

IRS Procedures and Collection Remedies

A Presentation for HCA Advocates

by

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Warning



All forms and instructions discussed are drafts. Some regulations have not yet been finalized. New guidance will be issued before tax season. Information and links to IRS forms will change.



Today's Presentation



- Key IRS concepts
- Mechanics of 2014 tax returns
 - ✦ Premium Tax Credit
 - ✦ ACA penalty
- IRS Assessment Rules
- IRS Collection Rules and Collection Options
 - ✦ Penalty Abatement
- Appeal Rights
- So your client has a tax debt...
- Looking ahead: potential pitfalls



Key IRS Concepts



- Each “tax period” is a separate account
 - ✦ For individuals, a tax period is a calendar year
- Assessment
- ASED – time limit on assessment
- CSED – time limit on collections
- How can tax be assessed?
 - ✦ Taxpayer files a return showing tax due
 - ✦ Examination (audit)
 - ✦ “Math error” (automatic assessment)
 - ✦ Substitute for return



Handy things to know about the IRS



- IRS relies mainly on documents
- Taxpayer issues can take a long time to resolve
- The agency is fragmented into separate functions and units
 - ✦ Different units do not always talk to each other
 - ✦ Different computer systems within the IRS do not always talk to each other
- Their internal procedures manual is online at www.irs.gov
 - ✦ Internal Revenue Manual, IRM
 - ✦ Frontline employees rely on the IRM
- The system has a timing problem
 - ✦ People can file tax returns before all 3rd party information is due to the IRS, let alone put in the IRS computer system



Premium Tax Credit: Mechanics



- VHC mails Form [1095-A](#) by January 31, 2014
 - At this time VHC plans to send paper, not electronic
 - Form 1095-A is sent for every QHP, including unsubsidized
- Taxpayer completes Form [8962](#) and attaches it to Form 1040 (or 1040A, etc.)
 - In some situations the amounts on Form 8962 will need to be allocated between taxpayers
 - There are temporary regulations on allocation that are very complicated



Premium Tax Credit: Mechanics



- 1095-A contains:
 - Each individual's start and termination dates
 - Monthly premium amount
 - Monthly premium amount of the second-lowest cost silver plan (SLCSP)
 - Amount of advance premium tax credit payments made for each month of the year



Premium Tax Credit: Mechanics



Form **1095-A**

Health Insurance Marketplace Statement

070115

OMB No. 1545-2232

Department of the Treasury
Internal Revenue Service

► Information about Form 1095-A and its separate instructions
is at www.irs.gov/form1095a.

CORRECTED

2014

Part I Recipient Information

1 Marketplace identifier	2 Marketplace-assigned policy number	3 Policy issuer's name	
4 Recipient's name	5 Recipient's SSN	6 Recipient's date of birth	

Part II Coverage Household

	A. Covered Individual Name	B. Covered Individual SSN	C. Covered Individual Date of Birth	D. Covered Individual Start Date	E. Covered Individual Termination Date
16					
17					

Part III Household Information

Month	A. Monthly Premium Amount	B. Monthly Premium Amount of Second Lowest Cost Silver Plan (SLCSP)	C. Monthly Advance Payment of Premium Tax Credit
21 January			
22 February			

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Premium Tax Credit: Mechanics



- Form [8962](#) Premium Tax Credit
 - Taxpayer reports family size, calculates household income and FPL
 - Taxpayer reports APTC received and calculates any overpayment or additional credit due
 - ✦ The final amounts will be transferred to Form 1040 (or 1040A etc)
 - The back of the form is used to allocate amounts between taxpayers



Premium Tax Credit: Mechanics



- What if client did not receive Form 1095-A?
 - VHC only has to send one form per QHP or per household
 - ✦ There will be cases where the client needs information for their taxes and can't get it from the person who received the 1095-A
 - VHC will hopefully be able to send a duplicate form or provide information over the phone in those cases.
- IRS policy is helpful!
 - [IRM 21.6.3.4.2.16.4.1](#), Disclosure of Taxpayer Data (10/1/14) says:

Data belonging to one individual may be disclosed to another taxpayer if the use of that data is directly related to resolving the other taxpayer's filing / reporting requirements.
 - But, IRS customer service hold time during tax season can be *hours* unless you call very early in the morning (7 to 8 a.m.)
1-800-829-1040



ACA Penalty: Mechanics



- The penalty is reported on Form [1040](#), [1040A](#), or [1040EZ](#)
 - Checkbox for full-year coverage
- The worksheet to calculate the penalty is in the Form [8965 instructions](#).
- Exemptions are claimed on Form [8965](#)
 - Form 8965 can be attached to Form 1040, 1040A or 1040EZ
 - For exchange exemptions, must list certificate number

61 Health care: individual responsibility (see instructions) Full-year coverage 61



IRS Assessment Rules



- What is assessment?
 - Assessment makes a liability official
 - Assessment is generally a prerequisite to collection action

- 1. General rules, applicable to:
 - Individual income tax, credits available on income tax returns, and most penalties related to those

- 2. Special rules for the ACA penalty



IRS Assessment Rules: Generally



- Self-assessment
 - Most tax is self-assessed
- Math error authority
- Examination (audit)
- Substitute for Return



IRS Assessment Rules: Generally



- Math error authority – IRC § 6213(b)(1)
 - Can be something of a misnomer
 - Will be used for PTC. [IRM 21.6.3.4.2.16.3.1](#) (10/1/14)
 - Taxpayer must respond and contest the change or they may not be given appeal rights
 - ✦ Respond in writing. A barebones “I disagree with this change” letter is better than nothing.
 - ✦ 60 days to respond and ask that the change be reversed. Taxpayer should then be given normal appeal rights. IRC § 6213(b)(2).



IRS Assessment Rules: Generally



- Examinations (aka audits)
 - Most are done by correspondence
 - ✦ Very hard for clients to understand what the IRS wants
 - ✦ There is no single individual at the IRS assigned to the case
 - Documents, documents, documents!
 - For income tax and related credits and penalties, taxpayers have the right to *pre-assessment* judicial review
 - ✦ Notice of Deficiency = ticket to Tax Court
 - ✦ Statutory, and special. Thanks, Congress.



IRS Assessment Rules: Generally



- **Substitute for Return**
 - The IRS files a tax return for you
 - Based on 3rd party information in their computer system
 - ✦ It could be wrong
 - ✦ It's incomplete – not enough to tell for sure what your tax return should look like
 - You will have some warning – at least one letter
 - ✦ Request for Tax Return
- **File an original return!** Even after the SFR, it will usually be accepted and the account will be adjusted.



The ASED



- **Assessment Statute Expiration Date**
 - IRS has a limited time to audit my tax return and make an additional assessment
 - Each tax period has a separate ASED
 - IRC 6501
- **The ASED is 3 years from the date the tax return is filed**
 - 6 years if the return understated tax by 25% or more
 - Unlimited in case of fraud
 - ✦ But IRS must prove fraud
- **The ASED never starts to run if a tax return is not filed**



Assessment: What's different about 5000A?



- Same ASED as income taxes
- Not included in the statutory list of items entitled to deficiency procedures
 - IRC Section 6211(a), definition of a deficiency
 - This means: no right to pre-assessment judicial review
 - The Tax Court is an Article I court of limited jurisdiction
- Exams: the IRS will still send letters, and taxpayers can respond with documents
- At this time we don't know if IRS will make a pre-assessment internal appeal available



IRS Collections



- What happens if a person doesn't pay?
 - Generally
 - ✦ Excess PTC is treated as additional income tax; normal collection process applies
 - Special rules: ACA penalty
- What options are available?
- When can penalties be removed?



What if a taxpayer doesn't pay?



- IRS sends a flood of letters. Normally if the taxpayer does nothing, IRS may:
 - Offset federal tax refunds
 - Levy (seize/garnish)
 - ✦ state tax refunds
 - ✦ Social Security (generally 15%)
 - ✦ Wages
 - ✦ Bank accounts
 - ✦ Real or personal property (unlikely)
 - File a notice of federal tax lien
 - ✦ Current policy is to file a lien when total owed is \$10,000



What if a taxpayer doesn't pay the ACA penalty?



- IRS sends a flood of letters. If the taxpayer does nothing, IRS may:
 - Offset federal tax refunds
 - Threaten to terminate the taxpayer's collection alternative for a prior IRS debt
 - Send more letters requesting voluntary payment
- IRS may not use levy powers, criminal sanctions, or file a notice of federal tax lien to collect the individual shared responsibility payment.
 - IRC § 5000A(g)(2)
 - IRS seizes state refunds and Social Security benefits by levy – off the table here



The CSED: Collection Statute Expiration Date



- CSED starts running at assessment
- Generally 10 years for income tax and related penalties, credit overpayments, and interest
 - Can be extended, basically when IRS is barred from collecting.
 - ✦ E.g. during a bankruptcy
- The CSED statute (IRC 6502) refers to levies and actions in court... does that mean there is no CSED for the ACA penalty?!
 - Maybe. As of 10/1/14, the IRM says federal refunds may be offset for as long as it takes to pay off an ISRP
 - This is contrary to IRS's prior interpretation



IRS Collection Alternatives



- Collection Alternative = avoiding a levy
- Options include:
 - Offer in Compromise (OIC)
 - Currently Not Collectible (CNC)
 - Installment Agreement
 - Bankruptcy
 - Innocent Spouse



Offers in Compromise



- Taxpayer offers the IRS a lump sum to settle her debt
- 3 different types
- Doubt as to Collectability: Offer must equal or exceed the taxpayer's "reasonable collection potential"
 - Quick sale value of assets + ("available" monthly income * 12 or 24 months)
- Paperwork-intensive
- Beware of companies that charge fees to prepare Offers!
 - Be very careful about who you hire for this



Offers in Compromise



- Generally can't have home equity or retirement accounts
 - Unless compelling circumstances why IRS should walk away from that asset, with 3rd party documents supporting
- Taxpayer must file and pay taxes on time for 5 years after offer is accepted
 - Offer will be revoked if taxpayer cannot pay her full liability by April 15th each year!
- Taxpayers must be able to document all their expenses for 3 months
 - Some expenses that taxpayers consider necessary are not counted by the IRS



Currently Not Collectible



- Taxpayer can't make payments – all income is needed to pay reasonable and necessary living expenses
- No assets that could reasonably be liquidated
- Can have home equity
 - Might be asked for a loan denial letter
- IRS will seize tax refunds, and may file a lien
- Should last as long as income remains the same
 - But IRS can review at any time
- IRS collection financial standards are at www.irs.gov



Installment Agreements



- Streamlined
 - available without providing financial information
- Partial Pay
 - Income-based; same collection financial standards as for CNC
- Lowest possible payment is \$25/month
- Administrative fee – request a reduction if low income
- Taxpayer must pay and file taxes on time for the duration of the agreement
- Can request a modification if income changes
- If multiple tax debts are included in one IA, payments are applied however the IRS chooses



Bankruptcy



- Income tax debts can sometimes be discharged!
 - The ACA penalty may not be dischargeable
- The rules are complicated – consult an attorney before filing for bankruptcy
 - Must wait at least 3 years after tax return was due
 - Must wait at least 2 years after filing the return
 - Tax must have been assessed more than 240 days before filing
 - Fraudulent tax debts not dischargeable
 - May not be dischargeable if a substitute for return was done
 - ✦ This is an area of uncertainty and litigation



Innocent Spouse



- Relief from joint and several liability
 - Includes PTC overpayments and the 5000A penalty
- File form 8857 to request relief
 - Goes to a specialized unit within the IRS
 - Send documents supporting the request
- Spouse is notified and given the opportunity to participate in the case
- If denied, request an administrative appeal
- If appeal is denied, can go to Tax Court



Penalty Abatement



- “First Time Abate”
 - Must request it
 - Can do it over the phone or in writing
 - Record must be clean for the past 3 years – all returns filed, all tax paid
- Reasonable Cause abatement
 - No harm in trying, but IRS takes a narrow view
 - Circumstances beyond the taxpayer’s control
- No appeal rights, discretionary
- Abatement is only granted once per tax period.
Wait until the underlying tax is paid.



Appeal Rights



- Varied & complicated!
- Audit decision → can request Appeals review
- Notice of Deficiency → appeal to Tax Court
 - Will get Appeals conference unless already had one
- First notice of Intent to Levy/Lien → request a Collection Due Process hearing
 - “Equivalent” hearing available for 1 year if you miss the deadline
 - Not available for the ACA penalty
- Collection Appeals Program
- Audit reconsideration / Amended return
- Refund claim → federal district court



IRS Administrative Appeals



- What does an appeal involve?
 - Send all your documents to a different IRS office
 - ✦ Proof that your position is correct
 - ✦ Cover letter with explanation/argument
 - Be patient
 - ✦ Appeals offices are backlogged; appeals take months and sometimes years!
 - Appeals hearings – “conferences”
 - ✦ informal, held by phone
 - ✦ Can request an in-person conference
 - Written decision



Collection Due Process



- CDP is an IRS administrative appeal available prior to first levy action and also when a NFTL is filed
- Generally must present a collection alternative and documents to support it
- Can challenge the underlying liability if you did not get a Notice of Deficiency
- Can appeal a CDP hearing to Tax Court
 - Abuse of discretion standard
- “Equivalent” hearing available for 1 year if you miss the deadline
 - ✦ No Tax Court appeal is available



Tax Court Appeals



- Appeal from:
 - a Notice of Deficiency
 - a CDP decision
 - an Innocent Spouse denial
- File a petition to start an appeal
- Forms, instructions, and an explanatory video are available on the Tax Court website:
www.ustaxcourt.gov
- S (small) cases v. R (regular) cases
 - S cases are more pro-se friendly
 - Taxpayer can choose S case designation



Tax Court Appeals



- What does an appeal involve?
 - Exchange documents and witness lists with the IRS attorney ahead of time
 - Try to settle the case informally
 - Eventually, show up in court with your witnesses and documents.
 - Be patient. It can take over a year.
- Where is it?
 - The Tax Court is in D.C. It comes to Burlington VT once a year.
 - Taxpayers can choose their place of trial



Collection Appeals Program



- A super fast administrative appeal
 - Could take a week total
- Challenge IRS collection actions being taken
 - Best where IRS is clearly violating the law or its policies
- Discretionary, no appeal



Audit Reconsideration



- No deadline, always available
- Must submit new documents that were not considered in the audit
 - Be thorough
- Taxpayer Advocate Service and Congressional delegation can help get these through, if you have a compelling case
- Discretionary, no appeal



Refund Claims



- If you can't get into Tax Court, judicial review is only available by paying the tax and filing a refund suit in federal district court
 - US Attorney's office will represent the gov't (unlike in Tax Court)
 - No simplified procedures available
- This is the only option for "de novo" judicial review of the individual shared responsibility payment



What if the debt was self-assessed?



- No audit, so no appeal from the audit and no Notice of Deficiency
- First notice of Intent to Levy/Lien → request a Collection Due Process hearing
 - Can challenge the underlying liability if you did not get a Notice of Deficiency
 - Not available for the ACA penalty
- File an amended return
 - Discretionary, no appeal
 - Must include supporting documents; will be scrutinized much more than an original return
- Refund claim → federal district court



Offer in Compromise, Doubt as to Liability



- An alternative to audit reconsideration or an amended return
- Generally not the best option, because the taxpayer must offer to pay something in an OIC
- There is an administrative appeal if an OIC is denied



ISRP: Interest and penalties



- Late payment penalties may be imposed under Section 6651(a)(3)
- Interest may be imposed under Section 6601
 - There is an argument that interest will not begin to run until assessment. Section 6601(e)(2)(A).
 - ✦ Congress specified that the ACA penalty is to be collected in the same manner as an assessable penalty under subchapter B of chapter 68 of the Code. 5000A(g)(1)
 - ✦ Interest on assessable penalties does not run until assessment.
 - ✦ IRS position on this is unknown



ISRP assessment and collection summary



- Same ASED as income taxes
- Potentially no CSED
- No right to a pre-assessment appeal or pre-assessment judicial review
- Will be collected through voluntary payments and refund offsets
- Normal collection alternatives could be used for ISRP debts
 - But no CDP rights



PTC assessment and collection summary



- Deficiency procedures apply under Section 6211(b)(4)
- Penalties and interest may be assessed as with any other overpaid refundable credit
- Normal income tax collection process and tools apply.
- The same collection options should apply as for other income tax liabilities
 - Including CDP rights



Scenario 1



- Jane is 23 years old. She is on her father's employer plan right now (which does not have good coverage). She wants to apply on VHC. She is not her father's tax dependent. Her father is having some problems and Jane fears he will claim her as a dependent anyway.



Scenario 2



- Ashlyn receives a Form 1095-A from VHC, but the effective dates of coverage are wrong. She really wants to file taxes now, because she needs her refund to catch up on her rent.



Scenario 3



- Phil is unmarried and has two children. His son has Dr. Dynasaur. Daughter Kate is 21 and a college student. During open enrollment, Phil and his daughter got a QHP with APTC. Phil was planning to claim both children.
- In July, Kate broke off all contact with her dad and moved out of state. Phil has no way to get in touch with her and doesn't know where she is living.
- What will happen regarding the PTC Phil received for his daughter for several months when he thought he would be claiming her?
How should he file his tax return?



So your client has a tax debt



- First question: Are your tax returns filed?
 - Go back at least 6 years
- Why is this important?
 - Eligibility for IRS collection alternatives
 - Ability to discharge tax debt in bankruptcy
 - Starts CSED & ASED running
 - Time limit to claim a refund
 - ✦ 3 years from due date of return or 2 years from when you overpaid
- If the answer is no:
 - Can try IRS taxpayer assistance center ("TAC"), VITA, or AARP, but know that often there is no free tax prep help available



So your client has a tax debt



- Second Question: Do you know what this debt is from?
 - Notice should list the tax year
 - Call the IRS and ask, or go to a TAC for explanation
- Third: Check letters for appeal deadlines
 - Or have client call and ask the IRS
 - “Notice of your right to a hearing”
 - “Notice of Deficiency”



So your client has a tax debt



- Next: Reassure clients!
- Collection matters (no appeal): client can call the IRS and explain her situation
 - 1-800-829-1040 (7 am - 10 pm)
 - Ask for CNC or installment, if appropriate
 - The IRS will not speak with an advocate unless the client is on the phone, or an IRS form release is signed
- IRS customer service reps vary in quality; some try to pressure people into paying
- If only income is Social Security, CNC should be granted quickly and without requesting documentation



Common Client Misconceptions



- “I didn’t file this year because I haven’t paid my taxes from last year / haven’t filed last year’s return”
 - It’s always better to file going forward. Each year is a separate account with the IRS.
 - ✦ Start the ASED and CSED running!
- “I should be able to claim my girlfriend’s children if I supported them”
 - Maybe, but maybe not. The rules are complicated. If possible, go to a free tax preparation site to have your return done.



Common Client Misconceptions



- “The divorce order says I can claim my child.”
 - The IRS is not bound by your divorce order. You must meet the IRS rules no matter what your divorce order says.
 - Technically the parent who had the child fewer nights must attach form 8332 to his tax return, signed by the other parent
- “I can’t pay the IRS because of my credit card/medical debt”
 - The IRS does not generally care about other unsecured debt you may owe
- “If I don’t pay, they’ll put me in jail”
 - Not likely. Very few taxpayers are subject to criminal investigations, and most have a lot of \$ on the line



Looking Ahead: Potential Pitfalls



- Forms 1095-A
 - Exchanges experienced massive technical difficulties this year.
 - ✦ E.g. some accounts have the child listed as subscriber and parent listed as the dependent. Will errors like this be straightened out by January 31?
 - What should taxpayers do if Form 1095-A is wrong? We don't know yet.
 - ✦ Call VHC? We will advocate for a dedicated help line or special review process



Looking Ahead: Potential Pitfalls



- Forms 1095-A
 - Taxpayers should NOT file a return that they believe is incorrect
 - ✦ Deficiency procedures apply to the Premium Tax Credit. Don't give them up.
 - ✦ A Tax Court appeal is a stronger position to be in than waiting on an amended return or Audit Reconsideration.



Looking Ahead: Potential Pitfalls



- Estranged parents and spouses
 - The PTC and § 5000A add complexity to dependent exemption disputes and decisions
 - ✦ People need to plan ahead if they are going to claim APTC
 - The number of dependents claimed affects a parent's eligibility for subsidies on the exchange, even if the child has Dr. Dynasaur
 - ✦ The child's individual shared responsibility payment could be an unpleasant surprise
 - Remember, the percent of income amount does not vary depending on how many tax household members owe a penalty



Looking Ahead: Potential Pitfalls



- Estranged parents and spouses
 - “Non-custodial” parents need to get form 8332 if they want to claim the children
 - Form 8332 is technically necessary for most people if they get audited
 - Many clients don’t believe it. A lot of returns go through. IRS correspondence examiners sometimes accept a divorce order when it’s not technically sufficient.
 - If clients don’t believe it, send them the [Armstrong/Hanson case](#)?



Looking Ahead: Potential Pitfalls



- Estranged parents and spouses
 - What if my ex won't sign form 8332 even though the judge said I can claim the kids?
 - The family court can order parents to sign documents necessary to implement a court order
 - Refusal = contempt of court
 - Punishable by fines or even jail time
 - But, the aggrieved parent will have to file a "motion to enforce" or a "motion for contempt", pay filing fees, and go to court with their ex again
 - Mediation could be required first, under the existing court order
 - Court forms and information packets can be downloaded at www.vermontjudiciary.org



Looking Ahead: Potential Pitfalls



- Estranged parents and spouses
 - What about modifying the family court order?
 - ✦ The court order may not seem fair now that the dependent exemption has additional consequences.
 - ✦ In most states, the family court's allocation of a dependent exemption can be modified if circumstances change.
 - ✦ In Vermont, this may be an area for future litigation or legislation.
 - Most recent VT case denied modification where exemption was placed in property division section of divorce agreement. *Adamson v. Dodge*, 816 A.2d 455 (Vt. 2002).
 - ✦ Best scenario for modification: the allocation is in the "child support" section of the court order



Looking Ahead: Potential Pitfalls



- Estranged parents and spouses
 - Getting access to information needed to file taxes could be a problem
 - ✦ 1095-A will be sent to the tax filer or enrolling individual
 - ✦ Next year, 1095-B will be sent to the policy holder
 - ✦ Next year, 1095-C will be sent to the employee
 - ✦ People can call the IRS and VHC for information
 - For the Premium Tax Credit, taxpayer could file what they believe to be correct, then appeal all the way to Tax Court if the return is challenged.
 - For the ACA penalty, it is not clear what a taxpayer should do. We don't know if any pre-assessment procedures will be available.



Looking Ahead: Potential Pitfalls



- APTC Reconciliation
 - There is no exception to reconciliation
 - ✦ Errors made by exchanges, navigators, etc. must all be paid for by the taxpayer.
 - ✦ People will not be happy about this
 - The caps on repayment should help

2014 Repayment Limits for Advance Premium Tax Credits				
Household Income as Percentage of Federal Poverty Line (FPL)	Annual Income for an Individual	Maximum Repayment for a Single Person	Annual Income for a Family of Four	Maximum Repayment for Married Taxpayers Filing Jointly
<200%	< \$22,980	\$300	< \$47,100	\$600
200 - 299%	\$22,980 - \$34,470	\$750	\$47,100 - \$70,650	\$1,500
300 - 399%	\$34,470 - \$45,960	\$1,250	\$70,650 - \$94,200	\$2,500
400%+	\$45,960+	Full Amount	\$94,200+	Full Amount

Looking Ahead: Potential Pitfalls



- APTC Reconciliation – grace period issues
 - People whose plans were terminated for nonpayment will owe back any APTC paid for their first grace period month, if the premium for that month was never paid
 - ✦ If the premium is never paid, it does not count as a coverage month for purposes of the PTC.
 - The good news: APTC does not need to be repaid by the taxpayer beyond the first grace period month. The issuer must refund any payments to the federal government for months in which the taxpayer had no health insurance coverage



Vermont Low Income Taxpayer Project



- Free Federal Tax Help for Individuals
 - ✦ Advice or representation for IRS disputes
 - Exams, U.S. Tax Court, Innocent Spouse
 - Collection alternatives, collection appeals
 - ✦ Educate
- A Voice for Low Income Taxpayers
 - ✦ Submit issues to the TAS Systemic Advocacy System
 - ✦ Comment on IRS forms and regulations
 - ✦ Part of a national network of LITC advocates
- 1-800-889-2047



Questions?



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