



## FROM THE DESK OF MORGAN D. KING OCT. 11, 2007

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### NEWS FOR LAWYERS HELPING DELINQUENT TAXPAYERS

## HOUSE VOTES TO CAN PRIVATE TAX COLLECTORS

US House Votes To Ban IRS Use Of Private Tax Collectors  
The U.S. House voted Wednesday to halt the Internal Revenue Service from extending the use of private collection agencies to pursue tax debts. The 232-to-173 vote on legislation to ban the IRS from entering any new contract with private tax collection agencies after July 18, 2007, came despite the threat of a presidential veto. The bill is estimated to reduce federal tax revenue by \$1.1 billion over the next decade. Congress in 2004 allowed the IRS to hire private collection agencies, which began work in September 2006. They have brought in an estimated \$20 million so far under the contract's first phase and are projected to bring in as much as \$ 2.2 billion over the next decade. Democrats have criticized the program, arguing IRS workers can do the same job at far less expense. Much of the revenue lost is attributable to the fact that IRS currently doesn't have the manpower to collect all the taxes due, Democrats said. "Through this important legislation, this House reiterate(s) that the collection of taxes is a core governmental function that should not be contracted out to private companies," House Majority Leader Steny Hoyer, D-Md., said. Rep. Jim McCrery, R-La., said that Democrats may argue that the cost to the taxpayers would be less if the IRS went after these obligations, "but the fact is they are not, and any such comparisons are apples-to-oranges

More story - <http://www.creditandcollectionnews.com/index.php>

LARGE DOLLAR UNIT CHECKLIST OF DOCUMENTS TO HELP  
RESOLVE DELINQUENT TAX ISSUES

Practitioner Check Sheet

To expedite the resolution on accounts in the Large Dollar Unit, please have the following information available when

NEWS FOR  
LAWYERS  
HELPING  
DELINQUENT  
TAXPAYERS



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

contacting ACS.

Valid F2848 covering all tax periods

Explain in detail why the taxpayer is not able to full pay or borrow to full pay

Completed Form 433- A, B or F

Copies of delinquent tax returns and /or ASFR returns

Three months of current pay stubs for both TP/TPW

Three months of current bank statements (all accounts)

Value of all property and/or available equity

Investment income

Value of 401K/Retirement

Year make of vehicles, value, equity, balance owed, and monthly payments

Employer's information including work number

Number of individual's living in the house hold

Secured loan(s) - amount of loan and remaining balance(s)

Life insurance policies, (whole or term), any borrowing ability? And/or value of policy

Profit and Loss statements for self-employed taxpayers

Commission statement

Substantiation of Court ordered payments

Substantiation of payments being made

Spouse's income and source with name/address/phone number

Out-of-pocket medical expenses

Pension income and/or Social Security income

Rental income

Additional information and /or documentation may be needed to determine disposition of the account.

Source: <http://www.irs.gov/businesses/small/article/0,,id=171984,00.html>

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## IRS Issues Redesigned Allowable Living Expense Standards

### Allowable Living Expense Redesign Changes to the 2007 ALE Standards

To promote better consistency and fairness, the IRS has revised the methodology for calculating some of the Allowable Living Expense standards used in collection determinations. These changes will be reflected in the 2007 standards which will become available and effective October 1, 2007.

The Allowable Living Expenses rely solely on the Bureau of Labor Statistics (BLS) and other governmental expenditure figures, which are based on surveys of actual consumer expenditures and provide a fair basis for allowances.

For more story - <http://www.irs.gov/businesses/small/article/0,,id=173524,00.html>

To access the revised figures - <http://www.irs.gov/individuals/article/0,,id=96543,00.html>

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## TAXPAYER ADVOCATE SAYS FEWER GOOD OIC OFFERS ARE BEING SUBMITTED DUE TO 20% UP FRONT PAYMENT

The National Taxpayer Advocate's  
Report to Congress  
Fiscal Year 2008 Objectives  
June 30, 2007

"TIPRA, enacted on May 17, 2006, requires any taxpayer seeking an OIC to submit a nonrefundable partial payment, equal to 20 percent of the offer, along with any offer to be paid in a lump sum or in five or fewer installments (called "lump sum" offers). The National Taxpayer Advocate is concerned that the new partial payment requirements, and the IRS's implementation of them, have reduced the accessibility of the OIC program to taxpayers who would otherwise submit good offers, particularly middle class taxpayers who have homes or qualified retirement plans. Such a reduction in OIC accessibility could, in turn, increase the number of unresolved IRS collection accounts, decrease federal revenue, and lessen voluntary compliance.

We may already be seeing the initial effects of the 20 percent partial payment requirement. The number of offers received and accepted has significantly declined since TIPRA was implemented in July of 2006. The number of offers submitted dropped by about 20 percent over the first eight months of FY 2007, from 37,764 in FY 2006 to 30,306 in FY 2007. Similarly, the number accepted over this same period has decreased by about 22 percent, from 10,083 to 7,842.15 Thus, TIPRA, or the IRS's implementation of it, appears to be reducing good offer submissions.

The partial payment requirements may discourage good offer submissions by requiring payments that taxpayers cannot afford, and by increasing the cost to taxpayers when the IRS returns an offer without determining whether to accept or reject it. If a taxpayer fails to submit a partial payment along with the OIC or to meet various other requirements, the IRS returns it to the taxpayer as "not processable". When the IRS returns an offer as not processable, it refunds the \$150 OIC user fee, but retains any partial payment. Further, if the IRS returns the OIC after accepting it for processing, the IRS retains both the partial payment and the fee. While the IRS will reconsider its decision to return an OIC in certain limited circumstances, the taxpayer cannot appeal the OIC return decision to the Appeals function."

To ameliorate these OIC problems the Advocate made several recommendations, including:

- 1) Permitting taxpayers to appeal the rejection of an OIC before accepting it for consideration;
- 2) Permitting cash-strapped taxpayers to submit an offer without the 20% up-front payment;
3. Waiving the 20% deposit in cases of taxpayer economic hardship;

Full report: [http://www.irs.gov/pub/irs-utl/2008\\_objectives\\_report\\_to\\_congress\\_v2.pdf](http://www.irs.gov/pub/irs-utl/2008_objectives_report_to_congress_v2.pdf)

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IN MEMORY OF SPECIAL TRIAL JUDGE CARLETON D. POWELL

August 30, 2007

Special Trial Judge Carleton D. Powell of the United States

Tax Court died on Thursday, August 23rd, after a long illness. Special Trial Judge Powell had served on the Tax Court since his appointment on August 25, 1985.

A native of South Carolina, Special Trial Judge Powell was born on March 1, 1939. He received a bachelor's degree from the University of Virginia in 1961 and a law degree from the University of Richmond in 1967. From 1962 through 1964, he served as a commissioned officer in the U.S. Army.

From 1967 to 1970, he worked for the Internal Revenue Service in Richmond in various positions. In 1970, he became an attorney in the Appellate Section, Tax Division of the United States Department of Justice in Washington, D.C., where he held progressively more responsible positions until his appointment to the Tax Court. Representing the interests of the United States, he was involved in more than 100 tax cases before various United States Courts of Appeals. The Department of Justice awarded him

Special Commendations for Outstanding Service in 1978 and 1984. During his 22 years on the bench, Special Trial Judge Powell presided over numerous trials and wrote opinions in more than 600 cases.

One of his most noteworthy cases was *Freytag v. Commissioner*, 89 T.C. 849 (1987), the opinion of which was ultimately affirmed by the United States Supreme Court.

Special Trial Judge Powell is survived by his wife of 44 years, Linda Byrd Powell; two daughters; and three siblings, including his twin brother.

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UNITED STATES TAX COURT  
WASHINGTON, D.C. 20217  
January 12, 2007

#### PRESS RELEASE

#### AMENDMENT TO RULES OF PRACTICE & PROCEDURE

Chief Judge John O. Colvin announced today that the United States Tax Court has adopted an amendment to its Rules of Practice and Procedure, requiring the filing of answers by the Commissioner of Internal Revenue in all small tax cases. The amendment is effective for small tax cases in which the petitions are filed after March 13, 2007.

The amendment will be formally published in the reports of the Court by the U.S. Government Printing Office. Copies of the amendment are available on the Court's Internet Web site, [www.ustaxcourt.gov](http://www.ustaxcourt.gov), or may be obtained by writing to the Clerk of the Court at 400 Second Street, N.W., Washington, D.C. 20217.

## **ATTORNEY'S TAXES HELD NONDISCHARGEABLE DUE TO TAX EVASION**

## U.S. BANKRUPTCY COURT

The taxpayer (debtor), a real estate attorney, filed chapter 7 bankruptcy and asserted that his delinquent income taxes were dischargeable in the bankruptcy.

The IRS argued that the debtor, by transferring all title to the family home to his wife as her separate property, and by having his law corporation pay some of this personal expenses as non-taxable corporate expenses, had engaged in a willful attempt to evade or defeat the tax, thus rendering the taxes nondischargeable pursuant to Bankruptcy Code § 523(a)(1)(C).

The debtor's law corporation paid for various personal and luxury expenses that benefitted the debtor personally, such as luxury automobiles for both debtor and his wife, expensive plastic surgery for his wife, and paying for club memberships.

The debtor defended his actions by arguing that his personal credit was so bad that he could not obtain a mortgage or vehicle financing unless his name was removed from title. He therefore used various devices to obtain the financing by transferring assets to his spouse, and by using the corporation to obtain financing for various purposes.

The bankruptcy court, noting that in tax dischargeability litigation the burden of proof is on the Government, ruled that the IRS had not met its burden of proof for intent, and found that the debtor's conduct was not a willful attempt to evade payment of taxes, and held that the liabilities were dischargeable. In ruling for the debtor the court noted his apparent remorse for not paying his taxes as evidence of lack of willfulness.

On appeal, the District Court overturned the bankruptcy court and found the debtor's conduct willful, knowing, and with intent to evade payment of taxes. The court found that evidence of intent was established due to the debtor's chronically late tax returns, making intra-family transfers, used his firm to pay personal expenses, failed to properly report income and indulged in lavish spending instead of paying his tax obligations.

On appeal the to 11th Circuit, the District Court opinion was upheld. The court held "The Bankruptcy Court's finding that Mr. Jacobs regretted not paying his taxes does not suffice to defeat a finding of willfulness."

In re Jacobs, 490 F.3d 913 (11th Cir. 2007). Michael G. Tanner, Jacksonville, FL, for debtor. Alarcon, Circuit judge.



## **TAX COURT REVERSES IRS REJECTION OF INNOCENT SPOUSE: LACK OF SUBSTANTIAL BENEFIT**

## U.S. TAX COURT

The husband in this case had invested substantial sums of money in the famous Hoyt Partnership tax schemes, which have been held fraudulent.

The wife, who signed the couple's joint tax return, said she relied on her husband's assurances that the Hoyt Partnership investments were legitimate, even though she did not consult separate professionals for an opinion. The wife had never received any training or instruction in business or taxes.

The IRS rejected the wife's application for innocent-spouse status based on her alleged participation in the Hoyt partnerships, and because she was thought to have benefitted from the erroneous tax refunds the couple received on account of the fraudulent Hoyt returns.

The Tax Court disagreed, noting that there was virtually no evidence that the wife participated, had never communicated with a Hoyt representative, had never attended a Hoyt meeting, and never read correspondence from the Hoyt people.

As to substantial benefit, the court noted the evidence that the substantial refunds were deposited in the husband's separate bank account, and that there was no evidence the wife enjoyed any special benefit from it; the funds were apparently largely reinvested in more Hoyt schemes.

Observed the Court: "During the years in issue, petitioner's (wife's) standard of living remained constant. There were no lavish expenditures of any kind that benefitted petitioner." The court recited the accepted rule that the benefit rule only applies to "significant" benefit, and "Normal support is not considered a significant benefit."

As to whether the wife had a duty to make reasonable inquiry into the legitimacy of a tax related investment, the court found that her questioning of her husband satisfied that requirement.

Based on these considerations the Tax Court held that the wife was entitled to innocent-spouse relief under 26 U.S.C. § 6015(c).

Juell v. Commissioner of Internal Revenue, T.C. Memo 2007-210 (Aug. 8 2007). Swift, Judge.

## SOME TAX-RELATED DOMAIN NAMES AVAILABLE

We have held the registration of several tax-related domain names for almost 10 years. However, our tax law firm is marketed as TaxJustice.com, and we have no current need for these others.

It seems to me someone out there could make good use of one or more of these. If you're interested, make an offer. It may become an auction, but you may be the only bid. We are looking for \$1,950 for a domain name but will consider any offer.



[irshotline.com](http://irshotline.com)  
[irsdirectory.com](http://irsdirectory.com)  
[dischargetaxes.com](http://dischargetaxes.com)  
[taxhelplawyers.com](http://taxhelplawyers.com)  
[taxhelphotline.com](http://taxhelphotline.com)  
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[taxhelphotline.com](http://taxhelphotline.com)  
[settletaxes.com](http://settletaxes.com)

E-mail your offers or questions to [morgan@TaxJustice.com](mailto:morgan@TaxJustice.com)

## CONSULTING WITH MORGAN KING 925-829-6363

### 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

Visit Morgan King's web site, [TaxJustice.com](http://TaxJustice.com), by clicking on his picture at right or the link below.

Or, e-mail him at [morgan@TaxJustice.com](mailto:morgan@TaxJustice.com)

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

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