by consulting with experts and studying the relevant law.	Section 1904
	11. Summarized the June 2014 revisions to the Circular 230 expedited suspension procedures.	Section 1905
CHAPTER 20 Access to Information	12. Updated the list of what disbarred or suspended practitioners can and cannot do, based on February 2014 revisions by the Office of Professional Responsibility.	Appendix 19B
	1. Added a discussion of the IRS2Go applications for smartphones.	Section 2000
	2. Added new fax numbers for filing Form 2848 (Power of Attorney and Declaration of Representative).	Section 2001
	3. Clarified that a practitioner listed on Form 2848 can be informed of the same items as a taxpayer.	Section 2001
	4. Provided information reported by TIGTA on the number of times the IRS failed to provide correspondence to authorized taxpayer representatives.	Section 2001
	5. Clarified the information provided on the enhanced Transcript Delivery System (TDS), including whether information will be provided if identity theft is suspected.	Section 2002
	6. Included contact information for when an individual desires to report unauthorized disclosure.	Section 2004
7. Referenced a new large case (LB&I) directive on issuing and enforcing information document requests (IDRs).	Section 2005	

<u>Chapter</u>	<u>Substantive Changes and Additions</u>	<u>Reference</u>
CHAPTER 21 Managing an IRS Engagement	<ol style="list-style-type: none"> 8. Cited the recent <i>Jewell</i> case for the proposition that the IRS's failure to meet the notice requirements can result in the summons being quashed. 1. Noted that beginning in 2014, the Practitioner Priority Service will only honor e-service requests for active tax account information. 	Section 2006 Section 2103
CHAPTER 22 Client Profiles	<ol style="list-style-type: none"> 1. Replaced the sample completed Form 656 (Offer in Compromise) with the January 2014 revision of the form. 2. Replaced the sample completed Form 433-A OIC (Collection Information Statement for Wage Earners and Self-employed Individuals) with the January 2014 revision of the form. 	Appendix 22D Appendix 22E