

## **Effectively Representing Taxpayers Before the “New IRS”**

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He represents taxpayers in the examination, appeals, and collections divisions of the IRS, as well as litigating cases against the IRS in Federal District Court, United States Tax Court, and Bankruptcy Court. Robert's practice also concentrates on resolving white collar criminal investigations and prosecutions.

In addition to tax controversy, Robert's practice includes asset protection, entity formation, and the drafting of wills and trusts.

Robert is a frequent speaker on tax controversy, IRS procedure, and litigation matters. He serves on the North Texas Representation Counsel and the Tax Controversy section of the State Bar of Texas.

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## **Trends with the Examination, Collection and Appeals Divisions of the IRS**

From about 2005-2012, the IRS was a more passive and agreeable entity when it came to working with taxpayers. Successfully resolving a case required knowing the rules and regulations and presenting them in a manner that met the needs of that particular division.

Beginning around 2012-2013, the IRS was less willing to work with taxpayers. The IRS was more active and aggressive in its techniques, such as imposing stricter (and perhaps unreasonable) deadlines and was much more willing to resort to issuing summons during examinations and utilizing various methods of enforced collections.

From March 2020-February 2025, the IRS was not active due to the Covid-19 Pandemic. “Knock and Talks” were abolished, audits were somewhat uncommon and “run-of-the-mill” enforced collections were virtually non-existent. There were, of course, exceptions but the IRS was largely quiet.

On January 21, 2025, President Trump ordered the IRS to return to the office. Remote work was eliminated and all divisions of the IRS quickly ramped up.

On February 14, 2025, the Department of Government Efficiency terminated almost all probationary employees hired under President Biden’s administration. The resulting confusion has affected every division of the IRS. The number of employees decreased by approximately 25% (26,000 employees).<sup>1</sup>

On October 8, 2025, the government shutdown furloughed most IRS employees across all divisions. The IRS resumed operations on November 14, 2025.

Our job, as taxpayer representatives, is to conform to the “New IRS” so that we may successfully represent our clients.

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<sup>1</sup> TIGTA Memorandum to Secretary Bessent dated October 15, 2025 “Major Management Challenges facing the IRS in Fiscal Year 2026” at p.3. Available at [https://www.tigta.gov/sites/default/files/reports/2025-10/FY%202026%20MMC%20\(Final\).pdf](https://www.tigta.gov/sites/default/files/reports/2025-10/FY%202026%20MMC%20(Final).pdf)

## Key Staffing in Key IRS Programs as of October 2025<sup>2</sup>

Key Program Areas	Employees as of October 2021	Employees as of October 2024	Employees as of October 2025
Overall IRS	81,491	100,435	81,456

*Source: IRS Human Capital Office reports for employees on roll for the week ending October 9, 2021; October 5, 2024; and October 4, 2025.*

## Individual Tax Return Inventory Levels in Key Tax Return Processing Programs Increased Leading Into the 2026 Filing Season<sup>3</sup>

Inventory	Pre-Pandemic	Pre-Staffing Losses	Post Staffing Losses and Government Shutdown
	December 2019	December 2024	December 2025
Amended Returns (AM)	132,831	492,204	548,769
Amended Returns (SP)	15,098	76,325	41,643
Correspondence (AM)	201,910	324,769	375,268
Error Resolution	24,621	35,758	126,594
Paper Tax Returns	182,000	52,293	294,052
Rejects	121,397	169,374	267,890
Unpostables	196,536	359,567	343,350
<b>Total Inventory</b>	<b>871K</b>	<b>1.5M</b>	<b>2.0M</b>

*Source: IRS weekly inventory reports as of the weeks ending December 28, 2019; December 7, 2024; and December 6, 2025; respectively. K=thousand, M=million, AM=Accounts Management and SP=Submission Processing. The inventory levels listed are limited to individual tax returns only.*

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<sup>2</sup> TIGTA memorandum to Commissioner of Internal Revenue dated January 26, 2026 at p.3. Available at: [https://www.oversight.gov/sites/default/files/documents/reports/2026-01/2026400002\\_Readiness%20Memo\\_Final.pdf](https://www.oversight.gov/sites/default/files/documents/reports/2026-01/2026400002_Readiness%20Memo_Final.pdf)

<sup>3</sup> Id. at p. 2.

# **HOW TO WIN WITH THE IRS**

Successful representation before the Examination, Collection and Appeals divisions of the IRS involves a number of factors. A few essential factors are:

## **1. Common Sense**

Common sense is the single most valuable tool at your disposal. Common sense must be used when dealing with the IRS since, in many cases, the facts and/or law will **not** be on the taxpayer's side.

## **2. Preparation**

Each case is different. Our job, as taxpayer representatives, is to know the facts, applicable law and have a plan to reach a reasonable solution to the case.

When a case is first assigned to an employee in Exam, Collection or Appeals, the IRS agent/officer may only have a piece of paper that indicates your client is a new "customer." The most prepared representative can fail if he or she does not know the taxpayer's file better than the IRS.

## **3. Communication**

Communicate with the IRS and the taxpayer on a consistent basis. Open lines of communication not only minimize the chance of overlooking an outstanding issue but it often presents the practitioner with opportunities to anticipate future issues and address them early in the process.

## **4. Presentation**

You may have the best case in the world, but if you do not present it properly, you will not be successful. There are many different ways to make a presentation. The type of presentation that you make will depend on the type of case that you have. Remember your audience!

## **5. Persistence**

Never give up! Just because you are not successful with one approach or one IRS employee does not mean that there are no other ways to win. Have a network of other professionals to consult and get their ideas to help in winning with the IRS.

**PRACTITIONER'S NOTE:** Document all communication and know the rules and regulations that apply. Remember the Internal Revenue Manual can be your guidebook, too! Successfully working with the new IRS requires the representative use every tool at his or her disposal.

## **THE IRS EXAMINATION DIVISION**

The Examination division is responsible for auditing taxpayers' returns. The IRS selects returns using a variety of methods:

- Computer Scoring – the IRS computer systems use an algorithm to determine a statistical “norm.” The computers analyze each return and assign a number called a Discriminant Function System (“DIF”) score. The DIF score rates the deviation from the “norm” and flags returns that likely contain irregularities.
- TIN Matching – the IRS computer systems compare the information contained on a taxpayer’s return against filed information returns (1099s, W-2s, etc.) that contain matching Taxpayer Identification Numbers. Discrepancies are flagged and tax returns may be selected for audit.
- Related Examinations – the IRS may select a return for audit when it involves issues or transactions with other taxpayers, such as business partners or investors whose returns were selected for audit.
- Abusive Tax Avoidance Transactions – some returns are flagged for audit based on information that identifies the taxpayer as having participated in tax shelters.

### **Historical Trends<sup>4</sup>**

- In FYE 2005, there were approximately 1,215,000 individual tax return audits, or 0.93% of tax returns filed.
- In FYE 2012, there were approximately 1,481,966 individual tax return audits, or 1.0% of tax returns filed.
- In FYE 2021, there were approximately 659,012 individual tax return audits, or 0.4% of tax returns filed.
- In FYI 2024, there were approximately 444,014 individual tax return audits, or 0.2% of the tax returns filed.

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<sup>4</sup> Data obtained from the Internal Revenue Service Data Book.

- Data is not available for the current year. However, within two weeks of the Return-to-Office mandate, we were retained to represent three clients notified of audits in the previous weeks.

## Types of Audits

### CORRESPONDENCE AUDIT

This is the most basic type of audit. It usually involves the simple issue of verification and is done by mail. The taxpayer will receive a letter from the IRS asking for additional information about certain items shown on the tax return, such as income, expenses, and itemized deductions.

Correspondence Audits are usually seen in cases where the taxpayer has opted to take a potentially abusive credit or deduction, such as the Covid-19 credit, Earned Income Tax Credit, and more recently, State and Local taxes paid. Newly implemented credits are typically seen as a “hot button” item and the IRS seeks to verify that it is being used properly through audits.

#### PRACTITIONER’S NOTE:

1. Bates Label every document included in the response.
2. Scan the entirety of the outgoing response to the IRS. All too often, the IRS will lose pages.
3. Send all correspondence by FedEx or certified mail, return receipt requested.

### OFFICE AUDIT

These audits are also initiated by mail but are conducted at a local IRS office by Tax Compliance Officers (“TCOs”). The audit may be transferred to the office closest to the taxpayer upon written request. Treas. Reg. 301.7605-1(e). TCOs are expected to close two to four audits per day. This typically makes a detailed examination impossible.

The role of counsel in an office audit is more complex than in a correspondence audit. This type of audit is often more comprehensive and larger issues come under review. For example, an office audit may examine the issues on a taxpayer’s Schedule C, such as mileage deductions or home office expenses. Moreover, the IRS requires the taxpayer or his/her representative to come to an IRS office location for the duration of the audit. This can be time-consuming and costly to your client.

#### PRACTITIONER’S NOTE:

1. Meet with your client as long as it takes so you know the return and his/her business better than the client!
2. Do the work for the TCO! Have all documentation organized and prepare a spreadsheet that itemizes each category of expenses.
3. Keep the TCO focused. Your goal should be the same as the TCO: close the audit by the time you leave.

## FIELD EXAMINATIONS

Field examinations are conducted by Revenue Agents (“RAs”). RAs frequently have more extensive experience and training than TCOs. They do substantial preparation before the examination and typically review the contents of an administrative file assembled by the IRS. The administrative file may include a history of prior audits of the taxpayer, a multi-year comparison of income and expenses and may identify additional categories of income or expenses to examine.

RAs are trained to identify unusual items and will contact other people (third parties) to determine background information related to those items. Unfortunately, this means that you will not have the ability to exclusively control the flow of information. Unlike TCOs in an office audit, RAs have great discretion as to what items should be further reviewed and examined.

### PRACTITIONER’S NOTE:

1. Know your client’s file and finances better than the client!
2. Conduct the examination at your office, not at the taxpayer’s home or place of business.
3. Prepare a separate binder for the RA that has all documentation organized by category and bates numbered. Include a cover letter that details each category of documents and provides the corresponding bates numbers.
4. Keep a digital copy of the cover letter and documents provided to the RA!

### Inventing the Wheel - TWICE! An Examination Hypothetical

Mr. and Mrs. Jones have retained you because their 2022 Form 1040 tax return was selected for audit. They are W-2 employees of Middleman, Inc. (a C-Corp) and have a minor ownership interest. The Joneses earn their living by identifying semi-rural areas that lack quality internet service and act as “middlemen” between Internet Service Providers (“ISPs”) and a base of potential new customers. They entice ISPs to the rural areas and receive a percentage of the additional revenue realized by the ISP. Additionally, Mrs. Jones has a Schedule C side business selling vitamins to her children’s PTA.

Mrs. & Mrs. Jones are quite successful. They average \$1m/yr in W-2 wages and Mrs. Jones generates \$5,000 of Schedule C income by selling vitamins to their children’s PTA. They use TurboTax to prepare their returns and usually file on-time.

In 2022, Mr. & Mrs. Jones decide they can make more money by starting their own business. They separate from Middleman, Inc. on July 1 and receive \$600,000 from the sale of

their ownership interest. The Joneses use that money to start their new business, which is reported on a second Schedule C. Their tax return has the following large item entries:

• W-2 Wages:	\$ 500,000
• Schedule C2 gross receipts (new business):	\$ 600,000
• Schedule C2 net income:	\$ 60,000

The examination letter states that all gross income will be examined, along with Schedule C2 office expenses, travel and depreciation.

The initial meeting with the Revenue Agent is on January 15, 2025. You conduct the initial audit interview and provide her with 1,350 pages of supporting documentation. She issues a second IDR and sets a meeting for February 20, 2025. She doesn't show up.

In April, you receive a call from a new Revenue Agent located in a neighboring state and she tells you she is now assigned to the case, only received 45 pages when the file was transferred and says the audit must, in effect, begin from scratch.

**Issue:**

How do you avoid duplicating the work you've completed, keep the new RA focused on the initial issues and minimize the cost to your client?

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## **THE IRS COLLECTION DIVISION**

The Collection division of the IRS is responsible for obtaining delinquent returns and collecting delinquent taxes. The majority of taxpayers voluntarily file returns and pay their taxes on time but some taxpayers have more trouble with these obligations. When the IRS determines a taxpayer is delinquent in filing returns or has failed to pay taxes, the collections process begins.

We – the taxpayer’s representative – must adjust the way we interact with revenue officers to best represent our client’s interests.

### **THE IRS AND ITS COLLECTION DIVISION: AN OVERVIEW OF THE COLLECTION PROCESS**

What are the requirements before the IRS can collect taxes?

1. An assessment must be made. [IRC § 6201]
2. The IRS must send the taxpayer a notice and demand for payment and give the taxpayer 30 days to pay. [IRC § 6330(a)]
3. If the taxpayer does not pay within the 30-day period, the IRS may seize assets to pay the taxes. [IRC § 6331(d)]

Once an assessment is made, a lien arises pursuant to IRC § 6321. This is called a statutory lien. In order for the IRS to perfect its lien, the IRS must file a notice of federal tax lien.

### **THE IRS NOTICE PROCESS**

Once the IRS makes an assessment against a taxpayer, the taxpayer will generally receive several notices before the IRS will take enforced collection action. A record of account should be ordered. A written response should be made to all notices received from the IRS.

It is the Final Notice of Intent to Levy or Notice of Federal Tax Lien that is the most important since it gives the taxpayer the right to request a Collection Due Process Hearing.

### **AUTOMATED COLLECTIONS SYSTEM (ACS)**

ACS is the computerized inventory the IRS maintains for past due accounts and delinquent returns of taxpayers. Taxpayers are contacted by telephone by IRS employees in an attempt to collect the taxes or to secure the name of the taxpayer's bank and employer so that levies can be served. ACS also attempts to secure delinquent tax returns.

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## STATUTE OF LIMITATIONS

The IRS has 10 years from the date a tax is assessed to collect the tax. *See* IRC § 6502(a).

**PRACTITIONER'S NOTE:** There are several events that will toll (stop) the statute of limitations from running. The primary events are: Collection Due Process requests, Bankruptcy, and Offers in Compromise.

## Alternatives to Enforced Collection Actions

The following are the long-time collection options for a taxpayer that owes outstanding taxes:

1. Pay the taxes in full.
2. Installment Agreement. [IRM §§ 5.14; 5.15.1]
3. Audit Reconsideration. [IRM § 1.13]
4. Currently Not Collectible. [IRM § 5.16]
5. Abatement of taxes, penalties and interest.
6. Offer-in-Compromise. [IRM § 5.8]
7. Innocent Spouse. [IRM § 25.15]
8. Bankruptcy.

What, then, has changed? The way we work with the IRS to achieve the collection alternatives.

The “pre-2020” strategies – relying on reasonable (or logical) outcomes from the IRS – are outdated and should not be relied upon. There is no guarantee the same revenue officer will remain on the case. If a case is transferred to a new revenue officer, the files may be lost and a new revenue officer may lack the decision-making authority to resolve the case.

Representatives should assume everything will be challenged by the IRS and therefore be ready to quickly adjust their strategy.

## **Helloooo? Is Anyone There? A Collections Hypothetical**

You meet with a new client that received a notice in the mail from a revenue officer. The notice shows the client has an outstanding balance attributed to the Employer Shared Responsibility Payment from tax year 2017.

You contact the revenue officer and she tells you a Final Notice of Intent to Levy was previously issued and she has just filed a Notice of Federal Tax Lien. In response, you timely file a CDP.

Six months later, the client calls you because their accounts receivable is being continuously levied. You call the revenue officer multiple times and leave messages but she does not return your call.

### **Issue:**

How do you proceed when no one answers the phone?

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## **IRS APPEALS**

The IRS Independent Office of Appeals (“Appeals”) serves as the administrative forum for any taxpayer contesting an IRS determination in the Examination, Collection or Litigation divisions of the IRS.

### **Mission Statement and Priorities<sup>5</sup>**

“To resolve tax controversies, without litigation, on a basis which is fair and impartial to both the government and the taxpayer, and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.”

IRS Appeals lists the following as their strategic priorities:

- Increase taxpayer awareness of the appeals process and their rights within the process.
- Increase taxpayer awareness of alternative dispute resolution programs.
- Improve our processes to meet customer needs and to reduce the length of the appeals process while spending the right amount of time with each taxpayer.
- Promote employee productivity, engagement and satisfaction.

### **How to Get to IRS Appeals**

Virtually every division of the IRS has multiple avenues that grant access to IRS Appeals. For audits, you may go to Appeals when you receive the initial audit report (called the 30-day letter). In collections, Appeals is available via administrative hearings through the Collection Appeal Program, Collection Due Process, protests or appealing a determination on Installment Agreements or Offers-in-Compromise. In litigation, IRS Appeals is usually the first step after filing a petition in the United States Tax Court.

There are basically two titles of IRS Appeals personnel (even when the IRS changes their titles): Settlement Officers (“SOs”) and Appeals Officers (“AOs”). SOs are assigned to cases that originate in the Collections division of the IRS; AOIs are assigned to innocent spouse appeals, penalty protests and cases that originate in Exam or the United States Tax Court.

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<sup>5</sup> [www.irs.gov/about-irs/appeals-at-a-glance](http://www.irs.gov/about-irs/appeals-at-a-glance)

## How Appeals Conferences Work

The purpose and structure of a meeting in IRS Appeals depends on why you are there. However, there are several characteristics that apply to any case.

- The conferences are informal.
- There is no written transcript of what transpires.
- Testimony is not taken under oath.
- The policy is that Appeals will not address new or resolved issues.
  - New facts, however, should be submitted in affidavit form or under penalty of perjury.
- Proposals: Generally, the appellate officer will ask the representative to make a settlement proposal, usually on an issue-by-issue basis.

**PRACTITIONER'S NOTE:** Any admissions and any statements made in Appeals can be used against your client. The IRS sees life as a one-way street.

## Appeals Settlement Authority

Appellate officers have as broad a settlement authority as one will find inside the IRS. These are some of the Service's best people and should be treated as such. They can settle not only based on facts, but also upon litigation uncertainty ("hazards of litigation"). Further, an appellate officer can decide contrary to determinations by Exam or Collections and their decision is binding.

When is settlement a settlement with IRS Appeals? Like everything else, words are meaningless until it is on paper and signed by the appropriate person in Appeals.

## Types of Settlement

There are four types of settlements in IRS Appeals:

- Mutual concession: This is the most common type of settlement because both sides have weaknesses and you have to split the baby.

- Split-Issue settlement: This sort of settlement is when the IRS concedes Issue A, the taxpayer concedes Issue B and the numbers fall where they will.
- Nuisance value: This settlement is related to hazards of litigation – for both sides. A good rule of thumb is a 10%-20% concession by the parties.
- Determinations: This is most common in cases that originate in the Collections division and involve CAPs and CDPs. The SO will review the action(s) taken by Collections and make a determination whether the action was appropriate, within the guidelines of the Internal Revenue Manual and equally (un)favorable to both the Government and the taxpayer.

**PRACTITIONER'S NOTE:**

1. For audit cases, know the strengths and weaknesses of your case. If you are going to lose an issue, concede it.
2. For Collections cases, KNOW THE IRM!!! Just because a Revenue Officer or his/her manager may not release a levy, there may be IRM provisions that clearly support your position.
3. Be creative. Remember, Appeals has *very* broad settlement authority. Present a solution that meets your client's needs *and* those of the Government.

**Sinking Depreciation. An Appeals Hypothetical**

A client contacts you after representing himself during an audit of his Schedule C return. The examination report disallows a large majority of the Schedule C expenses. The largest adjustment is the complete disallowance of accelerated depreciation of a 50' boat. The client explains that 50% of the boat's usage is personal for him and his family but the other 50% is for legitimate business purposes. Therefore, the client only claimed 50% of the depreciation. After you review the files, you file a protest on the 30-day exam letter to go to IRS Appeals.

The Appeals Officer is knowledgeable, friendly and concedes the Schedule C expenses were wrongly disallowed. However, both sides are at a stalemate on the boat's accelerated depreciation.

**Issue:**

How do you work with the Appeals Officer on the depreciation?

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## **HYPOTHETICALS & THE NEW IRS**

### **How to Get to a Decision Maker**

A client was referred to you with a common problem we're seeing these days. The client has been patiently waiting for a refund on his Form 1040-X Amended Return filed for the 2021 tax year. The client owns a Partnership Flow-Through Entity that has a substantial brokerage account. The gains from the brokerage account were listed at the Partnership level. In addition, the gains were also reported on the client's personal return. The original return was filed in April of 2022. In review of the file, you discover the double inclusion of income. You file an Amended Return in October 2022 to correct the error. This is the only adjustment and the explanation clearly states that income has been taxed twice.

It's now 2025. You have the phone number (866) 860-4259 seared into your frontal cortex from constant calls to the Practitioner's Priority line. After finally reaching an IRS representative, you learn the IRS Transcripts of Account show the Return and Amended Return were both filed. The Amended Return was sent for processing.

Last year, since processing the Amended Return is taking so long, you filed a Form 911 Request for Taxpayer Advocate Service Assistance. Every 6-8 weeks you receive an update from the Advocate saying they are searching for the Amended Return and have placed a request for assistance to determine additional information on the status of processing the Amended Return. You believe the return is most likely lost.

#### **Issue:**

1. How do you secure your client's refund in a timely manner? Remember, an Amended Return is a refund claim; it has been more than six (6) months since the Form 1040-X was filed.

**PRACTITIONER'S NOTE:** I usually wait until I have 3-4 clients that I can address with one call to the Practitioner's Priority line for the sake of efficiency and the offhand chance I reach a human.

## Working with a New Revenue Agent (and it might be a Millennial!)

A new client approached you for representation regarding an audit of his personal 2022 Form 1040 Income Tax Return. He advises you that several of his co-workers have also been audited. Your client and his fellow employees all use the same CPA.

The client owns 80% of a commercial real estate brokerage company while a minority shareholder owns the remaining 20%. The company sells and purchases commercial real property. In addition, the company also provides management services for commercial properties and has offices in Dallas, Oklahoma City, Fayetteville, and Orlando.

The client receives W-2 wages from his company, plus commissions on sales of commercial real property. The commission is paid by a 1099 and is reported by the client on a Schedule C. Further, the client individually owns multiple commercial properties either outright or with minority partners that are contained within separate LLCs. The client receives approximately twenty-five (25) K-1s each year.

The initial audit notice identifies two categories of items for examination. The main issues are all Schedule A items: a \$450,000 deduction for charitable contributions, mortgage interest and property taxes. The second set of issues relates to Schedule C. The auditor has requested substantiation for travel, meals & entertainment, and a \$37,000 mileage-based deduction for car and truck expenses.

While speaking with the client and assembling the Information Document Request (“IDR”) response documents, you discover the taxpayer regularly tithes a portion of his income. The amounts are reflected on his bank statements and he has letters from his church acknowledging the charitable contributions. You also have support for mortgage interest and property taxes. As to the Schedule C expenses, the taxpayer tells you he’s not sure how the CPA determined those numbers.

### Issues:

1. How do you respond to the IDR?
2. Additionally, the RA requests an initial interview with you and your client. He notifies you that his manager will also attend the interview. How do you prepare for the interview?
3. During the interview, the RA makes numerous allegations that you’ve not provided the requested information. For example, the auditor states you provided no support for charitable deductions. How should you respond?