

**Questions and Responses from
IRS Fresno Campus Practitioner Outreach Event
(Second and Final Set)
July 30 and 31, 2009**

The following is the second and final set of responses received for the questions submitted by the practitioners who attended the IRS Fresno Campus event and tour. Similar questions were combined and simplified to address issues that are general and applicable to the majority of practitioners and not specific to an individual taxpayer.

Submission Processing

Q: How long is a return (Form 1040), complete with attachments, kept in IRS files? Is there any plan to store them in an electronic format or just paper?

A: Individual paper tax returns (the Form 1040 series) are temporary records which are eligible to be destroyed six years after the end of the processing year. Currently the only electronic format of tax returns are tax return transcripts that show most line items contained on the return as it was originally filed, including any accompanying forms and schedules. Tax return transcripts are generally available for the current and past three years. These may be obtained most easily using IRS e-Services.

Q: What is the timeframe for how long transcripts of returns and Information Return Processing (IRP) documents (W-2s, 1099s, etc.) are available from the IRS, and why isn't backup withholding always reflected, especially related to investments?

A: A tax return transcript is available for current year and prior 3 years. The IRS can provide Form W-2 information for up to 10 years. Additional information regarding copies of transcripts for tax returns may be found by visiting www.irs.gov key word *e-Services* and review the tutorials about the Transcript Delivery System (TDS). Due to the technical nature and complexity of the question, Fresno Submission Processing is unable to provide an answer as to why backup withholding is not always reflected, especially related to investments.

Q: What is the current processing time for Form 1040X, Amended Returns, and Form 1045, Application for Tentative Refund, and what can practitioners do to speed up the process?

A: Current processing time for Form 1040X is 8 to 12 weeks; and for Form 1045 is within 90 days of receipt from the later of the date you file the complete application, or the last day of the month that includes the due date (including extensions) for filing your 2008 income tax return (or, for a claim of right adjustment, the date of the overpayment under section 1341 (b)(1)). Practitioners can help speed up the process by ensuring all required information is completed and legible on Forms 1040X and 1045, and all required supporting documentation is submitted along with the form, as per Form instructions.

Q: If possible, would you be able to email us the diagram of "the pipeline". This would be a great tool for us to use in our presentations to our group.

A: Provided separately, as requested.

Q: What research has been done to determine what errors are made by Taxpayers vs. CPAs/Enrolled Agents vs. unlicensed preparers?

A: The IRS does manually and electronically research and analyze sources of errors on tax return submissions. Additional information regarding top errors on return submissions may be found by visiting www.irs.gov key word *errors*.

Q: Should closing documents be included when filing Form 5405, First Time Home Buyers Credit, due to an increase of fraud? Why or why not?

A: Although fraudulent activities are a continuous concern of the IRS, currently, closing documents are not required for submission and processing of Form 5405. They should, however, be provided as requested, per receipt of an IRS letter or notice.

Q: What is the rule for timely filed Form 1040, late filed Form 1040, Form 1040X when Schedule D is required due to reporting of stock transactions? Can the short term and long term transactions be summarized, can brokers statements be attached to support transactions without duplicating on Schedule D, or must each transaction be itemized on Schedule D-1? Are there any exceptions to the general rule?

A: Schedule D is always required to support an entry on Form 1040, line 13, when the entry is a negative amount or when a positive amount is present and the line 13 box is not checked. Due to the technical nature and complexity of the question, Fresno Submission Processing is unable to provide answers to the following questions: *Can the short term and long term transactions be summarized, can brokers statements be attached to support transactions without duplicating on Schedule D, or must each transaction be itemized on Schedule D-1? Are there any exceptions to the general rule?*

NOTE: Form 8453, *U.S. Individual Income Tax Transmittal for an IRS e-Filing Return*, contains a check box which states that you may attach, "Schedule D-1 Continuation Sheet (Form 1040) (or a statement with the same information), if you elect not to include your transactions on the electronic short-term capital gain (loss) or long-term capital gain (loss) records. The important item to note is that any statement, including a broker's statement, must have the same information that would be reported on the Schedule D or D-1 Continuation Sheet.

Q: What is the most important rule of thumb when it comes to assembling a Form 1040 and all related forms, schedules and attachments, and must all the forms and documents be the same or a specific size (dimensions) for timely processing?

A: Ensure that all forms/schedules are in sequence order, they are signed with an original signature, and withholding support (e.g. W-2) is attached, if required. More returns are sent back to the taxpayer because they are not signed (or signed, but it is a photocopy) than for any other reason. There is not a specific size requirement for forms or schedules but it is highly encouraged that they be large enough to be legible.

Q: What specifically is transcribed on Form 1040 and related forms and schedules, and is a thorough breakdown of all income, expenses and deductions really necessary or can some line items be netted?

A: There are too many items that are transcribed from Form 1040 and related forms/scheduled to name here. However, Internal Revenue Manuals include information concerning items transcribed from Form 1040 and related forms/schedules may be found by visiting www.irs.gov key word **IRM** (Part 3 – Submission Processing).

Q: Approximately how many and what percentage of current year vs. prior year returns are processed during peak season as compared with non-peak?

A: Year to year it varies, but during the non-peak months, current year returns taper off significantly, but still make up the majority of returns received during these periods. Below is an example of tax return receipts during the 2008 calendar year for the Fresno Submission Processing Campus.

	Total Returns	Current Year Returns	Prior Year Returns	PY % to Total
Oct - Dec 2008	1,121,172	840,367	280,805	25.05%
July-Sept 2008	1,007,203	758,450	248,753	24.70%
Totals O-D and J-S	2,128,375	1,598,817	529,558	24.88%
January - June 2008	16,886,414	15,738,161	1,148,253	6.80%
Grand Total 2008	19,014,789	17,336,978	1,677,811	8.82%

Campus Compliance Services

Q: Please explain the difference between a CAP and a CDP request.

A: Collection Appeals Program (CAP)

Collection Appeals Program (CAP) is generally quick and available for a broad range of collection actions. However, you cannot go to court if you disagree with the Appeals decision.

Collection Due Process (CDP)

Collection Due Process (CDP) is available if you receive one of the following notices: Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 (Lien Notice), a Final Notice - Notice of Intent to Levy and Notice of Your Right to A Hearing, a Notice of Jeopardy Levy and Right of Appeal, a Notice of Levy on Your State Tax Refund – Notice of Your Right to a Hearing (Levy Notices), and a Notice of Levy and Notice of Your Right to a Hearing. If you disagree with the Appeals decision, you may be able to take your case to court.

Q: It was mentioned that the IRS is now asking for only 5 prior year returns instead of six. Is this correct, and if so, when did the change occur? The Franchise Tax Board, by statute, is still asking for a six year lookback period. Would the IRS only be looking for 5 years while the FTB is looking for six?

A: IRS does ask for 6 years of returns: the current processing year plus 5 prior year returns. For example, current processing year is tax year 2008. The five prior years are 2007, 2006, 2005, 2004 and 2003. We would not be looking for 2002

Q: Injured Spouse (Form 8379). What documentation will the IRS accept for proof of separate property for a married couple living in California (a community property state) that will prove that the couple has declared that their earnings and acquisitions after marriage are "separate" property? Also, where should this information be sent?

A: The Taxpayer may submit bank account statements showing they maintained separate income during the tax year. The documentation should be included when submitting the Form 8379.

Q: Why are stat notices being issued before the CP2000 notices arrive?

A: "If a CP2000 Notice is returned to the Automated Underreporter "undelivered" from the Post Office, we will look to see if the taxpayer has updated their address with the IRS. If there is a new address, we reissue the CP2000 Notice to that new address. If there is not a new address on file, we will send a Statutory Notice of Deficiency to the last known address for the taxpayer. This could explain why a taxpayer would receive a Statutory Notice of Deficiency and not receive a CP2000 Notice. The other possibility is that the Statutory Notice of Deficiency is from another department within the IRS and is not related to the Automated Underreporter issue.

The AUR system is set up so that a CP2000 Notice is required before a Statutory of Deficiency. A tax examiner cannot automatically generate a Statutory Notice of Deficiency and bypass the CP2000 Notice Phase of the process.

In addition, the AUR System is set up so that a Statutory Notice of Deficiency is only issued after the appropriate Suspense Timeframe for the CP2000 Notice has expired, allowing the taxpayer the 30 days to respond as listed on the CP2000 Notice plus mail delivery time. The only exception to this is if we receive a response from the taxpayer or an undelivered CP2000 Notice back from the Post Office."

Q: When an e-filed return is selected for a correspondence audit, is the IRS able to access the "history notes" entered by the preparer?

A: No. There are no current provisions to access the preparers' notes since the computers are not set up or compatible to support any interfacing between databases. Information is confidential between the TP and preparer. For IRS to access the history notes entered by the preparer would be a disclosure issue.

Q: When does the statute of limitations start for exam and collection cases?

A: Assuming this is an SFR case, then the statute of limitations for collections starts when the Service processes a tax return prepared under the authority of IRC 6020(b) and if a taxpayer signs an SFR return, it becomes the taxpayer's return per IRC Sec 6020(b) and starts the assessment period of limitations in Exam.

Q: How does this differ from an ASFR assessment and the statute of expiration for Collection (CSED)?

A: The ASFR assessment process is similar to the Exam process.

Q: The IRS seems to contradict itself (1) the statute doesn't run until the taxpayer physically files a tax return and that is supported by IRC 6501(B)(3); (2) the SFR is treated as an original return by the laws of due process, therefore, any return filed after the SFR is treated as an amended return. Is this correct?

A: Yes, but the SFR assessment is considered an "original filing" for the taxpayer which starts the statute of limitations for assessment.

Q: It has also been presented that there is no place in the code that states that an amended return extends the statute for collections, but it only extends the statute for audit. Is this correct?

A: Per IRM 25.6.1.9.4.5, the statute for collection starts when the Service processes a tax return for the taxpayer and the statute for collection also applies to additional assessments.