

Letters and Notices from the IRS are Coming – What You Need to Know

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Given the recent expiration of the IRS's People First Initiative on July 15, the return of IRS employees to offices and service centers, and this news release reminding taxpayers that collection activities would start resuming after July 15, 2020, taxpayers should prepare for a wave of letters and notices from the IRS because they are coming. While all correspondence from the IRS should be taken seriously and thoroughly reviewed, some letters and notices have more legal and serious consequences than others. This article identifies six of the most important letters and notices you might ever (and don't want to) receive from the IRS, then explains what they mean and how to respond.

Statutory Notice of Deficiency – Notice 3219

Sent by Certified Mail to your Last Known Address – This letter is a final determination of your tax liability for a given year(s) in which a deficiency in income tax has been determined, together with any penalty and related interest. Generally, it is issued after an IRS examination, via your correspondence with an IRS Service Center, or from your personal contact with an IRS revenue agent or an office auditor based upon your filed returns. However, it can also be issued where a taxpayer has not filed returns. The notice of deficiency increases your tax liability by either including additional items of income, or by disallowing certain deductions (expenses) or other credits you have taken on the filed returns.

The statutory notice of deficiency is commonly known as a “90-day letter” or a “deficiency notice” or a “SNOD” and is authorized in IRC § 6212. The deficiency notice allows you 90 days to file a Petition in the United States Tax Court to dispute the changes reflected in the deficiency notice. If you fail to file a Petition during the 90-day period, the determined deficiency in tax, together with any related penalty and interest, will be assessed against you. Thereafter, collection by the IRS can and will begin. However, if you file a timely Petition with the Tax Court, no assessment of any tax, penalty or interest can be made until the decision of the Tax Court becomes final.

Generally, upon filing a Petition, the Government will file an Answer and then refer your case to the IRS Appeals Office for settlement consideration. Over 90% of the “petitioned” cases to the Tax Court are settled with the IRS Appeals Office. The rules for filing a Petition with the Tax Court can be found at the recently revamped website for the United States Tax Court. These rules are fairly simple and straightforward. If your accountant, CPA, or attorney has not been involved in the IRS audit, you should converse with them upon your receipt of any statutory notice of deficiency as soon as possible.

Final Notice of Intent to Levy – Letter 1058 or Notice LT 11

Sent by Certified Mail to your Last Known Address – The IRS is required under the provisions of IRC § 6330 to send you a Final Notice of Intent to Levy and Notice of Your Right to a Hearing (Letter 1058 or Notice LT 11) with respect to any assessed and unpaid income tax liability before starting collection by levy or seizure of your property. Generally, the IRS has already sent you two or three notices prior to sending the Final Notice of Intent to Levy. This Final Notice gives you 30 days to file an administrative appeal with the IRS on a Form 12153 “Request for a Collection Due Process or Equivalent Hearing.”

This appeal is important for the following reasons: (1) while the appeal is pending, the IRS is prevented from further levying or seizing any of your properties, including your bank accounts, salary and/or wages; otherwise, if you fail to file a timely appeal, the levy will become effective immediately; (2) the appeal effectively transfers the case from IRS Collection to the IRS Appeals Office where you will have an opportunity to meet with a Settlement Officer and negotiate what is known as a “collection alternative” to the levy for your unpaid taxes; and (3) if you cannot negotiate a satisfactory collection alternative with the Settlement Officer, you have the right to file a Petition in Tax Court to dispute the proposed levy. All of this is commonly referred to as “Collection Due Process” and it is instituted by you filing the Form 12153 with the IRS from the Final Notice of Intent to Levy within the 30-day time period. Similar to Statutory Notice of Deficiency referred to above, the IRS Appeals Office will send you a Written Notice of Determination at the conclusion of your appeal from which you also have 30 days to file a Petition in Tax Court assuming you are not in agreement with the Written Notice of Determination. Further information concerning this procedure can be found [here](#).

Notice of Federal Tax Lien Filing – Letter 3172

Sent by Certified Mail to your Last Known Address – The IRS is required under IRC § 6320 to send you a Notice of Federal Tax Lien and Your Right to a Hearing under IRC § 6320 (Letter 3172) not more than five business days after the filing of the first Notice of Federal Tax Lien (NFTL) for a specific tax period. The notice must inform you of your right to request a Collection Due Process hearing before the IRS Appeals Office within 30 days from the date of the letter by submitting a Form 12153 “Request for a Collection Due Process or Equivalent Hearing.”

Similar to the appeal of a Final Notice of Intent to Levy discussed above, the appeal of a Notice of Federal Tax Lien Filing initiates the steps and protections afforded by “Collection Due Process” and the opportunity to go to Tax Court if matters cannot be resolved with the IRS Appeals Office. Although you may be entitled to a “collection alternative” for

example, an Installment Agreement, generally the NFTL will not be released until the underlying tax liability is satisfied. If you fail to appeal the notice timely, you are still entitled to an equivalent hearing with the IRS Appeals Office, but you cannot appeal the decisions of the IRS Appeals Office to the Tax Court or any other court. The filing of a NFTL by the IRS and the subsequent notification by the IRS are critical items that require your attention. A filed NFTL will negatively impact your credit score, make it very difficult to obtain loans from banks and other financial institutions, and may make other outstanding creditors nervous. Finally, a filed NFTL is a matter of public record.

Proposed Trust Fund Recovery Penalty Assessment – Letter 1153

Sent by Certified Mail to your Last Known Address – If you are an owner, officer, check-signer, or decision-maker at a business that is behind on Form 941 taxes (employment/payroll taxes), you are at risk of being personally assessed as a “responsible person” with a penalty called the “Trust Fund Recovery Penalty,” which is equal to the amount withheld from the employees’ paychecks that has not been remitted to the IRS. See IRC § 6672. A second element under IRC § 6672 is that the responsible person’s conduct must be “willful” which is interpreted broadly for purposes of the statute. For example, if a responsible person intended to pay the trust fund taxes to the IRS, but paid other creditors first in order to continue business, this is very likely to satisfy the “willfulness” requirement of the statute.

The IRS, however, cannot make an assessment of unpaid employee withholding taxes against a “responsible person” until he or she is first provided with notice and opportunity to file an appeal. This is done through the issuance of a Letter 1153, together with a Form 2751, which is sent by the Revenue Officer who generally conducted the employment tax examination of the business. The Form 2751 will tell you how much the “Trust Fund” portion is as the amount allegedly owed is reflected in the bottom right corner of said Form under the column entitled “Penalty.” If you receive this letter and believe that you are not a responsible person *and/or* did not engage in conduct deemed willful, it is imperative that you appeal and protest this letter within the 60-day time frame outlined in Letter 1153. If possible, it is best to engage counsel to prepare your protest and argue your appeal before the IRS Appeals Office. If you fail to file an appeal within the 60-day time period, an assessment of the Trust Fund Recovery Penalty will be made against you and collection action will begin by the IRS.

Notice of Certification of Seriously Delinquent Federal Tax Debt to the State Department – CP 508C Notice

Sent by Regular Mail to your Last Known Address (POA on file will *not* receive a copy) – Pursuant to IRC § 7345, the IRS may certify to the State Department that a taxpayer’s outstanding liabilities are “seriously delinquent,” so long as the IRS contemporaneously sends the taxpayer notification of the seriously delinquent tax debt certification, which the IRS does through the issuance of a CP 508C Notice. Seriously delinquent tax debt is an individual’s unpaid, legally enforceable federal tax debt (including interest and penalties) totaling more than \$53,000 (adjusted annually for inflation) for which a: (1) Notice of Federal Tax Lien has been filed and all administrative remedies under the law have lapsed or have been exhausted; or (2) levy has been issued.

Upon receipt of the Certification of Seriously Delinquent Tax Debt, the State Department can deny your application for a passport (after a 90-day hold period) or, at the subsequent request of the IRS, revoke or suspend your previously issued passport. The CP 508C Notice is important because it is your ticket to Court in the event the taxpayer either disagrees with the amount of the balance due, or whether the IRS failed to reverse the certification when required to do (i.e., if the tax debt was not a seriously delinquent tax debt due to a pending collection alternative, a pending bankruptcy, or a handful of other reasons). Thus, an individual that receives a CP 508C Notice should send a copy to their power of attorney or counsel as soon as possible, and then with the aid of that POA or counsel determine whether a suit should be filed. Section 7345 allows taxpayers to file suit in the Tax Court or a United States District Court. Further, the statute does not set a time limit for filing suit after receiving the CP 508C Notice, neither do the Tax Court's Rules.

Soft Letters (various Letters #####)

Sent by Regular Mail to your Last Known Address – When the IRS's Large Business and International (LB&I) division launched its new Compliance Campaign initiative in January of 2017, one of the "treatment streams" it introduced was the "Soft Letter." A Soft Letter is a letter sent to a taxpayer informally inquiring about a tax position they've taken. Soft letters do not constitute the beginning of an examination, nor do they request books and records, but Soft Letters do request specific additional information about certain tax positions. You are not required to respond to a Soft Letters, but the failure to respond will likely trigger the commencement of an IRS examination.

Of the 53 active LB&I Compliance Campaigns as of July 30, 2020, Soft Letters are a specified treatment stream in at least 14 of them, including Captive Service Providers, Form 1120-F Non-Filer, IRC § 965 for Individuals, Offshore Private Banking, Partnership Stop Filer, S Corporation Losses Claimed in Excess of Basis, Sale of Partnership Interest, Tax Cuts and Jobs Act, etc. Sample Soft Letters can be viewed [here](#), [here](#), [here](#), and [here](#). If you receive a Soft Letter, then one of your recently filed tax returns has likely taken a position that the IRS is somewhat concerned about; thus, you should not ignore a Soft Letter. You should contact your CPA and/or counsel to coordinate an appropriate response and hopefully avoid a time-consuming IRS examination and any penalties.

Takeaways

You should thoroughly review all correspondence received from the IRS, provide copies to your applicable trusted advisers, and respond as necessary. More particularly, the Statutory Notice of Deficiency (Notice 3219), Final Notice of Intent to Levy (Letter 1058 or Notice LT 11), Notice of Federal Tax Lien Filing (Letter 3172), Trust Fund Recovery Penalty (Letter 1153), and Notice of Certification of Seriously Delinquent Federal Tax Debt to the State Department (CP 508C Notice) all involve proposed assessment or collection actions by the IRS against you personally. While Soft Letters are not proposing immediate assessment or collection actions, they do indicate that the IRS is concerned about a particular position taken on your return. Failure to timely and properly respond to these letters could have immediate and far-reaching consequences. Attempting to resolve these consequences with an untimely response (or after the failure to respond) is often onerous, difficult, costly, and incredibly time-consuming. Please seek advice from a

professional if you receive any of the aforementioned letters.

For more information and guidance, or if you just have some questions concerning letters or notices you received from the IRS, please reach-out to Nexsen Pruet tax attorneys Paul G. Topolka at 336.387.5123 or David M. McCallum at 919.573.7440.