

# What Is “Installment Agreement”

---

Your Opportunity to Payout the Tax Bill Without  
Fear of Levy



## Table of Contents

<b>WHAT IS THE INSTALLMENT AGREEMENT? .....</b>	<b>5</b>
HOW TO CREATE AN INSTALLMENT AGREEMENT REQUEST.....	5
<i>What must be disclosed</i> .....	6
HOW LONG WILL IT TAKE? .....	6
<b>WHAT IS THE INSTALLMENT? .....</b>	<b>6</b>
HOW TO CREATE AN INSTALLMENT AGREEMENT .....	6
WHAT DEBT AND WHAT EXPENSES CAN BE INCLUDED? .....	7
<b>FINAL RESOLUTIONS – THE POSSIBILITIES.....</b>	<b>8</b>
<b>AM I ELIGIBLE – ARE THERE QUALIFICATIONS TO MEET? .....</b>	<b>9</b>
[105.1] 3.1 (09-26-1996) Overview.....	10
[105.1] 3.2.2 (09-26-1996) Determining Maximum Collectibility.....	12
[105.1] 3.2.3 (09-26-1996) Analysis, Substantiation, and Verification of Income and Expenses.....	13
<b>MY ACTIONS TO MAKE THIS WORK .....</b>	<b>15</b>
<b>WHAT MUST BE SENT TO MAKE THE REQUEST? .....</b>	<b>16</b>
<b>WHAT ARE THE RULE.....</b>	<b>17</b>
<b>CAN ANYTHING BE EXCLUDED FROM THE INCOME? .....</b>	<b>18</b>
<b>MUST I INCLUDE MY ENTIRE NET WORTH?.....</b>	<b>18</b>
<b>WHAT IS THE INTERNAL REVENUE SERVICE ATTITUDE AND POSITION? .....</b>	<b>19</b>
<b>HOW THE LIEN AFFECTS THE INTERNAL REVENUE SERVICE ATTITUDE.....</b>	<b>19</b>
<b>IRS OBJECTIVE.....</b>	<b>21</b>
WHEN MUST THE PAYMENT BE PAID? .....	21
HOW LONG DO I HAVE TO FIND THE MONEY? .....	21
<b>WHAT ARE THE BAD THINGS? .....</b>	<b>23</b>
<b>CPA AND CLIENT COMMUNICATIONS.....</b>	<b>25</b>
PRIVILEGED COMMUNICATIONS WITH TAX ADVISERS.....	25
FLORIDA: .....	25
TEXAS:.....	25
<i>Federally Regulated Aspects</i> .....	26
TAX ADVICE.....	26
<b>INFORMATION FOR YOU INDIVIDUALLY – NOT YOUR BUSINESS.....</b>	<b>28</b>
HOUSEHOLD INFORMATION: .....	28
ASSET INFORMATION: .....	30
Summary.....	30
Bank Accounts.....	30
Charge Cards.....	30
Real Property.....	31
Life Insurance.....	31

Securities.....	31
Other Questions to Answer.....	31
INCOME & EXPENSE INFORMATION – ALL AMOUNTS ARE MONTHLY: .....	32
<b>BUSINESS INFORMATION.....</b>	<b>35</b>
GENERAL INFORMATION.....	35
Description.....	35
Participants, Owners and Investors.....	35
Bank Accounts.....	35
Bank Credit Available.....	36
Real Property.....	36
Life Insurance.....	36
Securities.....	36
Other Questions to Answer.....	36
Accounts receivable.....	38
ASSET AND DEBT ANALYSIS.....	39
Income and Expenses Analysis.....	41
<b>DEFINITIONS .....</b>	<b>43</b>
[105.1] 3.3 (09-26-1996) Definitions.....	43
[105.1] 3.3.1 (09-26-1996) Allowable Expenses.....	44
[105.1] 3.3.2 (09-26-1996) Necessary Expenses.....	45
[105.1] 3.3.2.1 (09-26-1996) Necessary Expenses: National Standards.....	45
[105.1] 3.3.2.2 (09-26-1996) Necessary Expenses: Local Standards.....	46
[105.1] 3.3.2.3 (09-26-1996) Necessary Expenses: Other.....	46
[105.1] 3.3.2.4 (09-26-1996) Necessary Expenses: Other - Unsecured Debts.....	48
[105.1] 3.3.3 (09-26-1996) Conditional Expenses.....	48
[105.1] 3.3.3.1 (09-26-1996) Conditional Expenses: Three-Year Rule for Full Payment....	48
[105.1] 3.3.3.2 (09-26-1996) Conditional Expenses: Unsecured Debts.....	48
[105.1] 3.3.3.3 (09-26-1996) One-Year Rule for Eliminating Excessive Necessary and Not- Allowable Conditional Expenses.....	49
<b>MAKING THE DECISION, WHETHER TO ACCEPT THE INSTALLMENT AGREEMENT.....</b>	<b>2</b>
[105.1] 3.4 (09-26-1996) Making The Collection Decision.....	2
[105.1] 3.4.1 (09-26-1996) Installment Agreement.....	2
[105.1] 3.4.2 (09-26-1996) Enforced Collection.....	3
[105.1] 3.4.3 (09-26-1996) Offer-in-Compromise.....	3
[105.1] 3.4.4 (09-26-1996) Currently Not Collectible.....	3

BLANK PAGE

## Chapter 1

---

# What is an Installment Agreement?

## A short explanation of the term

What is the Installment Agreement?



The Installment Agreement is a method to request the Internal Revenue Service to review your financial situation in relation to the amount of tax that is owed to the government. The request is to pay the tax over a period selected and an admission the tax is owed.

By electing to make this filing, one will claim that the tax bill, interest and penalties are within the payment ability of the taxpayer, however there is not sufficient cash flow, borrowing power nor assets that can be liquidated to pay the entire tax bill immediately.

Submitting an installment agreement request does not automatically suspend collection activity.



**Here is a warning about the Internal Revenue Service Attitude:**

**If there is an indication that you filed the petition to delay collection of the tax or if delay of collection would interfere with the Service's ability to collect the tax, then Internal Revenue Service will continue collection efforts.**

## How to Create an Installment Agreement Request

To create the request one must do the following – submission of these items does not guarantee the government will accept the request. If the amount of the tax owed is *less than \$1,000* the request will usually be granted. The larger the amount or the longer term you request, more effort is required to obtain a favorable decision for you.

- 1) Make an inventory list of everything you own – nothing can be exempted on this initial listing
- 2) Make a cash flow of your current income, spending, saving, investing
- 3) Be prepared to disclose all banking, financial accounts, life insurance, credit card accounts, etc.

What must be disclosed



Your earnings



Your expenses



Your assets



Your insurance



Your pension plans



Your IRA's

The list of items to disclose would be too lengthy to include all disclosure items that would apply for all circumstances. The above does assist you to envision the disclosure required will be full and complete. Included in the Installment Agreement Kit are pages for you to write in the information that is required. This required information is used to file your petition or make the necessary calculations for the determination of the amount of the installment payments.

### **How long will it take?**

Usually the Installment Agreement request does not take as long as other petitions with the IRS. Sometimes the process is only a few days and sometimes it may take as long as a month.

### **What is the Installment?**

The amount of the Installment is a mathematical formula. There are some personal expenses the IRS will use National Standards for. In summary it is based upon your ability to pay or borrow from other sources.

In summary, the government will expect your installment payment to be all of your excess cash each month. Do not let this sound *easy*. The IRS uses its own rules for determining your *excess cash* each month. The Government expects to collect its money ahead of **all other unsecured creditors**. In addition if it believes your life style should be reduced to pay the back taxes, it will expect you to do so. I have read about taxpayers who were told to sell their personal residences so the house payment could be reduced to pay the back taxes.

### **How to Create an Installment Agreement**

Read this booklet –

Answer the questions at the end of the booklet –

Return the filled in answers to Bob Parrish CPA –

Ask Questions of Bob Parrish CPA so that you will fully understand the process.

**What debt and what expenses can be included?**

For the answers to the questions at the end of this booklet:



Be certain to include all expenses.

Be certain to include all debts

Do not exclude anything. The government will exclude items as it chooses, using standards and guidelines that are applied in all districts.

We will assist you to understand where there are limits and we will assist you with making arguments in your favor for those items the government limits or disallows, but for which the government is required to at least listen to the arguments for larger deductions.

## Chapter 2

---

### What is the final resolution?

#### Final Resolutions – The Possibilities

#### The resolution can go either way!

Usually the IRS will make a decision and either deny or accept the petition for an installment agreement.

#### The Installment Agreement is Accepted

If it is accepted you must start making the monthly payments and meet the obligation timely each month.

If you miss a payment – the Service *might* be forgiving. If you miss two or more, then expect the IRS to start the levy and seizure process fairly quickly.

#### The Installment Agreement is Denied

If the Installment Agreement is denied, then you must take action immediately. The action can to immediately revise the installment agreement petition so the Government will accept it.

As an alternative pay the tax in full immediately.

Another alternative is to prepare for the IRS to take enforcement actions to protect its own interest. Bankruptcy will stay the enforcement actions – but will not usually stop the enforcement actions once the Bankruptcy Case is closed. (There are specific circumstances that provide for Federal Taxes to be discharged in Bankruptcy. However, the window of opportunity is very complex and can be narrow. Furthermore, if the taxpayer files Bankruptcy to keep from paying the taxes, the taxes are **not dischargeable**.)

## Chapter 3

### Am I Eligible for Consideration?



#### What are the qualifications?

#### Am I Eligible – Are There Qualifications To Meet?



There must be tax owing and the tax must be assessed.



You must have filed all tax returns.



You must include all amounts due in the Installment Agreement.



If 941 or 940 taxes are included: Timely filed, timely paid and timely deposited all payroll taxes for the two quarters preceding the filing of the 656



Furthermore the taxpayer must have also timely paid all federal tax deposits due in the quarter in which the installment agreement petition is submitted.

The following is a quotation from the Internal Revenue Service Collections Manual:

#### Excerpt from The IRS Manual “Collecting Contact Handbook”



[105.1] 3.1 (09-26-1996)  
Overview

1. When you complete a tiered interview and conclude that an installment agreement may be appropriate, **and the taxpayer doesn't qualify for a streamlined agreement**, financial analysis is necessary. Financial information is secured on:
  - ?? The ACS financial information screen (FIN)
  - ?? Form 433-A, Collection Information Statement for Individuals
  - ?? Form 433-B, Collection Information Statement for Businesses
  - ?? Form 433-F, Collection Information Statement (CIS)(can substitute for Form 433-A for individuals owing less than \$100,000)
  - ?? The taxpayer's own financial statement
2. Your analysis of this information may indicate that full payment or a short-term extension for payment is possible, by having the taxpayer liquidate available assets or borrow on equity in assets.
3. Analysis of a taxpayer's financial condition provides you with a basis to make one or more of the following case decisions:
  - A. Require payment from available assets in full or in part; this is preferred over other case resolution methods, including installment agreements.
  - B. Recommend or initiate enforcement action (this would also be based on the results of the interview). If assets are available to pay taxes and a taxpayer is unwilling to convert the assets to cash, this method should be considered before an installment agreement or other case resolution.
  - C. File a Notice of Federal Tax Lien (see 2.5).
  - D. Allow an extension of time to full pay.
  - E. Make an installment agreement.
  - F. Explain offer in compromise.
  - G. Report the account currently not collectible.
4. If there are no assets to liquidate or borrow against, installment payments are the last resort for collection of the tax. Such payments are based on the taxpayer's ability pay, which is determined by the excess of monthly income over allowable expenses. This chapter will assist you in determining the amount of allowable expenses.
5. See the following exhibits:
  - ?? Exhibit 3-2. Financial Analysis - Expenses. An alphabetic listing

and discussion of major expenses

?? Exhibit 3-3, Questions and Answers to Assist in Financial Analysis

?? Exhibit 3-4, Financial Analysis - Total Monthly National Standards

?? Exhibit 3-5, Financial Analysis - Monthly National Standards

?? Exhibit 3-6, Local Standards: Housing and Utilities

?? Exhibit 3-7, Local Standards: Transportation

?? The procedures in this chapter do not affect streamlined installment agreements. See Section 2.4.4 for those procedures.

What else might the Internal Revenue Service Consider in this process? The Internal Revenue Service (or "Service" as it is usually referred to) will consider the components of the process and what should be done to "protect the government's interest". To add more to that statement is the following quotation from the instructions to the Internal Revenue Service personnel:

Excerpt From The IRS Manual

**Components of Collectibility**

Component

Definition

Assets

The amount collectible from the taxpayer's net realizable equity

Future income

The amount collectible from the taxpayer's income minus necessary living expenses. For cash offers, it is the amount that would be collected from the taxpayer's income over a period of 48 months; for short term deferred offers, it is the amount that would be collected over a period of 60 months; and for deferred payment offers, it is the amount that would be collected over the life of the statute

Amount collectible from third parties

Transferee liability, Trust Fund Recovery Penalty etc.

Assets or income that are available to the taxpayer but not available to IRS

The amount the taxpayer is reasonably expected to raise

from assets available to him or her, but which are beyond the reach of the Government. For example, assets outside the country, or property owned as a tenancy by the entirety.





[5.8] 4.3 05/26/99

#### Filing a Notice of Federal Tax Lien

During the consideration of an offer in compromise, a determination should be made regarding the need to file a Notice of Federal Tax Lien (NFTL).

Generally, the filing of liens on deferred payment offers should be considered when the taxpayer net realizable equity in assets is being paid over the life of the statute, if the value of those assets would ordinarily warrant such a filing.

The Installment Agreement must reasonably reflect collection potential. The four components of collectibility are:

-   The amount collectible from your assets, including IRA's etc.
-   The amount collectible from present **and future income**,
-   The amount that can be collectible from 3rd parties; and
-   Sources of funds that are available to you but not subject to the Service's collection for example, workers compensation and veteran's benefits.

It is the taxpayers' burden to show how acceptance of the Installment Agreement would be in the best interest of the Government.

The IRS Personnel are given training and instructions to collect the tax. To emphasize this point I quote another portion of the IRS Manual:

[105.1] 3.2.2 (09-26-1996)

#### Determining Maximum Collectibility

1. Analyze income and assets to determine ways of liquidating the account. Your goal is to collect the tax liability as quickly as possible. Follow these steps:
  1. If the taxpayer has cash equal to the tax liability, demand immediate payment.
  2. Otherwise. consider other assets which may be pledged or

readily converted to cash.

3. Consider unencumbered assets, equity in encumbered assets, interests in estates and trusts, lines of credit from which money may be borrowed, and the taxpayer's ability to get an unsecured loan.
4. If there are assets with value and a taxpayer is unwilling to raise money from them, consider enforcement.
5. If there appears to be no borrowing ability, ask the taxpayer to defer payment of other debts to pay the tax.

[105.1] 3.2.3 (09-26-1996)

Analysis, Substantiation, and Verification of Income and Expenses

1. When analysis of a taxpayer's assets shows no obvious solution for liquidating the liability, analyze the income and expenses to determine the amount of disposable income (gross income less allowable expenses) available to apply to the tax liability. Expense analysis is necessary only if you are unable to collect the liability from available assets.
2. Expenses must be reasonable for the size of the family, the geographic location, and any unique individual circumstances. You may allow more than a reasonable amount for an expense if the tax liability including projected accruals can be fully paid within three years. See Section 3.3.3.1.
3. A taxpayer is not required to substantiate expenses which are categorized as National Standards unless they exceed the standards.
4. A taxpayer may be required to substantiate expenses which are categorized as Local Standards or Other Necessary Expenses. See Section 3.3.2.3 or 3.3.2.4 and LEM V Text 546 for ACS and 480 for SCCB.
5. Substantiation of expense amounts could include items like bank statements, credit card vouchers, rent/lease receipts and leases, payment coupons, court orders, contracts, and canceled checks. Taxpayers who own homes should provide documents showing the monthly payment amount, purchase price, date of purchase, and the principal amount due. When obtaining documents for substantiation, ask the taxpayer for copies, not original documents. If necessary, secure telephone numbers of creditors, and who to contact. These can be used if verification is necessary.
6. When analyzing expenses for a business taxpayer, make sure that business expenses are not also included under personal expenses. Also, depreciation is not a cash expense for determining disposable income.
7. Compare income to expenses. If expenses exceed income, ask the taxpayer for an explanation. Look at the last filed return using CFOL cc RTVUE to see if an understatement of income is also present there. If so, consider referral to Examination.

8. For installment agreement or currently not collectible dispositions, consider future expenses; for example, the birth of a child or need to replace a car.
9. Send ACS cases awaiting substantiation from the taxpayer to R1 (hardship) or I8.

## Chapter 4

---

When am I not eligible?

What can I do to make it work?

My Actions to Make This Work

### **Action**

The taxpayer – you – must show that you intend to file all tax returns and to stay current in the future.

The taxpayer must file all past due tax returns.

The first step is to make all tax returns current.

The next step is to stay current, both in filing and in paying.

Furthermore, the installment agreement must be for an amount the government will consider to meet its criteria.



Offer less than you can afford to pay in monthly payments



Attempt to run more than one installment agreement at a time



Submit an installment agreement request when there is a tax return you have not filed.

## Chapter 5

---

### What must be sent to Internal Revenue Service?

What must be sent to make the request?

Is there a mass of procedural papers to process?

Yes.

Financial statement information forms and the form for filing the



installment agreement request must be completed.

In addition, the government may request additional information.

If the taxpayer's expenses are more than the standards, or more than the government believes is needed for personal living, then it may ask for proof of the actual expenses. That means copies of bank statements, deposit slips, and canceled checks. This can be a large headache and very time consuming. Not only must the copies be made, but also they must be reconciled to the bank, and they must be categorized and listed on worksheets for the revenue officer to overview.

There normally will be numerous telephone calls with the Installment Agreement Processor. Normally, expect this person to be in a city far from the taxpayers' domicile.

## Chapter 6

---

# What are the rules of the amount to use as the monthly payment?

What are the rules

## Does it mean “everything” I Make?

The amount of the request must include:

1. Income from all sources including trusts, business, rentals, earnings and investments
2. Subtract the expenses the IRS allows – for some understanding about the IRS position on the allowable expenses see the Glossary – “Definitions” and “Making the Decision”
3. The IRS will expect you to liquidate or borrow against the equity in some assets
4. Sometimes the IRS will require that you draw on all your retirement accounts
5. The Federal Tax Collection process ignores state laws regarding assets and income exempt from ordinary creditors. Therefore, there are very few items that are exempt from the IRS Collection Officer. However there are exceptions and you should consult Bob Parrish CPA to get current information on the exemptions.

When one lists the items one must include property that would ordinarily be exempt for business and personal creditors. Even where non-government creditors are limited, the federal government is not.

There are some exemptions and there are some limits. However, the amount that is open to the government’s seizure is so large, that it becomes a very disheartening and depressing environment. So much so, that the normal taxpayer honestly believes that everything is at risk – which “pretty much” it is.



**POINTER:** When placing a value on property (other than cash, securities or cash equivalents) be certain to use the prices that a distressed sale would be likely to produce.

Can anything be excluded from the income?

Yes.

Government assistance payments.

Disability Payments from Social Security (NOT Social Security Retirement)

Food

“Anything that eats”

Personal clothing

Medication









Limited amounts of household goods

Limited amounts of the necessities of the taxpayer's trade

Must I include my entire net worth?

Yes.

The government has ten years to collect the tax. The future collections might come from any of the following:

-  Wages or profits
-  Portfolio income from investments
-  Sales of securities
-  Withdrawals from pension plans
-  Sales of property
-  Increased earning through bonuses and raises
-  Inheritance
-  Having more cash surplus because of debt being paid off

Chapter 7

## Internal Revenue Service Attitude



What is the Internal Revenue Service Attitude and Position?



The Internal Revenue Service probably has a federal tax lien filed against your assets. If the Lien has not been filed – expect it to be soon. Even though you are successful in obtaining an installment agreement, the Tax Lien is usually filed. **This Lien lasts for TEN years or until the tax is paid in full.**



Furthermore, although the Federal Tax Lien expires in TEN years, the Service at its option may Execute a Judgment against you for the amount of the taxes, interest and penalties. In some states the Lien has a limited life and in some states it is perpetual – check with Bob Parrish (Bob Parrish may check with a legal counsel).



The government has ten years to collect the debt.

The government can seize bank accounts, saving accounts, broker accounts, IRA accounts, homes, payroll checks, rent income from rental property, sales proceeds from anything

with a title.

Do I need to belabor this point?

### How the Lien Affects the Internal Revenue Service Attitude



REMEMBER THE DEFINITION OF A "LIEN"? YOU ARE THE ENTITY UNDER THE LIEN. Effectively the IRS already owns everything you have up to the full amount you owe. So it's up to you to prove that everything you have, if you had to LIQUIDATE ALL OF IT

tomorrow, would not be enough to pay the outstanding tax bill. But of course anything having to do with money is not that simple.

Now the question becomes, "WHAT IS REASONABLE COLLECTION POTENTIAL"? And this is where it gets complicated.

A KEY TO SUCCESSFUL SETTLEMENTS IS KNOWING HOW THE IRS EVALUATES "REASONABLE COLLECTION POTENTIAL". This takes specific knowledge of the law and the IRS; its policies, procedures, formulas, Standards, etc., etc., etc. It's a long process that requires documentation to support the financial facts of YOUR life.

## Chapter 8

---

# Internal Revenue Service Objective in the Installment Agreement

## IRS Objective

The objective is to collect the tax. If the Service believes it can collect the tax along with a fair rate of interest it will do so.

### **When must the payment be paid?**

### **How long do I have to find the money?**

Usually you will have up to 30 days to make the first payment and the payments must be made on the same day of the month thereafter.



## Chapter 9

### What are the Bad Things?

#### What about enforcement actions and my rights?

##### What Are The Bad Things?



The government may take enforcement action at any time during the processing of the petition.

If the petition is rejected, then be prepared to receive a Notice to Levy or an actual levy of your bank accounts or any account at a financial institution or brokerage institution.



In addition, the government has the authority to seize paychecks directly from your employer. The government has the authority to seize your accounts receivable directly from your customers. The government has the authority to seize rental income directly from your tenants. Furthermore, the government has the authority to seize and close IRA and other similar retirement accounts. The government has the authority to require all the payers of income to withhold current income tax (backup withholding). The government has the authority to visit your home or your business, take an inventory, to lock the premises and hold the assets in its control for an auction.

**Wow!**

There are some very strong rights for you, the taxpayer. First consider only the negative side of the petition – the potential rejection. The taxpayer may appeal any adverse decision. Also, you the taxpayer, may file another Installment Agreement Request and restructure the amount of the monthly to place you in the best position. Furthermore, the financial circumstances may not only warrant, but also place you in a favorable position for submitting a new request.

The paragraph about the formidable and intimidating powers of the Government for enforcing collections – its collection powers – may seem so awesome that you want to “give up”. **DO NOT GIVE UP!** You have rights



and protections. There are limitations on the government. Some property is exempt – although the amounts may not be much, there are exemptions. Your home is protected within limits. The Internal Revenue Service must first

Petition a Federal Court and convince a Federal Judge that s/he should write an Order to seize and auction your homestead. Bankruptcy is NOT A SOLUTION! Bankruptcy does not prevent the unwanted actions – it only delays them. Federal Income taxes are sometimes dischargeable, not always. The trust portion of Employer Taxes is **never** dischargeable. There are other lawful and affordable methods to protect assets and income. You should work with Bob Parrish CPA to help you establish a system of cash flow and asset preservation.

## Chapter 10

---

### CPA – Client Communication

#### Is the CPA – Client Discussion Protected from the Government?

##### CPA and Client Communications

##### Privileged Communications with Tax Advisers

The new law extends the attorney-client privilege to certain communications between a client and a "federally authorized tax practitioner," i.e., any person authorized to practice before the IRS, such as a CPA, enrolled agent, or enrolled actuary. The communications must be in connection with "tax advice" and must be such that they would qualify as privileged if made between a client and an attorney.

In effect, the new rule incorporates the common law of attorney-client privilege. Thus, for example, communications concerning the preparation of a tax return may not be protected. Also, the attorney-privilege can be waived inadvertently, such as by voluntarily disclosing information to a third party other than an agent of the attorney or client.

The privilege applies only to noncriminal tax matters before the IRS and noncriminal tax proceedings brought by or against the government in any federal court. It does not apply to prevent other agencies, such as the SEC, from compelling disclosure. Also excluded from protection are written communications to a corporation's officers or other representatives (which could include employees) in connection with promoting the corporation's participation in a "tax shelter."

The main point is this: Don't assume your statements to a tax adviser are privileged. When in doubt, ask. The new rule applies to communications made on or after the date of enactment.

##### FLORIDA:

The communication between a Florida CPA and a Texas Client should be protected under the laws of Florida, or Texas whichever gives the most protection to the client/taxpayer. The communication under Florida law protects the communication more than in Texas.

##### TEXAS:

The communication in Texas law does not offer the strength of protection that the Florida law does for CPA and Client Communication. The Texas CPA can

protect only the communication allowed by the Federal Statutes, which is not as protective as the Florida Statute.

### Federally Regulated Aspects

#### New CPA--Client Privilege

The recently enacted Internal Revenue Service Restructuring and Reform Act of 1998 includes a provision creating a confidentiality privilege between clients and the CPAs who represent them in noncriminal federal tax matters.

The new law extends the common-law attorney-client confidentiality privilege to most tax advice furnished to a client (or a prospective client) by any individual authorized under federal law to practice before the IRS. This includes CPAs, attorneys, enrolled agents and enrolled actuaries.

### TAX ADVICE

Tax advice is defined as advice given by a CPA (or one of the other authorized tax practitioners) within the scope of authority of his or her practice with respect to matters under the Internal Revenue Code.

Direct tax advice given to a client (such as personal discussions, letters, memoranda, notes or reports) and tax advice documents (describing tax interpretations, opinions, mental processes, thoughts, tax positions, likelihood of success) should be protected.

There is an important exception to the privilege rules for certain written communications regarding corporate tax shelters.

Practice before the IRS. The privilege is available only in matters brought before the IRS or proceedings in federal court brought by or against the United States. Thus, the privilege is not available to prevent disclosure of information to any other regulatory body (for example, the SEC or FTC) or in private civil matters (such as domestic relations and employment disputes), even if tax matters are involved.

In addition, tax advice on state and local tax matters is not protected, although 36 states have some form of accountant-client privilege, which would include tax advice.

Criminal tax matters. The privilege also does not extend to criminal tax matters. A critical issue is to determine at what point an ordinary tax matter becomes a criminal matter. Clearly, this is the case when the IRS refers a case to the Justice Department, which accepts the referral; many situations, however, may not be as clear-cut. To best serve clients, the CPA should recommend, at the first hint of criminal activity (usually when an IRS special agent appears), that the client consult an experienced criminal tax attorney.

### SCOPE OF THE PRIVILEGE

This privilege applies only when the practitioner advises the client on legal matters; it does not apply when the tax practitioner acts in another capacity (such as a business adviser) or when the adviser is working at some other profession.

Because tax returns are intended to be disclosed to revenue officials (and thus are not confidential), there is no privilege for them or to the basis for the numbers and calculations on them. (This is equally true for returns prepared by attorneys.)

WAIVER

If a communication is voluntarily disclosed to anyone other than the tax practitioner, the client or certain persons under the direction and control of the practitioner or client, the privilege is considered waived. This may occur by express and voluntary surrender of the privilege, by partial disclosure of a privileged document, by selective disclosure to some (but not all) outsiders or by inadvertent overhearing or disclosure. Usually, an intent to maintain confidentiality is necessary to avoid waiver.

If a tax opinion or other document involving privileged tax advice is sent to a client's banker, financial adviser or securities broker, the privilege may be waived (unless he or she has a role in the tax advice process).

## Chapter 11

# Information Required by The Internal Revenue Service

Please furnish the following information

Checklist of information to send:

- Personal financial information
- Business financial information — if business taxes are owed
- Copies of all tax returns that are not fully paid
- Copies of tax returns you made payments on, or paid in full in the last two (2) years
- Government Correspondence
- Audit adjustments or other adjustments made to your tax returns
- Taxpayer Authorization of taxpayer representative
- Other information you believe may be Important or is “causing headaches”.

Information for you individually – not your business

### Household Information:

Husband name as on tax return	
Husband Social Security Number	
Wife name as on tax return	
Wife Social Security Number	
Number of people in household	
Enter number of wage-earners and self-employed	Wages Self
State of residence	
County of residence	
City of residence	
Fax number if you want results faxed	(     )
Homestead Address	
Telephone	
Email address	
Total tax owed – including interest and penalties	

What kind of tax? 1040, 941?	
What years	
Do you have any delinquent tax returns due?	Yes / No
If you are self-employed, are estimated taxes current?	Yes / No
Are all the payroll taxes current?	
Husband occupation	
Husband employer	
How long employed	
Nbr of exemptions on W4	
Pay period	
Wage earner, Sole Proprietor, Partner?	
Date of birth	
Wife occupation	
Wife Employer	
How long employed	
Nbr of exemptions on W4	
Pay period	
Wage earner, Sole Proprietor, Partner?	
Wife date of birth	
Name, Address, telephone number of next of kin	
Other names or aliases of husband or wife	
Previous address(es)	
List names, age and relationship of dependents living in the same household	
Last filed income tax return	
Number of exemptions claimed on that last return	
Adjusted Gross Income	
Will you be able to pay your current taxes on time?	Yes / No



Real Property

Description	Type of Ownership	Physical Address	County	Amount Owed	Market Value and Tax Role Value

Life Insurance

Name of Company	Policy Number	Whole or Term?	Face Amount	Available Loan Value

Securities

(Stocks, bonds, mutual funds, money market funds, government securities, annuities, etc.)

Kind	Quantity or Denomination	Current Value	Where Located	Owner of record	Symbol or Cusip	Cost

Other Questions to Answer

Any Court Proceedings?		
Repossessions?		
Anticipated Increase in income?		
Bankruptcies?		
Any recent sales or other transfer of assets at less than full market value?		
A Participant or Beneficiary to a trust, an estate, Profit Sharing Plan, Retirement Plan, etc.?		

**Income & Expense Information – All Amounts Are Monthly:**

Total Gross Monthly Household Income	
Wages – husband	
Wages – wife	
Interest and dividends	
Net business income	
Rental income	
Pension income – husband	
Pension income – wife	
Child support	
Alimony	
Other:	
National Standard expenses – to be filled in by bob Parrish CPA	

House payment or rent	
Insurance & taxes if not in payment	
Utilities including base phone rate	
Car payment # 1	
Car payment # 2	
Gas/Oil & routine maintenance	
Auto insurance	
Tolls & parking	
Public transportation	
Health insurance	
Out-of-pocket medical, dental, vision	
Taxes – Income, FICA, State & Local	
Child support and/or alimony	
Student loans	
Other secured loans	
Back state taxes	
Life insurance	
Other court-ordered payments	
Child or dependent day care	
Secured or other perfected debts – specify:	XXXXXXXXXXXXXXXXXXXX XXXXX



Business Information

**General Information**

Furnish the same information for all businesses separately, including those of both spouses

Description

Name and Address – and County		
Business telephone number		
Type of entity		
Employer Identification Number		
Type of business		

Participants, Owners and Investors

Name and Title	Effective Date	Home Address	Telephone Number	Social Security Number	Total Percentage or Shares

Latest tax return filed \_\_\_\_\_

Form number \_\_\_\_\_

Tax Year ended \_\_\_\_\_

Net Income before taxes \_\_\_\_\_

Bank Accounts

Name	Address	Type of Account	Account #	Balance

Bank Credit Available

Name or Type	Name and Address of Institution	Monthly Payment	Credit Limit	Amount Owed	Credit Available

Real Property

Description	Type of Ownership	Physical Address	County	Amount Owed	Market Value and Tax Role Value

Life Insurance

Name of Company	Policy Number	Whole or Term?	Face Amount	Available Loan Value

Securities

(Stocks, bonds, mutual funds, money market funds, government securities, annuities, etc.)

Kind	Quantity or Denomination	Current Value	Where Located	Owner of record	Symbol or Cusip	Cost

Other Questions to Answer

Any Court Proceedings?	
Repossessions?	
Anticipated Increase in income?	
Bankruptcies?	
Any recent sales or other transfer of assets at less than full market value?	
A Participant or Beneficiary to a	

trust, an estate, Profit Sharing Plan, Retirement Plan, etc.?		



**Asset and Debt Analysis**

**Section II** **Asset and Liability Analysis**

(a) Description	(b) Cur. Mkt. Value	(c) Liabilities Bal. Due	(d) Equity in Asset	(e) Amt. of Mo. Pymt	(f) Name and Address of Lien/Note Holder/Obligee	(g) Date Pledged	(h) Date of Final Pymt.
16 Cash on hand							
17 Bank accounts							
18 Accounts/Notes receivable							
19 Life insurance loan value							
20 Real property (from item 12)	a						
	b						
	c						
	d						
21 Vehicles (model, year, and license)	a						
	b						
	c						
22 Machinery and equipment (specify)	a						
	b						
	c						
23 Merchandise inventory (specify)	a						
	b						
24 Other assets (specify)	a						
	b						
25 Other liabilities (including notes and judgments)	a						
	b						
	c						
	d						
	e						
	f						
	g						
	h						
26 Federal taxes owed							
<b>27 Total</b>							

Income and Expenses Analysis

**Section III Income and Expense Analysis**

The following information applies to income and expenses during the period to		Accounting method used	
<b>Income</b>		<b>Expenses</b>	
<b>28</b> Gross receipts from sales, services, etc.	\$	<b>34</b> Materials purchased	\$
<b>29</b> Gross rental income		(Number of employees ..... ) <b>35</b> Net wages and salaries	
<b>30</b> Interest		<b>36</b> Rent	
<b>31</b> Dividends		(IRS use only) <b>37</b> Allowable installment payments	
<b>32</b> Other income (specify)		<b>38</b> Supplies	
		<b>39</b> Utilities/telephone	
		<b>40</b> Gasoline/oil	
		<b>41</b> Repairs and maintenance	
		<b>42</b> Insurance	
		<b>43</b> Current taxes	
		<b>44</b> Other (specify)	
<b>33 Total income</b>	\$	<b>45 Total expenses (IRS use only)</b>	\$
		<b>46 Net difference (IRS use only)</b>	\$
<b>Certification: Under penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete.</b>			
<b>47</b> Signature			<b>48</b> Date

## Chapter 12

---

# Glossary and Definitions

## Definitions

[105.1] 3.3 (09-26-1996)  
Definitions

1. **Allowable expenses** . There are two types: necessary and conditional.
2. **Necessary expenses** . These must meet the necessary expense test: provide for a taxpayer's and his or her family's health and welfare and/or the production of income. The expenses must be reasonable. The total necessary expenses establish the minimum a taxpayer and family need to live. Three types of necessary expenses are:
  - A. **National Standards** . These establish standards for reasonable amounts for five necessary expenses. Four of them come from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey : food, housekeeping supplies, apparel and services, and personal care products and services. The Service has established standards for the fifth category, Miscellaneous.
  - B. **Local Standards** . These establish standards for two necessary expenses: housing and transportation. Utilities are included in housing.
  - C. **Other** . Other expenses may be allowed if they meet the necessary expense test. They must be reasonable in amount. Since there are no nationally or locally established standards for determining reasonable amounts, you must determine whether the expense is necessary and the amount is reasonable.
3. **Conditional expenses** . These expenses do not meet the necessary expense test. However, they are allowable if the tax liability, including projected accruals, can be fully paid within three years.
4. **Three-year rule** . Excessive necessary and conditional expenses may be allowed if the tax liability including projected accruals will be fully paid within three years. Use IDRS cc ICOMP to calculate accruals.
5. **One-year rule** . A taxpayer may have up to one year to modify or eliminate excessive necessary or not-allowable conditional expenses if the tax liability including projected accruals cannot be fully paid within three years.
6. **Reasonable amount** . For specified expenses, the reasonable amounts are

provided by the National and Local Standards. If the reasonable amount is not provided by these standards, determine it. If the tax liability including accruals can be fully paid within three years, allow the taxpayer's claimed expenses, subject to substantiation requirements in Text 546 of LEM V.

7. **Disposable income** . This is the amount of income that remains after allowable expenses are deducted from gross income, including deductions required by law to be withheld, or any child support or alimony payments that are made under a court order or legally enforceable written agreement. Amounts required by law to be withheld include, but are not limited to, Federal and State taxes, FICA contributions, Medicare contributions, and wage garnishment payments. Disposable income is the amount available to apply to the tax liability.
8. **Substantiation and verification** . A taxpayer substantiates by providing proof of expenses. The Service verifies by checking on information provided by the taxpayer and by obtaining information from internal and external sources.
  - A. **Substantiation** . A taxpayer is required to provide evidence and justification for claimed expenses, except National Standards. See Text 546 of LEM V.
  - B. **Verification** . In some cases, it may be necessary to obtain additional information about a taxpayer's financial condition using third party data.

[105.1] 3.3.1 (09-26-1996)

Allowable Expenses

1. Allowable expenses include:
  - A. **Necessary expenses** - if reasonable are always allowed. A case would be closed as currently not collectible if there is no disposable income beyond necessary expenses.
  - B. **Conditional expenses** - are allowable if a tax liability can be fully paid within three years through an installment agreement.
2. A list of typical necessary and conditional expenses appears in Exhibit 3-2. This exhibit includes discussions of expense types and conditions which determine whether an expense is allowable.
3. In discussing expenses with taxpayers, emphasize how much we expect from them rather than how we expect them to spend their money. For example, if the taxpayer has excessive necessary or not-allowable conditional expenses:
  - A. Do not tell the taxpayer that he or she cannot own, for example, a boat or summer cabin.
  - B. Tell the taxpayer that we expect an amount equal to that going to excessive necessary or not-allowable conditional expenses.
  - C. Tell the taxpayer that he or she is responsible for determining what modifications or eliminations must be made to expenses to pay the tax.

[105.1] 3.3.2 (09-26-1996)  
Necessary Expenses

1. There is an essential test for necessary expenses: they are those used for taxpayers and their families to provide:
  - A. Health and welfare.
  - B. Production of income.
2. Unless the Service receives full payment within three years (see Section 3.3.3.1), necessary expenses must be reasonable. The total necessary expenses establish the minimum a taxpayer and family need to live.
3. Accounts closed as currently not collectible, offer in compromise, and as installment agreements requiring more than three years will be allowed only necessary expenses. For installment agreements which require more than three years, you may grant up to a year to eliminate excessive necessary and not allowable conditional expenses.

[105.1] 3.3.2.1 (09-26-1996)  
Necessary Expenses: National Standards

1. A number of necessary expenses are categorized as National Standards. They are: housekeeping supplies, apparel and services, personal care products and services, food, and miscellaneous.
  - A. Except for "miscellaneous," the National Standards are derived from Tables 1, 3, 4, and 5 of the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey. These expenses are stratified by income level; as income levels increase, the percentage of income provided for these expenses decreases. They will be updated yearly as the information becomes available through BLS. The miscellaneous expense is a discretionary amount established by the Service. It is \$100 for one person and \$25 for each additional person in a taxpayer's household.
  - B. The total monthly National Standards appear in Exhibit 3-4. This exhibit provides the total amount allowed a taxpayer, by gross income level and by number of persons in the household.
  - C. The monthly National Standards, by type of expense and by totals, appear in Exhibit 3-5.
2. National Standards eliminate the need to require justification or substantiation for a number of recurring expenses.
  - A. Allow taxpayers the total National Standards amount for their income level. Taxpayers making more than the highest income level shown in the National Standards will be limited to the maximum amount allowed by the National Standards unless they can substantiate and justify a larger amount.
  - B. How the amount allowed for National Standards is spent is up to taxpayers. For example, they may spend less for clothing and more for

entertainment (including cable TV); or they may decide to apply part of the amount to conditional unsecured debts.

- C. A taxpayer who claims more than the total allowed by the National Standards must substantiate and justify as necessary each separate expense of the total.

**EXAMPLE:**

A taxpayer may claim much more for food than allowed if based on special prescribed or required dietary needs.

3. If a taxpayer can fully pay the tax liability including projected accruals within three years, he or she may be allowed more than the National Standards amount.

[105.1] 3.3.2.2 (09-26-1996)

Necessary Expenses: Local Standards

1. For some kinds of expenses, the National Standards are not feasible: for example, housing, utilities, and transportation (including car insurance and public transportation), and child and dependent care.
2. Local standards for housing and transportation have been developed. Utilities, including telephone, are covered under housing. Taxpayers will be allowed the local standard or the amount actually paid, whichever is less. See Exhibits 3-6 and 3-7.
  - A. Housing. The housing standard provides the basis for determining whether a taxpayer will be required to pay the Service an amount equal to excessive or not-allowable housing expenses. Standards are established for each county within the district. When deciding whether a taxpayer should be required to pay the Service an amount equal to excessive or not-allowable housing expense, consider the cost of moving to a new residence and the increased cost of transportation to work and school which would result from moving to lower-cost housing.
  - B. Transportation. The transportation standard provides the basis for determining if the taxpayer will be required to pay the Service an amount equal to excessive or not-allowable transportation expenses. (1) As part of the standard, amounts are allowed for car purchase and lease, establishing different rates for a first car and, if allowed, a second or more cars. (2) Consider availability of public transportation if car payments (purchase or lease) will prevent the tax liability being paid in part or in full. Public transportation could be an option if it doesn't significantly increase commuting time and inconvenience the taxpayer. In some cities, public transportation cuts commuting time and a car is only a personal convenience, not a necessity.

[105.1] 3.3.2.3 (09-26-1996)

Necessary Expenses: Other

1. Depending upon individual circumstances, other expenses may meet the necessary expense test: health and welfare and/or production of income.

2. A taxpayer must substantiate the amounts and justify the expenses as necessary, unless the tax liability will be fully paid, including projected accruals, within three years. Expenses include, but are not limited to:
  - A. Child care.
  - B. Dependent care: elderly, invalid, or disabled.
  - C. Taxes.
  - D. Health care.
  - E. Court-ordered payments.
  - F. Involuntary deductions.
  - G. Secured or legally perfected debts (minimum payments).
  - H. Life insurance.
  - I. Charitable contributions.
  - J. Education.
  - K. Disability insurance for self-employed individual.
  - L. Union dues.
  - M. Professional association dues.
  - N. Accounting and legal fees for representing a taxpayer before the Service, and other fees which meet the necessary expense test of health and welfare and/or production of income.
  - O. Optional telephone service (call waiting, call identification, etc.), or long distance calls, if they meet the necessary expense test of health and welfare and/or production of income.
3. Charitable contributions. To be necessary, charitable contributions have to provide for a taxpayer's or his or her family's health and welfare or be a condition of employment. Otherwise, they are conditional and allowable only if the tax liability, including projected accruals, can be paid within three years.
4. Education. To be a necessary expense, a taxpayer must demonstrate that it is for a physically or mentally handicapped dependent and is not provided by public schools; or it is a condition of employment.
5. The expenses listed in 3.3.2. do not exhaust the category of necessary expenses. Other expenses may be considered if they meet the necessary expense test; health and welfare and/or the production of income.
6. If other expenses are determined to be necessary and, therefore, allowable, document the reasons for the decision in the ACS Comments or case file.

## [105.1] 3.3.2.4 (09-26-1996)

## Necessary Expenses: Other - Unsecured Debts

1. Payments on unsecured debts may also be necessary. Allow minimum payments if a taxpayer substantiates and justifies the expense as necessary for health and welfare and/or production of income. Unsecured debts are rarely necessary expenses. Examples of unsecured debts which may be necessary expenses include:
  - A. Payments required for the production of income; for example, payments to suppliers and payments on lines of credit needed for business;
  - B. Payment of debts incurred to pay a federal tax liability.
2. Except for payments required for production of income, don't allow payments on unsecured debts if the tax can be paid in full within 90 days.

## [105.1] 3.3.3 (09-26-1996)

## Conditional Expenses

1. The following describes expenses that may be allowed if certain requirements are met.

## [105.1] 3.3.3.1 (09-26-1996)

## Conditional Expenses: Three-Year Rule for Full Payment

1. If taxpayers establish they can stay current in all tax requirements and that the tax liability including projected accruals can be paid within three years, all expenses may be allowed, if amounts are reasonable.
2. Although three years are allowed, base agreements on the taxpayer's maximum ability to pay; i.e., on how quickly the taxpayer can full pay the tax liability. Don't automatically allow agreements for the three-year maximum. See Section 2.4. for Installment Agreement procedures.
3. Taxpayers may have incurred excessive necessary and not-allowable conditional expenses after the assessment of the tax liability. These expenses are not covered by the three-year rule. If you feel the taxpayer has incurred them to reduce the ability to pay, enforcement against the post-assessment assets or not allowing the expenses in an installment agreement may be appropriate.

## [105.1] 3.3.3.2 (09-26-1996)

## Conditional Expenses: Unsecured Debts

1. Don't allow payments on unsecured debt, including credit or charge cards, if omitting them would permit a taxpayer to pay in full within 90 days.
2. Allow payments if the tax including projected accruals will be paid within three years. Note dates for final payments of the unsecured debts so additional funds can be applied to the tax. Include the increase in payments in installment

agreements.

3. If the tax can not be paid within three years, tell the taxpayer that unsecured debts which are conditional expenses are not allowed, and he/she must pay an amount equal to the expense.

[105.1] 3.3.3.3 (09-26-1996)

One-Year Rule for Eliminating Excessive Necessary and Not-Allowable Conditional Expenses

1. Taxpayers who cannot full pay their accounts within three years may be given up to one year to modify or eliminate excessive necessary and/or not-allowable conditional expenses. By modifying or eliminating some conditional expenses, the taxpayer may be able to full pay the liability within the three-year limit. This would enable the taxpayer to retain some conditional expenses.
2. For the first year or part of the year, make an installment agreement for an amount, even if minimal, which can be paid until the date the excessive or not allowable expenses are to be modified or eliminated. See Chapter 2 for installment agreement instructions.
3. An installment agreement must include a payment increase at the date the taxpayer is expected to have modified or eliminated excessive necessary or not-allowable conditional expenses. Taxpayers are responsible for determining how best to adjust or eliminate expenses.
4. If an ACS agreement is to be monitored on IDRS, use agreement locator number 2012, with the appropriate originator code, to alert ACS that the taxpayer failed to follow through on the terms of the agreement. It may become necessary to request Archives for past history information.
5. If a CFf liability is over the amount in text 323:(1) of LEM V, the installment agreement may be manually monitored at local option. See Section 6.3 for non-IDRS monitoring. For IDRS monitoring, use agreement locator number (ALN) XX12 to alert SCCB to assign the case to status 26 due to default for failure to increase the payment. Districts will retain the case file until the payment increase takes place.
6. If a taxpayer does not agree to an installment agreement on these terms, consider immediate distraint.
7. Excessive necessary expenses include, but are not limited to:
  - A. Transportation. Car payments (purchase or lease) for luxury cars or for cars which do not meet the necessary expense test of providing for health and welfare and/or the production of income.
  - B. Education. The taxpayer may be paying for a child's private school or university education. Tell the taxpayer that, unless it is determined to be a necessary expense, it will not be allowed beginning with the following school year, and we will expect an amount equal to the tuition. Taxpayers are responsible for deciding how to adjust or eliminate expenses.
  - C. Housing. Taxpayers may be paying more than is warranted by their

income level or may be paying more than is necessary for similar housing. Before determining if housing expenses are excessive, consider what is involved: leases, saving money for moving, and selling a house.

8. If at the end of the first year, or other determined period of time up to one year, the taxpayer has not modified or eliminated excessive necessary and/or not allowable conditional expenses, grant additional time to do so only in unusual circumstances. Document the basis for the exception.

## Making The Decision, Whether to Accept the Installment Agreement

[105.1] 3.4 (09-26-1996)  
Making The Collection Decision

[105.1] 3.4.1 (09-26-1996)  
Installment Agreement

1. In some cases, payments on expense items are not due in regular monthly increments; for example, car insurance may be paid twice a year. Average expense items with varying monthly payments over twelve months unless the variation is excessive.
  - A. In such instances, tell taxpayers they are responsible for putting enough money aside to ensure that tax payments are made during months that large payments on other liabilities must be made.
  - B. If the installment agreement is for a year or less, it can be set up to reflect changes in payment. Document the expected increase or decrease in expenses, and adjust the installment payment amount accordingly.
2. In arriving at disposable income, analyze the taxpayer's payroll deductions to ensure they are reasonable and allowable. The only automatically allowable deductions from gross pay or income are federal, state, and local taxes (including FICA and Medicare).
3. Use locator number 2012 to establish installment agreements on cases involving non-allowable expenses which will be eliminated by the taxpayer, permitting an increase in payment. See Section 3.3.3.3.
4. If an installment agreement is granted to a taxpayer who has defaulted on a past agreement, document in Comments or the case file the reason for granting another agreement.
5. An installment agreement may be established even if the tax liability will not be paid in full within the collection statute. See IRM 5546.1 for ACS or 5434.8 for SCCB statute procedures for installment agreements.

6. Make sure that taxpayers have the resources to keep agreements. This will prevent defaulted agreements. If taxpayers do not have sufficient resources to pay but insist on making payments, allow them to do so, but establish the agreement using locator number xx53. This will cause the case to be Currently Not Collectible in the event of default, instead of going to enforced collection.

[105.1] 3.4.2 (09-26-1996)  
Enforced Collection

1. After taxpayers have been given the opportunity to resolve their accounts and failed to do so, consider enforcing collection.
  - A. Notice status accounts: use IDRS Command Code STAUP to accelerate tax modules to TDA Status 22 or 26; TSIGN to 0110 for Status 22, or to a Revenue Officer assignment number for Status 26. Place any correspondence in the 0110 file.
  - B. For ACS or CFf cases, follow normal enforcement procedures.

[105.1] 3.4.3 (09-26-1996)  
Offer-in-Compromise

1. Consider advising the taxpayer to submit an offer in compromise if payment by installments will not satisfy the tax liability in a reasonable time and the taxpayer could pay more through an offer than by installments.

[105.1] 3.4.4 (09-26-1996)  
Currently Not Collectible

1. When financial analysis indicates no means of payment, see the Currently Not Collectible (CNC) portion of this handbook (Chapter 8).
2. Don't report cases CNC when the taxpayer is allowed time to modify expenses.
3. Don't allow conditional expenses if a case is closed as CNC.

---

**Exhibit 1105.11.3.1 (09/26/96)**

---

***If the taxpayer***

***And:***

***Then:***

---

<b><i>If the taxpayer</i></b>	<b><i>And:</i></b>	<b><i>Then:</i></b>
Can full pay within 120 days		Refer to Section 2.3.
Can NOT full pay within 120 days	Qualifies for Streamlined IA	Refer to Section 2.4.4.
	Does NOT qualify for Streamlined IA	Complete CIS/FIN and refer to allowable procedures

***Per CIS/FIN:***

Can full pay (including accruals) within 3 years		3 year rule applies - all expenses (necessary expenses and conditional) may be allowed (see Section 3.3.3.2.)
Can NOT full pay (including accruals) within 3 years	Taxpayer is NOT currently-not-collectible	Refer to Section 3.4.4.
	Taxpayer is NOT currently-not collectible AND does have excess necessary expenses or not allowed expenses	1 year rule applies - (refer to Section 3.3.3.3)
	Taxpayer is NOT currently-not-collectible AND does NOT have excess necessary expenses or not allowed expenses	Follow normal IA procedures

**Exhibit 105.1 3-2 (09/26/96)**

National Standards

Apparel and services . Includes shoes and clothing, laundry and dry cleaning, and shoe repair.

---

---

Food . Includes all meals, home or away.

---

---

Housekeeping supplies . Includes postage and stationary; laundry and cleaning supplies; other household products: cleansing and toilet tissue, paper towels and napkins, lawn and garden supplies, and miscellaneous household supplies.

---

---

Miscellaneous . A discretionary allowance. It is \$100 for one person and \$25 for each additional person in a taxpayer's family.

---

---

Personal care products and services . Includes hair care products, haircuts and beautician services, oral hygiene products and articles, shaving needs, cosmetics, perfume, bath preparations, deodorants, feminine hygiene products, electric personal care appliances, personal care services, and repair of personal care appliances.

---

---

---

---

#### Local Standards

---

---

Utilities . Includes gas, electricity, water, fuel oil, coal, bottled gas, trash and garbage collection, wood and other fuels, septic cleaning, and telephone.

---

---

Housing . Usually, only expenses for the place of residence are considered to be necessary. Housing expenses include: mortgage or rent, property taxes, interest, parking, necessary maintenance and repair, homeowner's or renter's insurance, homeowner dues and condominium fees.

---

---

Transportation . Vehicle insurance, vehicle payment (lease or purchase), maintenance, fuel, state and local registration, required vehicle inspection, parking fees, tolls, driver's license, public transportation. Transportation costs not required to produce income or ensure health and welfare are not necessary.

---

---

---

---

#### Other Necessary Expenses

---

---

Accounting and legal fees . Fees are necessary only if they are for representation before the Service or they meet the necessary expense test of health or

---

---

---

---

welfare and/or production of income.

---

---

---

---

Charitable contributions . These expenses include donations to tax exempt organizations such as: civic organizations, religious organizations (tithing and educational), and medical services or associations. To be necessary, charitable contributions have to provide for the health and welfare of the taxpayer or taxpayer's family; or be a condition of employment.

---

---

---

---

Child care . Baby sitting, day care, nursery, and preschool. Expenses are necessary if they meet the necessary expense test: health and welfare and/or production of income. Ensure that only a reasonable amount is allowed. Costs of child care can vary greatly. Don't allow unusually large child care expenses if more reasonable alternatives are available.

---

---

---

---

Court ordered payments . Alimony, child support (including orders made by a state administrative agency), and other court-ordered payments. If the expense is already being deducted directly from a taxpayer's pay, do not include it again as an expense.

---

---

---

---

Dependent care . For the elderly, invalid, or handicapped. This expense is necessary if there is no alternative to the taxpayer paying the expense.

---

---

---

---

Education . Education is a necessary expense if required for a physically or mentally challenged child and no public education providing similar services is available. It is also a necessary expense if required as a condition of employment; for example, a teacher whose employment is conditional upon completion of a graduate program.

---

---

---

---

Health care . Health insurance, medical services, prescription drugs, and medical supplies (including eyeglasses and contact lenses). A guide dog for someone who is visually handicapped is also allowable.

---

---

---

---

Involuntary deductions . Deductions from income include FICA, Medicare, and union dues.

---

---

---

---

Life insurance . To be necessary, insurance is limited to term policies. Life insurance used as an investment is not a necessary expense. Consider if the payoff of the policy is high compared to the lifestyle of the beneficiaries. Even for term policies, expensive premiums must be justified.

---

---

---

---

Secured or legally-perfected debts . If the debts meet the necessary expense test of health and welfare and/or production of income, payments will be allowed for these debts. To be allowed, a taxpayer must substantiate that the payments are being made.

---

---

---

---

Taxes . Current federal (including FICA, Medicare), state, and local tax payments. Delinquent state and local tax payments are necessary and, therefore, allowable depending on the priority of the Federal tax lien and/or Service agreements with state and local taxing agencies.

---

---

---

---

Unsecured Debts . Minimum payments should be allowed if a taxpayer substantiates and justifies the expense. The necessary expense test of health and welfare and/or production of income must be met. Except for payments required for the production of income, payments on unsecured debts will not be allowed if the tax liability, including projected accruals, can be paid in full within 90 days.

---

---

---

---

### Conditional Expenses

---

---

---

---

Accounting and legal fees . Fees are necessary only if they are for representation before the Service or they meet the necessary expense test of health and welfare and/or production of income. Other accounting and legal fees are conditional expenses and are allowable if the tax liability can be paid in full, including projected accruals, within three years.

---

---

---

---

Charitable Contribution . These expenses include donations to tax exempt organizations such as: civic organizations, religious organizations (tithing and educational), and medical services or associations. Charitable expenses which are not considered necessary are conditional expenses and are allowable if the tax liability, including projected accruals, can be paid within three years.

---

---

---

---

Education . Expenses for private elementary and secondary and public and private college education are conditional expenses and are allowable if the tax liability, including projected accruals, can be full paid within three years.

---

---

---

---

Housing . Housing other than the principal residence is not a necessary expense. Other housing is a conditional expense allowable only if the tax liability, including projected accruals, can be fully paid within three years. Examples of such housing would include vacation property, owned, rented, leased, or time-shared. Other costs associated with housing are usually conditional. For example, pool service and gardening are optional and could be done by a taxpayer as opposed to the kinds of home maintenance, like roof repair or plumbing, which would qualify as necessary.

---

---

---

---

Life insurance . Life insurance used as an investment is a conditional expense. Ask the taxpayer whether it's possible to suspend payments on whole or investment life insurance policies in order to apply the money to the tax liability. If the policy has a cash value, ask the taxpayer to obtain it. If the taxpayer will not voluntarily obtain it, consider enforcement. Consider if the payoff of the policy is high compared to the lifestyle of the beneficiaries. Expensive premiums should be justified. Allow whole life/investment insurance as a conditional expense if the tax liability, including projected accruals, will be paid in full, including accruals, within three years.

---

---

---

---

Retirement - voluntary payments . Payments will be allowed if the liability, including projected accruals, will be paid in full within three years.

---

---

---

---

Secured or Legally Perfected Debts . Payments not considered necessary may be allowed if the tax liability including projected accruals will be paid within three years.

---

---

---

---

Transportation . Transportation not needed for family health and welfare and/or the production of income is not a necessary expense. Other than necessary vehicles are conditional expenses allowable if the liability, including projected accruals, will be paid in full within three years. Examples of conditional transportation expenses are multiples vehicles and recreation vehicles.

---

---

---

---

Insecured Debts . Allow payments on unsecured debts if the tax liability including projected accruals will be paid within three years. Otherwise, payments will have to come from the total amount allowed under the National Standards. Don't allow payments on unsecured debts, including credit cards, if permitting them would permit the taxpayer to pay in full within 90 days.

---

---

**Exhibit 1105 11 3.3 (09/26/96)**

---

---

1. **Question** . If, as a condition of employment, a minister is to tithe, a business executive is required to contribute to a charity, or an employee is

---

---

**Answer** . Yes. The only thing to consider is whether the amount being contributed equals the amount actually required and does not include a voluntary

---

---

2. **Question** . A taxpayer has a child in an expensive university. She has already paid the university \$25,000 for tuition and housing for the school year.

---

---

and she intends to pay another \$25,000 next July for the following school year. Should this expense be allowed?

**Answer** . Yes, if we can get a full pay within three years. Otherwise, the expense will not be allowable. If the provisions of Text 546:(3) of LEM V are met, the taxpayer may be eligible for an allowable expense to cover the child's enrollment at a local college. The reduced education expense could make it possible for the taxpayer to take advantage of the three-year rule. Tell the taxpayer that we expect an amount equal to the tuition. She is responsible for deciding what expense modifications or eliminations are needed to pay the tax liability.

3. **Question** . A taxpayer is starting the second year of a two-year lease for a luxury car. Car payments are \$1,200 a month. Should the taxpayer be allowed this expense?

**Answer** . Yes, if we can get a full pay within three years. Otherwise, the taxpayer must justify the expense. There are some occupations which require luxury cars. The type of car can also depend on the location. A real estate agent will probably drive a more expensive car if she is working in a suburb with very expensive homes than in a middle class suburb. If the taxpayer could be expected to drive a more reasonably priced car, then steps should be taken to eliminate the expense. Ask the taxpayer what the penalty would be to return the car to the dealer. With two years left on the contract, the penalty might not be negligible compared to the amount we could receive if the taxpayer leased a moderately-priced car.

4. **Question** . A taxpayer is living in an apartment which rents for \$2,000 per month. The lease has another six months to run. The lease agreement includes a termination penalty equal to the lesser of two months rent or the monthly rent due for the balance of the lease. The taxpayer has a \$500 security deposit. Local rental data indicates that an acceptable rental apartment in the same general neighborhood can be rented to house the family at a cost of \$1,500 per month. The taxpayer cannot full pay within three years. Should the taxpayer be required to move to cheaper living quarters as a condition of an installment agreement?

**Answer** . Since breaking the lease would cost more than keeping it until expiration, an installment agreement may be written which allows the taxpayer to live in his present quarters for the balance of the lease but which requires an increase of \$500 with the seventh month.

5. **Question** . A taxpayer is a commissioned sales person living in a home with a \$3,000 monthly mortgage. The property was purchased in 1989 at the peak of the local real estate market and has lost approximately 25 of its value in that time due to local market declines. The present value is approximately equal to the mortgage balance. A single family home of a size adequate to house the family is available in a middle class neighborhood convenient to work and schools for \$1,800 per month, including utilities. If the taxpayer remains in his home, income and expenses are approximately equal. leaving no disposable income to apply to the delinquent federal taxes. Should the account be reported currently not collectible?

**Answer** . No. The difference between the cost of renting and owning indicates that a significant payment can be made if the residence were sold. The loss of the taxpayer's equity is not the primary consideration. Advise the taxpayer he will have up to one year to adjust his expenses so that the Service will then receive an amount equal to the excessive housing expense. Make an installment agreement for a lesser amount in the interim, with an increase in payment at the date the house is supposed to be sold. Manually monitor the case if it meets the criteria of Text 546:(1) of LEM V. Advise the taxpayer that enforcement may be taken at the end of a year if the installment agreement defaults for any reason, including because the taxpayer failed to pay the required increase. If there is a default, the taxpayer will have to demonstrate that a good faith effort was made to sell or borrow on the property.

3. **Question** . A taxpayer claims her cable TV expense of \$40 per month is a necessary expense because she lives in a remote area where reception is poor. Should this expense be allowed?

**Answer** . Yes, if we can get a full pay within three years. But it is not a necessary expense. Also, the National Standards include an amount for "miscellaneous" which could cover this expense.

7. **Question** . A taxpayer claims that she needs more than the amount provided by the National Standards because she has five teenage children. Can she get an increased amount?

**Answer** . Yes, if she can fully pay the tax liability within three years. Otherwise, she has to substantiate and justify all the expenses included within the National Standards. The fact that she spends more than the National Standards allow for one category, such as clothing, does not in itself constitute a justification.

3. **Question** . A self-employed taxpayer who has no other source of retirement income has an Individual Retirement Account (IRA). Should payments to the IRA be allowed if it will take five years for her to fully pay the tax liability?

**Answer** . No. Tell the taxpayer to apply the amount going to the IRA to the tax liability, in addition to other identified disposable income. If the taxpayer wishes to continue making IRA payments, she must divert the money from allowed expenses.

9. **Question** . We have a joint tax liability against a married couple. They have submitted a Form 433-A. Our analysis indicates that it will take a four-year installment agreement to fully pay the tax liability. The husband is a truck driver who is responsible for his own food and lodging expenses on the road. He usually pays these as he goes with a credit card. He requests that this monthly payment be allowed. Should we allow the expense?

**Answer** . First, we need to determine if these are business expenses. If they are, they should not appear on the Form 433-A. The income which appears on the 433-A should not reflect business expenses which have already been deducted from business income to arrive at personal income. If they are not business expenses and it's determined they are necessary, they should be allowed. How they are paid, cash or credit card, doesn't concern us. If the taxpayer needs to make minimal payments to keep his credit card active, he should be told that the payments should come from the amount allowed by the National Standards, which includes a miscellaneous amount. Then monthly additions to the credit card should be fully paid from the amount allowed for the expense.

10. **Question** . A taxpayer completes a CIS which indicates that she can fully pay the liability within three years. Since the assessment of the tax liability, she has increased her expenses by buying a luxury car worth \$35,000, for which she put \$12,000 down. She has also moved from an apartment costing \$900 monthly to one costing \$2,000 monthly. Should the provisions of the three-year or the one-year rule apply?

**Answer** . If it appears that she, although aware of the tax liability, committed part of her disposable income to excessive necessary or not-allowable conditional expenses, the Service is not obligated to allow the excessive expenses even though the liability could be fully paid within three years. It may be appropriate to inform the taxpayer that for the Service to consider an agreement, she will have to pay us immediately an amount equal to the down payment on the car and to pay us, as part of an installment agreement, an amount equal to the increased monthly costs of housing and the car. This amount would be in addition to her other disposable income.

11. **Question** . A taxpayer is contacted who has a child in parochial school. Should the taxpayer be allowed this expense?

**Answer** . Yes, if we can get a full pay within three years. Otherwise, the expense will be allowed if it is for a physically or mentally challenged child and no public education providing similar services is available. If the expense is not to be included among allowable expenses, tell the taxpayer that he or she is responsible for deciding what expense modifications or eliminations are needed to pay the tax liability.

12. **Question** . Because of budget constraints, a public school district has begun charging fees for certain services which were previously provided free. Should a taxpayer be allowed the expense of paying these fees?

**Answer** . Yes, if the fees are required of all children in the school district. Fees for optional services, such as music lessons, are allowable if the tax liability including projected accruals will be paid within three years.

13. **Question** . A district has an arrangement with Consumer Credit Counseling Services (CCCS) in which CCCS submits installment agreement proposals on behalf of the taxpayer. Will these cases be subject to the new allowable expense procedures?

**Answer** . Yes, unless the agreement falls under the streamlined installment agreement procedures. Any installment agreement in which financial analysis is required will be subject to the new guidelines. The district must share allowable expense procedures with CCCS.

**Exhibit [105.1] 3-4 (09/26/96)**

**Financial Analysis Total: Monthly National Standards (Reference: Section 3.3)**

<b>Total Gross Monthly Income</b>	<b>Number of Persons</b>				
	<b>One</b>	<b>Two</b>	<b>Three</b>	<b>Four</b>	<b>Over Four</b>
Less than \$830	315	509	553	714	+120
\$830 to \$1,249	383	517	624	723	+130
\$1,250 to \$1,669	448	569	670	803	+140
\$1,670 to \$2,499	511	651	731	839	+150
\$2,500 to \$3,329	551	707	809	905	+160
\$3,330 to \$4,169	590	840	948	1,053	+170
\$4,170 to \$5,829	665	913	1,019	1,177	+180
\$5,830 and over	923	1,179	1,329	1,397	+190

**Exhibit [105.1] 3.4 (09/26/96)**

Expenses include:

Expenses include:

Housekeeping supplies
Apparel & Services
Personal care products & services
Food
Miscellaneous

For each person in a family with more than four persons, add the amount in the "Over Four" column to the amount in the "Four" column.

Normally, expenses should be allowed only for persons whom can be claimed as exemptions on the taxpayer's income tax return.

Dollar amounts are derived from Bureau of Labor Statistics (BLS) Consumer Expenditure Survey, 1992-93, Tables 1, 3, 4, and 5, and are adjusted for inflation.

A complete breakdown by expense item of these total monthly necessary expenses is in Exhibit 2-6.

<b>Exhibit [105.1] 3-</b>									
<b>ONE PERSON</b>									
		<b>Gross Monthly Income</b>							
<b>Item</b>	Less than 830	830 to 1,249	1,250 to 1,669	1,670 to 2,499	2,500 to 3,329	3,330 to 4,169	4,170 to 5,829	5,830 and over	
Housekeeping supplies	15	20	28	29	30	33	48	49	
Apparel and services	41	68	85	112	126	145	146	240	
Personal care products & services	12	17	20	24	27	29	38	44	

Personal care products & services	12	17	20	24	27	29	38	44
Food	147	178	215	246	268	283	333	490
Miscellaneous	100	100	100	100	100	100	100	100
<b>Total</b>	315	383	448	511	551	590	665	923

**TWO PERSONS**

<b>Gross Monthly Income</b>								
<b>Item</b>	Less than 830	830 to 1,249	1,250 to 1,669	1,670 to 2,499	2,500 to 3,329	3,330 to 4,169	4,170 to 5,829	5,830 and over
Housekeeping supplies	25	29	33	36	40	51	52	71
Apparel and services	67	69	86	127	134	173	208	314
Personal care products & services	23	24	30	31	37	39	47	63
Food	269	270	295	332	371	452	481	606
Miscellaneous	125	125	125	125	125	125	125	125
<b>Total</b>	509	517	569	651	707	840	913	1,179

**THREE PERSONS**

<b>Gross Monthly Income</b>								
<b>Item</b>	Less than 830	830 to 1,249	1,250 to 1,669	1,670 to 2,499	2,500 to 3,329	3,330 to 4,169	4,170 to 5,829	5,830 and over
Housekeeping supplies	26	30	34	37	42	52	60	74
Apparel and services	83	108	109	128	138	200	238	316
Personal care products & services	24	28	36	37	40	54	55	74
Food	270	308	341	379	439	492	516	715
Miscellaneous	150	150	150	150	150	150	150	150
<b>Total</b>	553	624	670	731	809	948	1,019	1,329

<b>FOUR PERSONS</b>								
	<b>Gross Monthly Income</b>							
<b>Item</b>	Less than 830	830 to 1,249	1,250 to 1,669	1,670 to 2,499	2,500 to 3,329	3,330 to 4,169	4,170 to 5,829	5,830 and over
Housekeeping supplies	27	31	48	49	50	56	67	82
Apparel and services	143	144	147	151	170	209	239	346
Personal care products & services	26	29	37	38	42	55	57	75
Food	343	344	396	426	468	558	639	719
Miscellaneous	175	175	175	175	175	175	175	175
<b>Total</b>	714	723	803	839	905	1,053	1,177	1,397

