Pilla Talks Taxes

DAN PILLA'S MONTHLY TAX AND FINANCIAL BULLETIN

August 2022
Vol. 34 Issue 7

IRS to Get $80 Billion

Agency Plans to Hire 87,000 Employees

On August 16, the President signed the misnamed "Inflation Reduction Act of 2022." The act carries $437 billion in tax increases, greatly trimmed down from the $739 billion initially proposed.

I say the act is misnamed because there is nothing in it that will reduce inflation. One of its key elements is to increase corporate taxes by $313 billion through a new 15 percent corporate-minimum tax. But this will only hinder investment and productivity, the very things needed to quell inflation. But the fact is high corporate taxes (or none for that matter) cannot and will not reduce inflation.

Another key element of the act is the provision to fund the IRS. The act appropriates $80 *billion* in new revenue (over its usual annual appropriation, about $13.7 billion in 2021) to the IRS over the next ten years. Here's how some of the new money is to be used:

- $3.181 billion for taxpayer services, including pre-filing assistance and education, return filing and account services, and taxpayer-advocate services;
- $4.751 billion for business-systems modernization, including updating computer systems generally and the development of call-back technology; and
- $25.326 billion for operations support, in-

IN THIS ISSUE

ADS

cluding general expenses to support taxpayer services and enforcement, general administrative expenses for such things as rent, printing, postage, vehicles, etc.

The centerpiece of IRS spending will be for tax-law enforcement. The act promises $45.638 billion for this purpose, to include enhanced audits and collection, legal and litigation support, criminal investigations, digital asset monitoring and compliance, and the general enforcement of tax laws and other financial crimes.

A significant portion of the $80 billion is pointed at increasing the IRS's work force. The agency's plan is to begin hiring new employees immediately and continue that hiring over the course of the ten-year period over which the $80 billion is spread. When all is said and done, the IRS intends to add nearly 87,000 new employees to the payroll. For context, the agency's current workforce is about 79,000 full time employees. Nearly half of these (44.6 percent) are dedicated to enforcement action.

And while the administration has repeatedly assured us that the targets of this increased enforcement action will be only high-income earners, I have shown clearly that the targets will likely be self-employed persons, along with those who claim the benefits of the laundry-list of refundable tax credits — lower-income taxpayers.

In his letter to the U.S. Senate on August 4, 2022, IRS Commissioner Charles Rettig parroted the Biden Administration's claim that nobody making under $400,000 per year will be targeted by any of the IRS's new enforcement resources. He said:

> These resources are absolutely not about increasing audit scrutiny on small businesses or middle-income Americans. As we've been planning, our investment of these enforcement resources is designed around the Department of Treasury's directive that audit rates will not rise relative to recent years for households making under $400,000. See full letter below.

In the first place, the there is abundant evidence that the IRS has for some time targeted sole-proprietorships, S corporations, and small partnerships for audit action, because the IRS believes these entities (all small businesses by definition) are responsible for about 50 percent of the total tax gap.

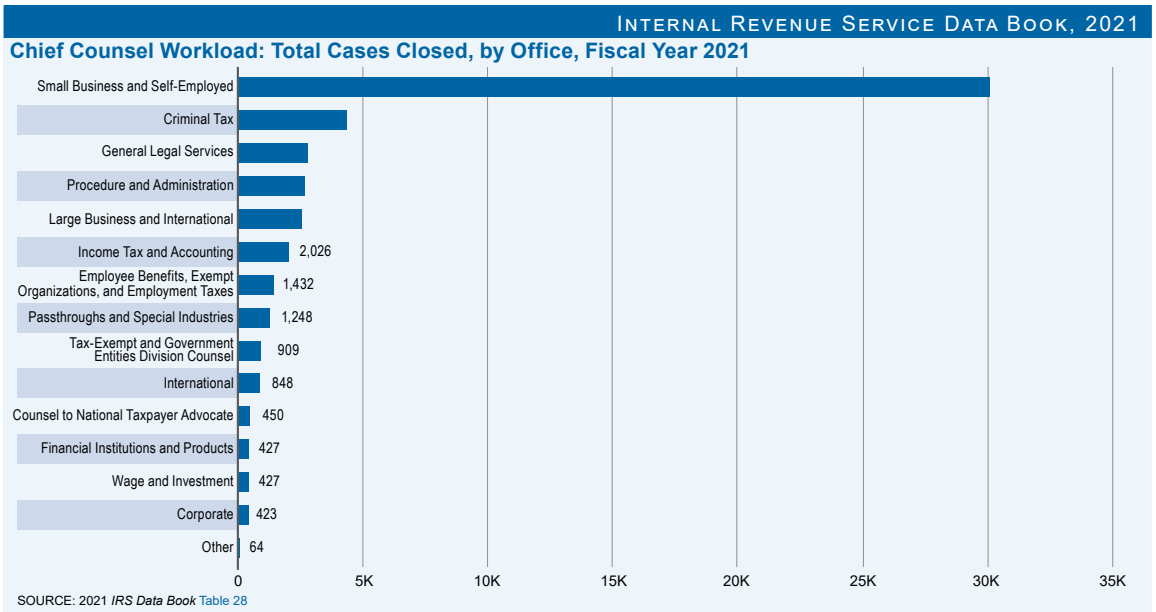
The commissioner's comment regarding audit rates "relative to recent years" made me wonder what percentage of the cases with the IRS involved small businesses. The IRS's 2021 Data Book, Publication 55-B, gives us a detailed breakdown of the number of cases handled by the Office of Chief counsel throughout the year. Chief Counsel is the staff of in-house attorneys that represent the IRS in litigation and provide general legal support to the agency.

In 2021, the Chief Counsel received 60,869 cases for disposition, mostly Tax Court cases. Nearly 60 percent of all cases came from the IRS's Small Business and Self-employed Division. This is the audit and collection staff that focuses expressly on small businesses. The remaining 40 percent of cases is spread throughout fourteen other categories of taxpayers. Large businesses and corporations (two of the fourteen) accounted for fewer than 3,000 of the 60,869 cases received by Chief Counsel. See chart on the next page, from the 2021 Data Book.

So if we take the commissioner at his word – that historical levels of attention to small businesses will be maintained – more than half the new resources will be pointed squarely in that direction.

But even if the IRS targets only high-income taxpayers, spending the lion's share of the $80 billion on enforcement is simply bad policy.

Compare the enforcement appropriation with that of taxpayer assistance and education. Enforcement is a winner by a margin of more than



14-1. And yet, only 2 percent of total federal revenue comes through enforcement. That means 98 percent of every dollar paid to the government is paid "voluntarily," that is, without the need of IRS intervention.

To the extent that people fail to comply with the law, the vast majority of what is deemed non-compliance is not really non-compliance at all. People do not wake up one morning and say,

"How can I tick off the IRS today? I know. I'll stop paying my taxes!" Nobody wants to get sideways with the IRS, and an overwhelming majority of citizens screw themselves into the ground to stay on top of their tax obligations.

Rather, failure to comply is generally attributable to either (1) a *misunderstanding* of what the law requires, or (2) the *inability* to comply due to some unforeseen circumstances. Examples include (but certainly aren't limited to) catastrophic illness or injury, a failed business or marriage, addiction, or natural disaster. Over the past two years, I've seen countless issues directly related to the COVID pandemic.

Policy-makers at every level fail to grasp the magnitude of tax-law complexity. The tax code was changed more than 5,900 times since 2001, and that doesn't count the many changes that occurred in 2020 and 2021. The 2017 Tax Cuts and Jobs Act constituted the most sweeping change to the tax code since the Tax Reform Act of 1988. As proof that policy-makers simply ignore this issue, consider that the 1998 Internal Revenue Service Restructuring and Reform Act required the IRS to submit an annual report to Congress on the sources of tax complexity and how it might be reduced. The IRS has issued just two such reports, and none after 2002. I take this to mean they just don't care about the burdens the Byzantine tax code places on taxpayers.

Honest taxpayers — individuals and businesses alike — are drowning in the flood of so-called tax reform to the point where they cannot quickly and easily ascertain their legal responsibilities.

If Congress is not going to stop changing the law several times every year, the IRS has to recognize that people need help complying. The 14-1 enforcement ratio must be turned on its head. That is, the IRS should be spending vastly more resources to help people comply on the front end, rather than grinding them into powder on the back end when they don't.

COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 4, 2022

Dear Member of the United States Senate,

It has been the greatest honor of my professional life to spend the last four years at the helm of the IRS. I am struck each day by the commitment of dedicated IRS employees to helping American families. And our employees have done all that without the tools to do so effectively. For too long, the agency has not had the resources that it needs to ensure the tax laws are enforced fairly and that Americans receive the level and quality of service they deserve. We are the greatest country in the world, yet the agency that touches more Americans than any other continually struggles to receive sufficient resources to fulfill its important mission.

The resources in the reconciliation package will get us back to historical norms in areas of challenge for the agency - large corporate and global high-net-worth taxpayers - as well as new areas like pass-through entities and multinational taxpayers with international tax issues, where we need sophisticated, specialized teams in place that are able to unpack complex structures and identify noncompliance.

These resources are absolutely not about increasing audit scrutiny on small businesses or middle-income Americans. As we've been planning, our investment of these enforcement resources is designed around the Department of the Treasury's directive that audit rates will not rise relative to recent years for households making under $400,000. Other resources will be invested in employees and IT systems that will allow us to better serve all taxpayers, including small businesses and middle-income taxpayers. Enhanced IT systems and taxpayer service will actually mean that honest taxpayers will be better able to comply with the tax laws, resulting in a lower likelihood of being audited and a reduced burden on them.

Large corporate and high-net-worth taxpayers often engage teams of sophisticated representatives who pursue unsettled or sometimes questionable interpretations of tax law. The integrity and fairness of our tax administrative system relies upon the ability of our agency to maintain a strong, visible, robust enforcement presence directed to these and other similarly situated taxpayers when they are noncompliant. These important efforts also support honest taxpayers who voluntarily comply with their filing and reporting requirements.

The IRS has fewer front-line, experienced examiners in the field than at any time since World War II, and fewer employees than at any time since the 1970s. Advances in technology have been helpful but have not kept pace with the ever-increasing

responsibilities and challenges facing the IRS. As a result, the IRS has for too long been unable to pursue meaningful, impactful examinations of large corporate and high-net-worth taxpayers to ensure they are paying their fair share. This creates a direct revenue loss from evaders and lessens the potential to deter others from pursuing a similar path of noncompliance. Every American should support a fair and impartial system of tax administration supported by an appropriately resourced tax administrator. In fact, the continued success of our country depends, in part, upon the success of the agency in appropriately, fairly and impartially enforcing the tax laws and in providing meaningful, impactful services to every American.

As an extremely proud American, I'm grateful for your support of the IRS and our dedicated employees. I cannot be forceful enough in emphasizing that these resources will be transformative for the agency and for American taxpayers. I am available to meet with you at your convenience to discuss the foregoing.

Thank you,

Charles P. Rettig

Taxpayers Defense Institute Consulting Members

Name	Ability Level	Territory (City located)	Phone	Email
James Chase	Attorney	AL, GA (Pensacola FL)	(850) 434-3601	jchase@chaseattorneys.com
Donald MacPherson	Attorney	AZ (Glendale)	800-BEAT IRS	mac@beatirs.com
Donald MacPherson	Attorney	S California	800-BEAT IRS	mac@beatirs.com
Lawrence Stephens	CPA	CA:Northern (Modesto)	(209) 543-0490	lhs@saccon.com
James Olson	CPA	Colorado (Golden)	(720) 328-8624	Financial.Forensics.LLC@comcast.net
Julius Janusz	Enrolled Agent	CT (New Britain)	(860) 225-2867	tax@jjtax.com
Steven Klitzner	Attorney	FL (Miami)	(305) 682-1118	Steve@FloridaTaxSolvers.com
Darrin Mish	Attorney	FL (Tampa)	(813) 229-7100	dmishesq@getirshelp.com
Patricia Gentile	Attorney, CPA	MA, NH (Nashua, NH)	(800) 880-8388	PGentileCPA@comcast.net
Charles Markham	Enrolled Agent	MA (Norwell)	(781) 659-6600	charles@markhamandcompany.com
Manuel Mendoza	Enrolled Agent	MD (Bethesda)	(301) 962-1700	mendoza@mendozaco.com
Daniel J Pilla	EA, US Tax Court	MN (Stillwater)	(800) 553-6458	support@taxhelponline.com
Chris Churchwell	CPA	MO (Joplin)	(417) 781-1829	chris@chtaxgroup.com
Tom Zeiders	Attorney	OK, Tulsa	(918) 743-2000	tom@tax-amnesty.com
Robyn McQuown	CPA	OK, Norman	(702) 265-1159	mcquown@cox.net
Mitchell Gerstein	CPA	PA (Bala Cynwyd))	(484) 434-2041	mgerstein@isdanerllc.com
Kenneth Eichner	CPA	TX (Houston)	(713) 781-8892	kde@kdepc.com
Dionne Cheshier	Enrolled Agent	TX (Dallas)	(972) 514-1424	dionne@cheshiertaxresolution.com
Frank Rooney	Attorney	VA (Arlington), MD & DC	(703) 527-2660	rooneyf@irsequalizer.com

The Biden Administration Doesn't Know What A Tax Cheat Is

Deliberate Deception Inflames Greed and Envy

In his letter to the U.S. Senate (see above), Commissioner Rettig did his part to carry water for the Biden Administration's push for $80 billion in new funding to his agency. Rettig argued that the IRS does not have "the resources that it needs to ensure the tax laws are enforced fairly and that Americans receive the level and quality of service they deserve." On the heels of this plea, the Senate passed the Inflation Reduction Act, which the president signed on August 16, 2022.

The IRS will get its $80 billion. As explained, nearly $46 billion is going for enforcement, along with 87,000 new employees.

The commissioner's letter provides a glimpse into the Administration's twisted thinking when it comes to tax policy generally, and IRS enforcement in particular.

For example, the commissioner accuses "large corporate and high-net-worth taxpayers" of engaging "teams of sophisticated representatives who pursue unsettled or sometimes questionable interpretations of tax law." The commissioner insinuates that corporations and the rich simply cheat on their taxes. He says, "[t]his creates a direct revenue loss from evaders and lessens the potential to deter others from pursing a similar path of noncompliance."

Hence the commissioner's argument, that a "strong, visible, robust enforcement presence," is necessary to ensure compliance.

This policy ignores the fact that both the American Bar Association (ABA) and the American Institute of Certified Public Accountants (AICPA) each adopted – decades ago – ethical standards of practice pointed directly at legal and accounting professionals in the tax planning and return preparation businesses.

The ABA standard is expressed in Formal Opinion 82-352. It requires that a position taken on a tax return at the advice of an attorney must be "warranted in existing law or can be supported by a good faith argument for an extension, modification or reversal of existing law and there is some realistic possibility of success if the matter is litigated."

To be sure, tax pros have an affirmative duty to represent the best interests of their clients. But they also have a duty to follow the law in the process. Failure to do so places that professional's license—and therefore livelihood—at risk.

The commissioner's statements suggest that the IRS is the final arbiter on all matters regarding tax law. But that's not the case. The U.S. courts ultimately decide what the law is, and that is often at odds with IRS opinions. As I document in my book, *How to Win Your Tax Audit*, the IRS is wrong between 60 and 90 percent of time (depending on the issue) when it comes to its audit results.

The problem is that most people do not challenge IRS audits because of the perception that the IRS must be correct, or that you just can't fight back. The facts prove otherwise. In 2021, the IRS and U.S. taxpayers settled 19,963 cases that were docketed in the U.S. Tax Court. A total of $4.29 billion in taxes and penalties were at stake in those cases, and they were settled for $1.30 billion. This means that taxpayers owed just 30 cents on the dollar compared to the IRS's allegations.

Even that number is deceptive because in tax litigation, citizens reach a point where they must make a business decision the IRS never has to

make. The agency will litigate over $50. But citizens have to balance the time, cost, hassle, and energy of fighting on against the cost of a settlement. Citizens routinely settle tax litigation for an amount they can *live with*, but which does not necessarily represent the true amount owed. The IRS knows this, so the agency pushes the envelope.

This is made clear in the disclaimer statement presented in its tax guidance publications. The IRS produces and distributes through its web site hundreds of official publications intended to explain the law in simple and non-technical terms. The IRS boasts that taxpayers downloaded "more than 461.7 million files" from its site, including forms, instructions and publications.

Publication 17, *Your Federal Income Tax (2021)*, is a 140-page guide to tax law compliance for individuals. The "small print" disclaimer reads:

> The explanations and examples in this publication reflect the interpretation by the Internal Revenue Service (IRS) of: Tax laws enacted by Congress, Treasury regulations, and Court decisions.

Now, what happens when certain court decisions are at odds with the IRS's "interpretation? The answer, according to the disclaimer, is:

> This publication covers some subjects on which a court may have made a decision more favorable to taxpayers than the interpretation by the IRS. Until these differing interpretations are resolved by higher court decisions or in some other way, this publication will continue to present the interpretations by the IRS.

It is clear that the agency *does not* apply "unsettled or questionable interpretations" in a manner most favorable to taxpayers. It sticks with its own interpretation. Yet when taxpayers or their counsel apply "unsettled or questionable interpretations" in their own favor, even when done in good faith, they are said to be tax "evaders."

Nothing could be further from the true. There is a remarkable distinction between tax *avoidance* and tax *evasion*, and that distinction has been recognized by the courts for time immemorial. Tax avoidance is perfectly legal. For example, the act of claiming an itemized deduction for mortgage interest or charitable contributions reduces one's taxes. That is tax avoidance—the employment of a specific provision of the code to reduce one's taxes. There's nothing wrong with that. As the Second Circuit Court of Appeals said in *Helvering v. Gregory*, 69 F.2d 809 (1934):

> Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes.

Tax evasion is much different. Evasion involves a willful and deliberate attempt to *defeat* the payment of taxes one *knows* that he lawfully owes. Compare the person who claims a valid mortgage interest deduction (avoidance) with one who fabricates a claim of mortgage interest which he never paid (evasion).

A person who in good faith takes a position that has some reasonable basis in the law is not "evading" tax. The commissioner and the Biden Administration apparently do not know the difference. Rather, they paint every person with the brush of a tax evader for doing precisely what the agency itself does, but to its own advantage. They paint such persons are "evaders" because it's easy to arouse the fury of the public against criminals. When it comes to our current tax law, the problem is that anybody can be made out to be a criminal.

The solution to this problem is not more money to the IRS so it can conduct more audits, the results of which are mostly erroneous. The solution is to abolish the Byzantine tax code and the army of IRS officers charged with enforcing it. We have to stop tinkering around the edges with tax "reform." We must bulldoze the income tax system and start over with a broad-based consumption tax.

Tax Professionals!

2022 Taxpayers Defense Conference

SAVE THE DATES NOW

Thursday & Friday,

OCTOBER 27th & 28th

SCOTTSDALE (Phoenix), Arizona

Embassy Suites by Hilton Scottsdale Resort

Go to our site for details.

Tax Professionals: Do you need educational credits? Looking for cutting edge information to assist you better with your clients?

The dates and location are set for the 2022 Taxpayers Defense Conference. **DO NOT MISS THIS CONFERENCE!** Not only is it the best tax resolution conference in the nation, but we guarantee you will enjoy the conference and not fall asleep! Available both live on site and live streaming, with up to 14 educational credits available including ethics credits.

This year's topics include:

- What to expect from the revitalized IRS
- Claim for Refund law and procedures
- Highlights of the recent Inflation Reduction Act
- What constitutes "financial disability" in refund cases
- Two sessions on ethics
- Our highly praised role-playing sessions, and
- The Solutions Workshop. This is where you bring your most pressing problems to the conference and your go home with solutions!

For more information including lodging and early bird discounts, go to: taxhelponline.com for details.

Rookie Mistakes Spell CPD Loss

Review of Fundamental CDP Practice Rules

BY SCOTT MACPHERSON

The case of *Chinweze v. Commissioner,* T.C. Memo 2022-56 (June 7, 2022) offers an important refresher on the law regarding proof of mailing by the IRS of a statutory Notice of Deficiency (SNOD), and a prior opportunity to contest an underlying tax assessment in a Collection Due Process (CDP) case. This case arises in the context of a Notice of Federal Tax Lien filing by the IRS for an assessed income tax.

Chinweze was a tax attorney who owned his S-corporation law firm. He late-filed his personal and business tax returns for years 2008-2010, submitting them in 2012. He did not pay the tax shown on those late returns. The IRS audited the returns, disallowed deductions, and issued a SNOD.

Chinweze did not petition the Tax Court. Because of that, the IRS assessed the deficiencies, and then mailed a Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing. Note: this notice is required under code § 6330 before the IRS may engage in any enforced collection action. See chapters 4 and 5 of *How to Get Tax Amnesty.*

A month later, the IRS mailed a Notice of Filing Federal Tax Lien. This notice is required to be mailed after the IRS files the lien notice, per code § 6320.

Chinweze ignored the levy notice. However, in response to the lien notice, he filed a timely request for a CDP Hearing (CDPH). As the court observed:

> In his written request [for the CDPH] he indicated his interest in collection alternatives and lien withdrawal, explaining that the liability amount was incorrect and that mitigating factors, including poor health, justified such relief. *Id.* at *2.

However, Chinweze never submitted to the hearing officer any information supporting his claims, nor did he provide proof of current tax compliance — and neither did he call the hearing officer for his hearing at the appointed time. Id. at *2.

The hearing officer then gave him a new deadline, which he also ignored. The officer then issued a Notice of Determination sustaining the filing of the lien.

Chinweze appealed to the Tax Court. The Tax Court ordered that the case be remanded to the Office of Appeals for a new hearing. The reason is that the record didn't reflect that the Appeals Officer verified that the assessment was made in accordance with IRS procedures, as required by code § 6330(c)(1) and (c)(3)(A). The fact that Chinweze didn't provide information to the Appeals Officer has no bearing on the question of the propriety of the assessment. The Appeals Office has an affirmation duty (discussed later) to make the verification regardless of whether that or any other issue is raised by the taxpayer.

On remand, Chinweze was invited a third time to submit documents to support his request for a collection alternative and to prove his current tax compliance. Again he did not provide anything. *Id.* at *2.

At his second Appeals hearing he argued only that did not receive the SNOD. The settlement officer made a fourth request for supporting documents and granted three extensions of the deadline but still Chinweze submitted nothing. *Id.* at *3. (By the way, this is a textbook example of *what not to do* in a CDP Hearing!)

At the Tax Court trial, Chinweze argued that the assessment was invalid because he did not receive

a SNOD. The court agreed that if he did not receive a SNOD then the assessment might be invalid:

> Although the assessment of an income tax liability is generally valid if the Commissioner properly mails the taxpayer a notice of deficiency, the taxpayer may still challenge his underlying liability if he did not actually receive the notice of deficiency or did not otherwise have an opportunity to dispute the tax liability. § 6330(c)(2)(B). *Id.* at *4.

The court then explained what each party must prove:

> Where, as here, the existence of the notice of deficiency is not disputed, a properly completed Form 3877 by itself is sufficient, absent evidence to the contrary, to establish that the notice was properly mailed to a taxpayer. *Id.* at *4 (internal citation omitted).

Form 3877 is the Certified Mail Log the IRS uses internally to record the mailing from its office of a certified letter to a taxpayer. The court explained that precise compliance with Form 3877 mailing procedures (explained below) "raises a presumption of official regularity in favor of the Commissioner," which the taxpayer must rebut. "Although an incomplete certified mailing list that does not contain all of the information required by Form 3877 is insufficient to create a presumption of proper mailing, it nevertheless has some probative value." *Id.* at 4. And, "[e]ven without the presumption of official regularity, the IRS can still prevail so long as it provides 'otherwise sufficient' evidence of mailing." *Id.*

In this case, there was a Form 3877, and the court held that it was sufficient, saying:

> Here, the Commissioner supplied a Form 3877 that contains the following information: (1) a USPS date stamp of March 4, 2014; (2) the signed initials of the USPS employee who received the notice; (3) the number of notices submitted on that date; (4) Mr. Chinweze's name and his last known address; and (5) the certified mail article number of the corresponding notice of deficiency. The Form 3877 contains one foot-fault in that it lacks the signature (or initials) of the IRS employee who issued the notice. We have previously held that this omission, together with other mistakes and omissions, "render[s] the presumption of official regularity inapplicable." *Id.* at *4 (internal citation omitted).

However, the court went on to hold that there was "otherwise sufficient" evidence of mailing of the notice of deficiency to affirm the Appeals Officer's determination to sustain the lien filing. The court noted:

> [T]he Commissioner has introduced the notice of deficiency, which bears the same mailing date, mailing address, and certified mail article number as the corresponding certified mailing list. Accordingly, even if the Commissioner does not benefit from the presumption of mailing, "we conclude that, in this case, the dated cop[y] of the notice[ ] of deficiency, combined with the incomplete certified mailing lists, are sufficient to show that the notice[ ] of deficiency for the years at issue [was] mailed to [Mr. Chinweze] at his last known address." *Id.* at *5.

To complete this refresher, the court reminded attorney Chinweze of his potential rebuttal argument:

> The mailing of a properly addressed letter creates a "presumption that it reached its destination and was actually received by the person to whom it was addressed…" [Citation omitted]. A taxpayer can rebut that presumption with credible evidence, see id., although a "taxpayer's self-serving testimony that he did not receive the notice of deficiency, <u>standing alone</u>, is generally insufficient to rebut the presumption," [citation omitted]. *Id.* at *5 (underlining added).

All Chinweze relied on in his effort to rebut the presumption that he didn't receive the notice of

deficiency was his own word. In light of the evidence that the IRS (a) mailed the SNOD to his last known address, and (b) that he didn't raise the issue in his request for a CDP hearing, his claim did not work. As the court said:

> Mr. Chinweze instead relies solely upon his unsupported allegation that he did not receive the notice. We are unconvinced. Mr. Chinweze was an experienced tax lawyer and filed a CDP request setting forth specific challenges to the NFTL filing (i.e., the liability amount and mitigating factors). His failure to contest receipt of the notice of deficiency in his CDP request undermines the credibility of his subsequent claim, particularly in light of the compelling evidence of mailing and the accompanying presumption of delivery. *Id.* at *5.

But all of that was just academic, because Chinweze already had a prior opportunity to contest the underlying assessment. Recall that he received a Final Notice of Intent to Levy prior to receiving the lien filing notice. He failed to respond to the levy notice. The court pointed out:

> This [the levy notice] notice provided him with an opportunity to request a CDP hearing with respect to tax years 2008–10 and 2012, the years at issue in this case. Consequently, even if he had not received the notice of deficiency, he nonetheless had a "prior opportunity to dispute the existence or amount of the underlying tax liabilit[ies]" by means of the notice of intent to levy, which likewise bars us from considering his challenge to his underlying liabilities. *Id.* at *5, citing 26 *U.S.C. § 6320(c).*

Note that code § 6320(c) incorporates § 6330(c)(2)(B), which reads:

> The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

LESSONS LEARNED

Let's recap some of the lessons learned (or, actually relearned) from this decision.

1. The "Big Three" statutory determinations. Note that the court remanded the case to the Office of Appeals for further proceedings even though Chinweze never submitted a single thing to the Appeals Officer for consideration. The reason is the court could not determine whether the Appeals Office performed the statutorily required verification. Code § 6330(c)(1) and (c)(3)(A) require this verification independently of whether the taxpayer challenges the underlying assessment. The verification is one of the so-called Big Three issues that must be addressed by Appeals. Failure to consider this question is an abuse of discretion and is always subject to challenge.

The second of the three relates to issues raised directly by the taxpayer. The Appeals Officer must take into consideration any issues raised by the taxpayer, including defenses to the underlying tax, challenges to the appropriateness of the collection action, and any collection alternatives presented by the taxpayer. See: § 6330(c)(2)(A). These must be addressed based on the evidence and information submitted by the taxpayer.

Finally the Appeals Officer must perform the balancing test required by § 6330(c)(3)(C). This provision states that the Officer must take into consideration "whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary."

The record made by the Appeals Officer must clearly reflect that *all three* of these elements were addressed at the hearing. Failure to do so, as was the case with Chinweze as to the first point, means the case will be remanded by the

Tax Court for further consideration of the issues.

2. Documents to the Appeals Officer. Chinweze was given multiple opportunities to provide information to the Appeals Officer. He didn't provide a single thing. As a result, the Appeals Officer was unable to consider, for example, collection alternatives or his challenge to the underlying assessment. Even if the court ruled that the Appeals Office should have addressed the underlying tax, Chinweze gave no information to address the propriety of the assessment. Generally speaking, you have no chance of prevailing in a CDP appeal if you don't provide information to support your position.

3. Always exercise appeal rights. The Court noted that Chinweze received a Final Notice of Intent to Levy prior to receiving his lien filing notice. He ignored the final notice letter. He failed to file a CDP request in response to that letter, which was his right. That was his first opportunity to challenge the underlying assessment, but he failed to do so. Section 6330(c)(2)(B) provides the right to challenge the underlying tax "if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability."

It was the "opportunity to dispute" clause that ultimately sank Chinweze. Even if the court believed that he didn't receive the notice of deficiency, he blew his first shot to challenge the assessment by failing to respond to his levy notice. This was not a very smart move for one the court called an "experienced tax lawyer." Chenweze probably should have attended a few our Taxpayer Defense Conferences because this was a rookie mistake.

Scott MacPherson *is a second-generation TFI/TDI member, and frequent contributor to* Pilla Talks Taxes *and our* Taxpayer Defense Conference*. He joins his father Mac and brother Nathan to form the MacPherson Group of tax attorneys. Scott will be a speaker at the 2022 Defense Conference. He can be reached at 310-773-2042.*

Processing Backlog is Crushing the IRS

Agency Remains Overwhelmed

According to the National Taxpayer Advocate (NTA), the IRS's document processing backlog is worse now than that it's ever been. As of the end of May, the IRS was buried in 21.3 million unprocessed tax returns. That's 1.3 million (7 percent more than last year at the same time. Of these, 10.5 million are individual returns and 7.4 million are business returns. Miscellaneous returns make up the balance.

The IRS claimed it was going to crush the backlog this year, but according to the NTA, "the backlog is still crushing the IRS." The task of digging out is daunting. According to the NTA, the IRS would have to process more than 500,000 returns a week, "more than double its current pace," in order to eliminate the pile this year.

A tax system that's dependent on more than 210 million business and personal tax returns annually, as well as another 3.4 *billion* information returns, is the hallmark of inefficiency. It is time to talk seriously about abolishing the income tax and adopting a national retail sales tax, which is all at once simple, fair and efficient.

How You Can Ask Dan Pilla a Question

If you have questions or problems you'd like Dan Pilla to address, please write to Dan at:

215 W. Myrtle Street
Stillwater, MN 55082

or e-mail to:

expert@taxhelponline.com

Write the word "newsletter" in the subject line.