



Welcome to TaxMama's Place

Home of the



Unagreed Collection Alternatives



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Who is Eva Rosenberg MBA, EA



Eva Rosenberg, EA, Your TaxMama® has been teaching Enrolled Agents Exam review courses off and on since developing the program for UCLA Extension over 15 years ago. These days, she's teaching her own course online at www.irsexams.com

Eva has a BA in Accounting and an MBA in International business. Your TaxMama® is a TaxWatch columnist for Dow Jones' www.MarketWatch.com and author of the ever-popular book, Small Business Taxes Made Easy, published by McGraw-Hill – new edition – just released!

As a speaker, TaxMama® is popular with both tax professionals and taxpayers.

You can find her at www.TaxMama.com and subscribe to her free daily podcast at www.TaxQuips.com



Who is Tom Buck, CPA



Tom Buck, CPA is a published author, tax coach, teacher And mentor. He has been a licensed CPA since 1971 and has been in private practice since 1982.

Tom was chairman of the Nevada Society of CPAs Taxation Committee. Tom has been representing taxpayers and solving IRS problems ever since the landmark Casino employee cases in 1982.

The approach Tom takes and that he would like to pass on to you is this:

- **the “science” of the work is the law and how it should be applied. The “art” is being able to counter any and all IRS measures which are not supported by law. Does the IRS always follow the rules? Of course not, so part of the “art” is really in forcing the IRS to obey the law. Of course, having the tenacity of a bulldog is often the critical ingredient. In the final analysis, once you determine what the outcome should be, then you must be ready to take any detours necessary to get your client to the finish line.**

Tom is a willing and helpful teacher and looks forward to sharing his hard-gained knowledge.



Who is Sonya Wilt, EA

Sonya Wilt, BS in Management, EA and entrepreneur. A graduate of Upper Iowa University, Fayette, and former student of Eva Rosenberg's *Enrolled Agent Review Course*, Sonya also has an extensive background in management and accounting, small business consulting, and employee training

Sonya's desire to stay on top of the changes in tax law is two-fold:

- 1) **To make sure *her* investments and entities are taking advantage of every legal tax deduction available with adequate documentation, and...**
- 2) **To provide our clients with accurate information so they may make solid decisions in both resolving current tax issues and legally protecting their future earnings.**

Sonya and her partner, Tom Buck, CPA aggressively represent clients before state and federal taxing authorities through audits, appeals and collections.



Special Guest – Jaime Buchwald, CPA

<http://snurl.com/pitbulltax>

Jaime is the CEO and Co-Founder of PitBullTax Software. He practices exclusively in the area of tax controversy and criminal tax litigation support. Jaime has handled countless IRS collection, audit, and appeals cases and has saved his clients millions of dollars in the process. Among notable cases, he recently was on the defense team representing a commodities and foreign exchange dealer in a \$40 million federal fraud, tax evasion, and criminal forfeiture proceeding before the FBI, IRS Criminal Investigation Division and the U.S. Department of Justice.



This is what we have already covered in this course:

IRS Practice Series: 10 Steps to Release IRS Levies on Paychecks or Bank Accounts

IRS Practice Series: 10 Steps to Resolving Collection Issues

IRS Practice Series: Hands-on Collections Workshop

***IRS Practice Series: 6 Simple Steps to an Offer-in-Compromise:
Completing (form 656)***

If you've come this far, done everything right – and still had your OIC rejected, what now?

Never fear!

There's more you can still do!



Today's Course is an Overview of your Alternatives. In the one precious hour we have, can't get into great depth.

We'll give you a taste of the things you can still do –
Point you to more information and key forms

And ...we have a guest who will show what you can do –
How YOU will be able to rescue even the worst case from the depths of...

Most cases CAN be resolved!



Fast Track Mediation (FTM)

- Pilot program in 2000 – was tested through 2008
- <http://www.irs.gov/pub/irs-drop/rp-03-41.pdf>
- Optional alternative
- Handled within Appeals Division
- Extremely under-utilized
- Specially trained, independent Appeals Officer – bulldogs
- Determination not binding – purely voluntary

IRS Form 14017 – Request for FTM

<http://www.irs.gov/pub/irs-pdf/f14017.pdf>



Qualifications - Who gets in?

The Internal Revenue Service now offers fast track mediation services to help taxpayers resolve many disputes resulting from:

- examinations (audits)
- offers in compromise
- trust fund recovery penalties
- other collection actions (for example, certain qualifying collection due process cases)

Most cases that are not docketed in any court qualify for fast track mediation



Qualifications - Who doesn't? Excluded Cases / Issues

- Issues for which there is no legal precedent
- Issues where the courts have rendered opposing or differing decisions in different jurisdictions
- Industry Specialization Program issues
- An issue for which the taxpayer has filed a request for competent authority assistance
- Service Center penalty appeals cases
- Service Center Offer in Compromise cases
- Collection Appeals Program cases
- Automated Collection System cases
- Constitutional issues



Collection Appeals

- Offers in compromise
- Denial of Penalty abatement requests
- Proposed Trust Fund Recovery Penalties

Service employee - Staple taxpayer's envelope here

Request for Appeal of Offer in Compromise

Please provide the information required in the spaces below. Be sure to sign and date this form.

Taxpayer name(s) John B Taxpayer		Taxpayer Identification Number(s) 401-16-3216	
Taxpayer name(s) Jennifer B Taxpayer		Taxpayer Identification Number(s) 402-16-3217	
Mailing address 400 S Main St		Tax form number 1040	
City Des Moines	State IA	ZIP Code 50304	Tax period(s) ended 12/31/2005
Taxpayer's current daytime phone number (515) 222-1254			Tax period(s) ended

Identify the specific item(s) you don't agree with as shown on the Income and Expense Table and Asset and Equity Table you received with your rejection letter. In the space next to the disagreed item, provide a brief statement indicating why you don't agree with our determination (for example: Incorrect valuation of real estate, omitted mileage from vehicle deduction, etc.). Attach supporting documents and indicate on the document which issue they apply to. Additional pages may be attached. If you do not agree with the Service's analysis of economic hardship or Effective Tax Administration, please provide an explanation with documentation.

Disagreed item <u>Calculation of Value of Home: Agent has over-valued the taxpayer's home and as such the equity in his home.</u>	Reason for disagreement	Supporting documentation attached	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Disagreed item	Reason for disagreement	Supporting documentation attached	<input type="checkbox"/> Yes <input type="checkbox"/> No
Disagreed item	Reason for disagreement	Supporting documentation attached	<input type="checkbox"/> Yes <input type="checkbox"/> No

Signature of Taxpayer(s)		Date signed 12/07/2010
Signature of Taxpayer(s)		Date signed

If this application was prepared by someone other than the taxpayer, please fill in that person's name and address

Name

Mailing address

City

State

ZIP Code

Name and signature of authorized representative (if a representative is signing this form, please attach a copy of your completed Form 2848, Power of Attorney and Declaration of Representative.)

Name of authorized representative
Sonya Wilt, 508 Main St, Schaller IA 51053

Signature of authorized representative

Date signed
12/07/2010

Telephone number of authorized representative
(888) 364-4496

Best time to call
9-5 PM

Form 13711 (Rev. 6-2009) Cat. No. 40992F www.irs.gov Department of the Treasury - Internal Revenue Service



Collection Due Process – CDP

- Tolls Statute of Limitations
- Stay of collections activities
- Can petition court if not satisfactory
- Can dispute underlying liability, but only if the taxpayer did not receive a statutory notice of deficiency (if applicable) *or did not otherwise have an opportunity to dispute the tax*
- Appeals Officer is someone outside the IRS Collection Division who takes an unprejudiced look at the case to determine whether the proposed collection action (levy, seizure, etc.) is appropriate



Collection Due Process – When & How

Within 30 days of receiving 1058 letter, other notice of intent to levy

File **Form 12153** - Request for a Collection Due Process or Equivalent Hearing

Or

In writing, and must contain the taxpayer's name, address, and phone number, the type of tax and tax periods, and a statement of the reasons the taxpayer disagrees with the filing of the lien or the threatened levy.

Request for a Collection Due Process or Equivalent Hearing

Use this form to request a Collection Due Process (CDP) or equivalent hearing with the IRS Office of Appeals if you have been issued one of the following lien or levy notices:

- *Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320,*
- *Notice of Intent to Levy and Notice of Your Right to a Hearing,*
- *Notice of Jeopardy Levy and Right of Appeal,*
- *Notice of Levy on Your State Tax Refund- Notice of Your Right to a Hearing.*

Complete this form and send it to the address shown on your lien or levy notice. Include a copy of your lien or levy notice to ensure proper handling of your request.

Call the phone number on the notice or 1-800-829-1040 if you are not sure about the correct address or if you want to fax your request.

You can find a section explaining the deadline for requesting a Collection Due Process hearing in this form's instructions. If you've missed the deadline for requesting a CDP hearing, you must check line 6 (Equivalent Hearing) to request an equivalent hearing.

1. Print Name: John B Taxpayer Jennifer B Taxpayer

If a husband and wife owe the tax liability jointly, please print both names if both want a hearing.

Address: 400 S Main St

City: Des Moines State: IA Zip Code: 50304

2. Social Security Number or Numbers

SSN 1 <u>401-16-3216</u>	SSN 2 <u>402-16-3217</u>
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Employer Identification Number

3. Daytime Telephone Number and Best Time to Call (888) 364 - 4496 am. pm.

4. Tax Information

Type of Tax (Income, Employment, Excise, etc. or Civil Penalty)	Tax Form Number (1040, 941, 720, etc)	Tax Period or Periods
<u>Income Tax</u>	<u>1040</u>	<u>12/31/2005</u>



Collection Due Process – Withdrawal

Do not withdraw a CDP request.

- ◆ Appeals officers are far more cooperative
- ◆ CDP stops collections
- ◆ If you withdraw and refile 12153, you are beyond the original 30 days so you've lost the clients rights to judicial review and the IRS can still pursue collections during negotiations



Collection Appeal Program – CAP

- Before or after collection activity in place
- Default, termination or rejection of installment agreement – appeal within 30 days of notification
- Appeal liens, levies, seizures
- Supposed to be fast
- ***No right to judicial review for CAP decision***
- ***Cannot challenge existence of tax liability or amount of tax liability***



Collection Appeal Process - CAP – When & How

- Request appeal from Collections Manager
- File Form 9423 filed within 2 days of manager conference *or* 30 days of receipt of notice when not dealing with RO

Collection Appeal Request

1. Taxpayer's Name John B Taxpayer		2. Representative: (Form 2848, Power of Attorney Attached)	
3. SSN/EIN 401-16-3216	4. Taxpayer's Business Phone	5. Taxpayer's Home Phone (888) 364-4496	6. Representative's Phone
7. Taxpayer's Street Address 400 S Main St			
8. City Des Moines		9. State IA	10. Zip Code 50304
11. Type of Tax (Tax Form) 1040	12. Tax Periods Being Appealed 12/31/2005		13. Tax Due \$184,000

Collection Action(s) Appealed

14. Please Check the Collection Action(s) You're Appealing:

- Federal Tax Lien
 Denial of Installment Agreement
 Levy or Notice of Levy
 Termination of Installment Agreement
 Seizure

Explanation

15. Please explain why you disagree with the collection action(s) you checked above and explain how you would resolve your tax problem. Attach additional pages if needed. Attach copies of any documents that you think will support your position.

Payment was provided to IRS in timely manner and in accordance with installment agreement. Proof of mailing and receipt is attached. Proof of cleared check is also attached. IRS lost or misapplied payment. Taxpayer did not default, thus installment agreement should be reinstated.

Under penalties of perjury, I declare that I have examined this request and the attached documents, and to the best of my knowledge and belief, they are true, correct and complete. A submission by a representative, other than the taxpayer, is based on all information of which preparer has any knowledge.

16. Taxpayer's or Authorized Representative's Signature	17. Date 12/07/2010
18. Collection Manager's Signature	19. Date Received



Equivalency Hearing

Same form as CDP request – 12153

Similar in procedure to CDP, but

Does not Toll Statute of Limitations

Does not force stay of collections activities

Can not petition court if not satisfactory

Up to a year after collection action begins



Tax Court

<http://www.ustaxcourt.gov/>

U. S. Court of Federal Claims

<http://www.uscfc.uscourts.gov/>

U.S. District Court

<http://www.uscourts.gov/districtcourts.html>

U.S. Courts site - <http://www.uscourts.gov>

What's the big difference?



- 1) You can file a petition in Tax Court without paying first.
 - To file suit in the other Federal Courts, you have to pay the balance due in full first.
- 2) We may be able to run our client's whole Tax Court case (Small Case) without being able to practice in Tax Court.
 - We can't do that in other Federal Courts. We can simply support counsel with good documentation

APPEALS

30-Day Letter: Proposed Notice of Deficiency

Taxpayer receives IRS findings after audit or other examination and notice of right to appeal. Taxpayer has three choices:

Appeal to IRS Appeals Office

Taxpayer requests an appeals conference within 30 days of notice. A written protest may be required if the proposal liability is more than \$25,000 or if the taxpayer is an S corporation or partnership. Follow instructions in the 30-day letter. Appeals conferences are information-by correspondence, by phone or in person.

No action

- * Taxpayer may request that IRS issue deficiency notice so taxpayer can proceed to court.
- * Taxpayer loses right to recover fees and costs by bypassing IRS appeals.

Pay Tax

90-Day Letter: Statutory Notice of Deficiency

IRS issues notice of deficiency. Taxpayer has three choices:

Tax Court

Taxpayer petitions Tax Court within 90 days of notice.

General Procedure

Small Case Procedure

Disputed amount is \$50,000 or less. Informal—briefs and oral arguments are not required. Decisions do not set precedent.

U.S. Court of Appeals

U.S. Supreme Court

Court Decides

NO APPEAL

No Action

Tax Assessed

NO APPEAL

Pay Tax

Taxpayer Files Claim for Refund

IRS Rejects Claim

U.S. District Court or Court of Federal Claims

Taxpayer sues the United States for refund. Taxpayer has two years from the claim rejection to sue. Taxpayer must wait until the claim is rejected or six months from date refund claim was filed before suit can be brought. Rejection may go through IRS Appeals Office.

U.S. Court of Appeals

U.S. Supreme Court

Video Presentation by U.S. Tax Court

http://www.ustaxcourt.gov/ustc_video_welcome.htm

Small tax case procedure



If the amount in your case is \$50,000 or less for any one tax year or period, you can request that your case be handled under the small tax case procedure. If the Tax Court approves, you can present your case to the Tax Court for a decision that is final and that you cannot appeal.

You can get more information regarding the small tax case procedure and other Tax Court matters from the United States

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

More information can be found on the Tax Court's website at www.ustaxcourt.gov.

Small Case Tax Petition Kit online at the U.S. Tax Courts website (http://www.ustaxcourt.gov/forms/Petition_Kit.pdf).

Fill in all the forms online and print them out. The fee is still only \$60.



District Court and Court of Federal Claims

Generally, the **District Court** and the **Court of Federal Claims** hear tax cases only **after you have paid the tax** and filed a claim for a credit or refund.

When your claim is totally or partially disallowed by the IRS, you should receive a notice of claim disallowance. If the IRS does not act on your claim within 6 months from the date you filed it, you can then file suit for a refund.

You generally must file suit for a credit or refund no later than 2 years after the IRS informs you that your claim has been rejected. However, you can file suit if it has been 6 months since you filed your claim and the IRS has not yet delivered a decision.

You can file suit for a credit or refund in your United States District Court or in the United States Court of Federal Claims.

However, you **cannot appeal** to the United States Court of Federal Claims if your claim is for credit or refund of a penalty that relates to **promoting an abusive tax shelter or to aiding and abetting the understatement of tax liability** on someone else's return.



<http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts.aspx>

The United States district courts are the trial courts of the federal court system. Within limits set by Congress and the Constitution, the district courts have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters. Every day hundreds of people across the nation are selected for jury duty and help decide some of these cases.

There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and Puerto Rico. Three territories of the United States -- the Virgin Islands, Guam, and the Northern Mariana Islands -- have district courts that hear federal cases, including bankruptcy cases. ([Printable Circuit/District map \(pdf\)](#))

Bankruptcy courts are separate units of the district courts. Federal courts have exclusive jurisdiction over bankruptcy cases. This means that a bankruptcy case cannot be filed in a state court.



The United States Court of Federal Claims has jurisdiction over most claims for money damages against the United States, disputes over federal contracts, unlawful "takings" of private property by the federal government, and a variety of other claims against the United States.

The general jurisdiction of the Court, is described in 28 U.S.C. § 1491



If these lower courts turn you down, you may appeal.

- Tax Court – General Procedure
- District Court
- Court of Federal Claims



Bankruptcy – Understanding the Rules

- **3 year rule**
- **2 year rule**
- **240 day rule**



Bankruptcy –

- Why Chapter 7 bankruptcy is better than Chapter 13
- Qualifying for Chapter 7
- Find a GOOD Bankruptcy Attorney



Protective Filings

Watch your deadlines, with IRS delays, protective filings are more important than ever

Example:

Documents were provided to the IRS and lost, documents were provided again to the IRS, they were received, but not yet reviewed and the 90 day deadline is approaching. If a tax court petition isn't filed within the 90 days, your client loses the ability to go to tax court



Special Guest – Jaime Buchwald, CPA

<http://snurl.com/pitbulltax>



The following case is a real case of Jaime's.

You or I might have believed it was hopeless.



Original Case

Offer in Compromise based on Doubt as to Collectibility.

Total IRS Liability - \$2.7 million.

Client is indicted and serves his term in prison for fraud against investors and US government. Client is a repeat offender.

Original OIC is filed in August 2009. Offer amount is \$5,000 for each, separate OIC filed for husband and for both husband & wife.

OIC Rejected

Rejected on January 8, 2010.

Reason: offer acceptance maybe a detriment to public compliance and is not in government's interest (see letter attached).



Representative's Response

February 3, 2010 – Response letter to IRS contesting the reason for rejection (see letter attached).

February 3, 2010 – Response letter to IRS providing additional information in regards to Asset/Equity Table (AET) prepared by IRS and protested by representative (see letter attached).

December 2, 2009 – Obtained independent legal opinion on what will have a priority: IRS lien against client's house or judgment by the Commodity Futures Trading Commission (see letter attached).

Based on the independent opinion representative increased offer amount for joint OIC to \$270,000 and husband's OIC to \$30,000.



OIC Accepted

OIC has been accepted on May 20, 2010

OIC for husband accepted for \$30,000

OIC for husband and wife accepted for \$270,000

Savings - \$2.4 million



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There is always something...Supreme Court and Legislators



Internal Revenue Manual – Part 5 is about Collections

<http://www.irs.gov/irm/part5/index.html>

IRS Alternative Dispute Resolution – all size cases, including international

<http://www.irs.gov/individuals/article/0,,id=96779,00.html>

IRS Collections Appeals Program (CAP)

<http://www.irs.gov/individuals/article/0,,id=160738,00.html>

Tax Court - <http://www.ustaxcourt.gov/>

US Court System <http://www.uscourts.gov/Home.aspx>

Taxpayers Advocate Service <http://www.irs.gov/advocate/>



Thanks for coming.

Remember to give CPE Link your evaluations.

Drop by to sign up for other TaxMama classes –
<http://www.cpelink.com/teamtaxmama>

The next 5 classes in the series will be taught after tax season.

Our Tax series are available as Self-Study or Resources:

- International Taxpayer issues – dealing with resident aliens and Americans overseas.
- The Tax Practice Series - Taxpayer representation – Collections, Offers In Compromise, other payment alternatives
- TaxMama's tips about tax issues and research