



FROM THE DESK OF MORGAN D. KING JAN. 15 2008

In This Issue:

NEWS FOR LAWYERS HELPING DELINQUENT TAXPAYERS

- NEWS & ANNOUNCEMENTS
- HELD: WRONG ADDRESS NULLIFIES IRS NOTICE OF INTENT TO LEVY
- NEW! KING'S LEGAL GUIDE TO OFFERS-IN-COMPROMISE
- CONSULTING WITH MORGAN KING 925-829-6363
- HELD: TAXPAYERS WAIVED RIGHT TO DUE-PROCESS HEARING
- SIGN UP FOR KING'S TAXGRAM - FREE!

NEWS & ANNOUNCEMENTS

IRS TAXPAYER ADVOCATE SEEKS BROADER DELINQUENT TAX REMEDIES

Criticizes IRS handling of offers-in-compromise, due-process hearings, and innocent-spouse defenses.

Taxpayer Advocate Service — 2007 Annual Report to Congress

Excerpts from the executive summary of recommendations:

INNOCENT SPOUSE

Allow Taxpayers to Raise Relief Under Internal Revenue Code Sections 6015 and 66 as a Defense in Collection Actions. In her 2006 Annual Report to Congress, the National Taxpayer Advocate proposed the following changes to IRC §§ 6015 and 66 to make the so-called "innocent spouse" provisions consistent and fair:

1. Direct the IRS to include the last date to file a petition with the Tax Court in innocent spouse final determination letters;
2. Suspend the period for filing a U.S. Tax Court petition during bankruptcy;
3. Require the IRS to establish a reconsideration process for innocent spouse determinations;
4. Provide the Tax Court with jurisdiction to review community property relief determinations under IRC § 66(c);
5. Provide that a taxpayer may request equitable relief from liabilities at any time the IRS could collect such liabilities; and
6. Expand the availability of refunds to taxpayers granted innocent spouse relief.

In this report, we reiterate these recommendations and propose an additional one. While taxpayers may raise IRC § 6015 relief in a Collection Due Process, deficiency, or

NEWS FOR
LAWYERS
HELPING
DELINQUENT
TAXPAYERS

TaxJustice.com



FOR CONSULTATION
ABOUT YOUR CLIENT'S
DELINQUENT TAX
PROBLEMS
(925) 829-6363

bankruptcy proceeding, or a refund suit, a number of recent United States District Court opinions have held that such relief cannot be raised as a defense in a collection suit in district court. We recommend that Congress amend IRC §§ 6015 and 66 to clarify that taxpayers may raise relief under those sections as a defense in a proceeding brought under any provision of Title 26 (including §§ 6213, 6320, 6330, 7402, and 7403) or any case under title 11 of the United States Code.

OFFER IN COMPROMISE:

24. Offers in Compromise. The IRS's Offer in Compromise (OIC) program is no longer being used to any significant extent as a viable collection alternative. Between FY 2001 and FY 2007, offer receipts declined by 63 percent and the number of accepted offers declined by 70 percent. The National Taxpayer Advocate believes that the long-term success of the OIC program is best served by maximizing the number of cases in which the IRS is able to complete the investigation and make a decision to accept or reject the offer on its merits.

However, for the IRS to achieve its policy goals and reap the benefits of a successful OIC program, it must first minimize the extent to which policies intended to deter taxpayers from submitting incomplete or unrealistic offers do not also discourage taxpayers from submitting good ones. In order to do so, the National Taxpayer Advocate recommends the IRS ensure all IRS Collection employees can identify when accepting an OIC is a "win-win" situation for taxpayers and the government. Moreover, the IRS should revitalize its OIC outreach efforts to taxpayers and practitioners to better assist them with the submission of reasonable and appropriate offers. The key to success of the OIC program is to identify those taxpayers for whom an offer is an appropriate collection alternative and ensure they are aware of the OIC process and do not face unreasonable barriers in the submission of an offer.

DUE-PROCESS HEARINGS

1. Appeals from Collection Due Process (CDP) Hearings Under Internal Revenue Code Sections 6320 and 6330. CDP hearings provide taxpayers with an independent review by the Office of Appeals of the IRS's decision to file a lien or its proposal to undertake a levy action. In other words, a CDP hearing gives taxpayers an opportunity for a meaningful hearing in front of an independent appeals officer before the IRS deprives them of property.

Since 2003, CDP has been the tax issue most frequently litigated in the federal courts and analyzed for the Annual Report to Congress. This year continues the trend, with the courts issuing at least 217 opinions during our review period. Some critics have argued that the CDP process stalls the IRS collection process and allows taxpayers to raise frivolous arguments. However, the National Taxpayer Advocate remains convinced that the process serves an important function by providing taxpayers with a forum to raise legitimate issues prior to the IRS's depriving them of property. The opinions reviewed this year support this view. Many of the reviewed decisions provided useful guidance on substantive issues, while others appropriately imposed or warned taxpayers about the possibility of sanctions being

imposed in the future.

PRIVATE TAX COLLECTION FAILING

In her annual report to Congress, National Taxpayer Advocate Nina Olson said that the Internal Revenue Service's private tax debt collection program (PDC) is falling way short of projected goals. And, according to Olson, the IRS knows it.

In May, the IRS estimated that the program using private collection agencies (PCAs) to pursue delinquent tax debts would raise gross revenue of between \$1.5 billion and \$2.2 billion over the next 10 years. It was estimated that yearly collections would reach a midpoint average of about \$185 million.

The IRS now acknowledges that the program won't hit these targets, Olson said in a statement. Instead of \$185 million a year in collections, the IRS estimates the private debt collectors reported gross revenue of \$31 million for Fiscal Year 2007.

For more story - <http://www.accountingweb.com/cgi-bin/item.cgi?id=104476&d=883&h=884&f=882&dateformat=%25e-%25h-%25y>

Download the complete Executive Summary of the Advocate's report -

<http://morganking.com/TaxJustice/taxjusticebooks.htm>

JK HARRIS CEO COMMENDS NATIONAL TAXPAYER ADVOCATE REPORT TO CONGRESS

NORTH CHARLESTON, S.C. – JK Harris and Company, LLC, CEO and founder John Harris both applauds and agrees with the Offer in Compromise section of the recently released National Taxpayer Advocate 2007 Annual Report to Congress.

National Taxpayer Advocate Nina E. Olson defines one of the problems with the IRS by stating, "The IRS' Offer in Compromise (OIC) program is no longer being used to any significant extent as a viable collection alternative."

Harris, founder of the nation's largest tax resolution company, agrees with the assessment.

"It appears pretty obvious the Offer in Compromise program is not being used to its fullest potential," Harris said.

More story -

<http://www.expertclick.com/NewsReleaseWire/default.cfm?Action=ReleaseDetail&ID=19640>

MORTGAGE DEBT FORGIVENESS MAY MEAN A STATE TAX BILL

SACRAMENTO January 14, 2008

Distressed California homeowners who have had all or part

of their mortgage debts "forgiven" by lenders through foreclosure or negotiating a new loan could be slammed with a big tax bill, the state tax collector warns.

California does not automatically conform to the federal "Mortgage Forgiveness Debt Relief Act of 2007," signed into law on Dec. 20, 2007.

In order for the provisions of this act to apply to California, the legislature must enact conforming legislation, the Franchise Tax Board says.

The "Mortgage Forgiveness Debt Relief Act of 2007," was enacted to provide relief to families hit by the subprime mortgage market. Under California tax law, however, debt forgiven following mortgage foreclosure or renegotiation is considered income for tax purposes and may result in a tax liability for taxpayers.

More story -

<http://www.centralvalleybusinesstimes.com/stories/001/?ID=7536>

USA IS BROKE

More about how the US Debt is so HUGE and that Cowboy Bush and their government doesnt care, every year \$500 billion dollars are added to it, more new taxes rebates BUT for the Rich ppl of course. US DOLLAR has lost lot of value against Euro and, YES, against Canadian Dollar.

The next president faces an unenviable task: namely, to fix the national fiscal position after eight years of Republican mismanagement. If they don't make fixing this their top priority, then the US could have an incredibly difficult time when they leave office in either four or eight years.

Let's start with an overview of the last six years. These figures are from the Bureau of Public Debt. They are the total amount of debt outstanding as of the end of the government's fiscal years.

09/30/2006	\$8,506,973,899,215.23
09/30/2005	\$7,932,709,661,723.50
09/30/2004	\$7,379,052,696,330.32
09/30/2003	\$6,783,231,062,743.62
09/30/2002	\$6,228,235,965,597.16
09/30/2001	\$5,807,463,412,200.06
09/30/2000	\$5,674,178,209,886.86

Currently, the total national debt stands at \$9,136,418,062,457.29

The Associated Press recently made this observation:

Like a ticking time bomb, the national debt is an explosion waiting to happen. It's expanding by about \$1.4 billion a day -- or nearly \$1 million a minute.

More story - <http://welttag.blogspot.com/2008/01/usa-is-broke.html>

DEBT, TAX CUTS, HEALTH CRISIS WORRY JAY

ROCKEFELLER

By Paul J. Nyden

Sen. Jay Rockefeller, D-W.Va., expressed deep concerns about the future of the country during a meeting with Gazette editors on Thursday.

"We have a government that has no money," Rockefeller said. "We have a government that hands over endless amounts of money in tax breaks to the top 1 percent of our people with no thought for anyone else...."

Rockefeller said he worries constantly about government finances.

"We are broke.... We went from a \$5.6 trillion budget surplus [when Clinton left office] to \$9 trillion in debt today. And the war in Iraq was totally unnecessary, totally destructive."

The financial crisis may deepen, Rockefeller added, because of rapidly growing debts to China, Japan and South Korea.

"Our nation is broke at precisely the time our nation needs to renew itself...."

More story -

<http://sundaygazette.com/section/News/2008011036>

JUDGE BLASTS COUNTRYWIDE

MORTGAGE SERVICES, BANKRUPTCY, AND PHONY EVIDENCE

At an almost comical December 20 hearing an attorney for Countrywide explained some fishy-looking documents to a Bankruptcy Court judge and trustee. The letters presented as evidence, sent to notify a homeowner of payment adjustments in 2003 during her Chapter 13 case, were actually "recreated", that is to say, created in 2007.

Evidence of what? It's a bit hard to determine from the transcript. It appears that after this homeowner completed a Chapter 13 plan providing for a cure of her mortgage default, Countrywide asserted that she was still thousands of dollars in arrears.

Countrywide seems to have blamed the problem on the debtor ignoring annual payment increases required by adjustments to the escrow for property taxes and insurance. The debtor and trustee, on the other hand, claim that Countrywide either lost payments made through the plan or misapplied them.

More ominously for Countrywide, there is reference to 293 cases in the same district in which the trustee is questioning the proper application of mortgage payments.

More story -

<http://pubcit.typepad.com/clpblog/2008/01/mortgage-paymen.html>

BILLS SEEK TO DENY GRANTS TO DELINQUENT TAXPAYERS

Over the past six months the General Accounting Office (GAO) has been reporting on the causes of the tax gap -- the differences between taxes owed and taxes collected (currently around \$350 billion, according to some estimates). A GAO study reports that nonprofit organizations owe about \$1 billion in back taxes -- primarily payroll taxes. Here is an excerpt from the report dated July 24, 2007.

What GAO Found:

Nearly 55,000 exempt organizations had almost \$1 billion in unpaid federal taxes as of September 30, 2006, with charitable organizations being responsible for more than 85 percent of the \$1 billion in debt. About 1,500 of these entities each had over \$100,000 in federal tax debts, with some owing multi-million dollars in federal taxes. The majority of this debt represented payroll taxes and associated penalties and interest dating as far back as the early 1980s. Willful failure to remit payroll taxes is a felony under U.S. tax law. The \$1 billion figure is understated because some exempt organizations have understated tax liabilities or did not file tax returns.

More story -

<http://lawprofessors.typepad.com/nonprofit/2008/01/bills-see-to-d.html>

NEW! KING'S LEGAL GUIDE TO OFFERS-IN-COMPROMISE

PRE-PRESS DISCOUNT IF ORDERED NOW!

BOOK: King's Legal Guide to Offers-In-Compromise by Morgan D. King. Softcover with CD. Scheduled release date Feb. 28 2008.

This book is written for tax and bankruptcy professionals and contains a thorough explanation of the law and procedure in connection with processing offers-in-compromise with the Internal Revenue Service.

It contains case-law comment and sample forms and checklists, and comes with a CD containing the text of the book and the complete text of the IRS offers-in-compromise "handbook" taken from the Internal Revenue Manual.

Contents:

REMEDIES FOR DELINQUENT TAXES - OVERVIEW

OVERVIEW OF OFFERS-IN-COMPROMISE

BASIS FOR MAKING THE OFFER

CALCULATING THE OFFER

PAYMENT OPTIONS

PROCEDURE

Click here
for more info
or to order

King's Legal Guide to
Offers-In-Compromise



FORMS & DOCUMENTS**NEGOTIATING****APPEALS****APPENDIX**

- Text of book
- Published cases on offers-in-compromise
- IRS OIC Handbook
- Forms
- Other resources

INDEX

REGULAR PRICE \$ 179.95 + s&h

OFFERED NOW AT A PRE-PRESS DISCOUNT OF \$129.95 + s&h.

Save \$50 if ordered now!

TO ORDER WITH CREDIT CARD CLICK ON LINK BELOW, then click on Order Online and enter coupon code "PREPRESS" (without quote marks).

Also visit BankruptcyBooks.com to review King's Discharging Taxes in Bankruptcy.

[CLICK HERE TO ORDER GUIDE TO OFFERS-IN-COMPROMISE](#)

HELD: TAXPAYERS WAIVED RIGHT TO DUE-PROCESS HEARING

CAVEAT: If your client has reached an agreement with the IRS while a collection due-process hearing ("CDP") is pending, it may not be prudent to sign a release giving up his/her right to the Due-Process hearing .

In this case, following receipt of a Final Notice of Intent to Levy, the taxpayers filed a timely request for a due-process hearing (IRS form 12153). While the hearing was pending, the taxpayer worked out an installment agreement with the IRS.

The IRS sent them a notice stating "Since we have addressed the issues on your Request for a Collection Due Process Hearing, you now have the option to withdraw your request. To do so, please complete the enclosed Form 12256, Waiver of Request For Collection Due Process Hearing."

Thinking that they need not proceed with the hearing, since everything appeared to be settled, the taxpayers signed the release giving up their right to a CDP hearing. The form states, among other things, "I understand that by withdrawing my request, I give up my right to a Collection Due Process Hearing with the Office of Appeals." The form also states "I give up my right to seek judicial review in the



Tax Court or a U.S. District Court. I do not give up any other appeal rights that I am entitled to, such as an appeal under the Collection Appeals Program ("CAP")."

Subsequently, the taxpayers failed to make any payments pursuant to the installment agreement, and consequently the IRS commenced levy action (without any further notices of intent to levy).

The taxpayers filed a second request for a due process hearing. Appeals determined that the second request was untimely, but gave the taxpayers an "equivalency" hearing [it is "equivalent" to a due process hearing, but has no right of judicial appeal. Treas. Reg. § 301.6330-1(i)(1)].

At the equivalency hearing the taxpayers asked to have their installment agreement reinstated, but Appeals denied the request in view of the taxpayers' failure to make any payments under the previous agreement.

The taxpayers petitioned the U.S. Tax Court, arguing that the termination of the installment agreement revived their right to a due-process hearing. But the Court found no statutory language providing for a revival of a withdrawn request for a CDP hearing. And, citing Treasury Regulations, the Court noted that the taxpayer has a right to request a CDP hearing only following the first, but not a subsequent, Final Notice of Intent to Levy. Accordingly, ruled the Court, the Court lacked jurisdiction to consider a judicial appeal.

Smith v. Commissioner of Internal Revenue, No. 4675-06L (U.S.T.C.) 8/9/2007).

[Ed. note: The IRS form waiving the right to a CDP hearing almost sounds as though it's offering something good to the taxpayer, "you now have the option to withdraw your request."

But what seems like a favor to the taxpayer may, as in the above case, come back to bite. It behooves the tax professional to examine anything that is supposed to be signed by the taxpayer to see what rights, exactly, are being surrendered once the form is executed (signed).]

HELD: WRONG ADDRESS NULLIFIES IRS NOTICE OF INTENT TO LEVY

A recent Tax Court decision found an IRS Final Notice of Intent to Levy invalid because it was not sent to the taxpayer's "last known address" as required by Treasury regulations and the IRC.

The IRS sent the taxpayer a Final Notice of Intent to Levy to the address shown on the taxpayer's most recently filed tax return. However, the taxpayer had moved to a different address and never received the Notice. He found out about it some four months later when his employer notified him that his paycheck had been levied.

The taxpayer filed a Request for a Collection Due-Process Hearing ("CDP"). The IRS denied the request on the ground



that it had not been filed within the 30-day period provided in the Final Notice, in which a taxpayer may file such a request. Instead, the IRS offered the taxpayer an "equivalency" hearing. 26 U.S.C. § 6330(a)(3)(B).

Pursuant to 26 U.S.C. § 6330(d)(1) the taxpayer filed a petition in the Tax Court to have the matter dismissed for lack of jurisdiction, on the ground that it was not mailed to his last known address, and thus was not a valid Notice.

The Court cited language in the Tax Code that a Final Notice of Intent to Levy must be served in person on the taxpayer, left at the taxpayer's place of doing business, or mailed to his/her last known address. 26 U.S.C. § 6330(a)(2), 6331(d)(2).

Although the IRS can ordinarily rely on the address listed in the taxpayer's most recent filed tax return, the statute and regulations also contain language to the effect " ... the Revenue Service will update the taxpayer addresses in its records by using information retrieved from the Postal Service's National Change of Address database and will use the Postal Service database address until a taxpayer either files a return with a different address or provides the IRS with clear and concise notice of a change of address." Treas. Reg. § 301.6212-2(b)(2).

The Court took notice of the fact that the taxpayer did, in fact, file a change of address form with the Postal Service. The Court cited case authority stating "A last-known address is precisely that; if [the commissioner] knows of one address for a taxpayer and is then notified of another address for the same taxpayer, such other address supersedes the previous address ... *Abeles v. Commissioner* 91 T.C. 367, 374 (1974), *aff'd* 538 F.2d 334 (9th Circuit 1976)."

The court noted, as well, that in this case the IRS sent correspondence to the taxpayer regarding his liabilities to both addresses on the same day, establishing that the IRS had the actual current address. The Court held the IRS to what it knew, or "should have known," through the use of its computer network.

The Court ruled that in view of these facts the Final Notice of Intent to Levy was invalid, and dismissed the case on the basis that the Court had no jurisdiction.

The opinion points out a distinction between dismissal for lack of jurisdiction based on the taxpayer's failure to file a timely request for a CDP hearing - which allows the IRS to continue with its levy, and a dismissal for lack of jurisdiction arising from a lack of a valid notice of intent to levy, which nullifies the IRS right to execute on that notice of levy.

Buffano v. Commissioner of Internal Revenue, No. 1`1281-06L (U.S.T.C. 2/8/2007)

CONSULTING WITH MORGAN KING 925-829-6363

ACROSS THE U.S. HELPING PEOPLE WITH DELINQUENT TAX PROBLEMS



California attorney Morgan D. King has been in practice for over 35 years, many of those years dedicated to finding legal remedies for delinquent tax liabilities. He is the author of the acclaimed "King's Discharging Taxes in Bankruptcy," and is currently writing "King's Legal Guide to Delinquent Tax Remedies."

King consults with other tax professionals, evaluating cases and writing expert opinion letters to help guide lawyers, enrolled agents, and accountants with their clients. He also represents taxpayers. Among the services offered are:

- Offers-in-compromise
- Marital transmutation agreements
- Representation at collection due process hearings
- Innocent-spouse defense
- Analysis of tax collection statutes of limitations
- Installment payment plans
- Tax Advocate assistance
- Collection appeals
- Discharge in bankruptcy

Mr. King may represent taxpayers in any state and can refer local counsel if appropriate.

Visit Morgan King's web site, TaxJustice.com, by clicking on his picture at right or the link below.

Or, e-mail him at morgan@TaxJustice.com

[CLICK HERE TO VISIT TAXJUSTICE.COM](http://www.TaxJustice.com)

SIGN UP FOR KING'S TAXGRAM - FREE!

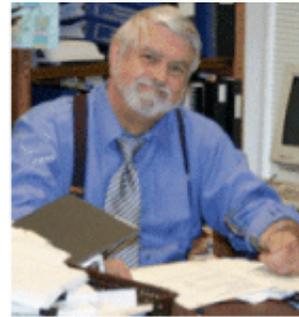
KEEP CURRENT on news, new case rulings, issues and answers, and updates on relevant law and procedure For tax professionals who help delinquent taxpayers find legal remedies for tax debts.

A free electronic newsletter distributed by The Law Offices of Morgan D. King, Attorneys & Counselors at Law, in Dublin, California. 925-829-6363, Morgan@TaxJustice.com.

Subscribing is free and quick, and by subscribing the letter will get past your SPAM filter!

[CLICK HERE TO VIEW PAST ISSUES OR CLICK ON IMAGE AT RIGHT TO SUBSCRIBE](#)

KING'S TAXGRAM published by the Offices of Morgan D. King, attorneys & counselors at law, emphasizing legal remedies for taxpayers with delinquent taxes, and assisting attorneys with consultation and research. 8348 Creekside Dr. Dublin, CA 94568. FOR CONSULTATION CALL 925-829-6363 or e-mail consult@TaxJustice.com. Offices located in Dublin California, with consulting lawyers across the country. [Visit our website at TaxJustice.com](http://www.TaxJustice.com)



Morgan D. King
925-829-6363

SUBSCRIBE
HERE



Close Window