The report makes a number of recommendations:
Pursuant to an article in the *Wall Street Journal* of August 3, 2019, Nina Olsen the retiring National Taxpayer Advocate stated:

> “The IRS is walking away from actually conversing with taxpayers. They embrace digital and say it’s self-service. That works for somethings like tracking tax refunds but not for others”.
“This past filing season, only 33% of callers got through on the telephone line dealing with compliance issues like liens and levies. Those who got through waited an average of 41 minutes”.
1. Cybersecurity (Dirty Dozen Scams)
2. Trust Fund Recovery Penalty
3. Taxpayer Advocate Service
4. Penalty Abatement
5. Bankruptcy and Tax Debt
6. Paycheck Checkup
7. Dispute Resolution
1. Phishing Schemes

- Direct deposit scheme
  - Stolen personal data – file return
  - Refund deposited to TP’s account
  - Pose as IRS or collection agency

- What to do?
  - Contact ACH dept of bank - return $ to IRS
  - Call IRS to explain return of $
  - PN: Unexpected Deposit
Cybersecurity

1. Phishing Schemes

- Business Email Compromise – pose as:
  - Business – with fake invoice
  - EE seeking to reroute a direct deposit
  - Known person requesting wire transfer

- What to do?
  - *Do not open* any enclosed links
  - Forward email to phishing@irs.gov

- PN: Lien Notification Scam
2. Phone Scams

- Vishing – Voice Phishing
- Claim to be IRS: demand $, threats
  - Prepaid debit card, wire transfer
  - Entitled to large refund but need info
- List of other possibilities – p. 382
- IRS does not contact TPUs this way
2. Phone Scams

Reporting

- Phishing @irs.gov (IRS Phone Scam)
- TIGTA IRS Impersonation web page
- Call (800) 366-4484
- FTC Complaint Assistant – FTC.gov

See PN re: claim to suspend/cancel SSN
3. Identify Theft

- Return rejected – SSN already used
- Receive IRS notices after all resolved
- Notice re: wages from unknown ER

- Return accepted as amended return
- Receive notice of fictitious EEs
- Notice re: closed business
Cybersecurity
3. Identify Theft

What to do?

- File paper return and pay
- Mail/Fax Form 14039
- File report with FTC
- Contact credit bureau for fraud alert or credit freeze
4. Tax Return Preparer Fraud
   - Types – list p. 384
   - Report on Form 14157

5. Inflated Tax Refund Claims
   - Seniors, low-income, non-English
   - Flyers, ads, fake storefronts
6. False Income or 1099s
   - Inflating income to max credits
   - False 1099s to gain access to funds

7. Inflated Deductions or Credits

8. Fake Charities
   - Form 13909 – TEO Complaint Referral
   - Research Credit and Fuel Tax Credit

10. Offshore Tax Avoidance

11. Frivolous Tax Arguments
   - Notice 2010-33
12. Abusive Tax Shelters

- Trusts
- Microcaptive Insurance
- Syndicated Conservation Easements

→ Contact Office of Tax Shelter Analysis
RECOMMENDED PRACTICES

- Keep clients informed – sample letter
- IRS Security Summit
Issue 2: Trust Fund Recovery Penalty (TFRP)

- Any person required to collect, account for, and pay over any tax
- Who *willfully* fails to collect, or account for and pay over such tax
- is liable for penalty equal to total amount not paid

Unpaid liabilities of many returns (list)
Issue 2: TFRP

- What person may be held responsible?
  - List of potential persons – page 393
  - May exercise independent judgment
  - Ministerial duties only generally not

- Determination factors
  - List – page 393-394
  - Looking for control over payments
Issue 2: TFRP

Third Party Payers

- Is the responsible person liable?
  - Had knowledge of noncompliance
  - Fraud or deception involved
  - Person on notice by IRS
  - Took action when became aware
Issue 2: TFRP

Volunteers

- Exception to TFRP if:
  1. Serving in honorary capacity
  2. No participation in day-to-day
  3. No actual knowledge of failure to pay

- Exception N/A if results in no person being liable
Issue 2: TFRP  
Multiple Responsible Persons

- Can assess same TFRP $ against > 1
- All jointly and severally liable
- Right of Contribution – IRC §6672(d)
  - Can recover $ paid > proportional share from other responsible persons
- PN: p. 400 – IRC §6103(e)(9)
  - Can get names of others & amounts paid

pp. 394-395
Issue 2: TFRP

Willfulness

Exists if the responsible person either:

1. Was aware taxes unpaid and with power to pay them, signed checks to pay other creditors, or

2. Acted with gross negligence or in reckless disregard of the fact that taxes were due and not paid
Issue 2: TFRP
Willfulness

- Unable to pay employment taxes but yet
  - Pays other creditors or
  - Pays net wages in full
- Fails to investigate/correct after aware
- If new to responsibility → liable up to $ available at the time for prior unpaid
Issue 2: TFRP

Investigation Procedure

- Records examination
- Witness interviews – Form 4180
- Form 433-A to determine collectibility
- Letter 1153 – proposes TFRP
  - TFRP = unpaid EE IT w/h’g and EE FICA
- Statute: 3 years from date return filed
  - But not < 90 days after Letter 1153 issued
Issue 2: TFRP

Defenses

- Direction from others (nonowner)
- Resignation (only for liabilities after)
- Delegation (retains NO authority)
- Lack of knowledge (if not reckless)
- Embezzlement (not a defense)
- Illness (involuntary & incapacitated)
- Reasonable cause (circuits split)
Issue 2: TFRP

Mitigating Liability for TFRP

In-Business Trust Fund Express IA

- Owes < $25,000,
- Fully paid w/in 24 months or < CSED
- Direct debit IA if $10,000 - $25,000 &
- In full compliance – filing & paying

If owe > $25,000, reduce liability with designated voluntary payment to qualify
Mitigating Liability for TFRP

Designated payment
- Must be voluntary payment
- Memo: “Trust Fund Taxes Only”
- Submit with cover letter

Standard IA – TFRP will be pursued
- TFRP collection suspended unless past defaults, CNC, or partial payment IA
Issue 3: TAS  pp. 402-403
Taxpayer Advocate Service

- Current office created in 1998 Act
- Activities of TAS – p. 402
- Presence in each state
- Authority
  - Statutory – IRC §§ 7803(c) & 7811
  - Delegated
Issue 3: TAS Operations Assistance Request

- Used if TAS does not have authority
- Requests action/inaction by an IRS division/function
- Details adjustments, decisions needed
- Includes analysis of facts, law, TP’s position, and documentation
- If no action taken, TAS may issue TAO
Issue 3: TAS
Taxpayer Assistance Order

1. TP suffering/about to suffer significant hardship if relief not granted
2. Hardship due to IRS law administration
3. TAS w/o authority to grant relief
4. IRS division/function handling does not agree with TAS on resolution

TAO directs the IRS to act/not act
Economic Burden
1. Current or imminent economic harm (IRS actions or personal circumstances)
2. Immediate threat of adverse action (IRS, utility actions, eviction)
3. Significant costs if no relief
4. Irreparable injury/long-term adverse impact (loss of assets, income, credit, license)
Issue 3: TAS
Criteria for Assistance

Systemic Burden (IRS process, system)

5. Delay of > 30 days to resolve tax problem
   ▪ 30 beyond given time frame or if none, from date of TP’s initial request
   ▪ TP delays do not meet #5

6. No response or resolution by date promised

7. IRS system/procedure failed to operate as intended or failed to resolve problem
Issue 3: TAS
Criteria for Assistance

Best Interest of the Taxpayer

8. Administration of tax law raises equity concerns or impairs TP’s rights

Public Policy

9. NTA determines compelling public policy warrants assistance to TP or group of TPs

TAS does not accept: Constitutional or frivolous issues, identity theft, processing of returns, injured spouse
Issue 3: TAS
Requesting Assistance

- Phone: (877) 777-4778
- In person: Local TAS office
  - Address/phone on TAS website
  - IRS Publication 1546
- Form 911 – Figure 10.3 (p. 407)
  - Mail or fax to local TAS office
  - Suspends CSED
Low-Income Taxpayer Clinics

- For TPs with income < 250% FPL (Fig. 10.4) or English is 2nd language
- Represent, educate, identify, and advocate for issues that impact these TPs

Systemic Advocacy Management System

- Studies issues, recommends actions
- Public submits issues: Online or Form 14411
Issue 3: TAS

Taxpayer Advocacy Panel (TAP)
- 75 volunteers – conducts outreach and solicits suggestions from public
- Issues: Sch A & B, IRS2Go App, ID Theft

TAS Reports
- Annual Report: Problems/recommendations
- Objectives Report: TAS goals/activities

Taxpayer Bill of Rights
Issue 4: Penalty Abatement

- Penalty relief
  1. Correction of an IRS error
  2. Statutory and regulatory exceptions
  3. Administrative waivers
  4. Reasonable cause

- IRM Part 20 – all things penalty-related
Issue 4: Penalty Abatement

- Correction of an IRS error
  - If an IRS processing or posting error corrected, penalties automatically adjusted
- Statutory and Regulatory Exceptions
  - Figure 10.6
Issue 4:
Penalty Abatement

Erroneous Advice from the IRS - §6404(f)

- Must abate penalty attributable to erroneous IRS written advice if TP
  - Reasonably relied on the advice and
  - Provided adequate/accurate info
- Form 843 w/copies of request, IRS written advice, report showing penalty
- Administratively extended to oral advice
Penalty Abatement

Waiver of Estimated Tax Pen. - §6654(e)(3)(A)

- Due to casualty, disaster, unusual event & penalty against equity and good conscience
  - Includes serious illness or injury
- Reasonable cause, not willful neglect & TP
  - Retired at age 62 or older during year or
  - Became disabled during year
Issue 4: Penalty Abatement

Waiver of Estimated Tax Pen. - §6654(e)(3)(A)

- F2210 + statemt, retiremt/age or dis. proof
- Relief automatic if in declared disaster area
- IRS disaster hotline – (866) 562-5227
  - Books, records, tax prof.’s office in area
  - Certain relief workers in covered areas
- 2018: Waive if 80% paid ≤ 1/15/19
- Reasonable cause N/A
Issue 4: Administrative Waivers

First-Time Penalty Abatement (FTA)

1. Filing compliance,
2. Payment compliance, AND
3. No penalty history (3-year lookback)
   ▪ No unreversed penalty (except est. tax)
   ▪ No reversed penalty

▪ FTA applies before reasonable cause
Issue 4: Administrative Waivers

First-Time Penalty Abatement (FTA)
- Request on attachment to return
- Request by phone if penalty unpaid
  - Must be written if exceeds threshold
- Request on Form 843 if penalty paid
Issue 4: Reasonable Cause

- N/A – fraud, fraudulent FTF, estimated tax or any portion due to lack of economic sub.
- Reasonable Cause Assistant
  - 1040: FTF/FTP  941, 940, 944, 945: FTD
  - Automated system for consistency
- FTF, FTP, FTD: TP exercised ordinary business care and prudence
- §6662: + good faith  §6724: no willful neglect
- Fig. 10.7 – reasonable cause citations
Issue 4: Ordinary Business Care & Prudence

IRS reviews all information including:

- TP’s reason for noncompliance
- Compliance history
- Length of time
- Circumstances beyond the TP’s control
Also considered for FTF, FTP, FTD

- Death or serious illness of TP, immediate family or responsible person in business
- Unavoidable absence of TP or responsible person
- Inability to deposit beyond TP’s control
- Ability to deposit impaired by civil disturbance
- Lack of funds prevented deposit/payment
Issue 4: Ordinary Business Care & Prudence

- Mistake – when aware, what was done to correct, timely after discovery?
- Ignorance of the law
  - Reasonable & good-faith effort to comply
  - Unaware/could not reasonably be expected to know of requirement
- No records – what did TP do?
- Hardship if required to pay when due
Issue 4: Requesting Relief – Reasonable Cause

- Written request
- Signed by TP under penalty of perjury
- Preemptive request w/late-filed return or abatement after assessment
- Form 843 – one for each tax type or period
- File within CSED for abatement
- File within 3/2-year rule for refund (see PN)
Issue 5: Bankruptcy and Tax Debt

Chapter 7 – Liquidation Bankruptcy

▪ Individuals who can’t make monthly paymts (means test to qualify for Chapter 7)
▪ Businesses choosing to terminate
▪ Trustee sells nonexempt assets and pays creditors
▪ No rules re: level of debt to qualify
Issue 5: Bankruptcy and Tax Debt

Chapter 11 – Reorganization Bankruptcy

▪ Business or individuals
▪ Debt repayment plan
▪ No plan approved → may be converted to 7
Issue 5: Bankruptcy and Tax Debt

Chapter 13 – Wage Earner’s Plan

- Repayment Plan over 3 to 5 years
- Limit on unsecured/secured debts
- Current for last 4 years and continue to be
- Keep nonexempt property if debtor pays unsecured creditors $ = $ if property sold
- Allows debtor behind on car/mortgage paymt to “catch up” over life of plan
Issue 5: Dischargeable Tax Debt

Tax debt may be discharged if:

- Unsecured,
- A return was filed (note: SFR not a filed return),
- Return filed > 2 years before bankruptcy filing,
- Return due > 3 years before bankruptcy filing,
- Taxes assessed > 240 days before bankruptcy &
- No fraud or willful evasion re: return

Tax discharged → related interest/penalties also
Issue 5: Dischargeable Tax Debt

- 240-day assessment period excludes:
  - Time an OIC was pending + 30 days
  - Time of a prior bankruptcy stay + 90 days

- PN: Transcripts
  - Request both Master file and Nonmaster file

- PN: Aging Debt
  - CDP tolls aging – hearing time + 90 days
Issue 5: Nondischargeable Tax Debt

- Secured debt
- Trust fund taxes, including the TFRP
- Taxes for which returns have not been filed
- Late-filed return tax, w/in 2 yrs of bankrupt. filing
- If from fraudulently filed returns or if debtor willfully attempted to evade/defeat the tax
- Certain nonpunitive penalties
- Certain ER share of employment taxes
- Certain excise taxes

pp. 421-422
Issue 6: Paycheck Checkup

- TCJA changes warrant w/h’g check
- IRS online withholding calculator
  - N/A for those listed on p. 423
- Change withholding on W-4, W-4P
- New W-4 – Fig. 10.8 – Draft for 2020
  - Note: Line 4…”if”….not required
Once again we are seeing a disconnect between the government and the average American taxpayer in the design of the new form W-4.

The form is amazingly more complicated than it should be and will not be understood by the great majority of our clients.

It requires the taxpayer to..........

1. Let us read the language in steps 1 and 2.
2. Step 3 – Determine the number of qualifying children under 17 and multiply that number by $2,000

- Multiply the number of other dependents by $500.

3. Let us read the instructions for Step 4.

- Can you believe it?
- Get ready for a lot of questions and frustrations from the clients!!
In summary, beginning with the 2020 Form W-4, employees will no longer be able to request adjustments to their withholding using withholding allowances.

Instead, new W-4 employees will have to provide employers with amounts to increase or reduce taxes and amounts to increase or decrease the amount of wage income subject to withholding.
Draft of Form W-4 – Really?? – Continued - NIB

- Note: Some employers will state that employees are required to file a new W-4 based upon their misinterpretation of the IRS promotion of this form.
- This is not true! A form W-4 has no “shelf-life”.
- A new one is required only when the taxpayer wishes to change his withholding or starts new employment.
Draft of Form W-4 – Really?? – Continued - NIB

Get ready for a lot of questions and frustrations from the clients!!
The draft of the 2019 form K-1 for form 1065 has been released.

It contains five new areas:

1. The partner’s basis must be reported on the tax basis.
The purpose of requiring the tax basis is to allow the IRS to earlier identify taxpayers that have claimed a loss in excess of basis.
2. Separate lines have been added for guaranteed payments for services and guaranteed payments for capital.

3. The form has added lines 21 and 22 to Part III to report “more than one activity for at-risk purposes” and “more than one activity for passive activity purposes.”
4. The partner’s beginning and ending Section 704(c) gain or loss must be entered in Part II.

- If the basis of contributed property differs from its FMV at contribution, Section 704(c) requires gain or loss with respect to such property to be allocated to the contributing partner.
The purpose of this section of the code is to prevent gain or loss from being shifted to another partner.

Section 199A information will now be reported on a subsequent schedule.

Part III, line 20, code Z will direct the partner to the attachment.
Employment Taxes – Reference to Practitioner Note on Pg. 423

- We had covered this topic in the last two Ohio tax seminar sessions but need to speak of it again.
- Essentially, the IRS in concert with the Department of Justice is cracking down on individuals/businesses that are delinquent or have a pattern of chronic delinquency of their payroll taxes.
- Since early this Spring, the IRS has made in many cases “surprise” visits to a number of businesses that they suspect of having serious issues with employment tax compliance.
Between March 25 and April 5, 2019, the IRS Field Collection officers and Criminal Investigation agents “visited” over 100 businesses as an example of their compliance effort.

This was done without warning.

These visits occurred before this period and are continuing.

During the two week period of March 25 and April 5, the IRS has indicted 12 individuals and executed four search warrants.
A half dozen individuals and businesses have been sentenced for crimes associated with payroll taxes with dozens more enforcement actions are planned.

Business owners who received visits from the IRS were given advice on ways to get caught up with their delinquencies and how to keep from having current and potential civil and criminal penalties from being asserted/assessed against them.

It is easy to infer that such individuals were being warned and being “watched” so to speak.
On September 16th, the Office of the Treasury Inspector General for Tax Administration ratcheted up an already crisis indictment of IRS enforcement with the issuance of a report that cited the agency for its continued failure to assess tax liabilities against employers who don’t file employment tax returns.

Citing IRS resource limitations, TIGTA reported that the IRS is flagging fewer returns and collecting much less revenue regarding non-filers.

TIGTA cited a loss of revenue of at least $10.4 billion and probably more.
The government is very, very serious about timely employment tax payments being paid in full.

This is an issue to take seriously and to advise our clients of the very punitive consequences of even being chronically delinquent even though the client gets caught up and pays the penalties.

Because of the extreme seriousness of this issue, let us review the discussion that was presented in prior seminars.......
IRS actions could involve an automated telephone call or notification by mail that an employer’s payroll tax deposits are late, have decreased, or have not been made.

In this notification, the employer will be requested by the IRS to explain why this is happening.

It is prudent for the employer not to ignore these calls as the IRS will be documenting and building a case, in part, with these calls.
An increase by the IRS in criminal referrals for the misuse of trust funds.

1. These will result from a discovery of a repeated pattern of nonpayment and diversion of the trust funds to other purposes.

2. To this end, the Department of Justice is involved in more criminal prosecutions.

One can believe that examples will be set.
The Chief of Internal Revenue Service Criminal Investigation Division announced in a conference call with reporters on August 2, 2017 that the Criminal Investigation Division will focus on criminal cases involving noncompliance with employment tax rules.

He stated “that cases exist in every judicial district and probably every zip code, and impact every field office.”

The IRS is shifting special agents from the Criminal Investigation Division that are investigating identity theft cases to criminal investigations involving the new employment tax compliance program.
Employment Tax Abuse – Continued - NIB

One immediate goal of the Justice Department is to seek injunctions against an employer and the individuals that are the operators and/or owners who have been identified as having a pattern of repeated violations of nonpayment and/or untimely payments.
When such an injunction is granted, the employer will be under a strict requirement that:

1. All taxes are paid timely.
2. Special notification to the IRS that deposits have been made.
3. No transfers of any assets allowed until all liabilities are paid.
4. Cannot open up another type of business or entity until all outstanding liabilities are paid.

5. Criminal prosecutions as noted before.

- This type of legal intervention by the Department of Justice indicates the seriousness of the government in attacking employment tax delinquencies and nonpayment.
Employment Tax Abuse – Continued - NIB

- It is very serious and reminiscent of the joint operations by the IRS and the Department of Justice against abusive tax shelter promoters.
- Further action by the IRS is to expand their efforts to go after the officers and/or shareholders for delinquent employment tax funds by seizing personal tax refunds.
Thus, one can expect a much wider application of the 100% trust fund penalty including the assertion against employees responsible for payroll, payment of employment taxes, or liabilities in general.

Currently, there are examples of this broader assertion of the penalty as evidenced by litigation.
The IRS broader assertion is much like a shot gun approach to any and all possible persons that they determine to be responsible including even volunteers and outside accountants.

This approach has a certain view to concentrate on the deep pockets of those able to pay.

The LLC structure does not protect against the assertion of the penalty.

If anything, the IRS crackdown will result in more assertions of the trust fund penalty although they have not been shy about its application before despite losing a number of court cases.
Employment Tax Abuse – Continued - NIB

- The client should be thoroughly counseled when trying to defend themselves in an IRS probe.
- The criteria for imposition of the civil trust penalty and a criminal action is virtually identical.
- It begins with the definition of “willfulness.”
- Section 6672 provides for the assertion of a 100% penalty of the unpaid tax.
Issue 7: Dispute Resolution

- Early referral to Appeals
- SB/SE Fast Track Settlement
- LB&I Fast Track Settlement
- TE/GE Entities Fast Track Settlement
- Fast Track Mediation – Collection
- Post-Appeals Mediation
- Rapid Appeals Process
Issue 7: Early Referral to Appeals

- Issues to Appeals → others still being worked
- Qualified examination issues – list p. 426
- Written request to case/group manager
  - Under penalty of perjury w/details
- If denied, TP retains right to traditional appeal
Issue 7: pp. 426-427
Early Referral to Appeals

- TP written response again upon receiving Notification Form (30 days)
  - If untimely, request considered withdrawn
- Appeals takes jurisdiction
  - If agreed, 906 Closing Agreement
  - No agreement, may request mediation
  - No mediation, to Exam – no later Appeal
- If withdrawn when in Appeals = no agreement
Involuntary Change in Accounting Method for ER

- Whether TP’s practice is a method of acct’g
- Whether IRS is precluded from changing method
- Whether present method clearly reflects income
- Whether the IRS proposed method clearly reflects income
- Whether IRS methodology for §481(a) adjustment is correct or is appropriate
Issue 7:
Early Referral to Appeals

Employment Tax Early Referral Issues

- Worker classification issues
- Section 530 apply? §3509 rates appropriate? Does TP qualify for interest free adjustment
- Issues involving definition of wages and definition of employment
Issue 7: Early Referral to Appeals

Employment Tax Early Referral Issues
1. If agreement reached → Form 2504 as “partial”
2. If unagreed and Section 530 or worker classification involved → notice under Section 7436 issued to allow petition to Tax Court
3. Unagreed not meeting #2 → assessed
Issue 7: Early Referral to Appeals

Collection Early Referral Issues
- Notice of federal tax liens
- Levies
- Seizure
- Denial or termination of installment agreement

Employee Plans/Exempt Organizations
- Issue list – p. 428
Revenue Procedure 2017-25

- This revenue procedure makes permanent its Fast Track Settlement program.
- This program is a blessing to the practitioner as it gives him or her a tool to combat agent’s who are taking positions that are unreasonable, not factual, etc. and helps to move along the audit.
The program in some ways keeps the agent from taking an arbitrary position and not doing their research, etc. as they are under pressure to close as many cases as possible as soon as possible.

It is an answer to the phenomena that we have seen in the last several years of a “drive-by-shooting audit”.
The agents also seemed to hate the program because it keeps their audit open and adds age to it.

The program has many advantages to it.

It was effective March 20, 2017.

It is available to anyone who is under an audit by the Small Business/Self-Employed Division who have at least one open year and have at least one unresolved factual or legal issue that is in dispute.
1. The purpose of the program is to resolve issues that are disputed as to their factual and/or legal basis while the case is still under the SB/SE examination division.

2. The intention is that the process will be completed within 60 days after the taxpayer’s/representative’s request for consideration for the program is accepted.

➢ We will see about that due to IRS lack of resources which means…. 
3. The program still guarantees that the taxpayer may request an Appeals hearing and that right is not forfeited by participation in the program.

4. The Fast Track Settlement session may be initiated any time once an issue is fully developed which means that the agent has to complete and obtain answers to all referrals, valuations, opinions, etc.

➢ This is an advantage to the representative because....
5. The taxpayer, the taxpayer’s representative, the revenue agent, or the agent’s group manager may suggest participation in the program.

- Very rarely, if at all, will the agent or his or her group manager suggest the program because...

- The representative and taxpayer should note that he or she must raise the issue of participation in the program and formally request it BEFORE the issuance of the agent’s formal report (i.e., form 4549, form 4549-A, form 4605, etc.).
6. The IRS and taxpayer must consent to participate in the program.

- It is crucial to note hesitation, refusal, etc. by the agent or his or her manager to consent to the program because........

- It must be explained to them that this is the right of the taxpayer and they must explain why the taxpayer is being denied his or her right to participate in the program.

7. Form 14017 – Application for Fast Track Settlement must be completed.
Fast Track Settlement – Continued – Reference to Text

- The application form must contain what are termed “properly documented work papers supporting the examiner’s position” and include the taxpayer’s response.

- Here is where the IRS must do their work and develop the issue before even giving it consideration by Appeals and here is where they do not....

8. The application and attached work papers, taxpayer’s response, etc. must be submitted to the group manager who makes the determination whether the case qualifies.
Note: If the manager refuses to submit the package (usually because they do not want to extend the time the case is open under audit) be certain to obtain in writing if possible the reasons for his or her refusal.

Do not push them to submit it as the clock is ticking on them and not you.

9. If a case is not accepted for the program by Appeals, it is returned to the SB/SE group manager and agent with an explanation of why it was not accepted and the alternative case resolution opportunities for the taxpayer.
10. A decision not to accept a case for the Fast Track Settlement is not subject to an appeal or judicial review, thus, it is final at that point.

11. The parties can withdraw their participation in the program at any time.

- If participation is withdrawn before the Session, the taxpayer is still eligible for post-Appeals mediation.

12. The following cases are not eligible for the program:
I. Lack of cooperation during the audit.

- It is critical that you and/or your client gave full cooperation during the audit and there are not any instances of failure to cooperate.
- Do not give the examiner and his or her manager a reason to disqualify you from the program which is in their advantage to do so.
Fast Track Settlement – Continued – Reference to Text

II. Correspondence audits which are the type performed by the Service Centers.

III. TEFRA partnership cases.

IV. Collection cases.

V. Cases that have been identified as containing issues for litigation or already docketed in court.

VI. Frivolous tax issues and arguments.

VII. Issues as to competent authority.

➢ See the complete list on pages 428 & 429.
13. Unresolved issues can be considered during the traditional Appeals process but are not eligible for post-Appeals mediation.

- An in-depth reading of the revenue procedure will explain the nature of the program, the issuance and form of the Fast Track Sessions report, raising new issues during the session (be careful here!) and how the settlements are accepted or rejected by either party.
Issue 7: SB/SE Fast Track Settlement – A Review

- Rev. Proc 2017-25
- Goal: Complete within 60 days of acceptance
- FTS available if:
  - Disputed factual or legal issues,
  - Issues are fully developed, and
  - Issues unresolved after manager involvement
- If one issue not eligible, entire case is not eligible
- FTS not available for 14 items (p. 428-429)
Issue 7:  
SB/SE Fast Track Settlement – A Review - Continued

- Either TP or IRS can initiate FTS  
- Jointly complete/sign Form 14017
  - Figure 10.9 – important 14017 consent  
- Appeals manager approves application
  - If denied, no admin appeal or judicial review
- Appeals officer trained in mediation
- Fast Track Settlement Report
- No agreement, traditional Appeals an option
Issue 7:
LB&I Fast Track Settlement

- Rev. Proc 2003-40
- Goal: Complete within 120 days of acceptance
- Exclusions from FTS similar to those of SE/SE
- Generally the same process as SB/SE
Issue 7: TE/GE Track Settlement

- Announcement 2012-34
- Goal: Complete within 60 days of acceptance
- Available for the issues listed on p. 430
- Exclusions listed on p. 430-431
- Application and settlement process similar to SB/SE and LB&I
Issue 7: Fast Track Mediation - Collection

- Rev. Proc 2016-57
- Goal: To complete within 40 days of acceptance
- May be used only when all other issues resolved
- Appropriate OIC and TFRP issues: List p. 431
- Excluded issues: List p. 431-432
- TP or Collection initiates
- Jointly complete Form 13369 – one per issue
  - Fig.10.10 – Important consent on Form 13369
Issue 7: Fast Track Mediation - Collection

- Appeals determines if accepted
- Mediation by trained Appeals officer
- At conclusion: Form 13370
- If unagreed, traditional appeal is an option
Issue 7: Post-Appeals Mediation (PAM)

- Rev. Proc 2014-63
- Used after traditional appeal unsuccessful
- Goal: To reach resolution in 60-90 days
- Applicable issues: p. 433
- Exclusions similar to SB/SE, OIC or TFRP cases not eligible for FTMC, others p. 433
- No PAM if mediated in other program
Issue 7: Post-Appeals Mediation (PAM)

- Both parties must agree to mediation
- TP sends written request to Appeals
- If denied, no process for judicial review
- Appeals trained mediator
- TP may use a comediator not from IRS
- Process totally confidential
- Stat notice for issues remaining unagreed
Issue 7: Rapid Appeals Process (RAP)

- Available to cases that have appealed
  - LB&I cases and SB/SE estate and gift cases
- TP’s elect mediation at start of appeal
- Preconference meet’g = mediation session
- Form 14525 – Waives ex parte restriction
- If mediation unsuccessful, appeal begins
- N/A to issues listed on page 435

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Questions?