

IRS Audit Preparation

Interacting with the
Revenue Agent



Introduction

Chris Stephens

Senior Manager, Tax, Bennett Thrasher



Bio

Chris Stephens is a Senior Manager in Bennett Thrasher's Tax practice. Chris has extensive experience assisting clients with state income and sales tax audit defense as well as protesting state tax assessments. He also helps clients mitigate tax exposure through multistate tax planning and state voluntary disclosure agreements. Chris assists clients with state tax consulting for M&A due diligence.

His industry experience includes construction, healthcare, professional services and technology. Prior to Bennett Thrasher, Chris provided state and local tax consulting services for two other large national accounting firms. Chris is a licensed attorney with the State Bars of Georgia and Maryland.

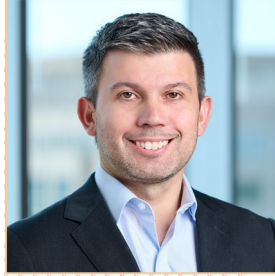


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- Chris Stephens, Esq.
- Luke Smith, Esq.
- Shyanne Fechter
- Sylvia Aikhuele

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- Sana Holmes
Administrative Assistant
- Janet Myers
Tax Specialist

SALT Tax Controversy

- Peter Stathopoulos, Esq.
- Chris Stephens, Esq.
- Luke Smith, Esq.
- Shyanne Fechter
- Sylvia Aikhuele

Agenda

- Background – Exam Process
- SB/SE vs. LBI Exams
- “IDR” Process
- Proposed Adjustments –
Understanding the “NOPA”
- Examination Reports –
Understanding the “RAR”
- Managerial Conferences
- Appeals
- State Considerations



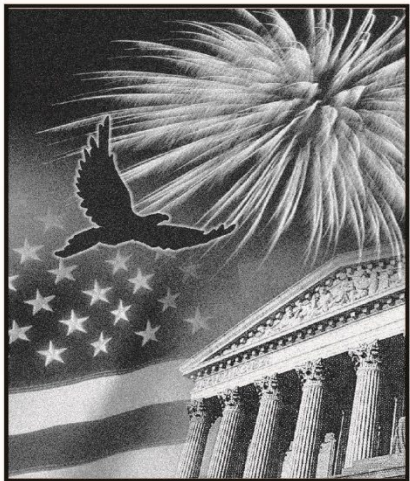
IRS Publication 556



Department of the Treasury
Internal Revenue Service

Publication 556
(Rev. September 2013)
Cat. No. 15104N

Examination of Returns, Appeal Rights, and Claims for Refund



Get forms and other information
faster and easier by:
Internet [IRS.gov](https://www.irs.gov)

Sep 26, 2013

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The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Reminders

Penalty for filing erroneous claim for refund or credit. You may have to pay a penalty if you file an erroneous claim for refund or credit. See *Penalty for erroneous claim for refund*, later under *Claims for Refund*.

Interest and penalties suspended if notice not mailed within 36 months. If you file your return timely (including extensions), interest and certain penalties will be suspended if the IRS does not mail a notice to you within 36 months. See *Suspension of interest and penalties*, later under *Examination of Returns*.

Fast track mediation. The IRS offers fast track mediation services to help taxpayers resolve many disputes resulting from:

- Examinations (audits),
- Offers in compromise,
- Trust fund recovery penalties, and
- Other collection actions.

See *Fast track mediation* under *If You Do Not Agree*.


Introduction

The Internal Revenue Service (IRS) accepts most federal tax returns as filed. However, the IRS examines (or audits) some returns to determine if income, expenses, and credits are being reported accurately.

If your return is selected for examination, it does not suggest that you made an error or are dishonest. Returns are chosen by computerized screening, by random sample, or by an income document matching program. See *Examination selection criteria*, later. You should also know

IRS Publication 1

The Right to Retain Representation



Your Rights as a Taxpayer

Publication 1

This publication explains your rights as a taxpayer and the processes for examination, appeal, collection, and refunds. Also available in Spanish.

The Taxpayer Bill of Rights

1. The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

3. The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

4. The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

5. The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

6. The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections, and will provide, where applicable, a collection due process hearing.

8. The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

10. The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Publication 1 (Rev. 9-2017) Catalog Number 64731W Department of the Treasury Internal Revenue Service www.irs.gov

Power of Attorney Required to Represent Taxpayer

Form **2848**
(Rev. January 2018)
Department of the Treasury
Internal Revenue Service

**Power of Attorney
and Declaration of Representative**
► Go to www.irs.gov/Form2848 for instructions and the latest information.

OMB No. 1545-0150
For IRS Use Only
Received by:
Name _____
Telephone _____
Function _____
Date ____/____/____

Part I **Power of Attorney**
Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.
Taxpayer name and address _____ Taxpayer identification number(s) _____
Daytime telephone number _____ Plan number (if applicable) _____

hereby appoints the following representative(s) as attorney(s)-in-fact:
2 Representative(s) must sign and date this form on page 2, Part II.
Name and address _____ CAF No. _____
PTIN _____
Telephone No. _____
Fax No. _____
Check if to be sent copies of notices and communications ☐ Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
Name and address _____ CAF No. _____
PTIN _____
Telephone No. _____
Fax No. _____
Check if to be sent copies of notices and communications ☐ Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
Name and address _____ CAF No. _____
PTIN _____
Telephone No. _____
Fax No. _____
(Note: IRS sends notices and communications to only two representatives.) Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
Name and address _____ CAF No. _____
PTIN _____
Telephone No. _____
Fax No. _____
(Note: IRS sends notices and communications to only two representatives.) Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
to represent the taxpayer before the Internal Revenue Service and perform the following acts:
3 Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).
Description of Matter (income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions) Tax Form Number (1040, 941, 720, etc.) (if applicable) Year(s) or Period(s) (if applicable) (see instructions)

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4, Specific Use Not Recorded on CAF. ☐
5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information): ☐ Access my IRS records via an Intermediate Service Provider;
☐ Authorize disclosure to third parties; ☐ Substitute or add representative(s); ☐ Sign a return; _____

☐ Other acts authorized: _____

For Privacy Act and Paperwork Reduction Act Notice, see the instructions. Cat. No. 11980J Form **2848** (Rev.1-2018)

Examination Process

The “flow” of the exam

Planning Phase

- Risk Analysis - Issue Identification
- Timeline
 - Milestones
 - “MCD” (SB/SE) or “ECD” (LBI)

Execution Phase

- Information Document Request (“IDR”) Issuance
- Issue Development

Resolution Phase

- Notice of Proposed Adjustment (“NOPA”)
 - The Form 4549 – Revenue Agent’s Report (“RAR”)
 - Managerial Conference
 - Appeals
-

SB/SE vs. LBI Examinations

“Field” Revenue Agents

Small Business/Self-Employed (SB/SE) Division

- Forms 1120, 1120S, 1065 with assets < \$10 million
- Large Form 1040 Returns
 - Large Schedule(s) C or F
 - Complex Schedule E

Large Business International (LBI) Division

- Forms 1120, 1120S, 1065 with assets > \$10 million
-

Letter 2205L

Selected for Examination (LBI)



Department of the Treasury
Internal Revenue Service
Large Business & International

Date:

Taxpayer ID number: (last four digits only)

Forms:
1040

Tax periods:

Person to contact:

Employee ID number:

Contact telephone number:

Contact fax number:

Work paper number:

Dear

Your federal return for the periods shown above was selected for examination.

What you need to do

Call me on or before . You may contact me from 8:00 to 4:30 at the telephone number above.

During our conversation, we'll talk about the items I'll be examining on your returns, the types of documents I'll ask you to provide, the examination process, and any concerns or questions you may have. We'll also set the date, time, and agenda for our first meeting.

Someone can represent you

You can have someone represent you during any part of this examination. If you want representation, you and the representative you authorize must provide a completed Form 2848, *Power of Attorney and Declaration of Representative*, before we can discuss any of your tax matters.

If you won't be present, you can mail or fax the form to me or have your representative bring it to the first appointment.

Your rights as a taxpayer

Publication 1, *Your Rights as a Taxpayer*, Publication 5125, *Large Business & International Examination Process*, and Notice 609, *Privacy Act Notice*, provide detailed information of the examination process.

The Taxpayer Bill of Rights, found in Publication 1, describes the ten fundamental rights taxpayers have in dealing with the IRS. Publication 1 also discusses general rules and procedures we follow in examinations. It explains what happens before, during, and after an examination, and provides additional sources of information.

The IRS will sometimes contact third parties if we need information regarding your case. Our need to contact other persons may continue as long as there is activity in your case.

You can get any forms, notices or publications mentioned above by visiting our website at www.irs.gov/forms-pubs, or by calling 800-TAXFORM (800-829-3676).

I look forward to hearing from you by 8/30/2018 .

Letter 2205-L (Rev. 4-2017)
Catalog Number 69810W



Department of the Treasury
Internal Revenue Service
Large Business & International

Date: 09/24/2018
Taxpayer ID number (last 4 digits):
Tax form: 1120-S
Tax periods: 201612
Person to contact:
Employee ID number:
Contact telephone number:
Contact fax number:

Dear [REDACTED]

I'm confirming the following appointment we scheduled during our telephone conversation on September 12th.

Appointment information

Location:

Via Teleconference

Date:

October 2, 2018

Time:

10:00 A.M.

Purpose of the appointment

The purpose of our first meeting is to help me understand your business operations and policies, and to begin the examination process. We'll discuss specific examination procedures, such as communication methods, response times, and other general expectations. Have the items listed on the enclosed Form 4564, *Document Request*, available for our first appointment.

Someone can represent you

You can have someone represent you during any part of this examination. If you want representation, you and the representative you authorize must provide a completed Form 2848, *Power of Attorney and Declaration of Representative*, before we can discuss any of your tax matters.

Your rights as a taxpayer

Publication 1, *Your Rights as a Taxpayer*, Publication 5125, *Large Business & International Examination Process*, and Notice 609, *Privacy Act Notice*, provide detailed information of the examination process.

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You can get any of the forms, notices or publications mentioned above by visiting our website at www.irs.gov/forms-pubs, or by calling 800-TAXFORM (800-829-3676).

Information Document Request (IDR) *The Process*

- Initial (“books and records”) vs. Issue Specific IDRs
 - Draft (LBI) or Informal Discussion (SB/SE)
 - Influencing the Revenue Agent
 - Key Factors
 - Addressing the issue without an IDR
 - Scope and depth
 - Response timeframe
 - The Agreement of Facts (AOF) IDR – LBI exams
-

To: (Name of Taxpayer and Company Division or Branch)



Subject

Financial Information

SAN Number

760

Submitted To:



Dates of Previous Requests

Please return Part 2 with listed documents to requester identified below

Description of documents requested

Audit Years: 201612

Purpose of this IDR - LB&I Examinations require certain mandatory financial and organizational information to perform the audit.

- a) Trial Balance - For the year prior to the Audit year and the Audit Year(s) by account.
- b) Closing Journal Entries and Adjusting Journal Entries.
- c) Bridge Workpapers (Tax Return Mapping the trial balance account(s) which comprise each tax return line).
- d) Summary of the Schedule M Adjustments and the supporting documentation for each adjustment.
- e) Chart of Accounts and/or Account Descriptions.
- f) Tax Credit Computations with Workpapers, supporting records and receipts of foreign taxes paid.
- g) Detailed Depreciation Schedule.
- h) Details supporting Gains and Losses not specified on Tax Returns.
- i) Schedule of All Prior Years Carryover Adjustments.
- j) Tax Organization Chart and Legal Organization Chart
- k) Audited Financial Statements, Annual Reports to Stockholders, SEC Reports (10-K).
- l) Corporate Minutes, Shareholder Minutes, Board Minutes (for review at initial meeting).
- m) Copies of National Office (Headquarters) Rulings or Other Correspondence.
- n) Working Copy of the following Tax Returns for all years in the current cycle:
 - i) Forms 1120/ 1120S (original and amended)
 - ii) Domestic Entity Unconsolidated Returns
 - iii) Partnership/S-Corporation Returns
- o) Financial Statements for a Joint Venture not requiring a Formal Return.
- p) Affirmative Issues from the Audit Year(s).

Information Due By 10/02/2018

At Next Appointment ☒

Mail in ☐

From:

Name and Title of Requester



Internal Revenue Agent

Employee ID number



Date (mm/dd/yyyy)

09/24/2018

Office Location



Telephone Number



Form 4564 (Rev. September 2006)	Department of the Treasury — Internal Revenue Service Information Document Request	Request Number 2
-------------------------------------------	----------------------------------------------------------------------------------------------	---------------------

To: (Name of Taxpayer and Company Division or Branch) [REDACTED]	Subject Filing Compliance SAIN Number 003 Submitted To: [REDACTED] Dates of Previous Requests
---------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------

Please return Part 2 with listed documents to requester identified below

Description of documents requested
Audit Year: 201612

Purpose of this IDR - LB&I Examinations require certain mandatory Federal tax and informational return filing compliance checks.

Provide a copy of the following tax returns in an electronic or hard copy format for review at the Opening Conference.

Employment Tax - Forms 940 & 941
Employee Benefit Plans - Form 5500 series
Excise Tax Returns - Forms 720 and 2290
Informational Tax Returns - Forms W-2 and 1099.
Any other non-income Federal tax returns not listed above.

Certain taxpayers file the above mentioned tax returns on a separate entity basis, a combined entity basis or a consolidated entity basis, this IDR is a request to review all filings regardless of filing basis.

If the above federal tax returns are filed by a company other than [REDACTED], please provide the Name and EIN of the company who functions as the common paymaster.

Does [REDACTED] act as a common paymaster for other related entities not included in the s-corporation tax return?

If the requested tax returns are filed under the name and EIN of an unrelated third party, provide the Name and EIN of the company who functions as the paymaster.

Information Due By 10/02/2018		At Next Appointment <input type="checkbox"/>	Mail in <input type="checkbox"/>
From:	Name and Title of Requester [REDACTED] Internal Revenue Agent	Employee ID number [REDACTED]	Date (mm/dd/yyyy) 09/24/2018
	Office Location [REDACTED]	Telephone Number [REDACTED]	

Agreement of Facts (AOF) IDR

LBI Examinations

Importance of accurate facts summary in a tax case

- Incorrect facts often lead to erroneous legal outcomes

Cases returned to exam team by Appeals in factual disputes

- IRS Appeals Division resolves legal questions not factual disputes
 - Determining and correctly summarizing facts is an examination function
-

Agreement of Facts IDR

Form 4564 (Rev. September 2006)	Department of the Treasury — Internal Revenue Service Information Document Request	Request Number AOF--9
To: (Name of Taxpayer and Company Division or Branch) [Redacted]		Subject Revised Agreement of Facts on [Redacted] SAIN Number Submitted To: 502-05 [Redacted] Dates of Previous Requests
Please return Part 2 with listed documents to requester identified below:		

Description of documents requested

The purpose of this IDR is to ensure that all relevant facts are being considered before the Form 5701, Notice of Proposed Adjustment (NOPA), is issued.

Please review the attachment and respond accordingly in writing by February 21, 2019

(a) Taxpayer agrees to the facts as written.

(b) Taxpayer provides additional relevant facts and supporting documentation.

(c) Taxpayer identifies disputed facts and provides clarification and/or supporting documentation.

Your response to the facts does not indicate agreement to the issue or any proposed tax adjustment. It is only to acknowledge that all of the relevant facts have been identified.

Information Due By 02/21/2019		At Next Appointment <input type="checkbox"/>	Mail in <input checked="" type="checkbox"/>
From:	Name and Title of Requester [Redacted] Internal Revenue Agent	Employee ID number [Redacted]	Date (mmddyyyy) 02/07/2019
	Office Location [Redacted]	Telephone Number [Redacted]	
	Catalog Number 23145K www.irs.gov Part 1 - Taxpayer's File Copy Form 4564 (Rev. 9-2006)		

Facts Summarized on Form 886

Form 886-A (Rev. January 1994)	Explanation of Items	Schedule number or exhibit
Name of taxpayer [REDACTED]	Tax Identification Number [REDACTED]	Year/Period ended 201512, 201612, 201712

Form 1125-A, Cost of Goods Sold, Line 5 Other Costs

Year(s)	Per Return	Per Exam	Adjustment
201512	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
201612	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
201712	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Issue

Whether funds deposited by the taxpayer with a [REDACTED] captive “insurance” company should be treated as an insurance premium expense for the taxable years ended December 31, 2015, 2016 and 2017 respectively.

Facts¹

Taxpayer Business Overview

[REDACTED] and its Subsidiaries (“Taxpayer”) filed consolidated U.S. Federal income tax returns for the years at issue.² Taxpayer is as a Professional Employer Organization (“PEO”) that provides payroll, insurance, human resources and administrative services to its clients primarily located in the [REDACTED]. As a PEO, the taxpayer can leverage the large pool of client employees to provide workers compensation insurance coverage at favorable rates—rates that smaller employers would have difficulty obtaining on their own. Such rate savings can often be passed on to clients to compel them to sign on with a PEO. The remainder of this fact section will focus on describing key aspects of the taxpayer’s workers compensation policies in place during the years at issue and will explain how certain expenditures associated with those policies were treated for Federal income tax purposes.

Workers Compensation Overview

Many PEOs, including the Taxpayer, utilize a loss-sensitive workers compensation policy whereby the premiums are largely influenced by the total dollar amount of claims filed against the policy, i.e. the employers with high claims histories usually have higher premiums. By purchasing a loss-sensitive deductible policy, an employer can substantially reduce their overall workers compensation since an insurer will discount the premium in exchange for an employer assuming a deductible obligation. The formulas used by insurers to compute premium rates under loss-sensitive deductible policies can be very complicated, but generally the higher the deductible dollar limits of a policy, the greater the premium discount given to an employer.

¹ Exhibit A: In response to Form 4549, Information Document Request titled Agreement of Facts (“AOF”) #005, the Power of Attorney (“POA”) provided facts and clarifications regarding the Taxpayer operations with following headings: Business Overview, Summary of [REDACTED]; Scope of Services for Clients, and Risk Management Services and Workers’ Compensation Coverage, some of which has been incorporated into this document.
² Taxable years ending 12/31/15 and 12/31/16 have been placed under exam and may be referred to as, “the years at issue.”

IDR Summary

Advocating for the Client

Influencing the Revenue Agent (RA)

- Addressing the issue without an IDR
 - RA may be open to resolving issue w/o another IDR
 - Scope and depth of the request
 - Limiting the documents requested
 - Response timeframe
 - Obtaining additional time
 - IRS IDR enforcement process
-

Proposed Adjustments

Understanding the LBI “NOPA” or SB/SE Lead Sheet

- The LBI Form 5701/Form 886
 - Notice of Proposed Adjustment (“NOPA”) and response options
 - The SB/SE Lead Sheet
 - Attached to Form 4549 – Revenue Agent Report (“RAR”)
 - Factors to consider
-

IRS Form 5701 w/ Form 886

[illegible]

Name of taxpayer [REDACTED]	Tax Identification Number [REDACTED]	Year/Period ended 201512, 201612, 201712
--------------------------------	-----------------------------------------	---------------------------------------------

Form 1125-A, Cost of Goods Sold, Line 5 Other Costs

Year(s)	Per Return	Per Exam	Adjustment
201512	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
201612	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
201712	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Issue

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² Taxable years ending 12/31/15 and 12/31/16 have been placed under exam and may be referred to as, “the years at issue.”

The SB/SE Lead Sheet

Taxpayer Name:



Examiner:



TIN:

Tax Form:

1040

Tax Years:

2014, 2015

Date:

6-27-2018

Form 4797, Ordinary Loss Lead Sheet

Determined Using Form 8582, "Passive Activity Loss Limitations"

Tax Period	Per Return	Per Exam	Adjustment	Reference
2014				
2015				

Conclusion:

Revised Form 4797 flow-through losses were the result of limitations imposed under Code Section 469. Re-calculated losses were determined using Form 8582 for each specific year.

After considering all Form 4797 adjusted items for each audit year, corrected net Form 4797 amounts per year remained "net" losses. Consequently, each year's losses remain "Ordinary" losses.

The above adjustments reduce reported losses on each year's Form 1040, Line 14.

Facts:

The audit of Schedule E, partnerships and rentals in 2014 & 2015 resulted in recharacterization of some reported losses from "non-passive" to "passive" in both years. Also, in both audit years, only a minimal amount of disallowed expenses was proposed on one rental property.

Among the various "passive" line items were some Form 4797 losses.

Because of the changes made to reported "passive" income and losses, passive loss limitations were re-calculated to determine corrected deductible line item amounts in each year.

Form 8582, "Passive Activity Loss Limitations" was used for this purpose. It effectively reallocated deductible loss amounts per line item.

RE: 2014

In 2014, only one reported Form 4797 passive loss item from § required an adjustment. Based on passive loss limitations determined using Form 8582 & associated worksheets, the recalculated allowable Form 4797 loss is now . The deducted loss per return was .

Proposed Adjustments

Factors to Consider

- LBI Response to NOPA
 - Response timeframes are agreed to at beginning of exam
 - typically, 15 to 30 days
 - Written response is best
 - SB/SE Response (consolidated process w/RAR issuance)
 - Lead Sheet and Supporting W/Ps usually attached to “RAR”
 - Response timeframe governed by cover letter w/ “RAR”
 - usually 30 days (sometimes 15)
-

Response to NOPA



March 4, 2019

PRIVILEGED AND CONFIDENTIAL

Internal Revenue Service

LB&I: [REDACTED]

[REDACTED]

Re: [REDACTED]

Tax Period: December 31, 2015

Dear [REDACTED]

On behalf of the above referenced taxpayer, we are responding to [REDACTED] [REDACTED] faxed to our attention on February 12, 2019 that proposes the imposition of IRC § 6662(a) penalty for the year ended December 31, 2015 of \$64,632. Based on the pertinent facts and the applicable Internal Revenue Code and Treasury Regulations referenced below, we believe the Service should not impose penalties for substantial understatement assessed under IRC § 6662(b)(2) and respectfully request the abatement of such penalties.

Background

As previously presented, [REDACTED] is a [REDACTED] Corporation that provides creative and flexible solutions to a variety of small to mid-sized companies.¹ In 2015, [REDACTED] negotiated on behalf of itself and its unrelated (third-party) clients to enter into a deductible reimbursement workers' compensation policy ("DRP") with [REDACTED]. Under the terms of the "[REDACTED] Client Service Agreement", [REDACTED] reinsured the risks under the DRP with [REDACTED] and paid the federal excise tax due at a rate of 1% with respect to the policy of reinsurance issued by [REDACTED]. The following is a summary of the risk associated with the DRP that was shifted from [REDACTED] and its unrelated (third party) clients to [REDACTED] and [REDACTED].

¹ For further details please see September 11, 2018 response to Form 4564 and Information Document Request AOF-5 (IDR-005).

BETTER TOGETHER

A Limited Liability Partnership of Certified Public Accountants & Consultants

Riverwood 200 3300 Riverwood Parkway Suite 700 Atlanta, GA 30339 phone 770.396.2200 fax 770.390.0394
www.btcpa.net

Examination Reports

Understanding the “RAR”

- The Form 4549 – Income Tax Examination Change
 - Commonly known as the Revenue Agents Report (“RAR”)
 - Similar mathematically to an Amended Return
 - The “Waiver”
 - Waiving appeal rights to agree
 - Can be on page 2 or a separate form (Form 870)
-

Form 4549 "RAR"

Form 4549-A (Rev. March 2013)		Department of the Treasury-Internal Revenue Service Income Tax Examination Changes (Unagreed and Excepted Agreed)		Page <u>1</u> of <u>2</u>
Name and Address of Taxpayer <div style="background-color: black; width: 100px; height: 40px;"></div>		Taxpayer Identification Number <div style="background-color: black; width: 100px; height: 20px;"></div>	Return Form No.: 1040	
		Person with whom examination changes were discussed. <div style="background-color: black; width: 100px; height: 20px;"></div>	Name and Title: <div style="background-color: black; width: 100px; height: 20px;"></div>	
1. Adjustments to Income		Period End 12/31/2015	Period End	Period End
a. Other Gains or Losses From Form 4797		25,885.00		
b. Schedule E: R.E. Professional Status & Passive L		2,233,394.00		
c. Itemized Deductions		67,776.00		
d.				
e.				
f.				
g.				
h.				
i.				
j.				
k.				
l.				
m.				
n.				
o.				
p.				
2. Total Adjustments		2,327,057.00		
3. Taxable Income Per Return or as Previously Adjusted		14,021,037.00		
4. Corrected Taxable Income		16,348,094.00		
Tax Method		SCHEDULE D		
Filing Status		Joint		
5. Tax		3,235,142.00		
6. Additional Taxes / Alternative Minimum		53,600.00		
7. Corrected Tax Liability		3,288,742.00		
8. Less Credits				
a. Foreign Tax Credit		1,275.00		
b.				
c.				
d.				
9. Balance (Line 7 less total of Lines 8a thru 8d)		3,287,467.00		
10. Plus Other Taxes				
a. Additional Medicare Tax		1,257.00		
b.				
c.				
d.				
11. Total Corrected Tax Liability (Line 9 plus Lines 10a thru 10d)		3,288,724.00		
12. Total Tax Shown on Return or as Previously Adjusted		2,836,868.00		
13. Adjustments to:				
a.				
b.				
c.				
14. Deficiency-Increase in Tax or (Overassessment - Decrease in Tax) (Line 11 less Line 12 adjusted by Lines 13a through 13c)		451,856.00		
15. Adjustments to Prepayment Credits-Increase (Decrease)				
16. Balance Due or (Overpayment) - (Line 14 adjusted by Line 15) (Excluding interest and penalties)		451,856.00		

Form 4549 "RAR" – Page 2

Form 4549-A (Rev. March 2013)		Department of the Treasury Internal Revenue Service Income Tax Examination Changes (Unagreed and Excepted Agreed)		Page <u>2</u> of <u>2</u>	
Name of Taxpayer [REDACTED]		Taxpayer Identification Number [REDACTED]		Return Form No.: 1040	
17. Penalties/ Code Sections		Period End 12/31/2015	Period End	Period End	
a. Accuracy-IRC 6662		90,371.20			
b.					
c.					
d.					
e.					
f.					
g.					
h.					
i.					
j.					
k.					
l.					
m.					
n.					
18. Total Penalties		90,371.20			
Underpayment attributable to negligence: (1961-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.					
Underpayment attributable to fraud: (1961-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.					
Underpayment attributable to Tax Motivated Transactions (TMT). Interest will accrue and be assessed at 120% of underpayment rate in accordance with IRC 6621(c).		0.00			
19. Summary of Taxes, Penalties and Interest:					
a. Balance due or (Overpayment) Taxes - (Line 16, Page 1)		451,856.00			
b. Penalties (Line 18) - computed to 07/31/2018		90,371.20			
c. Interest (IRC § 6601) - computed to 08/30/2018		54,508.39			
d. TMT Interest - computed to 08/30/2018 (on TMT underpayment)		0.00			
e. Amount due or refund - (sum of Lines a, b, c and d)		596,735.59			
Other Information:					
Examiner's Signature: _____ Name: [REDACTED]					
Employee ID: [REDACTED]		Office: [REDACTED] Atlanta, GA		Date: 07/31/2018	

The Internal Revenue Service has agreements with state tax agencies under which information about federal tax, including increases or decreases, is exchanged with the states. If this change affects the amount of your state income tax, you should amend your state return by filing the necessary forms.

You may be subject to backup withholding if you underreport your interest, dividend, or patronage dividend income you earned and do not pay the required tax. The IRS may order backup withholding (withholding of a percentage of your dividend and/or interest payments) if the tax remains unpaid after it has been assessed and four notices have been issued to you over a 120-day period.

In an Agreed Case - the “Waiver”

Form 870 (Rev. March 1992)	Department of the Treasury—Internal Revenue Service		Date received by Internal Revenue Service	
Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment				
Names and address of taxpayers (Number, street, city or town, State, ZIP code)			Social security or employer identification number	
Increase (Decrease) in Tax and Penalties				
Tax year ended	Tax	Penalties		
(For instructions, see back of form)				
Consent to Assessment and Collection				
I consent to the immediate assessment and collection of any deficiencies (<i>increase in tax and penalties</i>) and accept any overassessment (<i>decrease in tax and penalties</i>) shown above, plus any interest provided by law. I understand that by signing this waiver, I will not be able to contest these years in the United States Tax Court, unless additional deficiencies are determined for these years.				
YOUR SIGNATURE HERE →				Date
SPOUSE'S SIGNATURE →				Date
TAXPAYER'S REPRESENTATIVE HERE →				Date
CORPORATE NAME →				
CORPORATE OFFICER(S)		Title		Date
SIGN HERE		Title		Date

Managerial Conference

Informal discussion with Revenue Agent's first line manager

- IRS exam managers have the broad authority to resolve issues based upon the application of tax law to the facts.
- Typically works best in cases involving substantiation issues
 - Questions involving inadequate records, recordkeeping, etc.
- IRS managers tend to support the Revenue Agent in these meetings
 - May be worth the effort as these are informal meetings that be arranged with a simple phone call

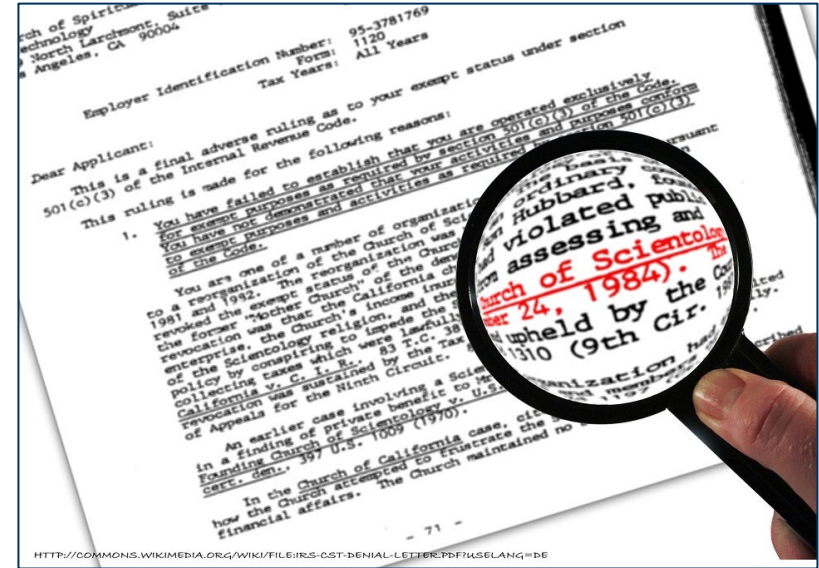
Penalties Before
and After the
Managerial
Conference

Form 4549-A (Rev. March 2013)	Department of the Treasury-Internal Revenue Service Income Tax Examination Changes (Unagreed and Excepted Agreed)	Page <u>2</u> of <u>2</u>
Name of Taxpayer	Taxpayer Identification Number	Return Form No.: 1040
17. Penalties/ Code Sections	Period End 12/31/2015	Period End 12/31/2015
a. Accuracy-IRC 6662	90,371.20	
b.		
c.		
d.		
e.		
f.		
g.		
h.		
i.		
j.		
k.		
l.		
m.		
n.		
18. Total Penalties	90,371.20	
Underpayment attributable to negligence: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.		
Underpayment attributable to fraud: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.		
Underpayment attributable to Tax Motivated Transactions (TMT). Interest will accrue and be assessed at 120% of underpayment rate in accordance with IRC 6621(c).	0.00	
19. Summary of Taxes, Penalties and Interest:		
a. Balance due or (Overpayment) Taxes - (Line 16, Page 1)	451,856.00	
b. Penalties (Line 18) - computed to 03/31/2018	90,371.20	
c. Interest (IRC § 6601) - computed to 08/30/2018	54,508.39	
d. TMT Interest - computed to 08/30/2018 (on TMT underpayment)	0.00	
e. Amount due or refund - (sum of Lines a, b, c and d)	596,735.59	
Other Information:		
<div></div>		
Examiner's Signature: Name	Employee ID:	Office:
Date:	07/31/2018	
The Internal Revenue Service has agreements with state tax agencies under which information about federal tax, including increases or decreases, is exchanged with the states. If this change affects the amount of your state income tax, you should amend your state return by filing the necessary forms.		
You may be subject to backup withholding if you underreport your interest, dividend, or patronage dividend income you earned and do not pay the required tax. The IRS may order backup withholding (withholding of a percentage of your dividend and/or interest payments) if the tax remains unpaid after it has been assessed and four notices have been issued to you over a 120-day period.		

Form 4549-A (Rev. March 2013)	Department of the Treasury-Internal Revenue Service Income Tax Examination Changes (Unagreed and Excepted Agreed)	Page <u>2</u> of <u>2</u>
Name of Taxpayer	Taxpayer Identification Number	Return Form No.: 1040
17. Penalties/ Code Sections	Period End 12/31/2014	Period End 12/31/2015
a.		
b.		
c.		
d.		
e.		
f.		
g.		
h.		
i.		
j.		
k.		
l.		
m.		
n.		
18. Total Penalties		
Underpayment attributable to negligence: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.		
Underpayment attributable to fraud: (1981-1987) A tax addition of 50 percent of the interest due on the underpayment will accrue until it is paid or assessed.		
Underpayment attributable to Tax Motivated Transactions (TMT). Interest will accrue and be assessed at 120% of underpayment rate in accordance with IRC 6621(c).	0.00	0.00
19. Summary of Taxes, Penalties and Interest:		
a. Balance due or (Overpayment) Taxes - (Line 16, Page 1)	168,161.00	451,856.00
b. Penalties (Line 18) - computed to 03/31/2019		
c. Interest (IRC § 6601) - computed to 04/20/2019	30,065.87	64,804.99
d. TMT Interest - computed to 04/20/2019 (on TMT underpayment)	0.00	0.00
e. Amount due or refund - (sum of Lines a, b, c and d)	198,226.87	516,660.99
Other Information:		
<div></div>		
Examiner's Signature: Name	Employee ID:	Office:
Date:	03/21/2019	
The Internal Revenue Service has agreements with state tax agencies under which information about federal tax, including increases or decreases, is exchanged with the states. If this change affects the amount of your state income tax, you should amend your state return by filing the necessary forms.		
You may be subject to backup withholding if you underreport your interest, dividend, or patronage dividend income you earned and do not pay the required tax. The IRS may order backup withholding (withholding of a percentage of your dividend and/or interest payments) if the tax remains unpaid after it has been assessed and four notices have been issued to you over a 120-day period.		
Catalog Number 23110T		
www.irs.gov		
Form 4549-A (Rev. 3-2013)		


Examination Notices and Letters - Examination Appeals

- If Unagreed
 - Written Protest in accordance with IRS Publication 5
 - Respond within 30-days of Final Report with Letter 950 (or similar letter)
 - Letter 950 - commonly known as a “30-day letter”
- Fast Track Settlement – Field Examinations Only



Letter 950

"30-day" Letter



Department of the Treasury
Internal Revenue Service
Large Business and International

Date:

Taxpayer

ID number (last 4 digits):

Form:

Tax periods ended:

Person to contact:

Contact telephone number:

Contact fax number:

Employee ID number:

Response due date:

Dear [REDACTED]

I have enclosed an examination report and two copies of an agreement form showing proposed changes to your tax for the periods above. **Review the report, and tell us whether you agree or disagree with the changes by the response due date above.** If you have an interest in any partnerships, S corporations, trusts, etc., this report may not reflect examinations of those entities. Changes to those accounts could also affect your tax.

If you agree with the proposed changes in the report

1. Sign and date one copy of the agreement form and keep the other copy for your records. If you filed a joint return, both spouses must sign for the case to be fully agreed.
2. Include payment for the full amount you owe (if the report shows you owe additional tax) to limit penalty and interest charges to your account. Make your check or money order payable to the United States Treasury.
3. Return the signed and dated agreement form with your payment in the enclosed envelope by the response due date.

If you agree, but can't pay the full amount you owe

Pay as much as you can, and sign, date, and return one copy of the agreement form, as explained above. We explain payment options in the enclosed Publication 3498, The Examination Process. You can also find more information regarding payment options by visiting Tax Topic 202 at www.irs.gov/taxtopics/tc202.html and www.irs.gov/payments.

If you don't enclose full payment for the additional tax, interest, and penalties, we'll bill you for the unpaid amounts. If you are a C Corporation, the law requires us to charge an interest rate 2% higher than the standard rate on underpayments of \$100,000 or more (Section 6621(c) of the Internal Revenue Code).

Letter 950 (Rev. 4-2017)
Catalog Number 40390D

If you don't agree with the proposed changes in the report
You can contact the person above to request a meeting or telephone conference with me. **If you still don't agree after the meeting or telephone conference, you can request a conference with the Office of Appeals.** If the total proposed change to your tax and penalties is:

- \$25,000 or less for each referenced tax period, send us a letter requesting an Appeals conference, and explain the changes you don't agree with and the reasons why you don't agree. Instead of sending a letter, you can complete Form 12203, Request for Appeals Review (enclosed). A fillable version of this form is available at www.irs.gov/forms-pubs.
- More than \$25,000 for any referenced tax period, you must follow the instructions in the enclosed Publication 3498 to submit a formal protest.

If you request an Appeals conference

An Appeals officer will contact you. Appeals conferences are held in an informal manner. Appeals is an independent office and resolves most disputes informally and promptly. A conference with our Appeals office may:

- Help you avoid court costs, such as Tax Court filing fees
- Resolve the matter sooner
- Limit or prevent interest and penalties from increasing on your account

If you provide new information or raise a new issue to Appeals, your case may be returned to Examination for our determination on the new information.

For Appeals to have enough time to consider your case, the statute of limitations generally must have at least 365 days remaining when Appeals receives it. If additional time is needed, we will request your consent to extend the period the law provides to assess additional tax. If you don't consent to extend the statute, we'll close your case based on the proposed changes and send you a notice of deficiency (explained below). For estate tax cases only, there must be at least 270 days remaining on the non-extendable statute of limitations when Appeals receives the case.

If you don't reply by the response due date

We'll process your case based on the proposed changes and send you a notice of deficiency. The notice normally gives you 90 days to either agree to the deficiency or file a petition with the United States Tax Court.

If you petition the Tax Court, your case will normally be sent to Appeals to try to resolve the disagreement before the court considers it. If you allow the 90-day period to expire without petitioning the Tax Court, we'll bill you for any additional tax, penalties, and interest.

If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Enclosures:
Examination Report
RAR, Supporting Schedules, Forms 5701 and 886a
Form 12203
Publication 3498
Envelope

Letter 950 (Rev. 4-2017)
Catalog Number 40390D

Internal Revenue Service
Small Business and Self-Employed
Earl Cabell Federal Bldg , 11th Fl
1100 Commerce Street, Room 1103
Dallas TX 75242

FIRST M & FIRST M LAST
STREET ADDRESS
DALLAS TX 75360

Department of the Treasury

Date:
April 11, 2013
Social Security Number:
XXX-XX-XXXX
Tax Form:
1040
Tax Year(s):
201012 201112
Person to Contact:
IRS Contact Name
Contact Telephone Number:
XXX-XXX-XXXX
Employee Identification Number:
XX-XXXXX
Contact Hours:
7:30 a.m. - 4:00 p.m.

Dear FIRST M LAST:

Thank you for the information you provided about the amount you own for the above tax form and tax year(s). Based upon our review of the information:

- ☐ We did not revise our original proposed change(s) to your tax return(s) because
- ☒ We changed the amount of our proposed tax increase. We have enclosed a revised examination report showing our changes.
- ☐

IF YOU AGREE with our proposed changes in the examination report, please sign, date, and return the report to us within 15 days from the date of this letter in the enclosed envelope.

To avoid interest and penalty charges that the law requires us to collect, we recommend that you pay the full amount now. Please make your check payable to the United States Treasury for the full amount owed shown on the examination report.

If you cannot pay the full amount at this time, please sign, date, and return the report and contact us to discuss payment arrangements.

IF YOU DISAGREE with the proposed changes in the examination report, we recommend that you request a conference with an appeals officer. Before requesting a conference, you must have provided the examiner all requested information. The appeals officer, independent of this office, will take a fresh look at your case. To request a conference with an appeals officer, please send us a list of the items you disagree with and why you disagree. We will transfer your case to the appeals office nearest you and they will contact you to schedule a conference.

If we conducted the examination entirely by mail, however, we would appreciate you first discussing our findings with the contact person whose name is shown at the top of the letter.

IF YOU DO NOT RESPOND within 15 days from the date of this letter, we will issue a notice of deficiency. A notice of deficiency is a legal notice stating the proposed tax increase. If you decide to appeal after we issue the notice of deficiency, you will need to file a petition with the United States Tax Court. If you decide to bypass the appeals office and petition the United States Tax Court after you receive the notice of deficiency, we will normally send your case to an appeals officer to try to resolve the issue before the United States Tax Court hears the case.

If you have any questions, please contact the person whose name and telephone number are shown at the top of this letter.

Thank you for your cooperation.

Sincerely yours,

IRS Contact Name
Tax Compliance Officer

Enclosures:

- ☒ Examination Report
Envelope

Overview of Appeals Process

- Taxpayer's Protest
- Rebuttal by Exam
- Pre-Conference (Exam Presentation)
- Conference (Taxpayer's Presentation)
- Potential Supplemental Protest

Protest to the Office of Appeals



April 4, 2019

Internal Revenue Service
Service Center Penalty Appeals Coordinator
ATTN: Sandy J. Horton
201 W. Rivercenter Blvd.
Mail Stop 318G
Covington, KY 41011

Re: Written Protest – Request to Appeal to Office of Appeals

Form 706-NA for period ending [REDACTED]

SSN: [REDACTED]

Appeal of Penalty Abatement Denial - Letter 854C dated Mar. 27, 2019

Tax Period: [REDACTED]

Form: 706-NA

Penalty: Failure to File

Dear Sir/Madam:

As the authorized representative for this taxpayer, I write to request an appeal to the Office of Appeals for the Form 706 penalty abatement denial for the tax period ending [REDACTED] per Letter 854C dated Mar. 27, 2019 (see Enclosure 1).

STATEMENT OF FACTS, LEGAL ARGUMENTS and CONCLUSION:

The brief in support of this appeal is at Enclosure 2.

CONTACT NAME, ADDRESS and TELEPHONE NUMBERS:

James M. Pickett, CPA
Power-of-Attorney
3300 Riverwood Parkway, Suite 700
Atlanta, GA 30339

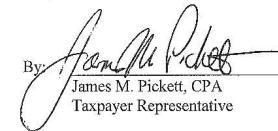
Phone (678) 302-1468
FAX: (770) 390-0394



PENALTIES OF PERJURY DECLARATION:

The undersigned, under penalties of perjury, declares that I prepared this written response and that, although I do not know of my own knowledge that the facts contained herein are true and correct, based on the information provided to me, I believe them to be true, correct, and complete.

Respectfully submitted,

By: 
James M. Pickett, CPA
Taxpayer Representative

Enclosures:

Enclosure 1 – IRS Letter 854C dated Mar. 27, 2019

Enclosure 2 – Brief in Support of Appeal (Facts, Legal Arguments, Conclusion)

Enclosure 3 – Copy of Original Abatement Request

Enclosure 3 – Form 2848, Power of Attorney

BETTER TOGETHER

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www.btcpa.net

State Considerations

- Some larger states somewhat mirror IRS procedure
 - New York and California
- Most states much more informal, with fewer defined procedures
- More opportunities to influence the agents at times
- States typically issue estimated workpapers, then proposed assessment, then formal assessment
 - All have defined response timelines
 - Typically 30-60 days

