TABLE OF CONTENTS

Volume 1

CHAPTER 1

Assessment, Collection, Settlement and Litigation: An Overview of the Players and the Process

§ 1.01	Intro	duction	1-11
	[1]	Application of Law	1-12
		[a] Breakdown of the Internal	
		Revenue Code	1-12
		[b] Legislative Process	1-12
		[c] Regulations: Legislative or Substantive,	
		Interpretative, and Procedural	1-16
		[i] Proposed Regulations	1-17
		[ii] Temporary Regulations	1-17
		[iii] Final Regulations	1-17
	[2]	Revenue Rulings, Private Letter Rulings and	
		Revenue Procedures	1-17
		[a] Definitions	1-19
		[b] Judicial Deference	1-20
		[c] IRS Pilot Program to Fast-Track	
		Corporate Letter Rulings	1-21
	[3]	Code of Federal Regulations	1-24
	[4]	Internal Revenue Bulletin and	
		Cumulative Bulletin	1-24
	[5]	General Counsel Memoranda	1-25
	[6]	Technical Advice Memoranda	1-25
	[7]	Generic Legal Advice Memoranda	1-26
	[8]	Action of Decision	1-26
	[9]	Chief Counsel Notices	1-27
	[10]	Compliance Officer Memoranda	1-27
	[11]	District Counsel Advice	1-28
	[12]	Field Directives	1-28
	[13]	Field Service Advice	1-28
	[14]	Information Letters	1-28

[15]	Legal Memoranda	1-28
[16]	Litigation Guideline Memoranda	1-29
[17]	Office Memoranda	1-29
[18]	Reviewed Briefs	1-30
[19]	Service Center Advice	1-30
[20]	Closing Agreements	1-30
[21]	Advance Pricing and Mutual Agreements	
	Program	1-30
[22]	Internal Revenue Service Publications	1-31
[23]	Case Law	1-31
	[a] Tax Court	1-31
	[i] The Effect of Ballard	1-32
	[ii] Rule 183	1-34
	[b] U.S. District Court and U.S. Court of	
	Federal Claims	1-34
	[c] Electronic Filing	1-34.1
[24]	General Rules Concerning Deference	1-34.2
	[a] Administrative Procedure Act	1-34.2
	[b] Mayo Standard	1-34.2
	[i] Administrative Procedure Act,	
	Anti-Injunction Act, and	
	IRS Reporting Requirement	
	Notices	1-34.5
	[c] History of Deference	1-34.7
	[d] No Deference	1-34.9
[25]	Circular 230.	1-34.9
	[a] Circular 230 Regulations	1-34.10
	[i] Individuals Authorized to Practice	1-34.11
	[ii] Contingent Fees	1-34.12
	[iii] Conflicting Interests	1-34.13
	[iv] Sanctions	1-34.13
	[v] Duty of Oversight	1-34.14
	[vi] Disciplinary Proceedings Are	
	Subject to the Administrative	1 0 4 1 4
	Procedure Act	1-34.14
	[b] Category of Reportable Transaction for	1 24 16
	Patented Transactions	1-34.16
	[c] Transitional Penalty Relief Provided to	1 24 17
	Tax Return Preparers	1-34.17
[26]	[d] Form 2848, Power of Attorney	1-34.18
[26]	Privileged Communication and Work	1 24 10
	Product Doctrine.	1-34.19
	[a] Attorney-Client Privilege	1-34.19
	[i] Legal Advice versus Business Advice	1 24 22
		1-34.23
	[ii] Tax Return Preparation	1-34.23
	L ,	1-34.24
	[iv] Implied Waiver of the Privilege	1-34.24
	[v] Crime Fraud Exception	1-34.26

		TABLE OF CONTENTS	13
		[b] Work Product Doctrine	1-34.27
		[c] Tax Practitioner and Client Privilege	1-34.29
		[d] Accountant or Audit Workpapers	1-34.29
		[i] Tax Reconciliation Workpapers	1-34.30
		[ii] Rule 301, AICPA	1-34.31
		[iii] Tax Accrual Workpapers	1-34.31
		[iv] Uncertainties After Textron	1-34.33
		[v] Practice Suggestions	1-34.36
		[e] Attorney Communications With	1 24 25
		Experts	1-34.37
	F0.773	[f] In Camera Inspection	1-34.37
0 1 02	[27]	Adjustments without Audit	1-34.38
§ 1.02		ayer Advocates, Problems Resolution,	1 2 4 2 0
		spayer Services, and Identity Theft Unit	1-34.39
	[1]	Problems Resolution	1-34.40
	[2]	Taxpayer Services	1-34.40
	[3]	Taxpayer Advocate and Form 911	1-34.40
	[4]	Identity Theft Unit	1-34.42
		[a] Form 14039, Identity Theft Affidavit	1-34.42
		[b] IRS Basics of Cyber Security and	1 24 42
0 1 02	T	Data Protections	1-34.43
§ 1.03	_	ayer Selection and Processing a Tax Return	1-34.45
	[1]	Filing a Return with the Proper Campus [a] Campuses, Formerly Known as	1-34.45
		Service Centers	1-34.45
		[b] Where to File a Return	1-34.46
		[c] Electronic Filing of Returns and Forms	1-34.50
	[2]	Discriminant Inventory Function System	1-34.51
	[3]	Unreported Income	1-34.51
	[4]	How to Obtain Copies of Documents	
		Taxpayers Have Filed with the IRS	1-34.52
		[a] Tax Returns	1-34.53
		[b] Types of Transcripts	1-34.54
		[i] Account Transcript	1-34.55
		[ii] Master File Transcripts,	
		"Tax Mod"	1-34.55
		[iii] W2/1099 Transcript	1-34.56
		[iv] Backup Withholding	1-34.56
		[c] Immediate Transcripts	1-34.57
		[i] Online Transcript Delivery	
		System (TDS)	1-34.57
		[ii] Practitioner Priority Service	1 24 50
		Hotline	1-34.58
		[d] Home Affordable Mortgage Program	1 21 50
		Transcript Needs	1-34.58
		[e] Copies of Form W-2	1-34.59 1-34.60
		[f] How IRS Credits Payments	1-34.60
	[5]	[g] Cash Payment Option	1-34.60
	[5]	IRS Data Analytics, Generally	1-34.00

		[a]	Data	Mining and Predictive Analytics	1-34.63		
		[b]		payer Cautions	1-34.65		
	[6]			gital	1-34.65		
	[7]			nal Information Return			
		S	system	nic Assessment	1-34.66		
§ 1.03A	The Structure of the IRS Follows a						
Ü				ssification System	1-34.68		
	[1]			Operating Divisions	1-34.71		
	[2]			onsibilities and Structure of the			
		I	arge	Business and International			
				on (LB&I)	1-34.73		
		[a]		Organizational Structure of LB&I	1-34.74		
		[]	[i]	Industry Director	1-34.77		
			[ii]	Directors of Field Operations	1-34.78		
			[iii]	Territory Managers	1-34.78		
			[iv]	Team Managers	1-34.78		
			[v]	Revenue Agents, Auditors,	1-34.70		
			[v]	Revenue Officers	1-34.78		
		Γh]	Indu	stry Issue Focus (IIF)	1-34.79		
		[b]			1-34.79		
		[c]		oal High Wealth Industry Group	1-34.81		
		[d]		prehensive Case Resolution	1 24 01		
				rogram (CCR)	1-34.81		
			[i]	Eligibility Requirements for	1 24 02		
			E	CCR Participation	1-34.82		
			[ii]	Taxpayer Risks Associated	1 24 02		
			т 1	with CCR	1-34.82		
		[e]		stry Issue Resolution	1.06		
		F 07		rogram (IIR)	1-36		
		[f]		lling Agreement Program (PFA)	1-36		
			[i]	Eligibility Requirements to			
				Participate in PFA Program	1-37		
			[ii]	Content of the LMSB PFA			
				Request	1-37		
			[iii]	Filing the PFA	1-41		
			[iv]	How the PFA Process Works	1-41		
			[v]	Taxpayer Risks Associated			
				with PFA	1-41		
		[g]		pliance Assurance Process (CAP)	1-43		
		[h]		ual Accelerated Appeals			
			P	rocess (MAAP)	1-44		
			[i]	Eligibility Requirements to			
				Participate in MAAP	1-44		
			[ii]	The MAAP Process	1-44		
			[iii]	Risks Associated with MAAP	1-44		
		[i]		ertain Tax Positions, "Schedule			
				TP"	1-45		
	[3]			pilities and Structure of the Small			
				ss/Self-Employed Operating			
		Ι	Divisio	on (SB/SE)	1-46		

		TABLE OF CONTENTS	xi
		[a] Taxpayer Education and Communication	
		(TEC)	1-46
		[b] Customer Account Services (CAS)	1-46
		[c] Compliance	1-46
		[d] Structure	1-47
		[e] Comparison of Small Business/	
		Self-Employed (SB/SE) Taxpayers	
		to Large Business and International	
		Taxpayers (LB&I)	1-47
		[f] Contact Information for SB/SE	
		Personnel	1-48
	[4]	The Responsibilities and Structure of the	
		Wage and Investment Operating	
		Division (W&I)	1-49
		[a] Communications, Assistance, Research,	
		and Education (CARE)	1-49
		[i] Media and Publications	1-49
		[ii] Stakeholder Partnership Education	
		and Communications (SPEC)	1-49
		[iii] Field Assistance	1-50
		[b] Customer Account Services (CAS)	1-50
		[c] Compliance	1-50
		[d] Contact Information for W&I Personnel	1-50
	[5]	The Responsibilities and Structure of the	
		Tax Exempt and Government Entities	
		Division (TE/GE)	1-50
		[a] Employee Plans (EP)	1-51
		[b] Exempt Organizations (EO)	1-52
		[c] Government Entities (GE)	1-53
	[6]	Office of Chief Counsel	1-53
§ 1.04	Asse	essment and Audit Examination Level	1-57
	[1]	Campus Conducts Correspondence Audits	1-57
	[2]	Unreported Income	1-58
		[a] Automated Information Statements	
		Reconciliation	1-58
		[b] Balance Sheet Financial Analysis	1-59
		[c] Bank Deposit Analysis	1-59
		[d] e-Commerce Analysis	1-59
		[e] Industry or Market Specific Ratio	
		Analysis	1-59
	[3]	Random Audits via National Research	
		Program	1-60
	[4]	Examination Division in Each of the	
		Four Divisions Conducts Office and	
		Field Audits	1-60.1
		[a] General Nature of Agents and Auditors	1-61
		[b] Practical Considerations Concerning	
		Internal Revenue Service Employee	
		Operations	1-62

	[5]	What to Expect During an Examination	1-62
		[a] Substantiation and Recordkeeping	
		Requirements	1-62
		[b] Information Document Requests ("IDR")	1-63
		[c] Electronic Records	1-64
	[6]	Top Five Things to Keep in Mind During	
		an Audit	1-66
		[a] Waiver	1-66
		[b] Kovel Doctrine	1-66
		[c] Attorney Invoices	1-66
		[d] Tax Opinions	1-67
		[e] Accountant Work Papers	1-67
	[7]	Industry Specialization Program	1-67
	[8]	Market Segment Specialization Program	1-68
	[9]	Internal Revenue Service Information	
		Gathering Resources	1-69
	[10]	Meeting with Agents/Auditors	1-70.3
		[a] Agent/Auditor Disposition	1-70.3
		[b] Recording Interviews	1-71
		[c] Non-Lawyer Privilege	1-71
	[11]	"No Change" Letters Versus Adjustments	1-72
	[12]	Statute of Limitations	1-72
		[a] Financial Disability	1-73
		[b] Collection	1-73
		[c] Interest and Penalties	1-74
		[d] Suspension of Interest on	
		Ûnderpayments	1-74
	[13]	Extending the Statute of Limitations for	
		Tax Assessment	1-75
		[a] Form 872-A, Special Consent to	
		Extend Time to Assess	1-75
		[b] Situations Triggering Six-Year Statute	
		of Limitations	1-76
	[14]	Revenue Agent Report	1-77
		[a] Adjustments	1-77
		[b] Conference with Team Manager	1-77
		[c] Disputing an Adjustment	1-78
		[i] Thirty-Day Letter	1-78
		[ii] Formal Protest to District	
		Director	1-79
		[d] Notice of Deficiency/Ninety-Day Letter	1-80
		[e] Rescission of Notice of Deficiency	1-80
§ 1.05	Colle	ection Division	1-82
0	[1]	Special Procedures Staff	1-82
	[2]	Revenue Officers	1-82
	[3]	Private Debt Collectors.	1-82.2
	[4]	Passport Revocation	1-82.4
§ 1.06		Referral Program: Examination/Collection to	- 02.1
0		Appeals Division	1-82.6
		11	

		TABLE OF CONTENTS	xiii
	[1]	Mechanics of the Early Referral Program	1-82.6
		[a] Written Request	1-82.6
		[b] Instances Where Early Referral Request	
		Will Be Rejected	1-82.7
	[2]	Procedures After Internal Revenue Service	1 00 7
	F21	Approval of Early Referral Request Offer in Compression Form 656	1-82.7 1-82.8
	[3]	Offer in Compromise, Form 656 [a] Down Payment	1-82.8
		[b] Partial Payments with Submission of	1-02.7
		Offers-in-Compromise	1-82.9
		[c] Lump-Sum Offer	1-82.35
		[d] Periodic Payment Offer	1-82.35
		[e] Compliance a Prerequisite	1-82.35
		[f] Requirements for Submission of	1.02.26
		Offer-in-Compromise	1-82.36
		[g] Doubt as to Collection Potential of Tax Liability	1-82.39
		[i] Verification of	1-02.57
		Form 433-A/433-B	1-82.39
		[ii] Calculating Value	1-82.41
		[iii] Calculating Future Income and	
		Basic Living Expenses	1-82.41
		[iv] Dissipation of Assets Rule	1-82.42
		[h] Doubt About Existence of Liability and/or Correct Amount of	
		Tax Liability	1-82.43
		[i] Promotion of Effective Tax	1-02.43
		Administration	1-82.43
		[j] Fresh Start Initiatives	1-82.43
	[4]	Review of Form 656 and Form 443-A/	
		Form 443-B	1-82.45
		[a] Missing or Additional Information	1-82.46
	[5]	[b] Evaluation of an Offer	1-82.46
		an Acceptable Offer	1-82.47
	[6]	Combination Offers.	1-82.50
	[7]	"Currently Uncollectible" Status	1-82.50
	[8]	Streamlining the Processing of an Offer	1-82.51
		[a] Analysis of Information	1-82.51
		[b] Amendments to Offer	1-82.52
		[c] Procedures for Acceptance/Rejection	1 02 52
	F01	of the Offer	1-82.53 1-82.53
	[9]	[a] Not in the Best Interest of the	1-02.33
		Government	1-82.53
	[10]	Appealing a Denied OIC	1-82.54
	[11]	Criminal Tax Convictions.	1-82.55
§ 1.07		als Division	1-82.56
	[1]	Structure of the Appeals Division Under	
		the 2018 Reorganization	1-82.56
			(Rel. 41)

[2]	Authority of Appeals Division	1-82.62
[3]	Submitting a Written Protest to the	
	Appeals Division	1-82.63
[4]	Handling the Appeals Conference	1-82.65
	[a] Presenting Evidence	1-82.65
	[b] Participants	1-82.66
	[c] Appeals Officer Preparation Prior	
	to Conference	1-82.66
	[i] Communication Between Agent	
	and Appeals Officer	1-82.67
	[ii] Documentation of Appeals and	
	Agent Communication	1-82.68
	[iii] Appeals Judicial Approach and	
	Culture ("AJAC") Project	1-82.68
	[d] Recording the Conference with the	
	Appeals Officer	1-82.69
	[e] Virtual Appeals Pilot Program	1-82.69
[5]	Settlement Positions in Negotiating with the	
	Appeals Division	1-82.70
	[a] Matters Where Settlement Is	
	Not Possible	1-82.70
	[b] Arguments and Concessions for	
	Successful Negotiation	1-82.70
	[i] Mutual Concession Settlement	1-82.71
	[ii] Split Issue Settlement	1-82.71
	[iii] Nuisance Value	1-82.71
	[iv] Fast Track Settlement	1-82.71
[6]	Evaluation of Settlement Prospects	
	by Appeals	1-82.72
	[a] Issue Orientation	1-82.72
	[b] The Golsen Rule	1-82.72
	[c] Hazards of Litigation	1-82.73
[7]	Tactics to Follow Upon Tentative Agreement	1-82.73
[8]	Alternative Dispute Resolution	1-82.74
	[a] Mediation and the Appeals Division	1-82.74
	[i] Cases Where Mediation Should	4 00
	Be Considered	1-82.75
	[ii] Initiating Mediation.	1-82.75
	[iii] Authority of Mediator	1-82.76
	[iv] Preparation for Mediation	1-82.76
	[b] Fast Track Mediation and the Appeals	1 00 76
	Division	1-82.76
	[i] Case Where Fast-Track Mediation	1 00 77
	Should Be Considered	1-82.77
	[ii] Initiating Fast-Track Mediation	1-82.78
	[iii] Authority of the Fast Track	1 00 70
	Mediator	1-82.78
	[c] Arbitration and the Appeals Division	1-82.79

	[2]	2010 Codification and Penalties	1-82.106
	[3]	Notice 2014	1-82.109
§ 1.08		n Transaction Doctrine	1-82.110
§ 1.08	B Subs	stance Over Form Doctrine	1-82.112
§ 1.08	C Step	-Transaction Doctrine	1-82.114
	[1]	Binding-Commitment Test	1-82.114
	[2]	Interdependence Test	1-82.115
	[3]	End-Result Test	1-82.115
	[4]	Relationship of the Parties	1-82.116
§ 1.09	Othe	er Sources	1-82.117
	[1]	Problem Resolution Contacts	1-82.117
	[2]	Account Related Inquiries	1-86
	[3]	Organizational Charts	1-88
	[4]	MSSP Audit Technique Guides	1-91
§ 1.10	Forn	ns	1-92
	[1]	Form 872: Consent to Extend Time to	
		Assess Tax	1-92
	[2]	Form 872A: Special Consent to Extend	
		Time to Assess Tax	1-94
§ 1.11		t" Act	1-96
§ 1.12	Virtu	al Currency Compliance	1-97
	[1]	"Educational" and Outreach Efforts	1-97
	[2]	Virtual Currency as Income	1-106
§ 1.13	Coro	onavirus Aid and Relief	1-108
	[1]	Deadlines Regarding Returns Extended	1-108
	[2]	IRS Operation Adjustments	1-111
		[a] Taxpayer Assistance	1-111
		[b] Get Transcripts Tools	1-112
	[3]	Erroneous or Suspicious Refunds	1-112
	[4]	Collections	1-112
		[a] Offers in Compromise and Installment	
		Agreements	1-112
		[b] Taxpayer Hardship	1-112
	[5]	Coronavirus Relief, and Economic	
		Security Act ("CARES Act")	1-112
		[a] Paycheck Protection Program ("PPP")	1-112.1
		[i] Eligibility	1-113
		[ii] Summary of PPP Loan	
		Forgiveness Process	1-114
		[iii] Audit of PPP Application and	
		Loan Use	1-117
		[iv] DOJ Prosecutions Regarding	
		PPP loans	1-118
		[b] Employee Retention Credit	1-119
		[c] Payroll Tax Deferment	1-120
		[d] Expanded Use of Net Operating Losses	1-120
		[e] Increased Deduction for Business	
		Interest Expense	1-121

	TABLE OF CONTENTS	xvii
	[f] Refund for Corporate AMT[g] Correction via Technical Amendment Regarding Qualified Improvement	
	Property ("QIP") [h] Excise Tax Exemption for	
	Hand Sanitizer	1-122
	Stimulus Payments	
	[a] Ineligible	
	[b] Refund Anticipation Loans ("RAL")	
	[c] "Inadvertent" Payments	1-123
	Impact Payments	1-123
	[7] Retirement Withdrawals	
	[a] Mandatory Retirement Distribution	
	[b] Charitable Contributions	
	[c] Student Loan Repayment Benefits	
	[8] Simplified Federal Income Tax Return	
	Filing Procedure For Individuals Not	
	Required To File for Taxable	
	Year 2021	1-124
	CHAPTER 1A	
	Litigation	
§ 1A.01	Introduction	. 1A-4
·	[1] Filing Deadline	
	[2] Sealed Records	. 1A-6
§ 1A.02	Burden of Proof	1A-8
	[1] Credible Evidence	
	[2] Standard of Review	
	Prohibited Positions for the Government	
§ 1A.04	Federal Rules of Evidence	
	[1] Scope	
	[2] Purpose and Construction	
	[a] Stipulation	
	[b] Offer of Proof	1A-15
	[4] Preliminary Questions	
	[5] Limited Admissibility	
	[6] Remainder of Related Writings or Recorded	
	Statements	. 1A-16
	[7] Judicial Notice	1A-17
	[8] Presumptions in General in Civil Actions	. 1A-22
	and Proceedings	. 1A-22
	Persuasion	. 1A-23
	[b] Effect of Burden of Proof	

[9]	Applicability of State Law in Civil Actions	
	and Proceedings	1A-28
[10	Relevant Evidence	1A-28
[11		
•	Irrelevant Evidence Inadmissible	1A-29
[12		
	on Grounds of Prejudice, Confusion,	
	or Waste of Time	1A-29
[13		
[10	Conduct; Exceptions; Other Crimes	1A-31
[14		1A-32
[15		1A-33
[16		111 33
LIC	and Related Statements	1A-35
[17		1A-35
[1/	[a] Mechanics	1A-36
	[b] Spoliation	1A-36
		1A-36
	[c] Informer Privilege[d] Marital Privilege	1A-30
		1A-37
	[e] Fifth Amendment	1A-39
	[f] Attorney-Client Privilege	1A-39
	[i] Corporations	1A-40
	[ii] Others Employed by the	1A-40
	Attorney	1A-40
		1A-41 1A-42
	[h] Non-Lawyer Privilege	1A-42 1A-42
	[i] Work Product Privilege	1A-42
	23	1A-44
Г1 С	Privilege	1A-44
[18		1A-40
[19		1A-47
[20		1A-48
[21		1A-48
[22		1 4 50
F2.2	Conduct of Witness	1A-50
[23		1 / 50
F2.4	Conviction of Crime	1A-50
[24		1A-52
[25		1A-52
[26		1A-53
[27		1 4 5 (
	Witnesses	1A-56
	[a] Rule 702: Testimony by Experts	1A-58
	[b] Rule 703: Bases of Opinion Testimony	1 4 61
	by Experts	1A-61
	[c] Rule 704: Opinion on Ultimate Issue	1A-62
	[d] Rule 705: Disclosure of Facts or Data	1 4 63
	Underlying Expert Opinion	1A-63
	[e] Rule 706: Court Appointed Experts	1A-64

		TABLE OF CONTENTS	xix
		[f] Expert Report Requirements	1A-64
§ 1A.05	Hears	say	1A-67
	[1]	Exceptions to the Hearsay Rule	1A-68
		[a] Prior Statement by Witness	1A-68
		[b] Admissions by a Party Opponent	1A-69
		[c] Co-Conspirator Statements	1A-71
	[2] [3]	Rule 802: Hearsay Rule	1A-72
		of Declarant Immaterial	1A-72
		[a] State of Mind	1A-72
		[b] Recorded Recollection	1A-73
		[c] Business Record Exception	1A-73
		[d] Absence of Record	1A-77
		[e] Public Reports	1A-77
		[f] Absence of Public Record or Entry[g] Statements in Documents Affecting	1A-78
		an Interest in Property	1A-79
		[h] Reputation as to Character	1A-79
		[i] Judgment of Previous Conviction	1A-80
	[4]	Rule 804: Hearsay Exceptions, Declarant	
		Unavailable	1A-80
	[5]	Rule 804(3)(b): Statement Against Interest	1A-83
	[6] [7]	Rule 805: Hearsay Within Hearsay	1A-85
		Credibility of Defendant	1A-86
	[8]	Rule 807: Residual Exception	1A-86
§ 1A.06	Autho	entication	1A-90
		or Identification	1A-90
	[2]	Rule 902: Self-Authentication	1A-91
		[a] Affidavit or Declaration	1A-91
		[b] Electronically Stored Information	1A-92
	[3] [4]	Originals Versus Duplicates	1A-93
		Recording and Photographs	1A-93
	[5]	Rule 1002: Requirement of Original	1A-94
	[6] [7]	Rule 1003: Admissibility of Duplicates Rule 1004: Admissibility of Other Evidence	1A-95
		of Contents	1A-95
	[8] [9]	Rule 1006: Summaries	1A-96
		of Party	1A-97
	[10]	Rule 1101: Applicability of Rules	1A-98
§ 1A.07	Refu	nd Versus Protest Routes	1A-99
	[1] [2]	Subjective Application of Variance Doctrine Tax Court Gives the IRS Ability to Raise	1A-99
	[3]	Additional Items of Deficiency Delegated Authority Concerning Tax Court	1A-101
	r- 1	Litigation	1A-101

§ 1A.08	Bene	fits and Burdens of Tax Court Versus	
	Fee	deral District Court	1A-103
§ 1A.09	Feder	ral District Court and Claims Court	1A-105
§ 1A.10	Unite	ed States Department of Justice Involvement	1A-106
	[1]	Settlement Possibilities	1A-106
	[2]	Delegation of Settlement Authority	1A-106
	[3]	Classification of Settlement Option	
		Procedure or Standard	1A-107
	[4]	Amount at Issue Is Factor in Determining	
		Level of Review	1A-107
	[5]	Path of an Offer at the Tax Division	1A-109
		[a] Authority of Trial Section and Appellate	
		Section Chief	1A-109
		[b] Authority of Solicitor General	1A-110
		[c] Authority of Assistant Attorney General	1A-110
		[d] Authority of Deputy Attorney General	1A-111
		[e] Involvement of the Joint Committee	
		on Taxation	1A-111
		[f] Authority of Office of Review	1A-112
	[6]	Submitting an Offer	1A-112
	[7]	Preservation of Evidence	1A-112
		[a] Sanctions for Loss of Electronically	
		Stored Information in Nonparty's	
		Possession.	1A-113
		[b] Sanctions for Client's Spoliation	1A-114
		[c] Form of Production	1A-115
		[d] Requests to, and Motions to Compel,	
		Inspection of Opponent's	
		Computer/Hard Drive	1A-116
		[e] Evidence Supporting Sanctions for	
		Failure to Conduct Reasonable	
		Inquiry and Intentionally Withholding	
		Documents	1A-117
		[f] Expert Testimony	1A-119
		[g] Cautionary Examples	1A-120
§ 1A.11	Rule	30(b)(6) Deposition	1A-123
Ü	[1]	Background	1A-123
	[2]	Obligations	1A-123
		[a] Party Issuing Rule 30(b)(6) Notice	1A-123
		[b] Entity Responding to the Notice	1A-123
	[3]	Designation of Witness(es)	1A-124
	[4]	Witness Preparation Required	1A-126
	[5]	E-Discovery	1A-127
	[6]	The Deposition	1A-127
	[7]	Privileged Communications	1A-128
	[8]	Potential Problems	1A-129
		[a] Location	1A-129
		[b] The Unprepared Witness	1A-130
		[c] The Kitchen Sink Deposition	1A-131

		TABLE OF CONTENTS	xxi
§ 1A	.13 Chec	[d] Manipulating Time Restrictions. [e] Uncooperative Parties. ple Notice of Deposition	1A-131 1A-132 1A-135 1A-139 1A-145
		CHAPTER 2	
F	Employn	nent Taxes and the Trust Fund Recovery Pe	nalty
§ 2.0 § 2.0	2 Statu [1]	oduction	2-4 2-7 2-7 2-10
	[2] [3] [4]	Personal Liability Standard for Imposing Liability Under Section 6672	2-10 2-10 2-12
	[5]	Limited Liability Company Members	2-13
	[6]	Non-Tax Business Purpose to Planning	2-13
	[7]	Immigration issues in Employment Tax [a] Form I-9 "Employment Eligibility	2-14
		Verification"	2-14
		[b] Penalties	2-14
		[c] Reckless Indifference	2-21
§ 2.0		ection Division	2-22
	[1] [2]	IRS Monitoring of Delinquent Businesses Investigation of Delinquent Trust Fund Taxes and/or Non-Compliance	2-22 2-25
	[3]	Procedures for Investigating Potential	2-23
	[4]	Section 6672 Penalty Assessment	2-26
	[5]	Responsible Persons	2-26
		Contractor	2-28
	[6] [7]	Trust Fund Recovery Interviews Evidence that may Support a Recommendation to Assess	2-29
8 2 0	1 Dafa	Section 6672 Penalty	2-30 2-32
§ 2.0		enses to the Section 6672 Penalty	
	[1] [2]	Transferring the Blame	2-32 2-32
			2-32
	[3] [4]	Liability no Longer Exists	2-32
		The Amount of the Assessment is Incorrect	2-33
§ 2.0 § 2.0		the Amount of the Assessment is incorrect tess of Collecting a Section 6672 Penalty tenue Officer's Recommendation of Trust Fund	2-33 2-34
g 2.0		ecovery Penalty Assessment	2-36

	[1]	Practitioner's Preliminary Analysis of the	
		Recommendation	2-36
	[2]	Procedure Following Recommendation	2-36
		Form 656, Offer in Compromise	2-37
		Appeals Post-Mediation for Offer	
		in Compromise and Trust Fund	
		Recovery Penalty	2-37
§ 2.07	Delayi	ing an Investigation of Section 6672	
· ·		alty	2-39
§ 2.08		ment Agreements	2-41
· ·		Considerations for Installment Agreement	
		with a Non-Business Taxpayer	2-42
	[2]	Considerations for an In Business Trust Fund	
		Installment Agreement	2-42.1
	[3]	Taxpayer Compliance with the Installment	
		Agreement	2-42.3
§ 2.09	Collate	eral Agreement	2-42.4
· ·		Purpose of Collateral Agreement	2-42.4
		Guidelines for Securing Collateral	
		Agreements	2-42.5
§ 2.10	Form	911, Application for a Taxpayer	
Ü		istance Order	2-42.7
§ 2.11		als Consideration	2-42.8
§ 2.12		dures for Examination Division	2-42.10
§ 2.13		cation of Payments and Collection of the	
Ü		alty	2-42.11
		Designated Payments	2-42.11
		Installment Agreements or Offers	
		in Compromise	2-42.11
	[3]	Accounting for Payments, Abatements,	
		and Adjustments	2-42.13
		[a] Payments	2-42.13
		[b] Involuntary or Undesignated Payments	
		Involving Trust Fund Taxes	2-42.13
		[c] Abatements and Adjustments	2-42.13
§ 2.14	Claim	for Abatement	2-43
		Procedures for Claim for Abatement	2-43
	[2]	Grounds for Abatement	2-43
§ 2.15	Claim	for Refund	2-44
	[1]	The Procedures for Filing a Claim	
		for Refund	2-44
	[2]	Protective Claim for Refund	2-44
		Collection Activities Should Be Halted	2-44
		Discussing Settlement with the Tax	
		Division Attorney	2-45
§ 2.16		ting the Trust Fund Recovery Penalty	2-46
	[1]	Burden of Proof	2-46
	[2]	Mediation Jurisdictions	2-47

			TABLE OF CONTENTS	xxiii
	[3]	Fact	tual Inquires Made by the Court in	
			Determining Whether Liability Exists	2-47
	[4]	Def	ining a Responsible Person	2-47
		[a]	Scenarios of Persons Who Have Been	
			Found Responsible by the Courts	2-49
		[b]	Delegation of Responsibility Is Not	
			a Defense	2-49
		[c]	Bankruptcy Does Not Relieve	
		F 13	Liability	2-50
		[d]	Significant Control Determines the	2.50
			Authority to Pay Taxes	2-50
			[i] Significant Control	2-51 2-51
	[5]	Dof	[ii] Embezzled Fundsining Willfulness Under Section 6672	2-51
		[a]	What Constitutes Knowledge	2-51
		[b]	The Judicially Created Reasonable	2-31
		[Մ]	Cause Exception in Tenth Circuit	2-54
		[c]	Reckless Conduct May Equal Willfulness	231
		[c]	Under Section 6672	2-54.1
		[d]	Developments in Court of Federal	
			Claims	2-57
	[6]	Liał	pility for Delinquent Taxes	2-57
	[7]	Con	ducting Discovery	2-58
	[8]		etronic Discovery Plan	2-64
		[a]	Document Retention Policy	2-64.1
			[i] Taxpayer's Preservation	
			of Records	2-64.1
			[ii] Consequences of Failing to	0 (10
		п.	Preserve Records	2-64.2
		[b]	Departing Employees' Records	2-64.2
		[c]	Expenses of Electronic Discovery	2-64.3
			[i] General Rule Regarding Expenses	2-64.3
			[ii] Cost-Shifting of Expenses	2-64.3
		[d]	Some Courts Have Adopted Rules	2 04.3
		լայ	Regarding Electronic Discovery	2-64.4
		[e]	Sanctions for Breaches of	2 0 1.1
		F - J	Discovery Obligations	2-64.5
			[i] Timely Production	2-64.6
			[ii] Inadvertent Production and	
			Waiver	2-64.6
			[iii] Imposition of Civil and	
			Criminal Sanctions	2-64.7
	[9]		fusing Calculations Before a Jury	2-64.7
	[10]		nctive Relief	2-64.8
§ 2.17			Practitioner May Give a Client to	2.65
6 2 174			te the Section 6672 Penalty	2-65
8 2.1/A	[1]		Prosecution	2-66 2-66
	[1]	Stal	idara for Chiminal Frosecution	2-00

xxiv	FEDERAL TAX LITIGATION				
	[2] Pyramiding	2-67			
§ 2.17B	Reasonable Compensation	2-68			
§ 2.18	Forms	2-68.2			
o .	[1] Collateral Agreement	2-68.2			
	[2] Form 433-D: Installment Agreement	2-71			
	[3] Form 911: Application for Taxpayer				
	Assistance Order (ATAO)	2-72.4			
	[4] Form 4181: Questionnaire Relating to Federal				
	Trust Fund Tax Matters of Employees	2-73			
	[5] Form 2674: Report of Trust Fund				
	Tax Violations.	2-74			
	[6] Form 4183: Recommendation re Trust Fund	2.76			
	Recovery Penalty Assessment	2-76			
	CHAPTER 3				
	Worker Classification: Independent Contractor				
	Versus Employee				
§ 3.01	Introduction to Independent Contractor				
	Misclassification	3-3			
	[1] IRS Motivational Factors	3-5			
	[a] The "Tax Gap"	3-5			
	[b] Information from Random Audits	3-5			
	[2] Substance of the Relationship is Key	3-6			
	[3] Tax Consequences of Misclassifying	2.7			
	a Worker	3-7 3-9			
	[4] IRS Discovery of a Misclassification [a] Ongoing Audit in the Examination	3-9			
	Division	3-9			
	[b] Competitors and Former Workers as	3)			
	Information Sources	3-9			
	[c] Surprise Visits from the Collection				
	Division	3-9			
	[d] Filing Form SS-8	3-9			
§ 3.02	How to determine a Worker's Status	3-11			
	[1] Service Industries are Often Targets for				
	Worker Classification Scrutiny	3-12			
	[2] Attorneys and CPAs	3-12			
	[3] Twenty Factor Test	3-13			
	[a] Behavioral Control	3-14			
	[b] Financial Control	3-15			
	[c] Relationship of the Parties	3-15			
8 2 02	[4] Judicial Scrutiny	3-16			
§ 3.03	Establishing Relief Under the Safe Harbor of	2 10			
	Section 530	3-18 3-19			
	[1] Legislative History of Section 530	3-19			
	[2] Sale Haron 5 Hing requirement	5 1)			

	TABLE OF CONTENTS	XXV
	[3] Workers in Substantially Similar Positions	3-20
	[4] Published Rulings or Judicial Precedent	3-20
	[5] Prior IRS Examination of the Business	3-21
	[6] Industry Practice	3-22
	[a] Defining "Significant"	3-22
	[b] Defining "Long-Standing"	3-23
	[c] Landlord-Tenant Analogy	3-23
	[7] Other Reasonable Basis	3-24
§ 3.04	Effect of Section 530 on Employees	3-24
§ 3.04 § 3.05	Preliminary Procedures During an Audit Examination	3-20
y 5.05	of the Worker Classification Issue	3-27
	[1] Scheduling a Meeting with the Agent	3-27
	[2] Settlement Negotiations with the Agent	3-27
	[3] Negotiations with the Appeals Division	3-29
	[4] Worker Reclassification Determination	3-29
§ 3.06	Audit Examination Techniques	3-29
g 3.00		3-31
		3-31
	[a] Categories of Employees	
	[i] Common Law Standard	3-32
	[ii] Corporate Officer	3-32
	[iii] Statutory Employees	3-32.1
	[b] Analysis of Information	3-32.2
	[c] Inquiries to Prepare for in Audit	3-32.2
	[2] Classification Settlement Program	3-32.3
	[a] Qualifications for CSP Eligibility	3-32.3
	[b] Computing CSP Standard Offer	3-32.4
	[c] Prospective Worker Classification	3-32.6
	[d] Exceptions to the Filing Requirements:	
	Form 940/941 Non-filers	3-32.6
	[e] Negotiating a CSP Settlement Offer	3-32.6
	[i] Ensuring Future Compliance is	
	a Consideration	3-32.7
	[ii] Other Factors Affecting Agent's	
	Ability to Extend CSP Offer	3-32.7
	[f] More than One Offer	3-32.8
	[g] CSP Standard Closing Agreement	3-32.8
	[h] CSP Offer Rejected or not Applicable	3-32.8
§ 3.07	Audit Techniques Used to Determine if a Worker	
	is an Employee or Independent Contractor	3-33
	[1] Does the Business Qualify for Safe Harbor?	3-33
	[2] Fact-Finding Investigation	3-34
	[3] Adapting the Twenty Factor Test to the Case	3-34
§ 3.08	Choosing a Forum for Litigation	3-37
	[1] Preliminary Considerations of Litigation	3-37
	[2] United States Tax Court	3-38
	[a] Field Counsel and Appeals Division	
	Authority over Cases	3-38
	[b] Pleadings	3-39
	[3] Expert Testimony	3-40

xxvi	FEDERAL TAX LITIGATION	
	[4] Factual Development is Most Important to Defeating the Government's Case [a] Taxicab Industry Example	3-40 3-41
	[b] Summary Judgment Possibilities	3-41
§ 3.09	[c] Examination Before the Court Action Planning to Survive Independent Contractor	3-42
	Scrutiny by the IRS	3-44
	[1] Written Agreement	3-44
	[2] Competitor/Industry Information	3-45
	Unemployment Tax	3-45
	[4] Record Keeping.	3-45
0.2.10	[5] Document Practice Points	3-46
§ 3.10	Source Material	3-48
	[1] Petition to United States Tax Court	3-48 3-50
	CHAPTER 4	
	Jeopardy and Termination Assessments	
§ 4.01	Introduction to Jeopardy and Termination	
	Assessments	4-2
	[1] Judicial Review	4-3
6 4 02	Termination Assessments	4-4
§ 4.02	IRS Investigation Prior to Making Assessment	4-5 4-5
	[1] Areas of Inquiry	4-5
	[3] Review of Books and Records	4-3
	[4] Accounting Method.	4-7
	[5] Mark-Up	4-8
	[6] Initial Interview Is Crucial to Setting the	10
	Focus of the Audit	4-8
	[7] Checklists of Issues for Which to Prepare	
	the Client	4-8
	[8] Agent's Analysis	4-12
§ 4.03	Procedures for Making a Jeopardy or Termination	
	Assessment	4-13
	[1] Approval Authority	4-13
	[2] Recommendation for Jeopardy Assessment	4-13
	[3] Informing the Taxpayer of Assessment and	
	Levying Assets	4-14
	[a] Jeopardy and Termination	
	Assessment Notices	4-14
	[b] Jeopardy Levy Notice	4-16
	[c] Collection Action	4-18
	[4] Service of the Notice	4-18

	TABLE OF CONTENTS	xxvii
§ 4.04	Appeal Process	4-19
o	[1] Exhaust Administrative Remedy Requirement	4-19
	[2] Appeals Division	4-19
	[3] Arguments in Support of Abatement	4-20
§ 4.05	Posting Bond to Stay Collection.	4-21
§ 4.06	Summary Judicial Review of Assessment	4-22
	[1] Arranging Payment Pending Judicial Review	4-22
	 [2] Time Period Governing Judicial Review [3] Standard for Judicial Review Under Code Section 7429 is the "Reasonableness" 	4-23
	of the Assessment	4-23
	[a] Defining Reasonableness	4-24
	Summary Review Under Code Section 7429	4-25
	[c] Example Illustrating Jeopardy	
	Assessment Prerequisites	4-26
	[d] Suggestions for Refuting Anticipated	4.05
	Government Arguments	4-27
	[4] Second Inquiry of Code Section 7429 Summary Review is the Amount of	
	the Assessment	4-28
	[a] Taxpayer has the Burden of Establishing	7 20
	That the Amount Is Inappropriate	4-28
	[b] Method Used by the IRS in Computing	
	Assessment Amount	4-29
	[5] District Court's Determination Is Final and	
	Not Open to Appeal	4-30
§ 4.07	Complaint for Review of Jeopardy Assessment	4-32
	CHAPTER 5	
	Refunds, Credits, and Abatements	
§ 5.01	Introduction	5-4
§ 5.02	Procedural Requirements of Seeking a Refund	
	or Credit	5-5
	[1] Establishing the Existence of an Overpayment [a] Re-Audit/Audit Reconsideration to	5-5
	Verify Overpayment	5-6
	Tentative Carryback Adjustment	5-7
	[2] Claim for Refund or Credit of Overpayment	5-8
	[a] Formal Claim for Refund or Credit	5-9
	[b] Informal Claim for Refund or Credit	5-10
	[c] Protective Claims	5-13
	[i] Refund or Credit	5-13
	[ii] Capital Loss Carryovers	5-14

xxviii FEDERAL TAX LITIGATION

	[d] Content of Claim for Refund or Credit	
	(Formal, Informal, or Protective)	5-15
	[i] Setting Forth the Grounds	
	Supporting the Claim for	
	Refund or Credit	5-15
	[ii] Computations	5-16
	[e] Amendments to Claim for Refund	
	or Credit	5-17
[3]	Time Period Limitation on Filing	5 17
[2]	Administrative Claim	5-19
	[a] Calculating the Time Period with	5 17
	Weekends	5-19
	[b] Proof of Mailing	5-20
	[c] Bad Debts and Worthless Securities	5-21
	[d] Loss Carrybacks	5-21
	[e] "Black Hole" Overpayments in the	5-21
	Second Circuit	5-22
[4]	Determining When a Return is Considered	3-22
[4]	Filed	5-23
		5-23 5-23
	[a] Agreement to Extend Limitations Period	3-23
	[b] Suspension of Limitations for	5-24
Γ <i>Ε</i> 1	Filing Claim	3-24
[5]	Limitations on Amount Allowed for the	5 24
F / 1	Refund or Credit	5-24
[6]	Determining when Payment of Taxes	5.24
F 77.1	Occurred	5-24
[7]	IRS Processing of Claim for Refund	5.05
	or Credit	5-25
	[a] Campus Processing	5-26
F07	[b] Division Review	5-26
[8]	Jurisdictional Requirements of Initiating a	
	Refund Suit.	5-27
	[a] Establishing a Waiver of Sovereign	
	Immunity	5-29
	[b] Doctrine of Variance	5-31
	[i] Taxpayer Need Not Raise All	
	Arguments	5-32
	[ii] Omitted Matter Affects the	
	Amount of Recovery	5-33
	[iii] Penalties or Interest Intertwined	
	with Underlying Tax	5-33
	[iv] Amending the Claim for Refund	5-34
	[v] Government Has Waived Its	
	Right to Assert the Variance	
	Doctrine	5-34
	[c] Burden of Proof	5-35
	[d] Form 4340: Certificate of Assessment	
	and Payments	5-36

		TABLE OF CONTENTS	xxix
		[e] Service of Process	5-36
		[f] Overpayment Interest	5-37
		[g] Interest Netting	5-37
	[9]	Application of Judicially-Created Doctrines	5-37
		[a] Economic Substance Doctrine	5-38
		[b] Federal Circuit and Economic	
		Substance Doctrine	5-39
	[10]	The Tucker Act and Tax Refund Suits	5-41
§ 5.03		tement Claims	5-42
·	[1]	Abatement of Taxes and Penalties	5-42
	[2]	Requirements for Abatement of Interest Claims	5-43
		[a] Defining a Ministerial Act	5-43
		[b] Time Period of Abatement	5-44
		[c] Location for Filing Claim for Abatement	5-44
		[d] Appeals Division	5-45
		[i] Reconsideration of Claim	
		Disallowed by Campus	5-45
		[ii] Interest Abatement Coordinator	5-45
		[iii] Method of Resolution of Claim	
		for Abatement	5-45
		[iv] Form 2297, Waiver of Statutory	
		Notification of Claim	
		Disallowance	5-46
		[v] Pending Case in Appeals	
		Division	5-46
		[vi] Letter Sustaining Full	
		Disallowance of Service	
		Center Claim	5-46
		[vii] Regional Director Involvement	5-47
		[e] Tax Court Jurisdiction	5-47
§ 5.04	Doct	trines Which May Be Invoked to Effect the	
3 0.0.		riod of Limitations	5-49
	[1]	Equitable Recoupment or Setoff	5-49
	[-]	[a] Factors Necessary for Equitable	.,
		Recoupment Doctrine to Apply	5-51
		[b] Recoupment as a Counterclaim	5-51
		[c] Doctrine of Unclean Hands	5-52
	[2]	Equitable Estoppel	5-52
	[2]	[a] Elements of Estoppel	5-53
		[b] Government Employee's Actions	0 00
		or Representations	5-54
		[c] Utilizing Accountant as Witness	5-59
		[d] Asserting All Doctrines to Refute	0 0)
		Statute of Limitations Bar	5-59
		[e] Court's Interest Is Not to Undermine	3 3)
		Correct Enforcement of the Law	5-60
		[f] Pre-Merger Doctrine Between Law	5 00
		and Equity	5-60
	[3]	Equitable Tolling of Statute of Limitations	5-61
	ا ت		2 01

	[4]	Mit	igatior	Provisions, Sections 1311	
				th 1314	5-62.1
		[a]		nition of Final Determination	5-62.2
			[i]	Four Types of Actions	5-62.2
			[ii]	Date of Final Determination	5-62.3
				Finality of a Court Decision	5-62.4
				Finality of Closing Agreement	5-62.4
			[v]	Finality of Claim for Refund	5-62.4
		[b]		ection of an Error in a Closed Year	5-62.5
		[c]		tion of the Successful Party	5-62.5
		[d]		rmination According to One of	3 02.3
		լայ		e Seven Circumstances in	
				ection 1312	5-62.7
			[i]	Section 1312(1) Double Inclusion	3-02.7
			[1]	of an Item of Income	5-62.7
			F#1		3-02.7
			[ii]	Section 1312(2) Double Allowance of a Deduction or Credit	5 62 0
			r::::1		5-62.8
			[iii]	Section 1312(3) Double	
				Exclusion of an Item of	5 (3 0
			r: 1	Gross Income	5-62.8
			[iv]	Section 1312(4) Double	
				Disallowance of a Deduction	5 (O O
				or Credit	5-62.9
			[v]	Section 1312(5) Trusts, Estates,	
				Legatees, Beneficiaries,	
				and Heirs	5-62.10
			[vi]	Section 1312(6) Related	
				Corporations	5-62.10
			[vii]	Section 1312(7) Basis	
				Problems	5-62.11
		[e]	Rela	ted Taxpayer	5-62.11
		[f]	Dete	rmining the Amount of Adjustment	
			A	fter Mitigation Is Established	5-62.12
		[g]	Proc	edure to Follow for	
			O	btaining Adjustment	5-62.13
§ 5.05	Proc	edural	Requ	irements for the IRS to Recover	
	an	Error	neous	Refund	5-62.14
	[1]			Limitations for Bringing Suit	5-62.14
	[2]			of Interest	5-62.14
	[3]			676 Penalty	5-62.15
	[4]			Proof	5-62.15
	[5]			y Procedures in Lieu of Erroneous	
				Suit	5-62.16
§ 5.06	Com	plaint	for T	ax Refund	5-63
§ 5.07					5-65
00,	[1]			ns for Form 843	5-65
	[2]			: Claim for Refund and Request	2 32
	[-]			atement	5-67
			110		5 57

TABLE OF CONTENTS

CHAPTER 6

Wrongful Levy

§ 6.01 § 6.02	Introduction	. 6-2
8 0.02	Two Years of Date of Levy	. 6-5
	[1] Two Year Period Applicable After	. 0-3
	December 22, 2017	. 6-5
	[2] Pre-December 22, 2017, Extension Period	
§ 6.03	Legal Standards Governing Adjudication of	. 0-0
8 0.03	Wrongful Levy Action	. 6-8
	[1] Burden of Proof	
	[2] Interpleader	
§ 6.04	Nominee and Alter Ego Theories	
y 0.04	[1] Nominee Situations	
	[2] Alter Ego Situations	
	[3] Fraudulent Conveyance Situation.	
§ 6.05	Transferee Theory of Liability	
8 0.03	[1] Elements of Transferee Liability	. 6-16 . 6-16
	[2] Proving Transferee Liability at Law	
	[a] Asserting Transferee Liability for	0-17
	Federal Estate Tax Liability	. 6-18
	[b] Asserting Transferee Liability Under	. 0-10
	State Law	. 6-18
	[c] Asserting Transferee Liability	. 0-10
	Under Contract	6-18.1
	[d] Asserting Transferee Liability Based on	0-10.1
	Federal Statutory Law	. 6-19
	[3] Asserting Transferee Liability at Equity	
	[a] Differences Between Elements of	0 20
	Proof for Action at Law Versus	
	at Equity	6-20.1
	[b] Additional Equity Remedy: Trust Fund	0 20.1
	Doctrine	. 6-21
	[4] Definition of Transferee Under the Internal	0 21
	Revenue Code.	. 6-21
	[5] Transferee Acting as Fiduciary Can Be	0 21
	Liable for a Personal Penalty	. 6-22
	[6] Transferee as Limited Liability	0 22
	Company Member	. 6-22
	[7] Statute of Limitation for Transferee	0 22
	Liability	. 6-23
	[a] Initial Transfer	
	[b] Subsequent Transfers and Transferees	
	[c] Transferor's Actions Can Affect the	. 0-23
	Expiration of the Statute of	
	Limitations for Assessment	. 6-24
	Limitations for Assessment	. 0-24

xxxi

xxxii	FEDERAL TAX LITIGATION	
	[d] State Law's Assessment Period May also Affect the Expiration of the Statute of Limitations for	
	Assessment	6-25
	of Transferor	6-25
	of Limitation for Transferee Spouse	6-25
	[g] Tolling the Statute of Limitation[h] Statute of Limitations for Actions Under	6-25
	Trust Fund Doctrine	6-26
§ 6.06	Liability Defenses for Refuting an Assessment Based on Alter Ego/Nominee and Fraudulent Conveyance	6-26
	Theories	6-26.1
	[1] Exercise of Dominion and/or Control	6-26.1
	[2] No Record Assets	6-27
	[3] Developing Evidence	6-27
§ 6.07	[4] Relief Available	6-29
	Section 7426	6-30
	[1] The Decision of <i>United States v. Williams</i> [2] Wrongful Levy Exclusivity After <i>Williams</i>	6-30 6-33
	[a] Lien Versus Levy Distinction [b] Non-Voluntary Payment of Tax	6-33
	Liability	6-34
	Activity	6-34
	[4] Post-Williams Statutory Relief	6-35
§ 6.08	Quiet Title, Wrongful Levy, and Real Property	6-36
	CHAPTER 7	
	The Reasonable Cause Defense	
§ 7.01	The Reasonable Cause Defense	7-2
	[1] Penalties	7-4
	[a] Negligence Penalty	7-4
	[i] Examples of Conduct That Can	
	Cause Penalty to Be Assessed	7-4
	[ii] Professional Advice, Experts	7-6
	[iii] Bookkeeper's Negligence	7-8 7-8
	[b] Frivolous Return Penalty	7-8 7-8
	[i] Applicability	7-11
	[ii] Penalty Amount	7-12

	TABLE OF CONTENTS	xxxiii
	[d] Substantial Understatement Penalty	7-13
	[e] Civil Fraud Penalty	7-15
	[f] Fraudulent Failure to File Penalty	7-16
	[g] Bad Check Penalty	7-16
	[h] Estimated Tax Penalty	7-16
	[i] Failure to Make Deposit of Taxes	7-17
	[j] Failure to File a Timely Return or Pay	
	Tax Due	7-17
	[k] Failure to File Information Returns	7-18
	[1] Failure to Report Tips	7-27
	[m] Failure to Honor Levy	7-28
	[2] Employment Taxes	7-28
§ 7.02	Administrative Procedure and Assessment	7-29
	[1] Establishing Reasonable Cause at	5 21
	the Revenue Agent/Audit Level	7-31
	[2] Practical Planning for Escaping Assertion	7.22
	of Certain Penalties	7-32
	[a] Techniques	7-32
	[b] Substantial Understatement Penalty	7-33
	[i] Non-Corporate Taxpayer	7-33
	[ii] Corporate Taxpayer	7-34
	[3] Alternatives for Disputing Penalty	7.24
	Recommendation	7-34 7-34
6 7 02	[4] Deductibility of Civil Tax Penalties	
§ 7.03	Establishing Reasonable Cause in Litigation	7-36
	[1] Supreme Court Precedent	7-36
	[2] Being Too Busy Does Not Establish	7-37
	Reasonable Cause	/-3/
	[3] Financial Instability May Establish Reasonable Cause	7.20
		7-39
	[4] Affirmative Action by Taxpayer to Comply with the Law Must Be Evidenced	7-40
		7-40 7-40
	[5] Burden of Proof	7-40
	[a] Erroneous Written Advice of IRS	7-41
	[b] First-Time Penalty Abatement	7-41
	[7] Disclosure Statement	7-41
§ 7.04	Developing the Case	7-42
g 7.0 4	[1] Checklists of Inquiries Concerning	7-43
	the Delinquencies	7-43
	[2] Erroneous Calculation of the Assessment	7-45
	[3] Common Considerations in Reviewing	1-43
	a Client's Case	7-46
§ 7.05	Sample Complaint Requesting Recovery of	, 40
3 7.00	Employment Tax Penalties	7-47
	1 -7	

TABLE OF CONTENTS

Volume 2

CHAPTER 8

The Innocent Spouse Defense

§ 8.01				8-2
§ 8.02	Adm			8-4
	[1]			8-4
	[2]	Nonrequesting Spouse's	s Right to Appeal	8-4
	[3]	Collection Due Process	Matters	8-4
§ 8.03	Theo	es of Innocent Spouse	Relief	8-6
	[1]		• • • • • • • • • • • • • • • • • • •	8-6
		[a] How to Figure the	Understatement	
				8-6.1
				8-6.1
		[c] Partial Relief in P		
				8-7
			airness	8-8
		[e] Significant Benefit	Received by the	
			Wrongdoing Spouse	8-8
	[2]	Separation of Liability		8-8
		[a] Consequences of T		
				8-9
		[b] Effective Date of		
		Planning		8-10
		[c] Practical Example		
			iability	8-10
			paration of Liability	8-11
			Property Laws	8-12
			or Figuring Innocent	
			elief Tax	8-13
	[3]			8-13
			Equitable Relief	8-13
			uitable Relief	8-15
			der Which Relief Will	
			Granted	8-15
		J		

	TABLE OF CONTENTS	7
	[vi] Trusts	9-18.2
§ 9.03	Priority Issues	9-18.4
Ü	[1] Two Step Inquiry	9-18.4
	[2] Federal Tax Lien Act of 1966	9-19
	[3] State Law Considerations	9-20
	[4] Federal Law	9-21
	[5] Superpriorities and Instances Where Federal	
	Tax Lien May Be Defeated	9-21
	[a] Statutory Prescribed Notice Must	
	Be Given	9-22
	[i] Determining Priority of Interest	
	in Securities	9-23
	[ii] Determining Priority of a	
	"Purchaser"	9-24
	[iii] Determining Priority of a	
	Judgment Lien Creditor	9-25
	[iv] Determining Priority of a Security	
	Interest	9-28
	[v] Same-Sex Relationships	9-31
	[vi] Mechanic's Lienor	9-31
	[vii] Miscellaneous Interests Which	
	May Be Entitled to Priority	
	over Federal Tax Lien	9-32
	[viii] Miscellaneous Interests Which	
	Are Not Entitled to Priority	
	over Federal Tax Lien	9-32.1
§ 9.04	Certificate of Subordination of Federal Tax Lien	9-33
	[1] Prerequisites for Certificate of Subordination	9-33
	[2] Obtaining Certificate of Discharge	
	or Subordination	9-33
	[3] Investigation of Application for Discharge	
	or Subordination	9-34
	[4] Issuing the Certificate of Discharge	
	or Subordination	9-36
§ 9.05	Revocation of Certificates of Release of Federal	
	Tax Lien	9-37
§ 9.06	Certificate of Nonattachment of Federal Tax Lien	9-39
§ 9.07	Withdrawal of the Filed Notice of Federal Tax Lien	9-40
	[1] Content of the Request for a Withdrawal	9-40
	[2] Instances Where a Request for Withdrawal	
	Should Be Submitted	9-41
	[3] Notice of Lien Withdrawal Will Facilitate	
	Collection of the Tax Liability	9-42
	[4] Withdrawal Based on the Best Interests of	
	the Government and Taxpayer	9-42
	[5] Installment Agreements and the Notice	
	of Withdrawal	9-43
	[6] Withdrawal May Be Issued Without Taxpayer	
	Intervention	9-43

	[7] C	redit Report Concerns	9-43
§ 9.08		cial Liens for Estate and Gift Taxes	9-45
Ü		pecial Estate Tax Lien	9-45
	[a		
		Tax Lien	9-45
	[b		
	L	Estate Tax Lien	9-46
	[c		,
	Ĺ	Tax Lien	9-47
	[d		<i>)</i> 17
	La	Tax Lien	9-48
	[2] S ₁	pecial Gift Tax Lien	9-48
§ 9.09		·	9-49
8 3.03		CS Proceedures Prior to Issuing Notice	J -4 J
	[1] IR	RS Procedures Prior to Issuing Notice	0.40
	Γ-	of Levy	9-49
	[a		0.50
		Notice of Levy	9-50
	[b	<u> </u>	
		Pre-Levy Review	9-51
		uty and Consequences of the IRS Levy	9-52
		wo Defenses to Failure to Honor Levy	9-53
	[4] T	he Nature and Extent of a Notice of Levy	9-54
	[a	The Effect of a Notice of Levy	9-55
	[b	Attaching the Levy	9-55
	[c		
	-	of Statute of Limitations	9-56
	[d		
		Determined Uneconomical	9-56
	ſе		
	Ĺ	Summons Appearance Date	9-56
	[5] Pı	roperty Exempt from Levy	9-56
	[s] II		9-57
	ی [b])-31
	Įυ		9-58
	[6] D.	Property	
		roperty Subject to a Levy	9-58
	[a		9-59
	[b		9-60
	[c		9-61
	[d	-	9-62
	[e	-	9-62
	[f		9-62
§ 9.10	Seizure	and Sale of Property Subject to Federal Tax	
		or Levy	9-63
	[1] N	otice of Seizure	9-63
		erifying Clear Title and Minimum	
		Bid Price	9-63
	[3] N	otice of Sale	9-64
		ale Conducted Within Ten to Forty Days	
	[.]	of Notice of Sale	9-65

		TABLE OF CONTENTS	vii
	[5]	Sale of Property Co-Owned with	
		a Delinquent Taxpayer	9-66
	[6]	Appealing Seizure of Property	9-66
	[7]	Redemption	9-66
		[a] Time Period for Redemption	9-67
		Property After Sale	9-67
		[c] IRS Records of Seizures and Sales	9-67
§ 9.11	The	Administrative Appeals Process	9-68
	[1]	Overview of the Administrative Appeals	
		Process	9-68
	[2]	Collection Appeals Program	9-69
		[a] Requesting an Appeal Through CAP	9-69
		[b] Jurisdiction of CAP	9-69
	[3]	Collection Due Process Hearing	9-70
		[a] Deadline for Requesting a Collection	
		Due Process Hearing	9-70
		[b] Requesting a Collection Due Process	0.71
		Hearing	9-71
		[c] Hearing Issues	9-71 9-72
		[d] Judicial Review of Determination	9-12
		[e] Suspension of Collection and Statute of Limitation	9-72
		[f] Examples of Taxpayer Situations Where	9-12
		Tax Court Rejected IRS Action	9-72.1
		[i] Business Taxpayer's Financial	9-12.1
		Hardship Beyond the	
		Taxpayer's Control	9-72.1
		[g] Simultaneous CAP and CDP Requests	9-72.2
§ 9.12	India	cial Proceedings of Tax Liens or Levies	9-74
3 7.12	[1]	Reducing Assessments to Judgment and	, , ,
		Government Foreclosure Action	9-74
		[a] Reduce Assessments to Judgment	9-74
		[b] Judicial Foreclosure	9-74
	[2]	Non-government Lienholder Seeking	
		Foreclosure and Discharge of Property	
		from Lien	9-74.1
		[a] Government's Right to Redemption of	
		Property	9-74.1
		[b] Procedures for Sale of Property	9-74.2
		[c] Request to Release Right to Redeem	
		Property	9-74.2
	[3]	Interpleader	9-74.2
	[4]	Declaratory Judgment	9-75
	[5]	Quiet Title	9-76
		[a] Non-Liable Third Party Lienor as	o = :
		Plaintiff	9-76
		[b] Delinquent Taxpayer as Plaintiff	9-77

viii	FEDERAL TAX LITIGATION	
	[6] Injunctions	9-79 9-81
§ 9.13	[8] United States' Right of Intervention	9-81 9-82
	Issuing a Federal Tax Lien	9-82 9-82
	CHAPTER 10	
	Tax Return Preparers and Tax Shelter Promoters	
§ 10.01	Introduction	10-4
	[1] Ministerial Violations	10-5
	[a] Preparer Tax Identification Number	10-5
	[b] Best Practices	10-5
	[2] Uncertain Tax Positions	10-6
§ 10.02	[3] Tax Preparer Due Diligence Penalty Overview of Preparer Penalties and Standards of	10-7
	Conduct	10-8.1
	Under the Internal Revenue Code?	10-8.1
	[a] Exclusions	10-10
	under Section 6694	10-10
	 [2] Disclosure Rules and Standards	10-11
	Act of 2008	10-12
	[4] Negligence	10-12.3
	[5] Willful Conduct.	10-12.4
§ 10.03	[6] Fraud	10-12.6
·	Penalties	10-12.6
	[1] Assessment and Appeal Rights [a] Preparer Penalty Assessment	10-12.6
	Procedures	10-12.6
	Penalties	10-12.6
	Examination and Assessment	10-14
	[3] Evaluation of Whether Substantial Authority	
	Penalty Applies	10-15
	Application	10-17
	[5] Reckless or Intentional Disregard	10-20

		TABLE OF CONTENTS	ix
	[6]	Understatement of Liability	10-20
		[a] Degree of Verification of Client	
		Information	10-21
		[b] Abatement of Preparer Penalty	10-22
	[7]	Unrealistic Position	10-22
		[a] One-in-Three Rule	10-22
		[b] Correlation to Substantial	
		Authority Test	10-22
	[8]	Examples of the Section 6694(b) Penalty	
		Application	10-23
	[9]	Circumstances Where Preparer Is Subject to	
		Multiple Penalties	10-24
	[10]		10-24
§ 10.	04 Ove	erview of the Return Preparer Penalty Program	10-26
	[1]	Program Structure	10-26
	[2]	Penalty Screening Committee	10-27
	[3]	Role of the Return Preparer Coordinator	10-27
	[4]	Role of Revenue Agent or Auditor	10-27
§ 10.	05 Prog	gram Action Cases	10-29
	[1]	Return Preparer Coordinator's	
		Recordkeeping	10-29
	[2]	Return Sampling	10-29
	[3]	Interviews with the Clients of the Subject	
		Tax Preparer	10-30
	[4]	Accuracy Related Penalty and Reasonable	
		Cause and Good Faith Defense	10-31
§ 10.	-	parer Defenses	10-32
	[1]	Adequate Disclosure Defense	10-32
		[a] Signing Preparers	10-32
		[b] Nonsigning Preparers	10-34
		[i] Advice to Taxpayer and	
		Disclosure Regarding Realistic	40.04
		Possibility Standard	10-34
		[ii] Advice to Another Preparer and	
		Disclosure Regarding Realistic	10.25
		Possibility Standard	10-35
		[iii] Advice to Taxpayer and Disclosure	
		Regarding Position Contrary to	10.25
		Rule or Regulation	10-35
		[iv] Advice to Another Preparer and	
		Disclosure Regarding Position	10.26
	[0]	Contrary to Rule or Regulation	10-36
	[2]	Substantial Authority Defense	10-36
	[3]	Reasonable Cause/Good Faith Defense	10-36
	[4]	Reduction of Amount Assessed Where Both	
		Penalties Under Sections 6694(a) and	10.20
8 10	07 E1~	6694(b) Applyctronic Filing Program	10-38 10-38.1
g IU.	U/ EIC	JUVING THING TIUGIAIII	10-30.1

	[1] [2]			ne Electronic Program?	10-39 10-40	
	[3]	Pen	alties	for Preparer's Noncompliance with octronic Filing Program		
				tions	10-41	
		[a]		losure or Use of Information	10-41	
		[b]	Prepa Fi	arer Penalties Against Electronic ilers Under Sections 6694, 6695,	10 11	
		[c]	Pena	nd 6713lty in Connection with Refund	10-41	
				nticipation Loans	10-42	
	[4]			toring of Electronic Filers	10-43	
		[a]		tronic Filer Activities Monitored y the IRS	10-43	
		[b]	Proc	edures for Suspending Electronic ler from the Electronic Filing		
			Pı	rogram	10-43	
		[c]	Adm	inistrative Appeals of Suspension,		
			R	evocation, or Denial of Participation		
			in	Electronic Filing Program	10-44	
	[5]	Dire	ector c	of Practice	10-44	
§ 10.08	Litig	ation	Involv	ving the Preparer Penalties	10-45	
	[1]	Inju	nction		10-45	
	[2]	Refi	und Si	uits and Burden of Proof	10-47	
	[3]	Disg	gorgen	nent	10-48	
§ 10.09	1 0					
ŭ.					10-49	
	[1]			evelopment	10-49	
	[2] Checklist of Criteria for Imposing the					
				n 6694(a) Penalty	10-50	
	[3]			Checklist of Criteria for Imposing		
	F- 1			etion 6694(b) Penalty	10-50	
§ 10.10	Resp			and Penalties of Tax Shelter		
0					10-52	
	[1]			on Responsibilities, In General	10-52.1	
		[a]		stration Procedures	10-53	
		[b]		nition of Tax Shelter	10-53	
		[°]	[i]	Tax Shelter, Generally	10-55	
			[ii]	Section 6112, Potentially Abusive	10 00	
			[]	Tax Shelter	10-56	
			[iii]	Summons Enforcement	1000	
			[]	Developments	10-56	
			[iv]	Special Requirements for	10 50	
			[1,1]	Confidential Corporate Tax		
				Shelter	10-58	
			[v]	Examples of Criminal	10 20	
			٢٠٦	Investigation	10-58	
		[c]	Sion	ificant Tax Avoidance	10 20	
		٢٠٦	_	irnose	10-63	

		TABLE OF CONTENTS	X1
		[d] Ordinary Course of Business Exception	10-63
	507	[e] Reliance on Counsel	10-64
	[2]	List Retention Requirements of Promoters of	10.64
		Potentially Abusive Tax Shelters	10-64 10-65
		[a] List Retention Requirements	10-65
		[c] Content of List	10-65
	[3]	Disclosures Requirements	10-66
	r- 1	[a] Categories of Reportable	
		Transactions	10-67
		[b] Disclosure Procedures	10-67
		[i] Bad Faith	10-67
		[ii] Penalties for Failing to Disclose	10 (7
		a Transaction	10-67
		[iii] Determining the Sufficiency of a Disclosure	10-69
		[iv] Statute of Limitations for	10 07
		Assessments Relating to	
		Listed Transactions	10-70
		[c] Protections Afforded to Privileged	
		Communications	10-70
	[4]	Promoters Have Affirmative Duty Not to	
		Provide False Information	10-71
	[5]	Fees	10-71
	[6]	Automated Process for Certain Penalties in	10.71
§ 10.11	Donal	Listed Transaction Situations	10-71
8 10.11		ties for Failing to Comply with le Requirements	10-72.1
	[1]	Penalty for Failure to Comply with	10-72.1
	[+]	Registration Process	10-72.1
		[a] Responsibility for the Penalty	10-72.1
		[b] Others Who May Be Assessed	10-72.1
		[c] Knowledge of Proper Registration	10-73
	[2]	Calculation of the Penalty	10-73
	[3]	Protective Registration	10-73
§ 10.12		of Lists by the IRS	10-75
	[1]	General Rule: Seven Year	
	507	Retention Period	10-75
	[2]	How the IRS Uses the Lists	10-75
	[3]	Consequences of Noncompliance with	10.75
\$ 10.12	Lour	List Retention Requirements	10-75 10-77
§ 10.13 § 10.14		er As Witnesssonable Conduct by the IRS	10-77
§ 10.14 § 10.15		Fax Shelter Controversies and Settlement	10-76
y 10.13		ers	10-79
	[1]	Syndicated Conservation Easements	10 17
	r-1	Transactions	10-79
	[2]	Micro-Captive Insurance Companies	10-82
		1	

CHAPTER 11

Recovering Monetary Damages from the Federal Government

§	11.01	Intro	oduction	11-2
	11.02		losure of Tax Return Information	11-3
		[1]	Section 6103	11-4
		[2]	Statutory Exceptions to Confidentiality	
			Which Permit Disclosure of Tax Return	
			Information	11-6
		[3]	Disclosure Made in Good Faith Is Not	
			Actionable	11-9
§	11.03	Actu	nal Damages	11-10
		[1]	Overview	11-10
		[2]	Establishing a Causal Relationship Between	
			the Unauthorized Disclosure and the	
			Actual Damage	11-10
		[3]	Establishing Proof of Causation	11-11
		[4]	Economic Loss as Element of Actual	
			Damages	11-12
		[5]	Emotional Distress as an Element of Actual	
			Damages	11-14
			[a] Circumstances Where Taxpayer Is	
			Awarded Damages for Emotional	
			Distress	11-15
			[b] Circumstances Where Taxpayer Has	
			Been Denied Damages for Emotional	
			Distress	11-16
		[6]	Physical Harm as an Element of Actual	
			Damages	11-17
§	11.04	Puni	tive Damages	11-18
		[1]	In General	11-18
		[2]	View that Punitive Damages Are Recoverable	
			Only When Actual Damages Are Proven	11-18
		[3]	View that Punitive Damages Award Does Not	
			Require a Showing of Actual Damages	11-19
		[4]	Defining What Constitutes a Willful	
			Disclosure	11-20
		[5]	Defining What Constitutes Gross Negligence	11-20
		[6]	Establishing Willful Disclosure and Gross	
			Negligence for Punitive Damage Award	11-21
§	11.05	Reco	overy Under the Privacy Act of 1974	11-27
	11.06		ernment's Right of Set-Off	11-28
			stleblower Awards	11-28.1
-		[1]	IRS Processing of Whistleblower Claim	11-28.1
		[2]	Amounts of Awards and "Collected Proceeds	11-28.2
		[3]	Anonymity	11-28.4

	TABLE OF CONTENTS	xiii
§ 11.07	Recovery for Damages for Failure to Timely Release	
e 11 00	a Federal Tax Lien	11-29
§ 11.08	Recovery for Damages for Unauthorized Collection Actions	11-31
§ 11.09	United States Must Be Named as a Defendant	11-31
§ 11.10	Constitutional Torts	11-35
Ü	[1] Qualified Immunity Defense of Government	
	Employees for Constitutional Violations	11-35
	[2] No Relief When Other Remedies Are	11 27
	Available	11-37
	Collection Context	11-37
	[4] Factual Circumstances Where Relief Was	11 57
	Afforded for a Constitutional Tort	11-37
§ 11.11	Recovery Pursuant to the Federal Tort Claims	
0.11.10	Act (FTCA)	11-39
§ 11.12	No Right to Jury Trial in Actions Brought Under Sections 7432 and 7433	11-41
	Sections 7432 and 7433	11-41
	CHAPTER 12	
	December Administration and	
	Recovering Administrative and Litigation Expenses from the Government	
§ 12.01	Introduction	12-2
§ 12.01 § 12.02	Pre-Suit Review of Award for Administrative Costs	12-4
Ü	[1] Recovery of Costs Incurred	12-4
	[2] Jurisdiction	12-5
	[3] Procedures for Recovering Administrative	10.5
	Costs	12-5
	Administrative Costs	12-7
	[5] Time Period During Which Costs Are	12 /
	Recoverable	12-8
	[a] Qualified Offer	12-9
	[b] Qualified Offer Period	12-9
	[6] Appeals Division Determination	12-10
	[7] Settlement of Claims for Attorneys' Fees	12-12
	[a] IRS Processing of Terms of Agreement	12-12
	[b] Example of Agreement on Administrative	12-12
	Cost.	12-13
	[c] Computation of the Litigation and	
	Administrative Cost Award	12-14
	[i] Submission of Required	
	Documentation and Information	12-14
	[ii] Non-Attorney Fees	12-14
	[1]	12 10

§ 12.03	Appe	aling the IRS' Disallowance or Partial	
	Dis	sallowance of an Award	12-17
	[1]	Procedures for Appeal	12-17
	[2]	Section 6673	12-17
§ 12.04		Litigation: Seeking Reasonable Litigation and	
3 12.0.		ministrative Costs and Fees	12-19
	[1]	Section 7430, in General	12-19
	[2]	Defining Reasonable Administrative Costs	12-19
	[3]	Defining Reasonable Litigation Costs	12-19
	[4]	Qualifications for an Award	12-20
	[5]	Examples	12-20
		[a] What Constitutes a "Substantially	12-22
		Justified" Position by the	
		Government?	12-22
			12-22
		- 3	
		"Substantially Justified" Position by	12.22
	[6]	the Government?	12-23
	[6]	Who Can Qualify as a Prevailing "Party" for	
		Purposes of Recovering Litigation	12.24
		Expenses?	12-24
		[a] Estate as a Party	12-25
		[b] Debtor-in-Possession as a Party	12-25
		[c] Creditor of Delinquent or Challenging	12.26
	[7]	Taxpayer Is Not a Party	12-26
	[7]	Exhausting Administrative Remedies	12-26.1
		[a] Participating in the Appeals Division	12.26.2
		Conference	12-26.2
		[b] Statement from IRS that Pursuit of	
		Administrative Remedies	12.20
	F03	Unnecessary	12-28
	[8]	Unreasonably Protracting Proceedings	12-31
	[9]	Determining Whether a Party is a Prevailing	40.00
		Party	12-32
	[10]	Court Discretion in Award	12-38
	[11]	Evidence Supporting Reasonable Litigation	
		Fees Award	12-38
	[12]	Burden of Proof	12-39
	[13]	Suits Where Recovery of Reasonable Litigation	
		Fees Should Be Sought	12-39
	[14]	Determining Whether the United States Can	
		Offset a Section 7430 Award	12-41
	[15]	Recovering Attorneys' Fees in	
		Bankruptcy Court	12-42
§ 12.05	Sanct	tions	12-42.1
	[1]	Government Award of Fees as Sanction	
		Against Taxpayer	12-42.1
	[2]	Taxpayer Awarded Sanctions Against	
		Government	12-43
	[3]	Fraud on the Court	12-44

	TABLE OF CONTENTS	XV
§ 12.06	Practical Advice.	12-45
§ 12.07	Checklists	12-47
	in Administrative Proceeding	12-47
	[2] Evidentiary Checklist for Recovery of Fees in Civil Tax Litigation	12-47
	CHAPTER 13	
	Criminal Tax Investigations	
§ 13.01	Introduction	13-10
3	[1] CID Structure	13-10
	[2] Voluntary Disclosure Practice	13-10.2
§ 13.02	Example of a Typical CID Investigation	13-10.5
3 13.02	[1] Phase One	13-10.5
	[2] Phase Two.	13-10.5
	[3] Phase Three	13-10.7
	[4] Phase Four	13-11
	[a] Specific Item or Direct Method	13-11
	[b] Bank Deposit Method	13-11
	[c] Net Worth and Expenditures Method [d] Taxpayer Should Be Given an Opportunity	13-12
	to Provide Needed Information	13-13
	[5] Phase Five	13-13
§ 13.03	The Structure and Purpose of CID.	13-14
y 13.03	[1] General Duties.	13-14
	[2] Marijuana Businesses	13-16
	[3] Offenses Investigated by CID	13-18
	[a] Fraud	13-18.1
	[b] Tax Evasion	13-18.1
	[i] Defining Evasion of Tax	13-19
	[ii] Proving Existence of a Tax	
	Deficiency	13-21
	[iii] Boulware v. United States	13-23
	[iv] Avoidance of Tax Versus Evasion	
	of Tax	13-25
	[v] 2018 Marinello case: Conviction	
	for Obstruction or Impeding	
	Tax Administration Requires	
	Knowledge Nexus	13-25
	[c] Filing False Income Tax Return	13-26
	[d] Willful Failure to File Return, Supply	
	Information, or Pay Taxes	13-27
	[e] Failure to Collect or Pay Over	
	Taxes	13-28
	[f] Fraud and False Statements	13-29
	[g] Offers in Compromise	13-30

	[i] Alleged Fraudulent Offers	. 13-30
	[ii] Joint Investigations	
	[iii] Offers in Pending Criminal	
	Investigations	. 13-30.1
	[iv] Offer Post-Conviction	
	[h] Bank Secrecy Act Violations	
	[i] IRS Role	
	[ii] Treasury Summons	
	[4] Triggers for Criminal Investigation	
	[a] Gathering "Affirmation Indications of	
	Fraud" During Civil Examination	. 13-34
	[b] Suppression of Evidence Gathered in	
	Civil Examination	. 13-34
	[5] Special Agent Responsibilities	
	[a] Strike Force/Racketeer Program	
	[b] Activities Special Agents Can Engage	. 13 30
	in Prior to Investigation Being	
	Officially Authorized	. 13-36
	[6] Responsibilities of Service Center Criminal	. 13 30
	Investigation Branch	. 13-36
	[7] Three Categories of Investigations Conducted	
	by a Special Agent	
	[a] General Investigation	
	[i] Authorized General Investigation	. 13-37
	Techniques	. 13-37
	[ii] Techniques Relating to Potential	. 13-37
	Fraudulent Refund Schemes	. 13-37
	[b] Primary Investigations	
	[c] Subject Criminal Investigations	
		. 13-36
	[i] Memorandum Recommending the Initiation of an Investigation	. 13-38
		. 13-36
		. 13-38.1
§ 13.04	Factors	. 13-36.1
8 13.04	Civil Audit/Assessment Pending Criminal Investigations	. 13-38.2
		. 13-36.3
	[3] Civil Penalties that May Arise During Criminal Investigation	. 13-38.4
	[4] Parallel Civil and Criminal Investigations	. 13-38.4
§ 13.05	Taxpayer Information that May Be Disclosed by	. 13-36.0
8 13.03	Special Agent in Conducting Investigation	. 13-38.9
§ 13.06	Guidelines Special Agent Must Follow in	. 13-36.9
8 13.00	Conducting Investigation	. 13-40
§ 13.07	Fifth Amendment Privilege	
§ 13.07 § 13.08	Miranda Warning	
§ 13.08 § 13.09		
8 13.09		
	[2] Requirement of Particularity	. 13-4/

TABLE OF CONTENTS	xvii
[3] Examination of the Scope and Execution	l
Method	
[a] Mandated Recordings	
[b] Duration of Recording	
[4] Notice, Inventory Return	
[5] Suppression and Standing	
[6] Applicability of "Good Faith" Exception	
§ 13.09A Privileged Communications/Documentation	
[1] Attorney/Client Privilege	
[2] Accountant/Client Privilege	
[a] Section 7525 of the Internal Revenu	ie
Code	13-50.2
[b] Extension of Attorney/Client Privile	ege to
Accountants	
[c] Accountant/Client Privilege Recogn	ized
by State Law	
[3] Attorney Work Product	13-50.6
[4] Corporate Privileges	13-50.7
[5] Filter Team or Taint Team	
§ 13.10 Information Gathering Tools Used by Special Ag	ent 13-51
[1] Summons Power, Generally	
[2] Third Party Record-Keeper Summons	
[a] Motion to Quash Summons	
[i] Standing	
[ii] Grounds for Seeking to Quash	
Summons	
[3] John Doe Summons	
[a] Use of John Doe Summons for Offi	shore
Accounts	13-56
[i] The Court's Authority to Com	
United States Bank to Prod	-
Offshore Records	13-58
[ii] John Doe Summons for Reco	
in 2000 Involving Tradition	
Caribbean Tax Havens	
[iii] John Doe Summons for Reco	
in 2002 Involving more tha	
Thirty Countries	
[b] Reporting Requirements for Use of	
Offshore Account	13-60
[c] Offshore Voluntary Compliance	
Initiative	13-62
[i] First IRS OVDP Initiative	
[ii] Other IRS OVDP Initiatives.	
[iii] Two Offshore Voluntary Disclo	
Program Options: "Regular	
OVDP and OVDP Streamli	
Compliance Procedures	
[d] Collection from Offshore Accounts	
[4] Constitution from Original Recounts.	15 07

		[i] The Government Must Establish Jurisdiction over the	
		Taxpayer	13-70
		[ii] Methods for Collecting the Tax	15 70
		Debt from Offshore Assets or	
		Taxpayer Overseas	13-70
		[iii] Defenses to Collection of	
		Offshore Assets	13-70.3
	[e]	Use of John Doe Summons for Gift or	
		Estate Tax	13-70.4
	[f]	Use of John Doe Summons Involving	
		Virtual Currency	13-70.5
[4]	Gov	vernment Enforcement of Summons	13-70.6
	[a]	Elements the Government Must Prove to	
		Establish Enforcement Is Proper	13-71
	[b]	Taxpayer's Burden After Government	
		Establishes <i>Powell</i> Requirements	13-71
[5]	Con	npulsion Order	13-72.1
	[a]	Procedures for Obtaining a Compulsion	
		Order During Investigation	13-72.1
	[b]	Procedures for When a Witness Reappears	
		in Response to an Adjourned	
		Summons	13-72.3
	[c]	Summons Enforcement Procedures Prior	
		to Requesting a Compulsion Order	13-72.3
	[d]	Perjury or False Statements Made by	
		Witness	13-72.4
	[e]	Compelled Testimony Should Be	
		Safeguarded by the IRS	13-72.4
	[f]	Prosecution of a Witness Subject to a	
		Compulsion Order	13-72.4
	[g]	Use of Information Obtained Through	
		Compulsion in Civil Matters	13-72.5
	[h]	Denial of Compulsion Order Request by	
5.63		Justice Department	13-72.5
[6]		nunity	13-72.5
	[a]	Use and Derivative Immunity	13-72.6
	[b]	Seeking Immunity for a Witness' Act	10.50 (
	a	of Production	13-72.6
[7]		rch Warrants	13-72.9
	[a]	Excluding Evidence Obtained from a	12.72.11
	E1 3	Search and Seizure	13-72.11
	[b]	Required Evidence	13-72.11
		[i] Probable Cause	13-72.11
		[ii] The Warrant Must Describe with	
		Particularity Items to Be Seized	
		and the Criminal Conduct	12 72 12
		Alleged	13-72.12
		[iii] Reckless or Deliberate Material	13-72 13
		IVESTEDIESCHIZHORS	13-7/.13

		TABLE OF CONTENTS	X1X
		[iv] Improper Execution of the	
		Search Warrant	13-72.13
		[c] Contempt	13-72.14
	[8]	Electronic Surveillance and Interception	13-72.14
		[a] Consensual Monitoring	13-72.15
		[b] Developing Arguments in Defense of	
		Taxpayers Subject to Federal	10.50.1
	F07	Wiretaps	13-72.16
	[9]	Electronic Tracking Devices (Beepers)	13-72.17
	[10]	Pen Registers and Trap and Trace Devices	10.70.10
	F1 1 3	(Grabbers)	13-72.17
	[11]	Informants	13-72.18
	[12]	Mail Covers	13-72.19
e 12 11	[13]	Hardware and Software Evidence	13-72.20
§ 13.11		rd-Keeping Resources of Taxpayer Information	13-72.21
	[1]	Currency Transaction Reports	13-72.22
	[2]	Suspicious Activity Report (SAR) Forms	13-73
	[3]	Report of Cash Payments Over \$10,000	12.7
	E41	Received in a Trade or Business	13-74
	[4]	Social Security Administration	13-74
	[5]	State Department	13-74 13-74
	[6]	Securities and Exchange Commission (SEC)	13-72
	[7]	Comptroller of Currency	13-75
	[8]	Bureau of Alcohol, Tobacco and	13-7.
	[9]	Firearms Records	13-75
	[10]	Federal Bureau of Investigation Records	13-75
	[11]	Drug Enforcement Agency Records	13-76
	[12]	United States Postal Service Records	13-76
	[13]	Financial Crimes Enforcement Network	13-70
	[13]	(FinCEN)	13-76
		[a] Virtual Currency	13-77
		[b] Information Sharing	13-78
		[c] The U.S. Anti-Money Laundering Act	15 /(
		of 2020 and Beneficial Ownership	
		Registry	13-78
	[14]	Financial Institutions	13-78.12
	[1.]	[a] Report of Foreign Bank and Financial	10 / 0.11
		Accounts (FBAR)	13-78.13
		[b] Forms 5471 and 5472	13-80
		[c] Silent or Quiet Disclosures	13-81
		[d] FBAR IRS Examination, Fast Track	
		Settlement, and Appeals	13-81
		[i] Examination	13-82
		[ii] Appeals Division	13-84
	[15]	FinCEN, Financial Institutions, and the USA	
		PATRIOT Act	13-88
		[a] Certification Must Be Completed	
		by IRS	13-88.1

		[b] Financial Institution's Discovery of	
		Suspicious Account or Transaction	13-88.1
		[c] Protecting Information that Is Shared	13-88.2
		[d] Likelihood of Suspicious Activity	
		Report	13-88.2
	[16]	Foreign Corrupt Practices Act (FCPA)	13-88.2
	[17]	Hiring Incentives to Restore Employment	
		("HIRE") Act/ Foreign Account Tax	
		Compliance Act ("FATCA")	13-88.2
	[18]	Ransomware and Potential OFAC	
		Sanctions for Facilitation	13-88.4
§ 13.12	Speci	ial Agent's Prosecution Report	13-89
ŭ.	[1]	History of the Taxpayer	13-89
	[2]	Taxpayer Contacts	13-89
	[3]	Theory of the Case	13-90
	[4]	Reconciliation of Books and Records to	
		Tax Returns	13-91
	[5]	Other Evidence for Use in Criminal	
		Proceedings	13-91
	[6]	Evidence of Intent	13-92
§ 13.13	Taxp	ayer Conferences with the Government	13-93
	[1]	Conference with the Special Field Agent and	
		Group Manager	13-93
	[2]	Conference with Field Counsel	13-93
		[a] Items the Practitioner Should Address at	
		Conference with the Government	13-95
		[b] Field Counsel Referrals for Prosecution	13-95
	[3]	Conference with the Tax Division	13-97
	[4]	Conference with the United States Attorney's	
	_	Office	13-98
§ 13.14	_	dited Plea	13-99
	[1]	Taxpayer's Representative Must Initiate Plea	4.0.00
		Discussion	13-99
	[2]	Justice Department Authority and	4.0.00
	F2.7	Jurisdiction	13-99
	[3]	Evidentiary Analysis	13-100
	[4]	Affect of Plea Negotiations on	12 100
	Γ <i>Ε</i> 1	Civil Liability	13-100
	[5]	Citizenship	13-101
		[a] Good Moral Character	13-102
		2 3	13-102 13-102
		[i] Tax Returns Filed Jointly [ii] Spousal Elections	13-102
			13-102
		[c] "Particularly Serious Crime" [d] Adjustment of Status Tax Scrutiny	13-102.1
		[d] Adjustment of Status Tax Scrutiny [e] Expatriates	13-102.1
§ 13.15	Rank	Secrecy Act: Title 31 Referral Guidelines for	13-102.1
y 13.13		vil Penalties	13-103
	[1]	Severity of Violations.	13-103
	L + J	~ · · · · · · · · · · · · · · · · · · ·	15 105

		TABLE OF CONTENTS	xxi
	[2]	Inconsequential Violations	13-103
	[3]	Disclosure of Tax Return Information Based	
		on Related Statute Test	13-104
	[4]	Criteria for Determining Whether Bank	
		Secrecy Act Violations Warrant a	
		Penalty Referral	13-105
	[5]	Mitigating Factors to Offer in Defense to	
0.10.16	-	Bank Secrecy Act Violations	13-105
§ 13.16		d Jury Matters	13-106
	[1]	Function of a Grand Jury	13-107
	[2]	Challenging a Grand Jury Subpoena	13-108
	[3]	IRS Initiation of a Grand Jury Investigation	13-108
	[4]	Initiation of Grand Jury by Department of Justice	13-108.2
		[a] Department of Justice Policy	13-108.2
		[b] CID Assistance in Grand Jury Initiated	15 100.2
		by Government Attorney	13-108.3
	[5]	Grand Jury Secrecy	13-108.4
	[6]	Use of Subpoenas Duces Tecum in Grand	
		Jury Investigation	13-108.4
		[a] Testimony and Documents	13-108.4
		[b] Required Records Doctrine	13-108.5
		[c] Establishing the Scope of the Subpoena	
		Served Upon a Corporation	13-108.7
		[d] Document Production by Corporation	13-108.8
		[e] Consider Whether an Appearance Before	
		the Grand Jury to Produce Documents	12 100 0
		Is Actually Necessary	13-108.9
		[f] Retain Separate Counsel for the Company	13-108.9
		[g] Preparation of Witnesses for Testimony	13-100.7
		Before the Grand Jury	13-108.10
		[h] Interviews of Witnesses After Their	15 100.10
		Appearance Are Permitted	13-108.11
		[i] Waiver of the Attorney Client Privilege	
		and Work Product Doctrines	13-108.12
	[7]	Immunity	13-108.14
		[a] Application of the Fifth Amendment	
		Privilege	13-108.15
		[b] Timing	13-109
		[i] Burden	13-110
		[ii] Adverse Inference	13-112
		[c] Informing the Grand Jurors About	13-112
		Immunity of a Witness [d] Transactional Immunity Automatically	13-112
		Denied	13-112
		[e] Criteria for Granting a Request for	1.0 112
		Immunity	13-112.1
		[f] Civil and Criminal Contempt	13-113
		*	

		[i] Civil Contempt	13-113
		[ii] Criminal Contempt	13-114
	[8]	Informants	13-115
	[9]	Grand Jury and the Corporate Taxpayer	13-115
		[a] Avoid Destruction of Evidence by	
		Sending Freeze Letter	13-115
		[b] Advise Employees of Their Rights	13-116
		[c] Initial Conference with the Prosecutor	13-117
		[d] In-House Investigations	13-118
		[i] Conducting an Investigation via	
		Outside Counsel	13-118
		[ii] Conducting an Internal	
		Investigation Without Outside	
		Counsel	13-119
	[10]	IRS Final Report on Grand Jury	13-119
	[11]	Inappropriate Prosecutorial Actions	13-119
	[12]	Sentencing Guidelines	13-120
§ 13.17		inal Tax Prosecution	13-122
3	[1]	Dual and Successive Prosecution	13-123
	[2]	Pleas After Arrests	13-123
	[3]	Indictment	13-125
	[4]	Information	13-125
	[5]	Complaint	13-125
	[6]	Warrant or Summons	13-126
	[7]	Preliminary Hearing	13-126
	[8]	Arraignment.	13-126
	[9]	Invoking the Fifth Amendment During	
		Discovery and/or Trial	13-126.1
	[10]	Discovery and Inspection	13-127
	[.]	[a] The Brady Doctrine	13-127
		[b] Henthorn Requests	13-128
	[11]	Trial Preparation Methods	13-129
	[12]	Sentencing in Criminal Tax Prosecutions	13-130
		[a] Federal Sentencing Guidelines	13-131
		[i] Determining the Offense Level	13-132
		[ii] Defining the Tax Loss	13-132
		[iii] Use of Sophisticated Means to	
		Impede Discovery of Offense	13-133
		[iv] Defendant Derived Substantial	
		Portion of Income From Tax	
		Offense	13-134
		[b] Good Faith Defense	13-134
		[c] Presentence Investigation	13-135
		[d] Guilty Plea Analysis	13-135
§ 13.18	Taxpa	ayer Defenses	13-137
	[1]	Preparation for the Taxpayer Interview with	
		the Special Agent	13-137
		[a] Questions to Ask Special Agent	13-137

		TABLE OF CONTENTS	xxiii
		[b] Agreement to Produce Records	13-138
		[c] Attending the Taxpayer Interview with	
		the Special Agent	13-138
	[2]	Selective Enforcement	13-138
	[3]	Production of Evidence	13-139
	[4]	Cooperation with the Special Agent	13-139
	[5]	Affidavits	13-140
	[6]	Voluntary Disclosure Policy	13-140.1
	[7]	Attacking the Method of Proof Used by CID	13-140.1
	F. J	[a] Net Worth Method	13-140.1
		[b] Prior Accumulations of Income in	15 1.0.1
		Previous Years	13-141
		[c] Gifts, Inheritances, Loans.	13-142
		[d] Use of Forensic Accountants	13-142
	[8]	Statute of Limitations	13-142.2
	[9]	Suppression of Evidence as Remedy for	13 142.2
	[2]	Improper Use of Immunized Testimony	
		During Prosecution	13-142.3
	[10]	Suppression of Evidence Due to Prosecutorial	13-142.3
	[10]	Misconduct	13-142.4
	F1 1 1		13-142.4
	[11]	Under Seal	13-142.7
§ 13.19	[12]	eitures	13-142.7
8 13.19		13-142.8	
	[1]	Seizures	13-142.9
	[2]	IRS Internal Forfeiture Procedures	13-142.10
		[a] Counsel Assistance Provided in Administrative Forfeiture Cases	12 142 11
			13-142.11
		[b] Advertisement	13-142.11
		[c] Notice of Seizure Letter	13-142.12
		[d] Declaration of Forfeiture	13-142.12
		[e] Inquiries from Parties	13-142.12
		[f] New Evidence Must Exist to Support	12 142 12
	F2.7	Reversal	13-142.12
	[3]	Quick Release of Property Procedures	13-142.12
	[4]	Administrative Review	13-142.14
		[a] Petition for Mitigation or Remission	13-142.15
		[b] Mitigation	13-142.15
		[c] Remission	13-142.18
		[d] Notice Sent to Claimant	13-142.18
		[e] Request for Reconsideration of Denial	
		of Petition for Mitigation	13-142.18
	[5]	Judicial Forfeiture	13-142.19
		[a] Claim of Ownership and Cost Bond	13-142.19
		[b] Field Counsel Processing and Referral	
		of Claim and Cost Bond	13-142.20
	[6]	Role of the United States Attorney's Office	13-142.20
		[a] Settlement Possibilities	13-142.20
		[b] Authorization to Initiate Judicial Action	13-142.21

	[7]	Judicial Action	13-142.21
		[a] Venue	13-142.21
		[b] Burden of Proof	13-142.21
		[c] Constitutional Concerns	13-142.22
	[8]	Defenses to Forfeiture	13-142.22
		[a] Due Process	13-142.22
		[b] Double Jeopardy	13-142.22
		[c] Property Reported on Taxpayer's Tax	
		Return	13-142.23
§ 13.19A	A Multi	iple or Dual Representation Problems	13-142.25
	[1]	Potential for Ethical Dilemma	13-142.25
	[2]	Disqualification Upon Showing of Conflict	
		of Interest	13-142.25
	[3]	Government Motion to Disqualify Counsel	13-142.25
	[4]	Conflicts of Interest Resulting in	
		Disqualification	13-142.26
§ 13.20		vering Attorney Fees in a Criminal Case	13-143
	[1]	Defining a "Prevailing Party"	13-144
	[2]	Burden of Proof	13-146
	[3]	Final Judgment	13-146
	[4]	Net Worth Requirement	13-148
	[5]	The "Position of the United States"	13-148
	[6]	Discovery of the Conduct of the Government	12 150
	F. 77.3	May Be Allowed	13-150
	[7]	Scope of Record	13-152
		[a] Conduct Unsupported by the Law	13-152
		[b] Conduct Unsupported by the Facts	13-152
		[c] Use of Charge or Prosecution for	12 152
	F01	Wrongful Purpose	13-153
	[8]	Deadline for Filing Claim.	13-153
	[9]	Common Government Arguments to Refute	12 155
	[10]	Award Under Hyde Amendment	13-155
	[10]	Statutory Loophole of Special Circumstances Making an Award Unjust	13-156
	[11]	Practical Advice	13-156
	[11]	[a] Build a Record	13-156
		[b] Alert Court to Government's Improper	13-130
		Conduct	13-156
		[c] Track the Government's Conduct with	13-130
		its Policies	13-157
		[d] Extract a Concession Not to	15 157
		Reindict/Reprosecute	13-157
		[e] Restitution	13-157
§ 13.21	Title	18 Bootstrap	13-158.1
§ 13.21		ble Petition to Enforce Summons and	10 100.1
-		companying Declaration of Revenue Agents	13-160
§ 13.23		a 8300: Report of Cash Payments Over \$10,000	2 - 00
		a Trade or Business	13-188

TABLE OF CONTENTS

CHAPTER 14

Bankruptcy and the IRS

§ 14.01	Introduction			14-4	
	[1]	The	Estate	14-6	
	[2]	Sep	arate Entity in Chapters 5, 7 and 11	14-7	
		[a]	Defining the Estate	14-8	
		[b]	The Bankruptcy Estate Tax Liability	14-9	
		[c]	Filing Applicable Returns and Paying		
			Tax Liability	14-9	
		[d]	Trustee and the Estate	14-10	
		[e]	Individual Debtor/Taxpayer	14-11	
	[3]	Ban	kruptcy Rules	14-11	
§ 14.02	Gove	rnme	ent Players in the Bankruptcy Process	14-14	
	[1] Special Procedures Function				
	[2]		ted States Department of Justice	14-14	
	[3]	d Counsel	14-14		
§ 14.03	Bank	14-15			
v	[1]		omatic Stay	14-15	
		[a]	Adequate Protection	14-16	
		[b]	Relief from the Automatic Stay	14-16	
		[c]	Rights of Set Off	14-16	
	[2]	Wh	at May Be Discharged?	14-16.1	
		[a]	Priority Taxes	14-16.2	
			[i] Employment Taxes	14-17	
			[ii] Excise Taxes	14-17	
			[iii] Affordable Care Act	14-17	
		[b]	Equitable Tolling	14-18	
			[i] "Three-Year Look-Back Period"	14-18	
			[ii] Offer in Compromise ("OIC")		
			Tolling Circumstances	14-19	
			[iii] Collection Actions and		
			Challenges	14-20	
		[c]	Penalties	14-21	
			[i] Dischargeable Penalties	14-21	
			[ii] Non-Dischargeable Penalties	14-22	
		[d]	Interest	14-22	
		[e]	Excise Tax or Penalty?	14-23	
		[f]	Student Loans and Cancellation		
			of Indebtedness	14-24	
	[3]				
		Ι	Dischargeability Purposes	14-24.2	
		[a]	Substitute for Return	14-24.2	
		[b]	Tax Returns and the Bankruptcy		
			Abuse Prevention and Consumer		
			Protection Act of 2005	14-24.4	

		[c] Return Filed Within Two Years of	
		Petition	14-24.7
		[d] Fraudulent Tax Returns	14-24.7
		[e] Dismissal Due to Failure to File Returns	14-24.8
	[4]	What Is the Effect, If Any, of a Federal	
		Tax Lien?	14-25
	[5]	Exempt Property	14-26
	[6]	Notice of Levy Requires Harmonization of	
		Bankruptcy Code and Internal Revenue	
		Code	14-26
	[7]	Tenancy by the Entirety	14-28
		[a] Bankruptcy Claims	14-28
		[b] Individual Claims	14-28
		[c] Joint Claims Not Exempt	14-29
		[d] Sale of the Nondebtor's Interest	14-29
		[e] Effect of Liens Perfected Prior to Creation	
		of Tenancy by the Entirety	14-30
	[8]	Employment Tax Payments	14-30
	[9]	Turnover Requirement	14-32
	[10]	Implementing an Offer-in-Compromise Prior	
		to and During the Bankruptcy	14-36
	[11]	Determinations of Tax Liabilities	14-36.3
		[a] Request for Prompt Determination	
		from IRS	14-36.3
		[b] Bankruptcy Court	14-36.4
	[12]	Application of the Doctrine of Sovereign	
		Immunity	14-36.6
	[13]	Damages for Violations of the Automatic	
		Stay	14-36.8
		[a] Establishing a Violation of the	
		Automatic Stay	14-36.8
		[b] Two Procedures for Seeking Damages	
		Against the IRS	14-36.9
		[c] Compensatory, Punitive and Actual	
		Damages	14-36.10
		[d] Recovery of Attorneys' Fees	14-36.11
		[e] "Non-Willful" Violation of Automatic	
		Stay	14-36.13
	[14]	Effect of Confirmation	14-36.13
		[a] Chapter 11 and Confirmation	14-36.14
		[b] Chapter 13 and Confirmation	14-36.15
	[15]	Effect of an Order of Discharge from	
		the Bankruptcy Court	14-36.17
		[a] Effect of Discharge on Lien Holders	14-36.17
		[i] General Rule for Lien Holders	14-36.17
		[ii] Providing for Lien Holders	14-36.17
0 1 1 0 1	Б.	[b] A Federal Tax Lien Survives In Rem	14-36.18
§ 14.04		rminations by Bankruptcy Courts of Income	=
	Tax	Consequences	14-37

TABLE OF CONTENTS				
	[1]	In General	14-37	
	[2]	Case or Controversy	14-38	
	[3]	Analysis of Short-Year Election in		
		Chapters 7 and 11	14-39	
		[a] Mechanics	14-39	
	F 43	[b] Tangible Benefits	14-40	
	[4]	General Requirements for Confirmation	14-41	
		[a] Chapter 11, Generally	14-41	
		[b] Chapter 13, Generally	14-42 14-44	
		[c] Chapter 7, Generally	14-44	
		Authority	14-44	
		[i] Chapter 7 and Chapter 13	17 77	
		cases	14-44.1	
		[ii] Chapter V cases	14-44.2	
		[iii] Payment Protection Plan		
		Challenges by Debtors in		
		Bankruptcy	14-44.2	
§ 14.05	Inter	nal Jurisdiction and Settlement Authority		
		etween the IRS and the Department		
	of	Justice	14-44.3	
	[1]	Before or After Objection to a Proof of		
		Claim Is Filed	14-44.3	
	[2]	Before an Objection to a Proof of		
		Claim Is Filed	14-44.3	
	[3]	After an Objection to a Proof of Claim		
		Has Been Filed	14-44.3	
	[4]	Assistant United States Attorneys	14-44.3	
	[5]	Department of Justice, Tax Division	14-44.4	
	[6]	Burden of Proof	14-44.4	
	[7]	Service of Process	14-44.5	
§ 14.06		tical Considerations	14-45	
§ 14.07		plaint to Determine Tax Lien Priorities	14-48	
§ 14.08	Pract	tice Tips	14-52	
	[1]	Using the Taxpayer Advocate to Avoid		
		Unreasonable Revenue Officer	14-52	
	[2]		14-52	
	[3]	Litigating Tax Liabilities	14-52	
	[4]	Innocent Spouse Relief May Allow Debtor/		
		Spouse to Escape Liability	14-53	
	[5]	Counsel Client Regarding Consequence of	44.50	
	F 63	Bankruptcy Filing	14-53	
	[6]	Willful Evasion in the Context of Luxury	1 4 52	
	F 473	Purchase	14-53	
	[7]	Ordering Transcripts of Debtors' Tax	1454	
	F03	Accounts/Periods	14-54	
	[8]	Foreclosure by Lender and	14.54	
		Consequences	14-54	

xxviii	FEDERAL TAX LITIGATION	
	[9] Asserting the Fifth Amendment[10] Divorced or Divorcing Couples, Only	14-56
	One Spouse in Bankruptcy	14-56.1
	[11] Post-Petition Interest in Chapter 13	14-56.1
§ 14.09	Bankruptcy Abuse Prevention and Consumer	
	Protection Act of 2005	14-57
	[1] Retirement Plan Exemptions	14-57
	[2] Education IRAs	14-57
	[3] Notice of Request for Determination of Taxes[4] Discharge of Estate's Liability for Unpaid	14-57
	Taxes	14-58
	[5] Rate of Interest on Tax Claims	14-58
	[6] Repeat Bankruptcy Filers	14-58
	[7] Chapter 13 Discharge	14-58
	[8] Chapter 11 Discharge	14-59
	[9] Tax Court Stay Provision Limited	14-59
	[10] Periodic Payment of Taxes Under Chapter 11	14-59
	[11] Avoidance of Statutory Tax Lien Prohibited	14-60
	[12] Payment of Taxes in the Conduct of Business	14-60
	[13] Tardily Filed Priority Tax Claims	14-60
	[14] Return Defined, "Hanging Paragraph"	14-61
	[15] Return Must Be Filed to Confirm Chapter 13 Plans	14-61
	[16] Tax Disclosure Standards	14-61
	[17] Setoff of Tax Refunds	14-62
	[18] Dismissal for Failure to Timely File Returns	14-62
	[19] Homestead Exemption	14-62
	[20] "Means" Test	14-62.1
§ 14.10	Dischargeability Checklists	14-63
§ 14.11	Recovering Attorney's Fees	14-65
§ 14.12	Debt Forgiveness Situations Creating Tax Debt	14-66
	[1] Outside of Bankruptcy	14-66
	[2] Debtor in Bankruptcy	14-67
	[3] When to Use the Form 982	14-68
	CHAPTER 15	
	Access to Information from the Federal Government	
§ 15.01	The Freedom of Information Act	15-2
g 13.01	[1] FOIA Legislative Structure.	15-2
	[a] The "Reading Room" Provision	13-3
	of FOIA	15-3
	[b] FOIA Requests	15-4
	[2] Procedure for Making an FOIA Request	15-5
	[3] FOIA Exemptions	15-8

		\mathbf{T}_{A}	ABLE OF CONTENTS	xxix
	[a]	Exe	mption 2: Internal Personnel Rules	
		aı	nd Practices	15-9
	[b]		nption 3: Information Exempt Under	
		C	ertain Laws Other Than FOIA	15-10
		[i]	Application of FOIA Exemption 3	
			with Section 6103	15-11
		[ii]	Haskell Amendment Exception	15-12
		[iii]	Grand Jury Information Also Falls	
			Within Exemption 3	15-12.1
	[c]	Exe	nption 4: Trade Secrets and	
			ommercial or Financial	
		Ir	nformation	15-12.1
	[d]] Exer	nption 5: Internal Communications	15-13
		[i]	Government Deliberative Process	
			Privilege	15-14
		[ii]	Attorney-Client Privilege	15-18
		[iii]	Work-Product Privilege	15-18
	[e]		nption 7: Investigatory Files	15-19
§ 15.02	The Priv	acy Ac	t	15-21
			re Purpose of the Privacy Act	15-21
	[2] Ex	emptio	ns Under the Privacy Act	15-22
			g a Privacy Act Request	15-23
	[a	Disc	losure Litigation Division	15-24
	[b]	IRS	Evaluation of Sufficiency of	
		R	equest	15-25
		[i]	Verification of the Requester's	
			Identity	15-25
		[ii]	Verification That Request	
			Complies with Regulations and	
			Description of Records Sought	
			Is Sufficient	15-25
		[iii]	Tracking Down Records Sought	
			and/or Initiating Action on	
			Request	15-27
	[c]	IRS	Response Granting Request Under the	
		P	rivacy Act	15-28
	[d]] IRS	Response Denying Request Under the	
		P	rivacy Act	15-29
	[e]		uation of Request for Amendment of	
		R	ecords Under the Privacy Act	15-30
	[f]	Revi	ew of Refusal to Amend Record	
		U	Inder the Privacy Act	15-31
	[4] Ac		Pricing Agreements Between	
			rate Taxpayers and the IRS	15-31
§ 15.03	Section 6		access to Government	
	Docum	nents		15-33
§ 15.04	Judicial I	Review	of FOIA and Privacy Act Requests	15-34
	[1] Ve	enue		15-34

XXX	FEDERAL TAX LITIGATION					
	[2]	Burden of Proof	15-34			
	[3]	Complaint	15-35			
		[a] FOIA Action	15-35			
		[b] Privacy Act Action	15-36			
	[4]	Tax Division, Department of Justice	15-37			
		[a] Disclosure Litigation	15-37			
		[b] Requests for Tax Division Records	15-37			
	[5]	In Camera Review of Withheld Materials Is				
		Discretionary	15-37			
INDEX			I-1			