

# 2022 NATIONAL INCOME TAX WORKBOOK

CHAPTER 8: TAX PRACTICE AND  
PROCEDURE – P. 285



**Topics:**

<b>1. Form 2848, Power of Attorney</b>	<b>287</b>
<b>2. IRS Assessments</b>	<b>293</b>
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## TAX PRACTICE AND PROCEDURE - LEARNING OBJECTIVES P. 285

- **KNOW HOW TO COMPLETE AND FILE FORM 2848**
- **UNDERSTAND IRS DEFICIENCY PROCEDURES**
- **UNDERSTAND HOW IRS ASSESSES TAX ON CLERICAL OR MATH ERRORS**
- **KNOW HOW TO CONTACT IRS IN RESPONSE TO A NOTICE OR LETTER**
- **UNDERSTAND WHEN TP IS ALLOWED APPEALS AND DISCUSS THE PROCEDURE**
- **RECOGNIZE WHEN IRS LIABILITY AGAINST TRANSFEREE, NOMINEE, ALTER EGO**
- **EXPLAIN WHEN T/P FILE AMENDED/SUPERSEDING RETURN & IMPACT**

**Authorization to represent taxpayers - IRS tax matters & specific acts**

**Authorized REPs:**

- |                             |                                      |
|-----------------------------|--------------------------------------|
| 1) Attorney                 | 6. Relation to T/P                   |
| 2) CPA                      | 7. Unenrolled Return Preparer (AFSP) |
| 3) Enrolled Agent           | 8. Special Appearance                |
| 4) Enrolled Actuary         | 9. Enrolled Retirement Plan Agent    |
| 5) Temporary Enrolled Agent |                                      |

**See Cross Ref. P. 287 for levels of representation**

**Individual** - name, address, SSN + EIN for Sch. C – w/ employees -2848 both spouses for MFJ

**Partnership** - name/TIN/address – *Central. P/S regime- P/S rep. & P/S name*

**Corporation**-EIN/address of corp.- consolidated only parent information

**Trusts** – trustee's name/address, and trust name and EIN

**Estates** – decedent's name/address, title/address executor/PR

**F-706**, decedent's SSN/ITIN

**All other estate forms** estate EIN or decedent's SSN – *See Practitioner Note – Deceased T/P*

**Gift Tax** –donor's name, address, and SSN or ITIN

**Line 2 – REP information (up to 2)**

Check box to receive IRS communication

CAF number & PTIN

- Practitioner Note P. 288 - IRS contact - authentication REP DOB & SSN

**Line 3 – Authorized Acts**

Tax Matters, Form Number(s) & period(s)/yrs. (prior & future up to 3 yrs. from yr. IRS receives 2848) Estate tax use decedent's DOD

**Line 4 - Acts Not on CAF – Specific use POA**

Describe issue, check box, e.g., private letter ruling request

**Line 5a –Additional Acts Authorized**

See Fig. 8.1, P.289 (e.g., agent signing return for T/P)

**Line 6 - Retention/Revocation Prior POA**

Check box, attach copy of POA retained

**T/P Declaration & Signature**

Authority to sign, see list PP. 290-291

***Practitioner Note - Signing Order***

T/P signs first – Rep. has 45/60 days to sign

**SUBMITTING F-2848 & 8821 TO IRS**

1. IRS Tax Pro Account, *IRS processing real time*
2. Online, upload/submit, FIFO processing
3. Fax or Mail – signature handwritten – FIFO processing



**Deficiency Procedures - assess tax + penalty+ interest**

30-day letter proposes changes

30-day letter proposed adjustments

Statutory notice of deficiency – 90 days to file in Tax Court

**Jeopardy Assessments exception to deficiency procedures**

- Collection in jeopardy - List of grounds for jeopardy assessments – P. 294
- Assessment made **immediately**
- Requires **written approval**
- Factors to consider – P. 295

## MATH & CLERICAL ERRORS

PP. 295-296

- IRS skips deficiency procedures
- Notice and right to abatement

### Math/Clerical Error Types

- Addition/Subtraction
- Incorrect use of IRS
- Inconsistent entry
- Omission of substantiating information
- Excess or incorrect deduction or credit
- Omission of TIN
- EIC for SE with no SE income

- Ex. 8.2 Diane uses MFJ not MFS
- Ex. 8.3 Sharon fails to attach Form 8889
- Ex. 8.4 Robert's MAGI disqualifies him for the student loan interest deduction

T/P has 60 days from notice date to request abatement with or w/o substantiation

IRS must abate – follow deficiency procedures

**Substantiated Protest** - Protest with supporting documents

**Unsubstantiated Protest** – Protest without supporting documents.

**Not math/clerical errors for 60-day abatement**

Withholding or estimated tax payment corrections

Tax decrease or increase of credits

*Practitioner Note T/P can request a copy of assessment record*

Some IRS notices suspended- *IRS website & Practitioner Note P. 298*

**Reasons for IRS Notices/Letters**

Balance Due

Refund change

IRS made return changes

Verifying identity

Additional Information needed

Question items

Notification of delays in processing

NTA notes only 3% of calls reached customer rep.

**Ex. 8.5** Jesse reports \$200K amount realized gets letter – explain difference between \$26,242.57 and \$26,242.57 amount realized. Consider call or written response w/supporting docs.

Practitioner Priority Service Phone #

**Fig. 8.5** expect delays

**Fig. 8.6** PPS phone prompts

**PPS provides account-related services such as:**

- Locating & applying payments
- Explaining IRS communications
- General procedure guidance
- Making account adjustments



## Question #1



Polling Question

Contact IRS to dispute adjustment w/in 60 days

Call IRS – or better to send by certified mail

If 60 days has passed, US district court or Court Federal Claims

**Only limited situations - file US Tax Court**

***Other phone resources P.303***

## **Notices & Letters - Appeal opportunity**

- **See list PP. 304-305**

## **Penalty- Appeals Request**

- 30 days of IRS rejection LTR re. T/P received penalty letter, filed written request for abatement of penalty, IRS denied, and T/P received letter stating denied and appeal rights
- **See IRS Pub. 4576 re. penalty appeals process.**

*Cross-Reference -See "Penalties and Defenses" in 2016 workbook for penalty relief discussion*

## REQUESTING AN APPEALS CONFERENCE

P. 306

Formal written protest if adjustment exceeds \$25K,  
employee plans, partnerships and S corps

- See information to Include

Small Case Procedure if adjustment \$25k or less and  
otherwise qualifies

- Form 12203

## Question #2



Polling Question

## THE APPEALS PROCESS

P. 307

Appeals officer contacts T/P, schedule virtual or in-person hearing

Time for first notice varies

Practitioner Note, Appeals time average 372 days

I.R.M. virtual conference requirements

Practitioner Note, no resolution, court petition

**Appeals Fast Track Program-Unresolved Issues**

Exam/collection action complete-T/P requests Fast Track

Small Business/Self-Employed apply on Form 14017

List of eligible cases

Collection issues apply on Form 13369

**Other ADR Types**

**Early Referral** – Exam/collection in progress transfer issues that are developed but unagreed

**Rapid Appeals Process-** Remaining unresolved Appeals issues -mediation- (LB&I & SBSE estate & gift tax cases)

**Post Appeals Mediation** Mediator for unresolved issues under Appeals consideration –See *List of issues not eligible*

Cross-Reference – Taxpayer Advocate Service, See 2021 workbook



## TRANSFEREES, NOMINEES, & ALTER EGOS

PP. 310-311

**Transferee** – receives property for < adequate consideration from TP who has tax liability

Heir/distributee of estate

S/H of dissolved corp

Donee

Corp successor

Party to reorg

Other distributees

### **Property Transfers**

Some must occur after accrual of tax liability – last day of tax period

Less than adequate consideration

Transferee is insider with reason to believe transferor insolvent

**Ex. 8.7** Corp paid debt to shareholder but not tax liability

List of direct and indirect transfers

### **Source of Liability**

Based on law or equity – fraudulent conveyance, trust fund doctrine

**Transferee/fiduciary notice** -w/in 90 days can petition Tax Court

IRS assesses if court decision, default, or agreement

IRS files lien and collects

**Statute of Limitations on Assessment**

Generally, within 1 year after Transferor SOL expiration

SOL suspended during 90-day assessment and while court action pending

**Estate & Gift Tax Transferee Liability – Limited to FMV of property**

**PR Personally liable** – other estate debts paid 1<sup>st</sup> – and tax nonpayment

**TRANSFEE DEFENSES AGAINST LIABILITY**

- 1) Transferor paid the tax and waived right to refund
- 2) Transferor does not owe the tax
- 3) SOL expired
- 4) Transferred property returned
- 5) IRS has not exhausted collection efforts against transferor

**Nominee = individual/entity **auth. to act on behalf** of someone else**

- 1) TP previously owned the property
- 2) Nominee paid < adequate consideration
- 3) TP retains control
- 4) TP uses property
- 5) TP pays property expenses
- 6) Tax avoidance transfer

**IRS issues NFTL to nominee**

**ALTER EGO**

**Legally** - Entity separate from T/P

**Factually** – Entity **not separate** from T/P

- |                               |                           |
|-------------------------------|---------------------------|
| 1) Co-mingling of funds       | 4) Corp. undercapitalized |
| 2) Unsecured int. free loans  | 5) No corp. formalities   |
| 3) SH has substantial control | 6) Unjust or unfair       |

**IRS treats as one for tax collection- alter ego liable**

**Superseding Return**-filed during filing period

**Amended Return**-filed after filing period

Reasons to Amend

Change filing status, correct income, deductions, credits, elections,  
change IRS amounts, claim a carry back

### **Statute of Limitations**

General – assess w/in 3 years, credit or refund filing w/in later of 3 yrs. from orig. return filed or 2 yrs. after tax paid

Amended return does not change SOL

Superseding return filed on or before original due date deemed filed on due date

Superseding return filed during extension period does not change SOL



## AMENDED RETURNS

PP. 317-320

See IRS Interactive Tax Assistant

May need transcript

### **When to file**

- Wait until original return processed
- Note – file earlier if necessary to avoid penalties/interest

File w/in SOL period

### **How to file**

Form 1040-X

Electronically file if 2019 or later and orig. filed electronically

**Deceased T/P** – write “deceased” and date of death

Surviving spouse or PR signs - May need Form 1310

**Tracking Amended Return** – online tool or call, processing delays

**Claim of Right Adjustment** – T/P reported income, later determines no right to income-files claim, deduction exceeds \$3K

Decrease is treated as payment for prior tax year and refunded

**Ex. 8.9** Robert gave refund to resolve dispute, file from 1045 to claim overpayment

## Question #3



Polling Question

## SUPERSEDING RETURNS

PP. 321-324

**Filed**– To correct an error or change a tax election. **Must be filed before end of filing due date (w/extensions)**

**Some binding elections** must be filed by the **original due date** of the return (not including extensions, e.g. changing filing status). **Planning Pointer-P.322**

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## SUPERSEDING RETURNS

PP. 320-321

Note - Superseding return to make or revoke election

**SOL assessments** 3 years after return filed (deemed filed on due date if filed before)

**SOL refunds** **Later** 3 yrs. return filed or 2 yrs. after tax paid

Superseding return does not extend SOL (Chief Counsel Memo 202026002)

**Ex. 8.10**, Emma filed superseding return 8/26/22 –SOL runs **6/4/22** (date original filed return)

Paper file – write “SUPERSEDING RETURN”

E-file – new check box

Note request extension when filing  
superseding return may be anticipated

## Question #4



Polling Question

THANK YOU

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