# STOP HIDING FROM I R S

THE INSIDER'S GUIDE TO SOLVING YOUR TAX DEBT ONCE AND FOR ALL



JOHN D. NIEMANN, CPA

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### **DEDICATION**

For my cherished friend, Valerie. She just is.

To Mom and Dad, whose advice to me as a teenager still serves me:

"Get a haircut and get a real job!"

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My friend, Doug Haldeman, who helps my clients work out credit issues and build wealth.

The thousands of clients who have trusted me with their lives throughout the years. I learn from them as they learn from me.

### **INTRO**

The IRS is the most powerful and feared collection agency in the world. They like it that way.

In a special message to Congress in 1961, John F. Kennedy said:

"One of the major characteristics of our tax system, and one in which we can take a great deal of pride, is that it operates primarily through individual self-assessment. The integrity of such a system depends upon the continued willingness of the people honestly and accurately to discharge this annual price of citizenship. To the extent that some people are dishonest or careless in their dealings with the government, the majority is forced to carry a heavier tax burden.

For voluntary self-assessment to be both meaningful and productive of revenues, the citizens must not only have confidence in the fairness of the tax laws, but also in their *uniform* and vigorous enforcement of these laws. If noncompliance by the few continues unchecked, the confidence of the many in our self-assessment system will be shaken and one of the cornerstones of our government weakened." [Emphasis added]

In other words, irrespective of our perception concerning the fairness of the tax laws, the system doesn't work unless the IRS goes after non-compliant taxpayers with extreme prejudice. They're the only collection agency that can take your stuff without a court order. And they do it all the time.

Often, that results in hardship for those who find themselves owing the IRS and can't pay. Because it's all too easy to fall behind and owe back taxes, particularly for those who receive income not subject to withholding.

We're always hearing about the celebrities who owe millions of dollars. But the real story is about real people. Maybe one of your friends or neighbors or co-workers. Maybe even you.

Because millions of Americans owe back taxes. Most of the people I represent are good people facing tough times because of circumstances outside their control. The loss of a job, divorce, business failure, illness, or unexpected expenses. Add the IRS to the mix, and their challenges seem insurmountable.

I help people like that get back on track. And that's why I decided to do this book. The people I interviewed have a wealth of knowledge to share. Insights and advice, along with real-life stories of people who took on the IRS and came out on top.

Whether you owe taxes or just want to learn how to avoid becoming a victim of the IRS, I think you'll find this information practical and useful.



John D. Niemann April, 2018

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### CHAPTER 1

### John Niemann

Why Me?

Millions of Americans owe back taxes. Many owe a million dollars or more. It can happen easily enough. You miss a payment. Then another one. And another. And then the interest starts piling up while the threatening letters continue to arrive. It happens to good people who had good intentions, but somehow things got out of control.

That's where I come in. I work with people like that and help them get their lives back on track. And the people I interviewed for this book provide a wealth of information for taxpayers who just don't know what to do or where to turn.

But before you hear from them, I think it's important that you hear a little from me. Who is John Niemann, and why am I the person who did this book?

How did I get here? By which I mean here in St. Louis and here in this career. It's not been a straight line, to be sure. I grew up in northern California, primarily in Sacramento. My family moved to St. Louis when I was 13. I must admit, I hated the weather and I missed the beach and the mountains. So, I took a pretty bold step when I was 16. I emancipated myself and moved back to California. I got a full-time job and finished high school there. Not many 16-year-olds can pull that off, but I did.

I went to college for a couple years at San Jose State University, where my major was physics. I was an athlete and was participating in what's now called mixed martial arts. Back then

we called it full-contact karate. Emphasis on contact. I was injured. Badly. Once I paid my medical bills, I was flat broke. I didn't want to take a couple semesters off to get back on my feet financially, because I knew myself well enough to predict that if I took the time off, I'd probably end up selling puka shells on the beach the rest of my life. Fortunately, my parents offered to help me out if I moved back to St. Louis. So, I did, and I ended up graduating from the University of Missouri in Columbia with a degree in accounting.

That accounting degree was another change in direction. I mentioned I was a physics major for my first two years of college. I wanted to be a rocket scientist. Along the way, I discovered my passion for business and finance and changed my major. Of course, I had no clue that Silicon Valley was taking off, and as an electrical engineer I probably would have made enough money to own my own island today, but you make your decisions and live with them. And I can't complain about how things turned out. (But owning an island would be cool)

So, I graduated with my accounting degree, and right out of college I got a job with KPMG Peat Marwick. Back in those days it was just simply known as Peat Marwick. I worked there for about six years. I had a passion to work with small businesses and their owners because they appreciated so much more what you were able to achieve for them. When you work with big companies, you really don't feel like you're making much of a difference and most of your efforts go unnoticed and are largely unappreciated. But working with small companies, the same effort can make a profound difference. I moved over to a local firm for a bit, but then went to another big accounting firm, Deloitte & Touche, which is now known just as Deloitte. I was there for about six more years.

Then, I left to start my own firm. I had been dealing with complex tax issues in the areas of mergers and acquisitions, and US taxation of foreign transactions. Most of my clients were huge in terms of their profile here in St. Louis. When I went out on my own, I found that you were immediately in the weeds with some of these smaller businesses. They had different problems and a wider range of needs. Though smaller in terms of the dollar amount, their issues were every bit as complex.

While at the international CPA firms, I was most often asked, "How can I defer my taxes?" or "How can I minimize my tax?" Now, on my own and working with smaller enterprises, I was asked those questions, too. But I was responding to another question that never came up during my tenure at the big firms—not once...

...I was never asked, "How can I **PAY** my taxes?" Working with small businesses and their owners, I'm frequently asked to help taxpayers in trouble.

When I talk to people about what I do, they wonder, "How can anyone get so far behind in their taxes?" I explain that most people wind up in IRS collections because of circumstances beyond their control. Divorce, job loss, business failure, long-term illness, injury.

I'm passionate about my work because so many people who come to me feel hopeless. They're suffering: sleepless nights, emotional problems, physical problems, relationship problems, divorce, humiliation. Sometimes, it even leads to suicide.

One thing I notice when I work to resolve tax issues is the extent to which huge IRS debt can affect your personal life. The resulting cash flow problems, combined with the IRS breathing down your

neck, can tear families apart, ruin marriages, and destroy businesses.

I can tell you story after story about clients who were able to keep their businesses going. Who basically got their lives back. Their suffering finally ends. That's why I'm passionate about this work.

What really frustrates me, though, is the current state of the IRS. Their budget has been cut by more than a third over the past 10 years. They're understaffed, undermanaged, and it's tough to get cases to move through the system. They get bogged down, and what once took three months to resolve now takes over a year—sometimes up to two years. It's very frustrating for my clients and for me. If I could change anything, I would have things move through the system more quickly, so that my clients could get relief faster.

Speaking of my clients, there are three big mistakes I see them make. I'm going to list them here, so hopefully you'll avoid them.

The one I think is most common is that they ignore the problem. Maybe they think if they ignore the IRS, it will just go away. Or in many cases, they ignore the IRS because they hope their ship will come in, and they'll be able to pay their back taxes all at once. Meanwhile, they don't communicate with the IRS or respond to notices. And the penalties and interest continue to accrue. Then, the IRS's tone changes. You might get two or three "friendly" letters from the IRS before they start getting nasty with enforced collection methods. They begin to levy your bank accounts and garnish your wages. There are a lot of folks who wait until that point before they seek help.

Mistake number two is they try to do it on their own. Granted, there are a lot of cases that a taxpayer can resolve on their own. When I identify those, I point people in the right direction to work

their own case. Under the right conditions, the matter can be handled online through the IRS website. If you can afford to full-pay your back taxes, then you may be able to negotiate a resolution on your own. The problem is, many cases are too big or too complicated for people to handle themselves. Either they fail to resolve the situation, or they get it settled but end up paying way more than they should.

The third biggest mistake is getting the wrong help. Your tax preparer may not be the best choice to handle your IRS collection matter. You need to find someone who's an expert in IRS collection matters who deals with issues like yours on a routine basis. And beware of the large IRS resolution companies who advertise heavily on radio and TV. They often look for the quickest solution rather than the best solution for your case.

So, who's my ideal client? It has everything to do with their attitude. I get the best outcomes with people who know they owe taxes, who understand they can benefit from professional guidance and will make every effort to gather the documentation that's necessary to begin a negotiation. These are people who want to stop procrastinating, get current with the IRS and get their whole financial house in order. Because they often have other credit issues beyond their IRS problem.

I often work with people who owe up to a million dollars or more in taxes, and I've been able to get them into an agreement they can afford. But you have to be realistic about it. People see commercials for some of these big tax resolution firms making unrealistic promises. As you'll see, it's not that simple.

The IRS is willing to negotiate when the information is presented to them clearly and convincingly. If someone owes half a million and will never be able to pay it, it just makes sense for the IRS to

negotiate a plan where they'll get some of what they're owed, and a compliant taxpayer to boot.

So why this book, and who should read it? This book is for people who owe the IRS money and don't really know how to proceed. I decided to do this book so people can read in plain language just what they're facing. The people who owe taxes and are realistic about their situation have fears. They fear what the IRS might do to them. I want to help diminish those fears.

The information in these interviews will help do just that. The experts I talked to shared valuable insights and information, which will help you get a better grasp on your situation, and how it can be resolved.

So, let's get started on getting you on the right path.

### SUCCESS STORIES

### CHAPTER 2

### "Carol Simpson"

An Audit Ordeal

"Carol Simpson" is the owner of a professional services firm that was audited by the Internal Revenue Service. She's been in business for more than 20 years. "Carol" and her staff of six serve clients in St. Louis City, St. Louis County, Jefferson County, and St. Charles County.



In this interview, she shares what it's like for a business owner to go through this ordeal. She details how she was treated by the IRS, how time-consuming and frustrating the experience was, and what it took to achieve a successful outcome.

John: We're talking about what it's like when you're the subject of an IRS audit. How it affects your business and your personal life. My guest is Carol Simpson. That's not her real name. Like most people who've undergone an IRS audit, Carol is concerned that sharing her experience is akin to poking the bear. Carol is the owner of a professional services firm who recently underwent an IRS audit. She's also my client. Carol, thanks so much for being here to share your story. Tell me a little bit about your business.

Carol: We have been in business for a little over 20 years. We

have a staff of six people. We advertise our services for the immediate area of the St. Louis metropolitan area, but we actually work through St. Louis County, St. Louis City, Jefferson County and St. Charles County.

John: So, you've been around for a while. And things were going along swimmingly but you were recently audited by the IRS. How did that start? How did you first learn that you were on the IRS's radar?

Carol: A simple little envelope in the mail. It said that I had been selected for an audit. It was for the year 2012. That was basically it. It didn't give much of the details.

John: Yes, I call that the "welcome to your audit" letter. What did you do?

Carol: I called my accountant. My accountant at the time. He arranged for me to meet with the IRS agent at his office.

John: How long was it between the time you got the letter and the meeting?

Carol: It was about six weeks.

John: Did you bring anything to that meeting?

Carol: I had stacks of paper, but I had previously provided the accountant with additional information. They had copies of all the taxes from the years 2012 and backwards for about eight years.

John: Okay. So, you're sitting in your accountant's conference room, and you've got boxes of documents, between you

and your accountant and the revenue agents there. What kind of questions did he ask you?

Carol: Basic questions at first. You know, your name, address, married, not married. I think just to get you sort of comfortable before they hit you with the more important questions. Then he began going into the tax return, and had questions regarding certain deductions and some expenses that they considered high. But they didn't realize how much we spend on advertising. So, we had brought receipts for all of that. It was about a two-hour interrogation.

John: Interesting word "interrogation". What happened then? Now the meetings over. Did you have a conversation with your accountant at this point?

Carol: Yes. He actually pulled me into the back room to talk with me while the agent was still in the conference room. He asked a couple of questions and sent me on my way. He stayed in the conference room with the agent at least for a little while after I left.

John: Okay. So now you've left your accountant's office. Did the IRS do anything at that point? Did you receive any more notifications from the IRS?

Carol: I believe we had more mail coming to the house than I've ever seen before. Envelopes, double copies of envelopes. My husband also got the same letters that I was getting, and he was upset. Some of them had to be signed for. We had to go to the post office after-hours to try to pick up paper. I had to pull it together, information that my accountant had never requested in the past.

John: What was your accountant doing at this point?

Carol: That's a good question. I'm not really sure what he was doing. It became increasingly hard to work with him. It was almost as if he didn't believe me on a few things, which was really frustrating. Then I had checked with other people and I found out that he had been doing my taxes for so long and he had made a number of mistakes, which actually were in the IRS' favor. Not that I ever ended up getting credit for those mistakes. It was just really evident that he didn't know how to proceed. He asked for paperwork that he'd already been provided years past.

I think he was just a basic kind of accountant who knew how to add and subtract and fill in numbers, but didn't know how to think through different ways that things could be reported or not reported, and what was included, and what category things went into.

John: So, I don't really need to ask you then why you changed representatives because you just described that clearly. At that point you engaged my services. I would imagine that you were experiencing a lot of anxiety about the audit, as well as you mentioned your husband was also being pestered as well. And I should mention that they were auditing your personal return because you filed as a self-employed individual on a Schedule C. So once you changed representatives, did your approach to the audit change?

Carol: Yes, it did. There were still nerves, but I never had to meet with an agent again. I never had to talk with the agent again. I just forwarded copies of everything that I received

to you. Of course, I found that usually you already had them in the mail, because you were listed as my representative, so they had already sent you copies. Maybe that's why the IRS does so many audits, because they have to pay for all their postage.

John: Right. Now, when you first came to me, they were talking about an additional assessment of over \$30,000. At this point, I had met with the revenue agent and these requests for information didn't stop. The other thing, just to remind you, is that they also expanded the scope of the audit. Now they said, "We're not only going to audit 2012, we're going to audit 2013 as well."

Carol: Yes.

John: I can tell you from personal experience that you were very responsive, and we as a team were responsive to every request for information that the revenue agent put forth. Did the audit end quickly?

Carol: No. It was almost like they had a personal vendetta because it seemed to get very personal. Even items that they said they would allow later appeared on a list of disallowed expenses. It wasn't just the one person. It was his boss and I believe their boss. At one point it felt like everybody was on the other side and only you and I were on this side. It was really nerve-wracking.

John: I recall going into what I thought was going to be the closing conference, with the group manager and the revenue agent and instead of closing the case they wanted to expand their examination even further. They were requesting additional documents. At which point I

basically got up and left and told them to write up their report. I ended up contacting the territory manager, to move it along. At this point the territory manager directed them to close the case and give me a report. I think that we had already anticipated that no matter what they did, we were going to file an appeal, which we did. Now with respect to the appeal, was that difficult for you? Did you have to put forth any effort in the appeal?

Carol: Only finding documents. I think the biggest relief after I hired you was I no longer had to worry about the IRS showing up at my office, which they did once, demanding to see me. I wasn't there at the time, and the staff was very upset about that. They didn't know what was going on either. At one point I felt like I was being treated like I was a drug dealer or something. I didn't understand the personal vendetta part that they seemed to be going forward with.

John: Well I think in every audit the IRS has already made a judgment about the taxpayer, which is, "You've overstated your expenses or understated your income." That's the assumption that they go on. But I guess in the end it all worked out well because we ended up settling at appeals for just over \$900 and that included penalties. If you were giving advice to anybody that's under an audit or gets the "welcome to your audit" notice, what would be the first thing that you suggest that they do?

Carol: They need to make darn sure that their accountant knows what they're doing as far as handling the matter professionally and protecting your interests. In my case there'd been signs that my accountant was not quite on the ball. There was a previous appeal that he filed, and the

IRS notified me quite happily that it was filed one day late, and they would not address it. So, you need someone that knows the rules, knows the IRS, knows how to stand up to them, and if they don't have one, they need to call you.

John: Thanks, Carol. Now in the meantime, your business got behind in payroll taxes as well. The IRS ended up filing a lien, which is not good in your business.

Carol: Correct.

John: We were able to successfully get that lien withdrawn. But the other thing I want to mention is, do you remember what happened when they filed that lien? First of all, you started getting calls from every Tom, Dick and Harry that wanted to offer you help.

Carol: Oh God yes. The mailbox was stuffed full again. This time not from the IRS but from all these people that wanted to help me. Anywhere from three to eight pieces of mail a day. Emails showed up. I'm not sure how they found my email address, but I would get emails as well.

John: Right. The reason I wanted to touch on this is because liens are in the public domain. At least in this market, your name even appears in the business journals as having a lien filed. But we were able to get yours withdrawn. What I mean to say there is that it's erased. In the meantime, you made some significant changes and improvements in your business and it's grown.

Carol: Yes.

John: So, what's your life like now?

Carol: I still don't have any free time but at least it's not wasted on the IRS. It's working with clients. Trying to build the business. Take care of my family. I actually get to spend a little more time with them. Looking towards the future and at some point, aiming for a retirement date down the road a few years from now.

John: So, you've been able to get on with the business of business and enjoying life.

Carol: Yes.

John: That's great. Carol, thanks so much for sharing your story. I know it takes courage to do that and I appreciate you doing this.

Carol: You're welcome. Hopefully no one else will find themselves in this position, but if they do, don't stick your head in the sand. That's the worst thing you can do.

### CHAPTER 3

### "Karen Wilson"

Lessons Learned

"Karen Wilson" is an individual whose personal return was audited by the IRS for not just one year, but two. She's sharing details of her experience, which she describes as a "frustrating nightmare".



She also shares the lessons she learned from her ordeal, including this one: it pays to use a professional to prepare your taxes. Doing it on your own with Turbo Tax can have unintended consequences.

John: Today we'll be talking more about what it's like when you're the subject of an IRS audit and how it affects your personal life. My guest is Karen Wilson. That's not her real name. Like most people who've undergone an IRS audit, Karen is apprehensive about poking the bear. Good morning Karen. Thanks so much for being here to share your story. Tell me a little bit about what happened. You were audited by the IRS. How did that start?

Karen: I received a letter in the mail from the IRS that finally reached me. Apparently, they had been trying to reach me for the last year, or close to the last year. They finally got my updated address. I was pretty shocked to get two letters in the mail. Not just one, but two.

John: Did they both say the same thing?

Karen: Well there was one for 2013 and one for 2014.

John: Oh, so you got two "welcome to your audit" letters.

Karen: And not very nice ones either.

John: Right. Well they sent it to your last known address and

you had moved.

Karen: Exactly, and they don't forward it. I'm assuming they had

to wait for me to file my next year's taxes to get my

current address.

John: That's generally the way it goes. How did the letters

make you feel?

Karen: I was shocked. I was upset. I was frustrated. My reaction

was, "What the heck is going on?"

John: What did you do next?

Karen: I contacted the IRS agent that was in the letter, and asked

him to help me understand what was going on, what I needed to do. Reading the documents that were sent to me was very confusing. So, I set up a time and met with him. I went to his office and met with him. It was the same. It was kind of like reading the letter. I was more

confused coming out than going in.

John: What did he have you bring with you? Do you

remember?

Karen: Any of the documentation that I used to do my taxes. I looked as hard as I could. I found the box. It had been water damaged, but I brought as much as I could. I was able to dig up some of the stuff I hadn't already turned over into the electronic copies now that you can do today. I brought as much information as I possibly could for those years.

John: Right. That was 2013 and 2014. So, you went and met with him. Did you get everything resolved there at that first meeting?

Karen: No. That was just the beginning of a frustrating nightmare I'll say. I walked out of there with more action items to get more information.

John: Okay so he asked you for more documentation, evidently what you brought in wasn't enough.

Karen: Yes, more documentation than what I brought. Then to set up another date to meet with him again. He said, "I'm here for you, I'll help you in any way I possibly can". I called him several times. He did pick up and help me a couple of those times. Then after that, I could tell in his voice he was getting frustrated with me because I was asking so many different questions and he didn't have the answers for them. That's when I decided that I needed some professional help.

John: When you said that he got frustrated with you, if you recall Karen we requested your audit data under a Freedom of Information Act request. I went through that file, and as I recall at some point pretty early in the

process it looked like he just decided he was going to close the case.

Karen: That's quite possible.

John: And he did. He didn't wait for you to provide the documentation. He just went ahead and closed it out. Then you got your 30-day letter, which said your audit is done and they wanted more tax from you. The number that sticks in my head is somewhere around \$30,000.

Karen: Yes, it was between \$30,000 and \$40,000.

John: Right. As I recall you used Turbo Tax to prepare your return for those years. The thing about Turbo Tax is it's kind of a handy tool if you don't have a complex return, but your return wasn't that easy.

Karen: Yes. After you started digging into it, you said, "This is crazy."

John: You had a lot going on in there, and there were a lot of things that the IRS agent overlooked or ignored as well, simply because as I said he wanted to close the case and move on. Rather than close it correctly, he just closed it out efficiently and assessed the tax.

Karen: Yup.

John: Now, your case hasn't yet settled. We're waiting for audit reconsideration, which is where you ask the IRS to take another look at your returns. Nevertheless, they assessed the tax and they gave you what's known as a 90-day letter, where they give you three months to file an appeal

in U.S. Tax Court. But very few people ever do that because it just costs so much money to go to Tax Court. Though you could have appealed, you lacked the requisite documentation. Right now, that's basically where we're at—collecting and providing the documentation. But in the meantime, they started sending you collection notices. They wanted their money, and they wanted it right away. So where does it stand now in terms of your payment?

Karen: I pay just under \$200 a month for a year until the reconsideration is back.

John: Right, and then we determine what your payment is going to be at that point. We were able to get you into kind of a modified streamline agreement so that you can live while we're waiting for them to settle.

Karen: Yes, and it was bittersweet I'll say. I wasn't expecting it to be that low. I was expecting actually the payment to be higher, but a higher payment means it gets paid off faster. However, that means there are some things I don't get to do, or you get in the meantime.

John: Right. Now if you were able to do it over again, what would you do differently?

Karen: I would have done my taxes with a professional right from the beginning. I would have never used Turbo Tax.

John: Right. I joke about how Turbo Tax is kind of like a video game for taxpayers because in the corner it shows you how big your refund is, and as you start playing with numbers, your refund gets bigger.

Karen: Yes. The funny part too is that I got the "warranty", that they'd back you up if you get audited by the IRS. I actually did buy that for those years and the other years that I used it for. When I called them for help, I got passed through so many different people. That just added to the frustration of getting the whole tax letter.

John: They have that "option to buy" warranty. But you're telling me that you got nowhere with them on that?

Karen: I got nowhere with them, absolutely nowhere.

John: Did they tell you why?

Karen: No. They just kept passing me to the next person. I'd tell my story again, and then they'd say, "Well let's set up some time. I think I need you to talk to so and so. Let's set up some time with them so that you can talk with them." Then it was another one of those steps. I think I got passed three times. That was the same time that I was talking with the IRS agent.

John: Right. It sounds like Turbo Tax just ignored you more or less and gave up on you, and you just gave up on them.

Karen: Yes.

John: Well that's good information. As I said, we're waiting for the audit reconsideration, so that will be for the next book.

Karen: Yes. It was eye opening once we started walking through the process of what they were asking for, and why they

were asking for it, and I hope to never have to do this again.

John: Well you had a professional do your tax return for 2015 and 2016. How did that go in comparison?

Karen: Oh, so much easier. So much easier, and less stress. Let the professionals handle it.

John: You know if you've just got a W-2, Turbo Tax works just fine, but anything beyond that you should probably get some help.

Karen: Agreed, but I'm hoping that this year's taxes are going to go much easier because it's not as complex as it was in the past.

John: You are correct. Karen, thanks so much for sharing your story. I know it takes courage to do that, and I really appreciate you.

Karen: I appreciate you much more John. Thank you.

# CHAPTER 4

# "Louis Peterson"

Buried Under Debt

"Louis Peterson" is a small business owner who found himself buried under a mountain of IRS debt. Late payments from his clients caused him to not pay payroll taxes.



And like many business owners, his family is also involved in the company, so the tax stress led to stress at home.

John: We'll be talking about how IRS debt affects the average taxpayer who finds himself in this hellish nightmare, how they overcame the challenge, and what their life is like now. My guest today is Louis Peterson. That's not his real name. Like most people with IRS debt, Louis is concerned about the stigma attached to delinquent taxpayers. Louis is a small business owner who was trapped by IRS debt. He's also my client. Good morning, Louis.

Louis: Good morning.

John: You were under a mountain of IRS debt when we first met. How did that happen? What was it about the business that caused you to get behind?

Louis: With the business we're in, we would invoice all our clients, and there were 30 days before we invoiced them.

Then they would hold out 60 to 90 days before they'd pay us, which always put us behind, because we're trying to do payroll and then we never have enough cash coming in. It was so far out that our payroll taxes didn't get paid.

John: The bills don't stop. You have to pay the bills and the only creditor that's not calling you at this point is the IRS, at least not initially. You may be getting calls from your suppliers, but the IRS usually doesn't show up at your door until months after the liability occurs. Now, you owed nearly \$100,000 in payroll taxes and income taxes. You worked your case on your own before you hired me. Tell me about that experience.

Louis: That didn't go too well. I knew that things were not going well, so I reached out to you.

John: You did deal with a revenue officer.

Louis: Correct.

John: Did they show up at your door? Did they call you on the phone?

Louis: They called me and told me that I needed to come down and see them. When I sat in there, they told me this is what has to be paid, this is what you owe, and we need to get this taken care of right away.

John: Was it a plan that you could comply with?

Louis: No, I don't think it was.

John: Did they threaten to shut your business down?

Louis: If I didn't pay it.

John: You had gone pretty far along in the process before you realized that you were in over your head.

You came to me in December of 2013, where we implemented several strategies. The first thing that we did is we shut down the old business as I recall, and we formed a new company, which was essentially the same as the old business. The revenue officer approved, but with a caveat that you not get behind in your taxes going forward. You shut down the old company, started the new company, and other than the form of the new business, you were pretty much doing business the same as you've always done. It was a mere hiccup at this point.

What we ended up doing is once we shut down the old company, formed the new company, the IRS was then free to assess you personally for the trust fund recovery penalty, which didn't happen until three months later in March of 2014. You didn't even receive a final notice of intent to levy until January of 2015. Now, you've got another year under your belt operating as the new business while we appealed their notice of intent to levy in February of 2015, which means you were granted a collection due process hearing. They set a conference date and at that conference we had to do quite a bit of work to prepare for that.

I kept asking you for documents and more documents and lists of these things and lists of those things. I had you behave a bit different financially so that we could present you in the best light to the IRS from your point of view.

At that appeals conference, we had submitted the collection information statement, the 433-A, and the appeals officer suggested that you were a qualified offer in compromise candidate, which was exactly what I wanted to hear, whereupon she directed us to file an offer, which we did. That offer wasn't filed until June of 2015, now a year and a half has passed. We pretty much had done a lot of the groundwork already with the collection information statement that we had filed with the appeals officer. We filed all these documents with the offer group in Brookhaven and I can remember months after we filed the offer, we were sitting around your kitchen table talking about your current business and I was doing some consulting with you on that because you still faced some of the same challenges you were facing in the old business.

We were talking about some upcoming payment that you had to make, and your wife mentioned something about "Well, why don't we sell the boat and use the proceeds from the boat to pay off this debt?" I can remember kind of a light bulb went off in my head because I had helped you with all these collection information statements and I said, "Wait a minute, this is the first-time I'm hearing about a boat."

We scrambled to figure out what the fair market value of that boat was and how to present it to the offer group. We immediately disclosed that "Hey, we inadvertently left this off." I'm just trying to make the point that you never want to mislead or give misleading information or omit information from a collection information statement. If you do, there's a way to correct it if you stay on top of it. We filed the offer in June of 2015, and I'm telling this story

here, because you didn't even know what was going on behind the scenes because you were working your business. While the offer was pending, as I mentioned your business continued. In fact, you grew the business and you made substantial improvements to it.

You had a piece of ground that you owned personally and you were able to put a building on it. It's a nice structure and you continue to use it to this day. Long story short, you ended up settling your debt, your \$100,000 debt, for about \$11,000. How has that affected your life now? What's it like being free of IRS debt?

Louis: Great, no more stress, getting sleep, waking up feeling good about myself.

John: The thing that I've noticed is that, because I know that we had meetings with you, your son, your wife, all of you are involved in the business, and these meetings were always so contentious. I mean, you and your wife were fighting all the time and it was easy for me to see that it was a real strain on your relationship with not only your wife but your son as well. I guess the good news is remarkably you were able to sell your business and now you're on to a new venture. We've got you set up so that you won't get into that trap again.

What would you recommend for somebody who finds themselves behind the eight ball like you did with payroll taxes and income taxes and such, what would you recommend they do? What's the first thing they should do when they hear from the IRS? Let's talk about when they first start falling behind.

Louis: Once you're behind, it's a nightmare, but first, find the right person who's going to help you to get you out of that nightmare that knows how to do it. From what I experienced, there's not a lot of people you can trust. Many of these people just want to take your money.

John: Did you consider engaging one of these national firms that you hear about on the radio or on TV all the time?

Louis: No, I heard too many nightmares about that. I reached out and I talked to a lawyer and she introduced me to you, and from that point on I realized that you knew how to take care of all this and we would move forward to get this resolved.

John: I find a lot of people that come to me think that once they hire a professional that it's going to resolve overnight or within a short period, where yours took, although you first engaged me December of 2013, it didn't get resolved until September of 2016. Over two years passed until we ended up with a final resolution that worked out remarkably to your benefit.

# THE EXPERTS

# CHAPTER 5

# Eric Green

How Bad Can It Get?

Eric L. Green is a partner at Green & Sklarz LLC, with offices in Connecticut and New York City. The firm specializes in representing businesses and individuals with complex tax planning needs and representation.



The focus of Eric's practice is taxpayer representation before the IRS, Department of Justice Tax Division, and state departments of revenue. He is a frequent lecturer on tax topics, including estate planning and handling tax audits and tax controversies. Eric runs a weekly podcast found in iTunes called *Tax Rep*, is the author of *The Accountant's Guide to IRS Collection*, and has been quoted or published in numerous media outlets, including *USA Today, Consumer Reports Financial News, and CreditCard.com*.

He is an advisor and columnist for CCH's Journal of Tax Practice & Procedure and creator of their Certificate Program in IRS Representation, which trains other professionals to handle IRS matters on behalf of clients. Prior to practicing law, Eric served as a senior tax consultant for national and international accounting firms, including KPMG and Deloitte & Touche.

John: We're discussing how you become a target of the criminal tax division of the IRS and what to do if you think the worst

might happen. Eric Green is an attorney admitted to practice in New York, Connecticut, and Massachusetts and is a member of the US tax court bar. I'm honored to have him here for this discussion.

Eric, I don't ever represent taxpayers before the criminal division because I'm not an attorney. You have that privilege. How do people end up becoming targets of the criminal tax division?

Eric: Well you know, there are a number of ways this happens. Generally, they will get on the radar screen. Sometimes they get on the radar screen because of something that's very blatant, but that tends to be rare. For instance, I have a restaurant where the undocumented workers actually went to a public advocacy service to try to get them overtime, and they held a press conference in front of the restaurant. That's a pretty good way of drawing attention to it. But usually it's not that way.

It often comes from civil exam as a referral from a Revenue Agent during the course of an IRS audit, or it could come from the Department of Labor, but something was flagged that gave an indication that there was fraud going on. False deductions, unreported gross receipts, and by the way a big thing now, since 9/11, has been the bank secrecy act where financial institutions are reporting suspicious activity. Referred to as an SAR, or "suspicious activity report," certain cash transactions must be reported to the government, not just cash deposits of more than \$10,000, but just any sort of activity considered suspicious. To give you an example, there were about 185,000 such reports filed in 2001. 10 years later, there were almost two million filed. Now we're closing in on 2.5 million. The financial

institutions and others are reporting this activity. If there's notice of "structuring," and cash deposits, that will trigger the reporting.

John: It's all in the name of national security.

Eric: What's interesting is it's to attack terrorism and the narcotics trade. But, there are a lot of other people that get swept up into this. I have more and more cases being triggered by the bank reporting than ever before. As the government will tell you, when they note structuring, when they see people structuring deposits to avoid the filing of the Form 8300 Currency Transaction Report, they feel that that's normally a symptom of something else sinister going on. Otherwise, why are you dealing in cash?

There are other ways. Lying. Just lying to the government. Lying to an examiner. Interestingly, lying to a revenue officer in collection can get the case referred to the criminal tax division. The other thing is evasion. Everyone thinks of tax evasion as under-reporting income on your returns. There's also evasion of collection. I have a taxpayer now who's being prosecuted because after he filed all of his back returns and owed a lot of money, he decided at some point he no longer felt like dealing with the collection division, and just began operating in cash.

The government is charging him with evasion of collection, and they're using his bank structuring, the depositing of the cash, as the affirmative act of the evasion. We're also seeing more and more criminal payroll tax cases. People who have set up businesses, run up debt, shut the company down, set up a new business, run up debt and shut that company down. Payroll tax cases you virtually never saw

10 years ago are now a major priority for the IRS, both civil and criminal.

John: Right, because if you're subject to the civil penalties for trust fund liabilities, you're also subject to criminal prosecution for the same thing.

Eric: Yes, potentially. 80% of small businesses in America fail. Businesses fail every day. They're not going to prosecute everyone who doesn't pay their payroll taxes, but if you have one of those indicators, or something that they really look for that would trigger it to go criminal. For instance, recidivism, doing this over and over again with different companies. With everything in the tax world, patterns are always bad. It's no different with payroll taxes.

They look for recidivism, or if you have a lot of toys. If the company couldn't pay the payroll but you've got a Bentley, a Maserati, you have a place in New York City, a place in Florida, now the picture begins to look like it's not that you couldn't pay the payroll taxes, it looks like you just didn't feel like it. Effectively, you're stealing the government's money. Finally, the other thing that they will look for, and this is what I would caution people about, because they can get caught up in this. That's the business owner who doesn't pay the payroll taxes, if it's an S Corp or a C Corp, they have a W2, they should not claim the withholding on their personal return, because they know full well that it never got paid.

It is considered a badge of fraud when an owner of a company that didn't pay the payroll tax, files their 1040 claiming the withholding. I know it happens. It is one of those things where they're just sort of going along. The

payroll service processes the W2, as if he had paid the taxes, and it's given to his accountant. I don't know that there's anything nefarious about it, but it is something that people may unwittingly do, and like I said, it is considered a badge of fraud by IRS criminal division.

John: Even if they're in an installment agreement of some kind for the delinquent payroll taxes?

Eric: That would certainly help blunt it, but even so, they're still claiming withholding. Although with the payment plan there would be at least a straight-faced argument that, "Listen, I'm paying this. I may be paying it more slowly, but I am paying it." The ones that we've seen that have gone criminal are where they weren't paying.

John: You mentioned structuring, could you go into that in a little bit more detail?

Eric: Structuring is a crime, and the crime is where you know about the filing of a currency transaction report. To back up, a financial institution or a business is supposed to report to the government if it receives more than \$10,000 in cash or cash equivalents. The IRS form is Form 8300. If you are aware of that, and you structure your deposits to avoid the filing of the currency transaction report, you've just committed a crime.

Let's say the person has \$12,000 in cash, and doesn't want the bank to do that "reporting thing", so they put in \$8,000 today and then \$4,000 tomorrow. They've just committed a crime. I've had this from accountants who say, "Well it's your money, you can do what you want with it." Unfortunately, in this day and age, you really can't. Not

when it comes to cash. It's a real problem for people, to the point where we've had legitimate businesses get looked at. I have a pawn shop as a client, and by the way, they are the most heavily regulated industry ever.

The police are in weekly, photographing the stuff that comes in. Knowing that there's a potential for all kinds of abuse, pawn shops, at least in our area, are heavily regulated. Every day they go to the bank and they bring whatever cash they received. \$1,500, \$3,000, whatever, they get a visit by the IRS about the possibility of structuring. So, they show, "Look this is what we got, here are the receipts". They show the register receipts, and it kind of goes away, but that shows you the bank noticed it and reported it to the government, and the government is looking at it.

There are two things with structuring. One, it's a crime in itself, but again, the IRS views this as generally being symptomatic of something else. Why are you dealing in so much cash? Now there are legitimate businesses that do, but from the perspective of the IRS, it's worth taking another look.

John: Earlier you mentioned tax evasion. Why do you point out evasion of collection?

Eric: There are two types of evasion. Most people are familiar with the liability. Evasion of liability. The under-reported income on the return. That's what most people think of. What we're seeing now is the government is looking at evasion of collection where we have taxpayers who are just trying to avoid levies. Those who are trying to play games with the revenue officer, cat and mouse with their money.

They're moving it around. As I pointed out, it's one of those ways that these people probably never thought they were committing a crime. They just needed their money.

This is what happens. John, you and I both know you can deal with a revenue officer. Get into a payment plan. They're uncollectible. We can deal with that, but for people who try to do it on their own, if the revenue officer on the other side won't cooperate and work with them, then often the knee-jerk reaction is, "Well you know what, I'm just not going to bank. You can levy all you want. You're not going to get it." What they're doing is they're evading collection. They're actually committing a crime, but most people don't think about it. Here's another example. I have somebody now who's a landscaper, who's looking at 30 months of prison time. They're charging him with evasion of collection.

When you sit and talk to him he never thought he was committing a crime. He was just doing this because he needed to pay his bills. It's one of those things I think we should make people aware of, that there is evasion of liability but there's also evasion of collection. The key thing for people is when they owe money to the government, it's better to just deal with it. If you can't deal with it yourself, get a professional and just get it resolved.

If you do start playing that cat and mouse game, you're playing with fire. Because there's a significant possibility that it could go criminal, especially if it goes on long enough.

John: I have clients all the time who make this statement, "Well you know, I'm just the little guy. What's my exposure?"

Does the average taxpayer face any likelihood of getting caught?

Eric: Yes. I know people know Wesley Snipes, and Leona Helmsley, and the big names. But the reality is they enjoy going after everyday people. For instance, the local contractor. All the contractors know each other. There's a collateral effect when they get somebody in the community because the rest of the community hears about it. The IRS cannot possibly prosecute as many criminal cases as there are. Therefore, when they do decide to initiate a criminal investigation, they look for things that have impact.

Of course, the big-name people get headlines, but the local people sometimes have a bigger impact, because so many people think, "Well, they go after famous people to make a big splash." Nope. My guy they're going after is a landscaper. They know full well he knows the other landscapers, and they're going to hear about it. If he does jail time, they're going to know about it. The collateral effect is "Wait a minute, they're looking at him. They might be looking at me." The idea is that compliance will go up because of that.

The idea that "Well I'm only a little guy, I'm not famous" doesn't matter. They will make the criminal case regardless. I have a police officer they're going after. In the end, I think we've shown them that it wasn't the evasion they think there was, but their feeling was "You know, if we go after him, the rest of the police force and the other people he knows in law enforcement will hear about it." That community, that impact in the community, is really what the government's going for.

They want to get more bang for their buck. They just can't do that many cases, so the ones that they do, they aim to achieve the maximum impact. The reality is, being known in your community is enough. You don't need to be a famous person to become a target of this.

John: Now, I often get folks that say, "Well, I'll just pay the taxes owed, and they'll go away."

Eric: No. I get that too John. "Well can't I just pay it?" No. Unfortunately, the federal government's view is that a crime has been committed. Now, paying the money may help you with sentencing, to show that you've made restitution, but that does not blunt the idea that you've committed a crime. Even amending a return later, let's say you wake up one day and you've seen the light, and you want to correct your ways. You go and amend your false returns, and clean it up. Theoretically you've just admitted to the crime and that does not absolve you.

The reality is, is when people voluntarily clean it up, the government does not generally go after them because it would have a chilling effect. If you amended to fix it and they prosecuted you, well, why would anyone come forward afterward?

John: Exactly.

Eric: So, no, but the technical rule is that doesn't absolve it. You still committed fraud when you filed that original return. Now, if you come in before you're contacted, you're doing what they want you to do. They generally don't, in fact, to my knowledge prosecute those people. Unless you committed fraud on the voluntary disclosure, but that's a

different issue. No, the idea that I can just make this go away and pay it, paying it will not make it go away. It'll help it, like I said, at sentencing, but it won't get rid of the case.

John: How often do these cases really go to prosecution and result in jail time?

Eric: Criminal prosecution of tax-related offenses has been around since the income tax was enacted in 1913. The criminal division, originally known as Special Investigative Services with the IRS, is highly effective. In those cases that they have investigated and forwarded for prosecution that went to trial, they have never had less than a 90% success rate at getting conviction and jail time.

The reason for that is twofold. One, these cases, when they're brought, are very good. The IRS has spent thousands of hours building their case. They forward it to the Department of Justice who spend hundreds of hours reviewing it and getting comfortable with it. They then send it to an Assistant US Attorney who has to prosecute the case and take it to a grand jury who's reviewed it. When the government brings these cases, they're generally very good. They've got the paper trail, they've got the witnesses, and they've got the employees that flipped. The ex-spouse who made the statement because she's angry about the divorce. Whatever it is, they've got their witnesses. They've got their paper trail.

The other thing is tax defendants do not do well in front of juries. Jurors hate the IRS, but you know who they hate more than the IRS? Other taxpayers who don't pay their fair share. Historically, tax defendants do not do well in

front of juries. Theoretically, there's probably around a 10% chance of winning a trial, but those aren't great odds.

John: What about the guy who just makes an honest mistake on his return? Does he need to be concerned?

Eric: No, if that is an honest mistake. Well first of all, they should fix it. Right? If you know there's a mistake and its material, you should amend the return and fix it. Aside from that, even one-off years are generally not good criminal cases. What the government looks for mostly is patterns. There could be one significant transaction that's not reported, and that in and of itself could be big enough, but mostly when it's an honest mistake, no. You don't need to be concerned about a criminal referral, although, ethically, any professional should inform their client. You and I both know, we should inform the client that they should fix that.

John: For those folks who have been cheating the government, is it too late or is there a way to clean it up and fix it?

Eric: Well you can absolutely clean it up and fix it assuming you have not been contacted by the government, they have not sent you an audit notice. The two ways to clean it up are called "quiet disclosure" and a "voluntary disclosure." The quiet disclosure is "I'm just going to quietly amend the returns and file them." If it's not too much money, that may be the cheaper, easier way to go, only because the likelihood of prosecution goes way down. If you did it on your own, and it's not a huge amount of money, the likelihood of them going after you is slim. If it's a significant amount, the quiet disclosure, just amending the returns, is not a guarantee against prosecution.

If you truly want a guarantee, you would go with what's called voluntary disclosure where you contact the government. There's a fax number in Philadelphia. It's on the IRS website. You basically fax in your name, address, and number and say you want to do a voluntary disclosure. They will simply run your name through the database to make sure you are not already the target of an investigation, and then they will send you a fax or letter back basically saying you are accepted to do a voluntary disclosure. You're cleared to do that. And then you would go and submit the information, because nobody wants to submit information if they're a target. If you're a target, you've just handed the government its case. This allows people to make sure that they're not a target before coming in.

John: Well that works, that's good for a couple reasons. First, it's good to know bad news fast. If you're concerned about it and you hear that they'll accept an amended return, that's good news as well.

Eric: Yes.

John: Now, what if I know someone else who's cheating the government? Is there something I can do about that?

Eric: Oh yeah.

John: Can I get paid to do it?

Eric: Oh yeah. The IRS has a whistle blower program, which has been very successful for them. It's Form 211. It's just a one-page form. What drives this is not just filling in the form, but it's the other information you can provide. Now, I'm

going to tell you, the IRS gets tens of thousands of letters like this. "I'm filling in the Form 211 because I watched the Oscars and I think one of the famous actors is cheating on his taxes." They get tons of those. They're nonsensical.

My successful cases, when we've brought whistle blowers, are where I can say, "Here's the crime. Here's how they're doing it, and here's the evidence." Either I'm a witness to this, or I have copies of records that prove this. The more you substantiate, or lay out the case, the more likely it is for them to do it.

You send it in and it goes to an address in Utah. I'm always afraid, I have this Raiders of the Lost Ark vision, at the end where they're wheeling the thing off to a warehouse and nobody knows whatever becomes of it. So, what I'll do is I'll submit it. I make sure I get my certified mailing slip back, so I know it's there, and then I actually will take it to my local criminal investigators who I know at the IRS, and say, "Here, I filed a 211, but I want you to be aware of this."

They generally tell me, off the record, they like doing it that way because they may never get anything from the Whistleblower Office, or "centralized". Someone may look at it at centralized and say, "Meh, it's not really great." Our local folks tell me they want first bite at the apple. They want to be able to see it and if they want to take the case, they want to be able to do that. If I only send it to centralized, they may never hear about it. I'll submit it because I want to go on the record, and I want it dated and everything else.

There's another thing you can do. Caroline Ciraolo, the former head of the Department of Justice tax division,

made a statement at one of the ABA meetings that if you do a whistleblower, DOJ would love to receive a copy of it because they want to be aware of it. They may decide to take the case. DOJ does not have any 'whistleblower" awards, but as long as you've gone on record with the IRS, you potentially could get anywhere from 15 to 30% of what the government recovers and that includes tax, interest, and penalties.

John: So, you'd better be careful of an ex-spouse, or a disgruntled employee or neighbor. I've even heard stories where people are at a party bragging about how they're cheating on their taxes and they end up being overheard by an IRS agent without even knowing it.

Eric: Oh absolutely. In fact, if you go and look at the headlines, recently, there was just a story that the whistleblower behind Caterpillar's massive tax headache could make \$600 million.

John: Wow.

Eric: Talk about hitting the lottery. If you have clients who are aware of fraud, I don't encourage people to go after their neighbors, but if you're working for an employer and you discover there's a massive fraud going on, one is there's the opportunity to get it right for the government and for the tax-paying public, and number two, it could actually be a significant payday.

John: Well the other thing is they could become a subject or a target too.

Eric: Absolutely. In fact, if you're going to have a client that

blows the whistle, you need to make sure they are not part of the problem. We actually get this a lot in divorce cases. Here's an example of what happens. A husband and wife were running a restaurant in Manhattan and they've been skimming like crazy for years. Now they're getting divorced. He submits the tax return showing what he's making, and she knows full well that it is massively understated. All of a sudden now there's going to be a huge fight over this and they get really angry. We always get this, "Should we go and whistle blow?" I say, "No, have your divorce lawyer call the other side, and really what you should do is go back and amend the last three years of returns, deal with it, and then wrap up the divorce." If the other side is smart, they're going to do that too, but I have to tell her that you were aware of this. You were involved with it. You can whistle blow and be right there with your husband as a target of this.

The other thing is, it doesn't have to be criminal. They may just go after the civil case. You can get a share of the civil judgment, which may be significant. In whistle blowing, you get what the government recovers, whether the underlying offense is criminal or civil.

I mentioned that you won't be able to get innocent spouse treatment if you report your spouse. You knew about it. But you might use it as leverage to get the other side to agree to be more generous with the alimony and child support, but to be honest with you, whistle blowing is not the way to go.

You know what John; often they're so angry. They're more interested in just hurting the other side; they almost don't care if they get hurt themselves.

John: Right. Eric, I just want to say how grateful I am that you make these resources available on the web for professionals like me. I've taken your CCH course, and I refer to it often. I've been through your course on IRS exams and I just want to give you your props where they're due. Thanks very much.

Eric: I appreciate it. Thank you, and thank you for inviting me on.

# CHAPTER 6

# Doug Haldeman

Tax Liens and Your FICO

Doug Haldeman is the Branch Manager of Cornerstone Mortgage, Inc.'s St. Charles office. Mr. Haldeman has over 18 years of mortgage origination and management experience. Doug spent 5 years overseeing the Cherry Creek Mortgage Branch in St. Louis before joining Cornerstone. Prior to that, he owned Infinity Mortgage for 10



years. Doug has served as a mortgage expert for NBC, Fox and various other local radio stations. He has served as the real estate, finance, and credit resource for St. Louis since 2012.

Doug is passionate about helping clients form a debt strategy to minimize the amount of interest they pay on all debt. Doug and his team share Cornerstone's passion for helping clients achieve their dreams of homeownership.

In his free time, Doug enjoys weightlifting, boxing and yoga. He is also a professional juggler and an avid reader of books about business, economics, finance, sales, psychology, and spirituality.

John: We're talking about debt in general, and IRS tax debt specifically. When it shows up on a credit report and in your FICO score, it's painful. I'm fortunate to have Doug Haldeman here. Doug has been in the mortgage business for over 20 years, and I've been referring my clients and associates to him for more than a decade. Many of my clients seeking a mortgage often discover that many

lenders are somewhat perplexed and don't seem to understand their business, their industry, or other issues unique to them. Other mortgage professionals simply move on to the next opportunity at the slightest challenge. Doug, on the other hand, looks for a unique solution. Welcome, Doug. Thanks for joining me.

Doug: Thank you for having me. You've been a guest on my show many times; the Doug Haldeman Show on FM NewsTalk 97.1, and our podcast is Smart With Your Money with Doug Haldeman.

John: I found out a few things that I wasn't aware of as I was looking into your history. Where did you grow up, Doug?

Doug: I grew up in southwest Missouri and part of Kansas, so I moved around quite a bit. Early in life, my parents got divorced young, so it forced me to move around.

John: You grew up on a farm, right?

Doug: I spent quite a few years on a farm, but I lived in a book plant up until the time I was about seven years old. My father had inherited a book publishing plant, which used to be a massive publishing plant, in Girard, Kansas. Then my dad moved to Joplin, but I went into the foster home system for about a year. My brother and I got shipped around to multiple foster homes, and then I lived on a farm close to Lebanon, Missouri after we got out of the foster homes. I lived there for quite a few years, and then eventually moved back to Joplin. When people ask my hometown, I claim Joplin because I was born there, and then went back there for high school and part of college.

John: You're no stranger to adversity.

Doug: I'm certainly no stranger to moving around. I remember second grade, I went to four schools in one year. You get to learn to make an impression quickly.

John: How did you get started in the business, Doug?

Doug: How I got started is interesting. Many people more or less back into a career sometimes. That's what happened to me. I graduated from Mizzou with a mechanical engineering degree. One of the things about engineering is it teaches you how to problem-solve. But I didn't want to do design work every day. I thought I'd get into engineering sales. A couple years out of college, I saw that several guys I went to college with had gone into the mortgage industry, and were making a ton more money than I was. I got into it for that reason at first, just for the money.

As I started that, I also got into investment real estate. I had owned several businesses and had saved a nest egg from that. I started buying properties right when I got into the mortgage business in 1996. That's how I started flipping properties. I'd work as a loan officer during the day, and then at night, I'd go rehab these properties. The first five properties that I bought, my average acquisition cost was \$4,500. That gives you a little bit of an idea of the derelict properties that I was dealing with. I couldn't hire a contractor, so I'd have to go down and work all evening.

John: You did the work yourself?

Doug: I did the work myself, and 190 properties later, I've definitely learned a lot about flipping properties. That

being said, the mortgage business has always been my main focus.

John: I know it's tempting to be pulled into flipping properties, once you've had your first success, but there's certainly no guarantee in that business because I've seen it consume someone's life.

Doug: Well, it's one of those risks. The number-one piece of advice I give people who think they want to invest in real estate is, don't quit your day job.

At the point when people want to start doing it full-time because they flipped a couple of properties on the side, now suddenly, you must flip properties just to make a living. It can't be a hobby. Keep your day job if you can and continue to do that as a hobby, it may be good extra money for you.

That's one thing about flipping houses. The taxes aren't built into it. That's a misstep a lot of people make taxwise; they don't put the money away for their taxes. They flip a property and make \$15,000. That \$15,000 goes right in their bank account. They don't block out the tax money.

John: I have a lot of real estate investors as clients. The taxes are the last thing they think about, and they are surprised on April 15th of the subsequent year when they have to come up with \$10,000-\$30,000.

Doug: They either come up with that money, or unfortunately, what a lot of people do is they start exaggerating expenses and invite an audit.

John: One of the things I tell people that have income that's not subject to withholding, where the taxes are baked in, is that there's no magic to quarterly estimates. Even a quarterly estimate can be more than you can afford. The IRS has made it very easy to pay online whenever you feel like it.

Doug: Do you recommend setting up the automatic payments on the quarterly basis?

John: Once a quarter or once a month. What do you like best about the mortgage business?

Doug: I like the debt strategy. I'm going to help people create the largest indebtedness of their life with a mortgage. Most lenders are going to facilitate the mortgage, and then they're going to walk away. Once they're paid their fee, they're going to move on to their next opportunity. I don't like that. I don't want to make that same mistake.

John: In my own experience, both times I've purchased a home, I rarely considered the debt.

Doug: But not necessarily the amount of the debt. When I think about it, if I'm going to help somebody create the largest debt of their life, then I have a professional responsibility to help them manage that debt. When I meet with clients, the mortgage is one tool that needs to integrate into their long and short-term financial and investment plan. The goal in the end is to pay the lowest blended interest rate on all of their debt. The mortgage is just one piece of that. I think that's a little bit of a difference in mindset.

Let me just give you an example of what I mean by that.

Frequently I'll get somebody after they've had their first home. Now they have quite a bit of equity because it's appreciated, and they paid the balance down a little bit. Let's say they're going to have \$100,000 when they sell that house. They are going to net 100 grand. Well, the typical thinking is to roll that hundred grand into the next house all as down payment.

But let's say 20% down might only be \$40,000. So, 20% down would be given the best loan possibility out there. Anything more than that doesn't necessarily improve the terms. It avoids the interest on the mortgage, but when we look at the rest of their debt structure, they may have credit card debt, student loans, and all kinds of things that are higher interest rate than a tax-deductible mortgage. We really help form a debt strategy to know what's the best use of those dollars.

John: Doug, where do most of your clients come from?

Doug: Most of my clients come from referral. I'll say that 98% of them come from referral, either from past clients or long-term referral partners. A lot of real estate agents refer business to us. That's one of those things, when you've built up a reputation over time and you live in the community. The online lenders, if they don't meet a closing date, they don't have to see those people in the grocery store. For us, everything we do has to be centered around knocking the ball out of the park when it comes to customer service. Knowing that we have to be really competitive on rates, really competitive on fees, or our lifeline is cut off. We won't continue to get referrals.

John: What is a FICO score? I know there's a lot of mystery

surrounding that, and with a lot of the tools that are out there.

Doug: A FICO score is a scoring model that can be used by the credit bureaus. I say can be, because there are several different scoring models. If you use something like Credit Karma, they are giving you your VantageScore. It can be relatively similar, but it's not the same. A credit score is to give the best probability of your likelihood to pay back the debt. The higher your credit score, the more likely you are to pay back the debt. The lower your credit score, the less likely you are to pay off the debt.

John: How is that score determined?

Doug: It's made up by several different things. We're going to talk FICO, because that's the most well-known. That's what we use in the mortgage industry. The largest category of how your FICO score is determined, 35%, is determined by how well you pay your debts. If you ever had a late payment, if you ever had a bankruptcy or a judgment, and a judgment is going to show all the tax liens, so any sort of tax lien on there, that's going to count in that 35%. That's a big deal. It's the largest category of your debt. The second category is credit card debt or revolving debt. It's 30% of your score. They take the balance on your credit card, on your revolving debt, and they divide it by the credit limit. You want that ratio to be really low. The closer you are to being maxed out on credit cards, the lower your score is in that part of it. Then 15% of your score is the length of time you've had accounts open. The longer the better. Every time you're opening new accounts, it's going to shorten that amount. That's why if you've had a credit card open for a long time,

and now you pay it off, don't close it. Just leave it open. Let it sit there.

John: I got a notice from a credit card I haven't used in years saying they were going to cancel the card unless I used it.

So, I went out and used it.

Doug: You use it. Go buy a gallon of milk. In fact, on that 30% of the score on how they manage revolving debt, if you've gone six months without using the card, then they take it out of that equation. Keep at least three or four cards that you use occasionally. I'm not encouraging you to rack up credit card debt, but you want to use them enough that it at least keeps it active.

John: What I do is I'll put the monthly charge for Netflix on one card, and the monthly fee for iTunes, which is \$2.99 or something like that, on another card just to keep going.

Doug: One of the other categories is inquiries. How many times you've had your credit pulled, and this is hard pulls. The difference between a hard pull and a soft pull is when you're applying for credit it's a hard pull. A soft pull is if you pull your credit score up on Credit Karma or any of those credit monitoring sites, or now a lot of the credit cards will also let you get a soft pull to monitor your credit. That's not a hard pull. The hard pulls will affect 10% of your score.

John: I do everything online now, and almost every credit card I use gives you the opportunity to check your credit score.

They don't call it a FICO score, though. They call it your credit score.

Doug: Usually, it will tell what the scoring model is, but just know they're not going to be exactly equivalent.

John: So, the two things that are most important are your payment history with your creditors and the amount of revolving credit you have in relation to your total credit.

Doug: When your balances start approaching your credit limits, your likelihood of default goes way, way up because one of the things we see in the mortgage industry a lot is people can continue to spend more money than they make until they run out of credit. You could just keep charging and charging and charging, and sometimes a home equity line of credit may be for a couple hundred thousand dollars, so you can continue that trend sometimes for years. Once you eventually start to reach those limits, there is going to be a change in there, and it may not be pretty when that happens. The way out of those situations isn't pretty.

John: What I'm thinking about is the case where you max out your credit to the extent that you can, and then you stop meeting other obligations, like taxes, for example. You start getting behind. It's like a business. What happens with businesses is they've used all their available credit, so they decide they're not going to pay their payroll taxes. "I'll pay it next month. I know I've got this big receivable coming in. I'll pay it next month." The same thing works for individuals. It's a similar principle.

Doug: It's so scary, and I guess the advice that I think you and I will agree on, is when you're prioritizing those things, you better put that money aside. That is the wrong money to borrow from because it's not going anywhere. It will catch

up with you. The way out of it isn't good. The interest rate the IRS charges and penalties, you know a lot more about that than I do, John. It's not good.

John: That's why, at least in my opinion, the IRS is the fiercest creditor you can have, because they have the biggest hammer. If they want to, they can put you in jail. Your credit card companies or your other creditors can't put you in jail.

Doug: As an individual, you're powerless, too. There's nobody you're going to complain to, because with a regular creditor, you can write a complaint to the Consumer Financial Protection Bureau or the Federal Trade Commission, and that will scare that creditor a little bit. With the IRS, you have no one to complain to.

John: Let's talk about tax liens for a minute. What effect does a tax lien have on a FICO score?

Doug: A tax lien on a FICO score will be similar to any other public record. When I say public record, that's anything that reports or gets recorded at a courthouse somewhere. That's a public record. If you've ever had a judgment against you, a bankruptcy, a tax lien, those are all going to report similarly, and they're horrible for your credit, and they'll sit there for 10 years. Public records will pull for 10 years. People don't often know that, because it's seven years for most items on your credit. It's 10 years for any sort of public record.

John: What's the difference between a tax lien and a judgment?

Doug: There's not really a lot of difference. A tax lien is a

judgment against you; it's just a judgment from the IRS. If anybody sues you in court for anything, and you lose that lawsuit, that's going to now get filed as a judgment, and you don't want that. That's why it's always better to settle outside of court than to let that judgment hit. It's going to be very similar to a tax lien, though. The difference might be, they're going to record a tax lien at the courthouse against you personally, but they also might record it against your property. If they record it against your property, it's going to come before a first mortgage, second mortgage, or any other debts. They're going to put that tax lien first.

I wonder how many people out there would like to buy a John: home but can't, because they have a tax lien. People may have fully paid their tax after the IRS having filed a lien, so on their credit report it will show the tax lien being filed and then the tax lien being released. The thing I've found, at least in my experience, is that a release following a filing of a lien doesn't really do anything to improve your credit score. A lien will have a negative effect on your credit score of somewhere between 60 to 90 points. Nina Olson, the head of the Taxpayer Advocate Service, confirms that having a lien released doesn't do anything to improve your credit score. You need to have it withdrawn. Now, if you're in full compliance and you're full paid, it's a fairly simple matter to get a lien withdrawn, and I recommend they do it.

Doug: You're talking about federal tax liens specifically. State tax liens are a little different. This is important for anybody to understand the differentiation, because the tax lien is like a regular collection. You get a medical collection on your

credit, I've seen people have a \$10 collection hit them 100 points. Let's take a tax lien as an example. This tax lien was filed back in 2014, and they didn't pay it, and then all of a sudden in 2016, they decide to pay it. They pay it, and now the most recent reporting date shows the release, and their scores actually go down rather than up once they pay it. It's not always going to help your credit score, and if anything, it actually could hurt your score for a while.

Now, you still have to get it paid. At some point, you're going to have to get it paid and you're going to have to show it released. John, another one that we see a lot, and you probably have dealt with this too, is you get a lien, and instead of just filing it in one place, like the county that you live in, they file it in multiple counties to make sure they really have you covered. Then once it's paid, they show it released in one county, but not released in another. The amount of work it takes to follow up on those things is more than most people can deal with.

John: Going back to the state versus federal tax liens, and this is true for pretty much every area of tax collection. Dealing with the state's a lot more difficult because they don't have a mechanism that's in place to negotiate. They've got these broad guidelines, and if you can't meet them, they're going to start garnishing and taking your stuff. The good news is that in most states, what you owe is significantly less than what you owe the feds. For most people, it's much easier to get the lien satisfied for the state.

Doug: It's easier to get it satisfied, and unfortunately, the amount of a lien, whether it's \$100 or \$100,000, doesn't

really make a difference on your scores, just from my experience of it.

John: Another area that can help borrowers or people that are behind on their taxes, is that even if they have an active lien and they haven't paid off the debt, in some cases, you can have that lien withdrawn. It's not easy to do. There are some lien withdrawals, if you're in full compliance and you're fully paid, you can get a lien withdrawn, but anything beyond that gets a bit dicey.

Doug: You're paying off a tax lien and having it shown as released, that's now going to theoretically allow you to buy a house or some of the things that you may want to do. You still have to qualify with your credit score and lots of other things, but getting an action removed from your credit completely; that's golden. I'm a do-it-yourself type of guy in a lot of cases, but what I realize when trying to do certain things for myself, that there are a lot of things I can't do for myself and shouldn't even try. That's one of the areas where if anybody thinks there's some mechanism where they can get that removed themselves, I'll laugh at them, because it's not going to happen. They won't know how to do it. They won't know all the little lessons and all the tricks that you know, John, from doing it hundreds of times for people. People need to get professional advice in that area.

John: Now, most people that come to see me certainly owe a lot of money to the IRS or to the state, but that's not their only credit issue. The have other credit issues as well. How do you recommend that people prioritize creditors as they pay their debts and become fiscally responsible?

Doug: I know that from wherever you are, if you're in a bad situation, there is a road to recovery. I've seen so many people recover from this situation, so just know, first, that it is absolutely possible. When it comes to prioritizing creditors, you really have to put taxes in front of just about everything else. Because of how egregious the IRS is, you better put them top of the list. I'd say your mortgage is going to come right after that, because you need to have a place to live. Especially all the secured debt, because if you don't pay your taxes, then they're going to attach to your house, too, and now they're going to attach to that secured debt. So, pay those taxes first. Pay your mortgage, because if you don't pay your mortgage, they're going to take it. They're going to take your house, and whatever equity you have will be gone.

Credit cards have to be a little bit further down the line. I'd say student loans after the mortgage because student loans, you're not going to write off in a bankruptcy much like taxes, so those have to be after the mortgage. If you don't pay your student loans and they default, they're not going to take your house. They can't take your education away from you, either, but they're also not going to go away. You're not going to write it off, so at some point you're going to have to pay those student loans or just plan on never getting a loan for anything. Or if you do, it's going to be a very high interest rate. At some point, pay your student loans. And don't forget cars, because if you don't pay for your car, they're going to take it. Then credit cards I'd put last, personally.

John: I think if you owe the IRS and you have other creditors as well, if you're looking to refinance, you should have your lender working with whoever is helping you, work out

something with the IRS so everybody is on the same page. Depending on what context you look at, some debts are better to pay off than others when you're trying to negotiate with the IRS.

Doug: I'll use an FHA loan as an example. We can have an open IRS lien or any type of federal or state tax lien, and it doesn't have to be paid off to get an FHA loan. You can be on a payment plan, and if we see a few months of verification that you've actually been paying on the payment plan, then you can qualify after just a few months, assuming that your credit score is still okay, and there's nothing else that would prevent you from qualifying.

John: The other thing is you can get the IRS lien removed. Depending on how much you owe and your payment history with the IRS, you may be able to persuade them to release the lien for no other reason than you've got a good payment history, so long as you don't owe more than a certain amount, generally the number is \$50,000.

Doug: What you're talking about is really crisis management. You have a bunch of debt. You have a limited amount of money, and how are you going to negotiate with all these? I'll go through a few of these rules because I've been through this personally. Let me share a little background on what I went through personally on this.

Right when the market crashed, I had gotten into a position where, to me, growing up really poor, I thought having a big house and really nice cars was going to be a sign of success. I bought the million-dollar home at the peak of the market. I had the nice cars. I had the Escalade

and the Lexus. I thought that was going to be success, but instead of success, it was the worst period of my life, and it was absolute misery. As I continued to go further and further in debt until the economy crashed, I thought I was going to have to file bankruptcy. Right then, my wife left me, so I ended up right in the middle of a divorce, with all of this crashing.

I decided I wanted to avoid the bankruptcy, but I had a limited pool of funds that would have survived through a bankruptcy to negotiate with my creditors. I had 38 creditors. I had taken on all the debt in my name, and all the debt that was joint from the marital debt, too. As I went through and I had to negotiate with these creditors, on average I was able to negotiate them down to 12 cents on the dollar, and avoid a bankruptcy. Here was part of the strategy. First is, detach yourself from the situation, because it's very easy to want to bury your head in the sand and not deal with it because you're ashamed. It's so complicated that you don't even want to have to dig into it.

It took me 40 hours of negotiations to work with all 38 of those creditors. And there was so much detail work, and taking really close notes with exactly who I talked to and exactly what time, so I could hold their feet to the fire, which saved me later on some things. You absolutely have to do that. So, don't attach it to yourself personally and who you are. Realize that it's just a game. And it's just a negotiation to get your way out of it. Second rule is make sure you represent yourself first in this situation, not your creditors. I'm going to guess, you probably did not intend to default on any of that debt when you first took it out. If

that's the case, usually these life events happen that put us there. Now you just have to find the best way out of it.

It's representing you and your family first, not the creditors or anybody else. You do what's best for you. Then, the next hierarchy for me was thinking about negotiating with the money that I had to the things that were already on my credit report first, because if you have bad marks on your credit, you need a stake in the ground where everything is paid up. You need liens released or you work on getting them removed completely, and you never have another late payment after that. That's how your credit really starts to improve, because if you have something sporadic that pops up after that, it's going to hit your score even harder than it would before. Then I took what hadn't reported to credit, and negotiated payment plans on all the stuff that hadn't reported to credit yet. That's one other hierarchy that's important, when you're looking at managing credit and how you recover, the fastest is preventing anything new from hitting your credit report from that point forward.

John: I think it's worth noting that while you had 38 creditors, not one of them was the IRS or the state.

Doug: I will say that I did have some IRS things I had to clean up during that time, because I wasn't the one handling the books for a company that I owned. The person handling the books didn't pay some payroll tax. They did some maneuvering where it did show up on my credit. You had to go in and face that one head on and get it negotiated and get that off my credit, too, which was a judgment they had to remove. It actually wasn't even anything against me personally. It was against the business that still

showed up against me. Dealing directly with the IRS agent and cooperating and not being combative with them and not ignoring it, could make that go away. You remember, John. You got on the phone with that IRS agent and gave all the specifics of what had to happen, and it worked.

John: What are some of the biggest mistakes you see your clients making, and how do you help them?

Doug: The first thing is not managing the details of life. I'm going to say that I didn't learn to manage the details of life until I was well into my adulthood, and usually it's through experiencing the pain of what happens when you don't manage those details. All the little details of making sure your taxes are paid. Is it safe to say that most people you deal with that have IRS issues, it's because they didn't manage the details somewhere along the way?

John: They didn't know how much they owed in taxes because they weren't paying attention to how much they were making or how much they were spending. Most people who start a business are great technicians. Not so much when it comes to business management.

Doug: Their focus was on cranking out whatever product that their company produced, whatever service they provided. If they don't have some background in finance, they may not have been super in tune with that. But I'll tell you, managing the details of life is not just about the tax issues or running your own business. It follows through to your personal finances as well. Manage those details. Know what your interest rates are on different items. Know the fine print. Manage those details.

In the mortgage business, there's this thing called a loan quality initiative, LQI, and it's a requirement by Fannie Mae and Freddie Mac that within one week before closing, you have to re-verify somebody's employment to make sure that they still work there, and you have to re-pull their credit report. It's a soft pull, but it basically makes sure that nothing's changed, no major changes from when you started the process until the end of the process. Well, I've had multiple situations where from the start of the process until the point of closing, they had something come up on credit that disqualified them from being able to get a loan. And these were not uneducated people. One was a \$650,000 house. It was a dentist. One was a \$550,000 house. That was an architect. One was a \$350,000 house. The guy was the head of a SWAT team. All smart, all dealt with a lot of details on their job. They all just let different things happen, and by not managing those details, it cost them a lot of money.

John: I know from personal experience that you educate consumers about money and basic financial principles.

Can you tell us a little bit about that?

Doug: First-time homebuyers are still some of my favorite people to deal with, because I remember buying that first house. When someone comes in for a mortgage, I want to go through not just what it takes to be able to buy a house, but all that's involved in taking a loan application. There are a lot of different questions. When it comes to understanding those basic financial principles, there are some things that differentiate people in this world that build wealth and people that don't. Really understanding some of those basic financial principles.

I go all the way through. I have a course that I offer and I think every couple before they get married should take this course. I go through personal financial management with couples, how they should set up their bank accounts, what's going to lead to success, who should pay the bills between them, whether you combine the money or not. I go through a lot of different specifics with that, because I have some very fundamental beliefs in how people should handle those things and be smart with their money as a couple or as individuals. You better be on the same page with money with your spouse, or you're going to have issues.

John: In this culture, nobody saves any money. Nobody thinks about building wealth. I saw something interesting on Facebook. Somebody had shared something where instead of saving pennies, they were saving 20s. Once a week, they put a \$20 bill in a shoe box, and at the end of the year, they had 52 \$20 bills. They'd save that money and they'd do the same thing the next year.

Doug: That's why a 401(k) is effective. It's coming out of your paycheck pre-tax, typically, and it's voluntary in the sense that you don't have to contribute. And it's automatic. I think saving needs to be that way. When you look at the fundamental difference between people that accumulate wealth and people that don't, you have a certain amount of money that comes into your household every month. Most people out there will spend first, and then they save that little bit that's left at the end if there's anything. Sometimes they're spending even more than they are making. People that accumulate real wealth will decide how much they're going to save first. They save a certain percentage of their income and then they'll spend what's

left. Once you decide in advance how much you're going to save on your income, whether it's a percentage of your income or a dollar figure, your expenses have to fit into what's left. It may seem like a matter of semantics, but it's really not, because that second person—the one who chooses first to save, will always accumulate so much more wealth than anybody else.

John: What's an ideal client for you?

Doug: An ideal client for me is somebody who doesn't already know everything. What I mean by that is there are times that people come into my office and they think they know exactly what they want. They'll go ahead and self-prescribe what the best loan product is going to be for them, the best debt strategy, and all the best things. They know how much they should put in down payment. But they're making some of those decisions on limited information. The best client for me is somebody who is looking for a trusted advisor that not only knows what they're doing, but is going to look out for their best interests.

We don't get paid based on any certain loan product. I don't have any vested interest in giving somebody bad advice, because they're not going to come back to me again and again. I have entire families that have done all their loans with me. There are streets where everybody on that entire street has used us. They're going to talk at those barbecues if we don't give advice that ends up serving them in the long run. An ideal client is somebody who is looking for a trusted advisor and is willing to listen to advice. Because frequently they'll come in with a certain idea, but end up with something else that's better

for them in the end. I don't make decisions for people. All I do is analyze their situation, ask consultative questions, and I will present the options. I'll also present what I think is the best option, but people still have to make their own decision.

John: I've seen that tool that you use.

Doug: It's called Mortgage Coach Edge. It's the product I use that helps me not only present, but also analyze the different loan scenarios. Let's say you have a current house and you're doing a refinance. I can take your current loan and compare it to several different loan options. Or if you want to buy a house, we can compare all those different options.

John, here's what's interesting. I have a mechanical engineering degree. You and I are both overly analytical guys, and we know how to crunch the numbers. I use Mortgage Coach, not just to present the numbers, but actually for my own self to see what the best loan option is. Because some of these numbers are so complex, when you start going out, is it one year, two years, 10 years, 20 years down the road to know which option is best. It actually reveals which option is best. Sometimes I'll think in my head that one product is going to be the best, and after I put everything in, that's not actually the case. I am open to the advice that it gives and look at the numbers, because sometimes it also is going to depend on the length of time somebody is going to live in their house and the length of time they're going to be in this loan.

John: It also is in keeping with your passion to educate the consumer, because you can show each of the options that

are available to the borrower in real time and change the numbers. You just do what-ifs.

Doug: I can add a video to it to walk them through those options in detail. What's interesting is sometimes one loan product will be the best for, say, years one through three, and then another product takes over and is better for years four through 10, and then a different product is better after year 10. Learning those things and knowing the probability of how long they're going to be in this loan is pretty important.

John: If somebody's either decided they want to buy a home or refinance their current mortgage, what's the first step for them to take?

Doug: First step to take on that is to reach out to me and schedule a consultation. I don't charge anything for the upfront consultation

John: Thank you Doug, this was great information.

Doug: Just before we close here, I just want to say if someone is in a situation where you need serious tax help, you really need to turn to a pro. John, I trust you wholeheartedly when it comes to this, because you really know your stuff.

John: Thank you for that, Doug.

# CHAPTER 7

# Roger Nemeth

Before You Do Anything

Roger Nemeth is the owner and president of Audit Detective LLC, the first company to offer desktop software for tax professionals that requests, downloads, and analyzes IRS transcripts. Their process is 75% faster than doing it manually.



Roger has been doing taxes since 2006. Prior

to launching his own company, he's been the general manager for one tax franchise, and a technology manager for several others. Roger is an Enrolled Agent and an NTPI Fellow.

Before entering the tax industry, Roger was a Deputy Sheriff in Leon County, Florida for eight years. He was injured in the line of duty, and awarded the Medal of Valor and Purple Heart by the Florida Sheriff's Association.

John: I always recommend that troubled taxpayers never ignore IRS notices. Rather, you should find out what action the IRS is proposing or what information they're looking for and take action. One thing to remember: in some instances, inaction is the best action. I know that sounds counterintuitive, but sometimes requesting an installment agreement or an offer in compromise will result in unintended and undesirable results. The clock may be running out for the IRS to collect your taxes and

your request may stop the clock. I'm talking about what's known as the statute of limitations, which I refer to as "SOL". That's easy to remember, because the IRS is SOL once the statute of limitations has expired. The rules are extremely complex and the period the IRS is allowed to take certain actions varies depending on which statute of limitations applies to your situation.

Another item that's often overlooked is penalty abatement. Sometimes the IRS will abate certain penalties given the right conditions. It's a gift. Most taxpayers aren't even aware of it and tax professionals often overlook it. Again, the rules are complex and varied. Here to help us sort it all out is Roger Nemeth, developer of Tax Help Software. In my opinion, he is the nation's leading authority on statutes of limitations. Welcome Roger, I just wanted to mention at the top here I love to hear about your adventures as Deputy Sheriff just as much as I like hearing your war stories about dealing with the IRS. I'm curious. What led you from law enforcement to tax resolution work?

I got married, and after getting hurt another time on the

it's kind of a new area for them after an extended time of

job my wife said, "Come on, let's go. We're doing something else that's a little bit more safe." And quite frankly, when you've done something for eight or 10 years, that kind of time frame, you start to get into "I've already seen this, and I've already done this," which I think a lot of the tax people out there can appreciate. After 10 years of doing taxes you always look to expand what you go into, and that's why we're seeing a lot of these tax professionals getting into resolution because

Roger:

doing just regular tax returns.

John: Now, could you take a few minutes and explain what a statute of limitations is?

Roger: A statute of limitations is a statutory period of time that the IRS has to do certain things. In general, it's when they can either get money or take money. There are statutes which govern how long you have to request a refund, or how long they can come after you for different things. And there are three primary statute dates at the IRS. The first one is the "Assessment Statute Expiration Date" (ASED). That's how long the IRS has to actually assess you for a tax issue. How long they can audit you after you filed an original return. It's their audit window to come after you.

The next one is the "Refund Statute Expiration Date" (RSED). Every April, the IRS sends out a big email promotion. You'll see it on CNN and Fox and all these other news channels. It says, "Hey, American taxpayers are going to leave eight gazillion dollars, whatever the final figure is, in refunds if they don't file a tax return before a deadline." So, what the refund statute expiration does is it gives you a deadline to file for a refund. And the refund that you're generally getting back is your withholding from a W-2. That's the primary, but there are some other instances out there where you'd be able to get a refund.

John: What comes up mostly in the context of tax resolution is you've got folks with prior year unfiled returns going back six to 10 years or more. And they find out that six years ago, or five years ago, or even four years ago, they had a big refund coming. And they're kind of shocked when they discover they're not going to get it. It could

amount to tens of thousands of dollars. So, is that what you're talking about when you talk about the refund statute expiration date?

Roger: Yes, absolutely. And I can't tell you how many times I've seen taxpayers that waited to file tax returns, and we've done them, and there have been upwards of 20,000, 30,000, even some \$50,000 in refunds combined over several years that were expired. It is impossible to get them. I hate to use the word impossible, but the IRS will generally not budge past the deadline. It's generally either a two or three-year deadline depending on which date you're looking at it. But they don't budge on that even if the tax was collected improperly. That's what people don't understand. So, the IRS basically lets your refund go stale after three years. But what's really not fair is the next statute of limitations. That's the one that provides how long the IRS has to collect an assessed tax from you.

What that says is if the IRS assesses your tax, whether by you filing a tax return or by them filing for you or auditing you and assessing an additional amount, the general limit on the cap or the Collection Statute Expiration Date (CSED) is 10 years. What that says is the IRS generally has 10 years to come after you. They'll levy you. They'll force you into an installment agreement, but get money from you that is owed to the IRS. They'll only give you your money back within three years, but they have up to 10 years to collect.

John: I want to ask you about the refund statute expiration date once again. These old refunds that the IRS will not cut you a check for, will they use those to apply against

taxes on returns that are even earlier than the refund year?

Roger: No, the rule on that is, and I hate to say never because I have heard of people with instances where a revenue officer or an examiner has made a mistake in the system and done it, but there have been very few examples I've heard where they've taken refunds from an out of statute refund and moved it to another year in regard to the refund statute.

John: So, in other words if I owe for 2010 but I've got a refund coming for 2011, both years that have expired, they will not offset the earlier year with the later year refund.

Roger: Correct. And in 99.99% of the cases and the examples I've seen I think have been errors on the IRS' part that have happened to go through. But it's definitely not something you want to rely on.

John: Okay, now focusing on the Collection Statute Expiration
Date because that's the thing that most often is in
consideration when you're working with tax resolution.
What stops the clock?

Roger: There are several different things that stop the clock. I'll run down the list. It's a pending offer in compromise. It is a military deferment. Tax court or IRS instituted litigation. Bankruptcy. Collection due process. A waiver of the statute. What that last one means is, you can actually grant a waiver to extend it or the IRS can go to court and get a waiver. A pending installment agreement tolls (extends) the statute. A terminated installment agreement tolls. Also, a request for innocent spouse relief

tolls the statute. There are some other more obscure ones out there as well.

Now the one that's probably impacting folks the most is military deferment for people in combat zones. But the one that kind of gets people is taxpayers living outside the U.S. for greater than six months. So, in other words, if you're living overseas for 20 years and you don't come back to the U.S. on a regular basis, the IRS in essence has 20 years plus 10 years to collect for debt. And that's when we'll see a lot of really old cases pop up that should have died off years ago, but because the person's been living outside the country, it stayed open for an extended period of time.

John: So, to use an example, if I've got a statute of limitations that expires in 2020 and I file an offer in compromise that takes a year to resolve, in general now the IRS has until 2021 to collect the tax.

Roger: That is correct. As long as the OIC is filed before the expiration date. And the IRS only has until the expiration date to actually put it as a tolling event. So, in this case if the IRS happened to mess something up and not put that OIC on the case for whatever reason, the CSED hits and they're not allowed to go back and add it at a later date.

John: How would a taxpayer determine their Collection Statute Expiration Date?

Roger: The simplest way is to pick up the phone and contact the IRS and ask them what the CSED date is. Generally, they will give that information over the phone. However, the best bet if you're actually having to call on CSEDs is to

actually retain or work with a tax professional, because what the tax professional will do is he or she will actually calculate those dates and compare them to the IRS. And the reason that's important is that the Inspector General for the IRS has determined that in over 40% of instances where CSED's have a tolling event on them, some event that stops the clock, the IRS is wrong. And that's quite a few.

So, what you can run into is the IRS could give you a CSED, but it might be the wrong date. That's why it's so, so important to use a tax professional on some of these cases, or at least get guidance on your CSED. Because even if you can get a CSED from the IRS, there's a very good chance that their antiquated computer has miscalculated that date and possibly given the IRS a bigger window in which to collect from you, the taxpayer.

John: So, what you're saying is that first of all it's difficult to compute what your Collection Statute Expiration Date is. It's not easy to get the information to compute it. And most taxpayers are going to be in over their head when it comes to computing the Collection Statute Expiration Date.

Roger: Absolutely. The Collection Statute Expiration Date is something that's a specialized area within tax resolution. There are about 700,000 people that are registered as paid preparers in the United States. Probably less than 10% of those people will actually give you a fairly accurate calculation of the CSED date. It is a very complicated formula to determine the correct date. You're dealing with dates. You're dealing with overlaps.

You're dealing with exceptions. Everything at the IRS has an exception. Every rule at the IRS reads, "This happens unless or except this happens." And that's where it becomes very, very difficult. You're basically doing math in regard to the law. So, I call it lawyer math and lawyer math can become very, very difficult.

John: I think the reason it's so critical to know your CSED particularly on taxes that you may think are old and cold, between six and 10 years old, is because first of all it's going to affect how the IRS resolves your case. Because if you're close to the Collection Statute Expiration Date, the IRS in most cases will make you a priority case and if you haven't heard from them in years, they start taking action right away. There's a tendency for most taxpayers to start doing those things that toll the statutes. Instead of taking actions that would normally seem prudent, inaction should be considered as you develop your strategy. Could you give me an example?

Roger: Earlier I said if you wanted to get your CSED, the best thing to do is call the IRS. However, be advised anytime you call somebody at the IRS they can then flag your accounts to be reviewed at a higher level. So, if a taxpayer calls the IRS and asks, "What's my CSED?" and the CSED was in 90 days, that person could fire off a note to the collection department and say, "Hey this person called me. They owe \$50,000. It's about to expire and there's no action on the account. It's just going to fall off."

And at that point, the IRS has some procedures to do some last-minute levying. They'll try to extend it in some cases. But just be aware that you can awaken the sleeping giant. We always talk about that, especially

when we're consulting with clients in this area. Be careful about reaching out to the IRS and waking the sleeping giant.

John: I call it poking the bear.

Roger: Poking the bear. Waking the sleeping giant. But you don't ever want to make your account active, particularly if you're "Currently Not Collectable" or you're in a Partial Pay Installment Agreement. And accounts do kind of fall through the cracks where they don't get reviewed. But the more money you owe, the less likely you are to fall through the cracks. Let me say that first. If you owe \$10 million, you're likely to have your own personal Revenue Officer at the IRS looking at your account. But if you owe under \$100,000, believe it or not that is not big money to the IRS. They rarely will assign an individual to your case. It'll just be controlled by what's called ACS, or the Automated Collection Service. A group will manage your account but nobody's in charge of your account individually except in rare cases where you just happen to get lucky for whatever reason.

John: And this most often comes up when you have a taxpayer who's in "currently not collectible" status or a partial pay installment agreement, and the clock's about to run out on some of these taxes.

Roger: That's why having your tax professional calculate the CSED is a much better way to proceed than calling the IRS and asking for it. What I recommend to folks is, once you calculated the CSED, you won't know if it differs from the IRS. So once the expiration hits that you calculated, I never tell people to call the very next day, because

sometimes we're basically making the best educated and informed guess on what some of these tolling events were, based on the information we're getting. But sometimes the IRS for whatever reason will say the dates are wrong, or they'll come at you a little bit. So, we always tell people wait at least 90 days after your calculated CSED to call the IRS, and basically say, "Hey what is the CSED? Because it doesn't match what I have and you're continually getting money past the statute." Because it's a statutory requirement when you contest it, the IRS is supposed to send it to a unit, if they can't do it themselves, to manually recalculate the CSED because it's against the law for them to collect after the CSED has expired. So, if you make a claim that they're in violation of the law they'll generally research it for you.

However, sometimes you have to elevate it and do something called an Offer In Compromise—Doubt As To Liability. And what that basically says is, "I'm not liable for that tax anymore because under statutory regulations it's expired and we don't agree on the expiration date." What that does is it gives you appeal rights to people that actually have to look at this, not somebody on the phone that basically says, "Yeah, I'm not going to do anything today. Have a nice day." And that's what you get a lot of times from the initial people you talk to at the IRS. You will actually call some people at the IRS who will not even know what a CSED is. That's kind of how bad it's gotten with the new generation of people that they've hired at the IRS. They're not as well-trained as the people that have been there, but are currently going through their retirement cycles.

John: So, you can compute your CSED without calling the IRS?

Roger: Yes, there are two methods to that. The first method is to get something called the IRS transcripts, which have all the raw transactional data about you as a taxpayer under your Social Security number in regard to the IRS. Those are broken down by modules. A module for most taxpayers is going to be a tax year. So, you'll have basically a raw data tax transcript for tax year 2009, 2010, 2011, 2012. Now businesses can actually get into quarters, and by month, but we're not going to cover that for the purposes of this discussion. For most people you have one module per year that will show the debt for that year and any action taken. And what a lot of professionals will do is look at the transaction codes. They'll compare it to the Internal Revenue Manual that the IRS uses, and they'll come up with the CSED based on what the IRM says and what those dates are, and 99% of the information you need is going to be on the transcript. But not everything.

John: And you can pull those from <a href="https://www.irs.gov/?">https://www.irs.gov/?</a>

Roger: Yes. A taxpayer can go in and answer some very difficult questions. If you have a cell phone that's registered in your name, you can verify your identity and actually get the transcripts online. Or you can go to a tax professional who will get that data for you. They can get them the same day as well, but most pros that do a lot of tax resolution work usually use an automated system so that'll take anywhere from three to five business days. But the nice thing about that system is it's generally considered anonymous at the IRS. You access the data, but there's nobody sitting there saying, "Oh, John Niemann, CPA just accessed John Smith's data. Let's take a look at why John Smith's data is getting pulled."

John: Right.

Roger: People access IRS transcripts for everything now. Student loans, mortgage, you name it. So, by pulling it through these automated systems, you're not going to poke the bear. It's not going to trigger the IRS to take a look at it. Because people pull transcripts every day. It's only if they think you're pulling it because of a soon-to-expire CSED.

John: Right. And like I said, the IRS will get aggressive if CSEDs are about to expire. And taxpayers will get frantic and start filing requests for collection due process hearings, or an offer in compromise or things of that nature that toll the statutes, when inaction might be a better part of your strategy in order to prevent the tolling event to occur.

Roger: Correct. I need to finish up on the previous question. We talked about the two ways to do the CSED. The first was to do it manually. Then the second way is there's software, which is what I do. But there's software that will actually do the calculations by importing the data from the transcripts themselves. That's a service that we only offer to tax professionals, so it's a professional grade product. It's not anything we offer to the public, because even once we give you those numbers, it's something that really needs to be interpreted and handled by a tax professional. It's not as simple as me just giving you a date and you calling the IRS and saying, "you can't collect on this anymore." Just to finish that question up.

John: Thanks, Roger. In your opinion, what's the biggest mistake that taxpayers make?

Roger: The biggest mistake is two-fold. One, they try to handle it themselves. Or two, they go to the person that does their taxes and tries to get them to help them with their tax resolution. Let me equate that with this. If I take my car to a Jiffy Lube or a five-minute oil change place, and he tells me that I need my transmission replaced and he'd be happy to do it, more than likely he's not a transmission expert working at a Jiffy Lube. Okay? Now that's not to say that some of the people that work at Jiffy Lube are not transmissions experts. So, I'm not trying to

audit.

And like anything else in life, the more somebody does something, the better off you are. When I used to do tax resolution the thing I used to like was, "Well you did all this in three hours and you're charging me this much money." Yes. But I had already done 200 cases like this. I knew exactly who to call. I knew exactly what to calculate. I had it trimmed down to just the necessary work. If you had gone to a tax professional that hadn't done this or wasn't familiar with these types of cases, they would have had over 40 or 50 hours with research alone. They wouldn't have known who to call and probably wouldn't have gotten you a favorable outcome. So that's why it's so important to find a tax professional that understands your specific needs.

take anything away from tax professionals that also do resolution. But out of those 700,000-people registered with the IRS as a paid preparer, only a small percentage actually will know how to handle a collection case or an

John: Right. You mentioned that they probably wouldn't get you the appropriate result. And I see that more often than not.

Roger: Absolutely. And you will only be going through this one time. You might get one type of professional that gets you into an installment agreement for \$400 a month and you think that's the best thing in the world. Or you may go to somebody like yourself, like John Niemann, who calculates the CSED, realizes the IRS was outside the statute date, or that you're getting close and they have you placed in "currently not collectible" for two years and the debt falls off.

\$400 a month versus nothing a month. That's fantastic. Please don't take what I'm saying the wrong way. The tax resolution industry has had its share of bad actors. Everyone remembers, "I'll get rid of your tax debt for pennies on the dollar." That is generally not what happens in tax resolution, and CSED expiration doesn't happen for everybody. But, there are different scenarios to lessen the blow of how much those installment payments are. A good tax professional will evaluate you for an offer in compromise, which will allow you to offer less money than what's actually owed. But rarely is it pennies on the dollar.

If you owe \$100,000 most offers are more likely, "Well if you can pay 30, 35, \$40,000 just to get it off your books would you be willing to do that?" It's those kinds of things that happen, but people in marketing focus on the best case. You see it with doctors. "Oh, I can operate and this person's perfect." Well he doesn't show the other 98 people that were disfigured using the same procedure. Something that's risky. Everybody always wants to focus on the success and that's something that you have to be aware of about the tax resolution industry.

John: You mentioned two mistakes. The first of course is for the taxpayer to be underrepresented. What's the second biggest mistake taxpayers make in your view?

Roger: The underrepresentation is either do it yourself or going to a tax professional who doesn't have the specialized knowledge. The other thing is not doing anything at all. Just letting the IRS take the refunds and eventually start levying your paychecks and your bank accounts. That, believe it or not, is probably the number one way people handle this in the United States. Or they wait too long, because eventually, once your bank account starts to get depleted and you can't pay your rent, that's when you start to seek the help of a professional. So, either inaction completely or waiting until it's too late. Because once the IRS has started levying your accounts, there are fewer options for you or even the most skilled tax professional.

John: So, let's move on to penalty abatement. Because this is an area where I think a lot of people drop the ball, because they don't even know it's available or how to determine whether they're eligible. Specifically, I'm talking about what's known as first-time penalty abatement (FTA). What is it, and how do I know if I'm eligible?

Roger: The best way I can describe first-time penalty abatement is it's a program at the IRS that basically says everybody makes mistakes. So, what the IRS is going to do, where you get assessed a penalty, they will go ahead and abate that penalty without you having to show reasonable cause—provided you have not been assessed a penalty for the three preceding years. But like anything else in life, the IRS has put some very complicated rules on that. If you're assessed a penalty, the IRS says if there are no

penalties in the three prior tax years, and no penalties have been abated in the prior three tax years, then you can get that penalty abated. And just to give you an example of how significant that could be. I've had two of our subscribers in the past year, tax professionals, who used our software to find first-time penalty abatements in excess of \$100,000.

So, not everybody's going to have a \$100,000 first-time abatement, but there is potentially a large amount of money out there for first-time penalty abatements. Take people that are self-employed with Schedule C's. I don't think I've ever seen somebody with a Schedule C that didn't have some type of penalty going back in their history. Sometimes it's \$500 or \$600, and sometimes it's \$50,000. But there's some penalty out there. Now the nice thing about penalty abatement is, whereas if you amend a return or try to file an old return to get a refund moved to another year, the IRS generally won't let you do that. But in regard to the first-time penalty abatement, a lot of times you can take that first-time penalty abatement from an old year where RSED has expired, and move it to a module where you owe money. And that's significant in tax resolution.

John: I'm working with a client right now who owes taxes from 2009 and 2010, and he qualifies for a roughly \$4,000 first-time penalty abatement from a previous year. And the IRS is going to offset what he owes today with penalties abated for the years where the refund statute has expired. He's not getting a check, but his liability will be reduced. Almost as good as cash.

Roger: A skilled resolution professional will first look at the various statutes of limitation and first-time penalty abatement.

Sometimes you don't want to go file for that first-time abatement on day one because the IRS may still be assessing the penalty that you can get abated. If you do the first-time abatement today and the IRS continues to assess another \$5,000 or \$6,000 because you're still delinquent and the penalties are still being assessed, those penalties aren't included in the FTA. So, one of the mistakes people will make is they'll rush to do a first-time penalty abatement and then they'll hold off. Sometimes, you're going to want to wait until resolution is complete before requesting first-time penalty abatement.

You want to wait until you get the offer in compromise almost ready to submit. You want to wait until you get certain things. And if you're doing an OIC you may want to hold back on that FTA because that person potentially will get in trouble in the next few years. So, know when to use your FTAs and when not to use your FTAs. That's something that I think even the most trained professionals struggle with because it's a strategy. A lot of times, how that client's going to act in the future determines whether you need to ask for an FTA now or not.

John: In checking on first-time abatement, can it help you in creative ways, when you're trying to qualify for example a Streamlined Agreement, where your tax liability has to be under \$50,000? If you owe \$55,000 and you want to get it below \$50,000, you don't have \$5,000. But you

might have a first-time penalty abatement out there of \$5,000.

Roger: Absolutely. And that Streamlined Agreement basically says if you can get your assessed tax debt under \$50,000, you just go into an installment agreement for 72 months, or 84 months in some cases. Or until the expiration of the CSED, if it's less than 72 months.

John: Okay, so how do I go about getting a penalty abatement?

Roger: There are a couple different ways. Generally if you pick up the phone, call the IRS as a taxpayer and say, "Hi, I'd like a first-time penalty abatement for 2010," I have heard of instances where the IRS will actually work with you and go through it and calculate it but most often times they want the person calling, whether it's the tax professional or the taxpayer, to say, "I'm asking for a 2012 first-time penalty abatement for \$4,712.00 and the prior three years are clean." Clean is like I said before, anything without a prior abatement and no penalties.

John: What I always do is pull IRS account transcripts going back to 1998 to look for penalty abatements because the IRS will abate penalties for years as far back as 2001 to offset taxes that are owed.

Roger: Absolutely, and that's why you don't want to go to just anybody. Again, you don't want to go to your oil change guy to fix your transmission because he's not going to know the ins and outs of that. I train people every day how to do tax resolution, especially using software, which is what we do. And so many people say, "I never go back to 1998." Probably 99% of the people that go

through one of my classes for the first-time, or haven't used my software before, or haven't talked to me, say, "I only go back four or five years. Why would anybody want to go back to 1998?" And until the software was out there to actually review those years, you were looking at an enormous amount of the tax professional's time to pull all this data, evaluate it, put it into a spreadsheet and determine what years qualify.

Now, with the software, we can analyze all that in a very short amount of time. But again, if I were to give a regular taxpayer that same report, they're going to struggle with interpreting it and understanding what it is. So, it's kind of like an MRI in the doctor's office. If I hand you your MRI and say, "Here you go." You're still not going to know how to read it. And that's where your tax professional's going to come in with the assistance of the software. Not only to determine if you qualify, but also the best time to request the penalty abatement and what strategy to implement.

I can't tell you how many times I've seen people request FTA and it cost them a lot. We had one the other day where it cost them over \$100,000 because they requested FTA at the wrong time on the wrong year. Just to give you an idea.

John: Yes, I can just see somebody trying to pull their own transcripts going back to 1998 and pouring over them to determine if they qualify for first-time abatement.

Roger: And it's not anything you can go online and educate yourself about, even remotely. I've been working on the formulas since 2009. And, I even calculated them before

that. That's when I started really getting into the research for the software, and I still find new things pop up with tolling. One of those exceptions we talk about. And it's not anything that even a tax professional really understands. It takes years to actually start to understand all the nuances or at least a good part of the nuances of the CSED calculations.

John: First-time abatement should always be considered as part of any strategy when you're looking to get your tax debt resolved. Roger, thank you very much for sharing with us your extensive knowledge in this area.

Roger: I'm glad I can help.

# CHAPTER 8

# **Jack Adams**

Bankruptcy - Should You Go Nuclear?

Jack Adams is the founding member of Adams Law Group. He focuses his practice on Bankruptcy and Social Security Disability, and has been fighting for the rights of St. Charles, Warren, and Lincoln County residents for more than two decades.



Jack has used his extensive bankruptcy knowledge to save literally thousands of homes and automobiles from foreclosure and repossession. On Social Security Disability and SSI claims, he is known for passionately fighting for his clients' rights to benefits. Working with Social Security can be a long, exhausting process, but Jack knows how to work within the bureaucratic system.

He is licensed in the state of Missouri, the U.S. District Court for the Eastern District of Missouri, and the U.S. Court of Appeals. Jack is a member of the American Bar Association, the Missouri Bar Association, the J. Reuben Clark Law Society, the National Organization of Social Security Claimants' Representatives, the National Association of Consumer Bankruptcy Attorneys, and the Scottish Missionary Association.

John: Many people who owe the IRS aren't aware that some taxes are dischargeable in bankruptcy. Often, bankruptcy

starts looking like a good option. I'm thrilled to have Jack Adams join me. Jack's law firm, Adams Law Group, represents individuals in Chapter 7 or Chapter 13 bankruptcies in the eastern district of Missouri. The firm also represents individuals in social security matters across the country.

Jack hasn't always been a lawyer. He worked as a union carpenter for his father's contracting business throughout his youth and early adulthood. He switched careers, becoming a machinist and for good measure he had a parttime sand blasting business. While working full-time raising two children, Jack attended college and attained a 4.0 GPA. In fact, he was tied for valedictorian with his wife, Adriana. Encouraged by his academic success, Jack departed from the blue-collar world and at age 30, attended law school at the University of Missouri Columbia. His unique perspective of living in the paycheck-to-paycheck real world has helped Jack achieve a reputation with his clients as a compassionate advocate who truly understands his client's perspective. He cares for their cause, and respects them for who they are.

Welcome, Jack. Can you tell me how you got started in the bankruptcy practice area?

Jack: In law school, soon-to-retire Judge Coker decided to teach a class on bankruptcy. I took the class and found it interesting. That was the first thing that made me interested in the topic. When I started practicing, it became an area where I found there was a definite need.

John: You've been practicing bankruptcy law since you graduated from law school.

Jack: For about the last 20 years. At the beginning, I did not do bankruptcy law. We kept getting requests for it and so finally, I decided to get into it.

John: What is it that inspires you?

Jack: I can't tell you how many people said, "When I came in here I felt horrible and somehow I left all my headaches on your desk." We get people a fresh start, people that are losing homes and have had catastrophic medical bills. They're being hounded or sued, and their life gets better. That inspires me.

John: Can you describe the difference between Chapter 7 and Chapter 13?

Jack: A Chapter 7 is very short. Start to finish it's about three to four months on the average case. It's designed to eliminate debts. In most cases you keep the things you want, like your car or your home. A lot of people say, "Why would anyone ever file a chapter 13?" Chapter 13 is very different. It's three years to five years.

You're making a monthly payment in a chapter 13. There is no monthly payment in a seven. Let's say somebody's losing their home and they're behind 10 payments, they're facing foreclosure. We can take all the payments they're behind, put them into a repayment plan, and save the home. One is designed to make a payment and save assets. The other one is designed to wipe out debts.

Having said that, in the 13, you don't have to pay back things like credit cards, medical bills, etc. You're paying back the essential things you want to keep.

John: Let's talk about taxes that are dischargeable in bankruptcy.

Jack: People will come in and say, "I've got a lot of tax issues." First, we try to see what type of tax. Is it income tax or is it sales tax or personal property tax? What type of tax is it? If it's income tax, we have a chance to get it discharged or eliminated. We have to look beyond that and to see how old the taxes are and what tax year. Has somebody filed a tax return or is the IRS sending them letters saying you owe us? There is an analysis we go through to see if the taxes are dischargeable.

John: I know there's a three-year rule, a two-year rule and this 240-day rule. The tax has to be at least three years old. Not only does it have to be three years old or older, then the tax return that it relates to has to have been filed within the last two years.

Jack: Yes, and it has to be filed by the individual, not filed by the IRS or something.

John: That's known as "substitute for return" or SFR. The 240-day rule applies to additional assessments of tax for years that you have already been previously assessed.

Jack: We have to make sure that even though those are the time periods, three-year, two year and 240 days, but nothing's happened during those time periods, that would keep the clock from ticking. We call it tolling the clock. Let's say somebody was in an offer in compromise for a period or had spent some time in a Chapter 13 during the middle of this. It stops the clock from ticking. It has to be three years, but we do have to look, is there any time during that three years the clock wasn't ticking?

John: You could have a tax that's five years old but it's still not dischargeable because of the collection statute that may have been tolling because of a pending installment agreement or an offer in compromise. With respect to the trust fund recovery penalty. The tax that's assessed against an owner of a company for not paying payroll taxes, that's never dischargeable. Anything that might have to do with tax fraud also not dischargeable. Penalties and interest that are associated with dischargeable taxes are also dischargeable.

We mentioned substitutes for return. The taxes associated with a year that includes an SFR are never dischargeable even though you may subsequently file an actual return to replace the SFR and the actual return is accepted by the Internal Revenue Service.

Jack: Sometimes that's hard to explain to people. They don't quite understand why that is, but it is a rule.

John: One thing that I also wanted to cover, and you know more about this than I do. A lot of times folks go out and they borrow money on a credit card for example and they use a cash advance to pay taxes that were non-dischargeable. Is the debt that they incurred to pay a non-dischargeable tax, is that dischargeable?

Jack: It can be. If they took out the money on a credit card or some other credit device with the intention of filing bankruptcy, then I would say it's not dischargeable because there are some reasons that are defrauding the creditor. Taking out a loan, knowing they're going to file, but if in good faith they took out the cash advance or loan

and then sometime later ended up filing bankruptcy, then we can get that discharged.

John: Whenever I'm developing a plan to resolve an IRS tax debt issue, I consider every option including bankruptcy because sometimes a troubled taxpayer can qualify for a manageable installment agreement were it not for all these other monthly minimum payments he's got to make on the credit cards. Even if the taxes aren't dischargeable, the other debt may be.

Jack: I had a gentleman come in with quite a bit of tax debt. Some was going to be discharged, but some was clearly not dischargeable. He was carrying about \$70,000 in credit card debt. By filing bankruptcy, we got rid of some of the taxes, credit card debt and that gave him cash flow after his bankruptcy is over and he did the Chapter 7. It was over in three or four months. Then, he was able to set up a meaningful installment agreement with the IRS to pay off the taxes.

John: If you find that your taxes that are not dischargeable, I think the circumstances can't get any better in terms of filing an offer in compromise post-bankruptcy because generally, your financial situation immediately following discharge or bankruptcy is often the best-case scenario for an offer in compromise, because your reasonable collection potential is likely at its lowest point. Even if you don't qualify for an offer of compromise at that point, then you certainly qualify for an installment agreement or getting placed in currently not collectible status.

Jack: I think that's where it's important. There are people that sometimes don't need a bankruptcy because they have a

small amount of non-dischargeable tax debt but they're drowning, and we can usually send them to a professional and they can work out something with the IRS and avoid bankruptcy. However, there are other people that need the bankruptcy regardless of the tax issue, so they can pay off the non-dischargeable. There's some people we can work miracles. File the bankruptcy and a quarter million of taxes go away that have been following somebody. We did that not too long ago and the lady couldn't have been happier.

John: One of the reasons I refer to a bankruptcy attorney is because it's often cheaper than it is to work through a long and complex process with the IRS. Moreover, bankruptcy stops enforced collection immediately because of the automatic stay.

Jack: I like to say it stops the bleeding so then people can line things out and truly start down a new path.

John: It can be used as a device to force the Internal Revenue Service into an installment agreement because there are a lot of folks out there that have already defaulted on two, three, four installment agreements. The IRS, they've had enough. They don't want to get you another new installment agreement no matter how much you agree to pay. Bankruptcy can force them into an installment agreement.

I always find that when I'm talking to bankruptcy attorneys about installment agreements and offers in compromise that the rules with respect to representation in bankruptcy court and determining your monthly payment are very similar to the rules that the IRS looks to in their Internal

Revenue Manual to determine what your monthly payment is.

Jack: They are very similar. In fact, in 2005, Congress created a means test, which is an income test. It's about 10 pages long and among other things, determines whether somebody is going to be a Chapter 7 or a Chapter 13. When we use the means test, about a third of it, we don't get to put any numbers in that have anything to do with reality. If it's a household of four, Midwest region, we click, and it fills in the IRS guideline. Not only is it similar, much of it is really connected to the IRS guideline and that's what we are forced by Congress to use for certain expenses.

John: In terms of the tax lien, what happens to a tax lien in bankruptcy?

Jack: A tax lien is not going to be discharged. It's not going to be eliminated. It's not going to go away. It will survive the bankruptcy so that's one of the real heartbreaks. When somebody has let their taxes go long enough that the IRS or state has decided to file a lien on the taxes because the bankruptcy, the automatic stay does stop the collection activity, but it does not make the lien go away and at the end of the bankruptcy, the lien survives.

John: What happens to non-dischargeable tax debt in a chapter 13 once the five-year period expires?

Jack: The non-dischargeable tax debt is normally paid off. There are three categories of taxes in bankruptcy. One is secured, which are tax liens normally. Two is priority, which means debts that are not going to be discharged or will survive bankruptcy, and then unsecured. Unsecured, those taxes

are almost like a credit card; they get wiped out. At the end of a Chapter 13 the unsecured portion, if any remains, is discharged or eliminated. Normally, the priority has been paid and the secured has been paid. If the bankruptcy is done right and people go all the way to the end of it, there shouldn't be any portion that is no longer dischargeable and so if they paid all the secured, then the lien will be satisfied because it's been paid.

However, sometimes we have to convince the IRS to clean up a little paperwork afterwards because they don't always notice they need to remove the lien.

John: There's a big difference between lien release and a lien withdrawal. If you have a choice, you'd prefer it withdrawn as opposed to released. Now, one of the objections I get from clients and prospects is that when I tell them that bankruptcy is an option, one of the first things they say is, "I can't file bankruptcy. I make too much money." When all they have is tax debt, and their unsecured debt is relatively low in comparison to the tax debt, one of the first things that I tell them to ask the bankruptcy attorney is, "How is the tax debt viewed in terms of the means-testing?"

Jack: Tax debt helps a great deal on the means test because one of the things they set up is a category where you list these priority debts. In other words, the tax debts that are not going to be discharged. In the means test, they get treated specially. Because they have to be paid by basically making sure that you're not going to have to pay anything towards credit cards or medical bills or payday loans or signature loans. They're very helpful when there are priority debts on the means test.

John: What about negatives with respect to bankruptcy? Generally, people see it as the last resort and even if it is their last resort and it's something that they need to do, there's this stigma associated with it.

Jack: I think if we were to get in a time machine and go back to 1950, there'd be a stigma associated with divorce. Somehow, society has moved in the divorce realm to when people get divorced, people don't take a gasp and go, "Oh my gosh." People get divorced. Bankruptcy has not seemed to progress into the mainstream as much. There are people that we see all the time. They will ask things like, "Is my dad going to find out about this? Will my employer find out?" There is a stigma that people associate with it. By the way, it doesn't get published.

You can't Google somebody and find they've filed bankruptcy unless maybe it's somebody famous because then it gets out in the tabloids. It's as private as you want to keep it, but I think there is an emotional element. People sometimes will tell me, "I feel like a failure." I said, "No, the failure would be to keep on going like you're going, perhaps lose your house, not be able to take care of your kids as well. Let's do this and move on." Surprisingly, all the time we get letters from people, emails, photos saying bankruptcy is the best thing ever, "We just bought a house."

I know people aren't supposed to file bankruptcy just to go to Disney but that's not what it is. They've gotten rid of a catastrophic amount of debt sometimes and they've been able to get their life lined out and things are going well. They got some promotions and a result that nobody seems to think about is it helps marriages. Finances are a real

pressure point on marriages and I see people coming in on the brink of divorce and five years later when the bankruptcy is over, they're doing much, much better.

John: Right, because it's always somebody's fault.

Jack: This is a typical scenario. Husband and wife come in. Husband goes, "I don't know. I work all the time. I don't know what she does with the money." She cowers in the seat and goes, "Well." I go, "Did you buy anything for your husband with this?" Yes, I bought this, this, this, this, this. I said, "Sir, where do you think that money was coming from?" I don't know. I said, "Moving forward, I want you to work on finances together," and I said, "You both benefited from the debt. Let's move forward as a team."

John: The other thing that's associated with the bankruptcy or the fear that people have is that it's going to ruin their credit score. But one of the things that I find, with rare exceptions, is that usually when they're at the point where they're even considering bankruptcy, their credit is shot anyway.

Jack: For probably 95% of the people, their credit scores are shot and filing bankruptcy sometimes doesn't drop it all or drops it minimally. The real key is what happens after bankruptcy. If after bankruptcy, let's say you have a house you're paying on and after bankruptcy, continue to make late payments on it. You continue to make late payments on your car. Your score is never going to come up but that's not a bankruptcy issue. That's a lifestyle issue. I will tell you most people that share their credit score postbankruptcy after a Chapter 7. Within two, two and a half years, their scores are anywhere from 650 to 750. I can't

guarantee that because those are the people that did things right.

People can buy homes, buy cars, and do everything they want to do. Build businesses. It can be either the worst thing you did or the best thing you did. It's up to you what you do with it.

John: I've got war story after war story where someone's come to me drowning in massive IRS debt and in a period of three years, they've been able to grow their existing business, sell it, and start a new business or something similar and it goes back to what we were talking about. What it is that inspires us. You said it at the top of the discussion that bankruptcy is a mechanism whereby honest people can get a fresh start. It's not about trying to game the system because I don't know of anybody who does it intentionally. I don't think I've ever seen one in my career.

Jack: I think there's an interesting thing out there. A lot of people assume that the person filing bankruptcy lives in a shack or something that's falling apart and can barely put food on the table. That's not what we see. In the last year, we filed for medical doctors, chiropractors, accountants, factory workers and acupuncturists. You name it. It's every segment of society that we file for and it's interesting and I do think the financial fall of 2008 when many businesses went bad, filings were so high that it has made more people say, "You know? Just like if I was in criminal trouble I would hire an attorney or if I was in divorce trouble I would hire an attorney." They're starting to go, "I'm in financial trouble. I need to hire an attorney," or go to a CPA that can work out an offer in compromise.

Unfortunately, they wait sometimes way too long, and they could have done it two years before and had a better result.

John: I've been to these trustee meetings with clients and they're very fearful going into it but they're almost relieved to find out that it's standing-room only in the federal courts building because it's not uncommon anymore.

Jack: I had a situation in 2008 where a gentleman who I walk in with and goes, "What is my boss doing here?" I said, "Well," I said, "I can assure you he's doing exactly what you're doing." Come to find out, I represented both. Before it was over, they were laughing about it, but the boss filed bankruptcy to get rid of about \$100,000 of unsecured debt, credit cards, etc. so he could keep his business going. He was there partially to keep my other client employed. They were laughing it up when they left and went on their merry way.

John: What do you think is the biggest mistake people make when they get into trouble?

Jack: I think the biggest mistake is that they start emptying out 401Ks and IRAs trying to pay off debt. They pay off a bunch of credit cards. Two years later, they've run the credit cards back up and now they have credit cards where they need to file bankruptcy on and no IRA or 401K. Some people take it beyond that where they not only get the IRA, the 401K, they're taking out pay day loans, they're taking out unsecured loans, they're taking out secured loans. They're taking on more debt to try to deal with the problem rather than eliminating debt. I think that's the number one problem.

John: If I'm Joe Citizen out there and I know in the back of my head that things aren't all that good financially for me, what are some red flags that people should look at to determine that it's time to talk to somebody like you?

Jack: I would say normally they could look at their budget and figure it out but frankly, many of the people we deal with don't have budgets. They've never budgeted. First thing I would say, ask yourself this. If I'm driving down the road, my car has difficulties, it's not under warranty and I've got a \$1,500 repair, am I going to have to put that on a credit card or am I going to be able to pay for it in cash? If you have to put it on a credit card, I think that's a little bit of a red flag. Now, there's nothing wrong with that credit card if you can really service the debt. Then people start buying groceries on credit cards. If you're not covering with your income your ordinary expenses and are looking for other sources, I think that's a big red flag.

## CHAPTER 9

# Jeff Long

Inside the IRS - No, really INSIDE the IRS

Jeffrey Long is an Enrolled Agent, and is the Managing Member at Resolutax Advisors, LLC. His firm specializes in defeating the filing of the Notice of Federal Tax Lien (NFTL) and focuses on complex tax problem resolution. Jeff is considered an expert in stopping the IRS from filing NFTL's, which kill



businesses, careers and credit ratings; along with getting existing NFTL's withdrawn.

Prior to founding his company in 2012, Jeff represented clients with tax problems before the IRS and helped commercial property owners receive significant tax savings. Before working with taxpayers, Jeff worked on the other side of the fence as a tax auditor and revenue officer at the IRS.

He spent 12 years in the U.S. Air Force as a Hurricane Hunter, flying into the eye of a hurricane 66 times. Jeff was also a professional blackjack player for five years.

John: We're talking about the IRS. Inside and out. That's why it's my pleasure to talk with Jeffrey Long. He dedicates his time to tax problem resolution, representing people and businesses who find themselves facing the IRS's aggressive

enforced collection efforts. Jeff also worked at the IRS for six years. First, as a tax auditor, then as a revenue officer.

Because he has worked both for and against the IRS, he is uniquely qualified to speak from both perspectives. I'm very much looking forward to our discussion.

Welcome Jeff, thanks for joining.

Jeff: Thanks for having me, John.

John: Where did you grow up?

Jeff: I grew up in the horse farm area of Lexington, Kentucky.

John: What inspired you to become a Hurricane Hunter?

Jeff: I've always been science-oriented, and I knew at a young age that I wanted to go into the Air Force. I went in as a weather observer, working in a weather station. Not even being a year in, I was selected by people who were grooming my career. They selected me as a Hurricane Hunter, which is a rare opportunity. There are 4,000 enlisted weather people in the Air Force and they only chose 10-15 of us a year to become Hurricane Hunters. I jumped at the chance. I spent several years doing that and would do it for free now if they'd let old guys fly into hurricanes.

John: I've seen pictures from inside the eye of a hurricane before and they're stunning. That must have been a thrill.

Jeff: There was a lot of violent flying and you were flying half your flights at night. A challenging job but we got to see

most of the northern hemisphere and had a wonderful experience. Great time in my life.

John: You pivoted to becoming a professional Blackjack player, which is quite a change. Was it as glamorous as Hollywood portrays it?

Jeff: I think the way that Hollywood portrays it is fantasy. If you go that route then you'll be kicked out—what's known as being 86'd--and you wouldn't be allowed to play. I wasn't on a team, I practiced on my own. I became perfect at it. I played 45 minutes to an hour every 8 to 10 days. I kept spreadsheets on which casino I was at, which dealer, which pit boss, and rules of each table. I found the rules that worked best. I would only play the dealer and me, heads up. There was nobody else at the table.

I wanted to get in, make my money, get out, and I wouldn't be back to the same casino for a couple of months.

It was fun making the kind of money I made. It was a tremendous living and I don't believe that people could actually do that today. There's a radio frequency ID Chip in the chips at every major casino, so they know exactly how much money you're moving in and out. They can see how you're varying your bets, their cameras from the ceiling can discern whether you're an advantage player, rather than an average player applying good basic strategy and they simply will not let you play very long.

John: Today we're going to be talking generally and specifically about the IRS but first, could you explain what is an enrolled agent? Everyone has an idea about what tax

attorneys and CPA's do, but tell us about the EA designation.

Jeff: An enrolled agent is a tax professional who is sanctioned, or licensed, by the Treasury Department, in the practice of tax preparation and can represent a taxpayer in an IRS audit or collection defense. We do get our license at the Federal level whereas a CPA or an attorney is licensed at the state level.

John: I often hear folks telling me that, "My tax guy was with the IRS, so he knows about the deductions and what I can and can't do." Does being a former IRS employee necessarily equate to better representation before the IRS?

Jeff: I happen to be both, former auditor and a former tax collector or "revenue officer". If you spent 30 years as a former auditor and now you're working in tax collection, you simply do not have the collection background, even though you can learn that. That's two different fields and I'm not sure that even though the representative would know some of the ways that the IRS works and the function of the IRS, I'm not sure that someone who only worked as an auditor would know much about collection and someone who worked as revenue officer—a tax collector—would know anything at all about audit.

John: That's a point I wanted to talk about was that most folks don't understand that when they're talking to the IRS they're probably talking to collections. They're two separate divisions: audit and collections.

Jeff: I know dozens of current/former IRS people and I only know one who did both: became a revenue officer and/or a

revenue agent or a tax auditor, so it's very rare. When you work at the IRS, you almost always stay in the one division. Auditors are concerned that the tax is correct and couldn't care less if it's collected. They might offer you a form to fill out to set up an installment agreement right off the bat but other than that, they have no idea whether any of the money is collected. When you're talking to a revenue officer who comes knocking at your door, your place of business or your home; they will collect any tax returns that haven't been filed. But honestly, they do not care if the tax was computed correctly. They're only interested in collecting the tax that's owed.

When you're talking to the revenue officer, they're merely looking at whether you signed the return and whether it's properly dated. Other than that, it's very rare for a revenue officer to spend even one minute flipping through a tax return to try to figure out whether that return's viable or not. And even if he wanted to, he's not an auditor, he can't select you for audit, he can't make changes to what's on your tax return.

John: What I'm hearing you say is that there's a different skill set, and a knowledge base required for IRS exam defense as opposed to IRS collections? A practitioner skilled in audit defense may not be suitable to represent you in collections?

Jeff: It's night and day. Most lawyers, CPA's and EA's are reluctant to get into collection cases because it's a field that has relatively few resources for learning which makes it difficult to gain the requisite skills. There's plenty of guidance for the practitioner to learn enough about issues that are subject to examination; almost none about how to

represent clients before the collection division of the IRS. I get a lot of referrals from professionals who do wonderful audit work. It's quite common.

John: Let's discuss IRS audits. Not all of them are the same. What are the various types of IRS audits?

Jeff: The IRS is busy collecting information pretty much yearround, so one of the most frequent audits is an audit of underreported income. That'll come to you in a Form CP2000 and that form essentially says, "we've been made aware of income that doesn't appear on your tax return." That's not a letter generated by a human at the IRS. That just comes out automatically. That letter gives you the opportunity to send in documentation that would prove that that income is not reportable. If you don't respond to it at all, they will assess the tax. They effectively amend your return, without you signing it. Eventually, they get around to collecting it.

The CP2000, for underreported income, is the most common, but it is an exam.

John: What goes on behind the scenes?

Jeff: Every 10 to 15 years, the IRS randomly selects returns for exam or audit. This is done for each of the various business codes. When they do that, there's a mathematical formula and they will audit every 10 to 15 years about 50,000 tax returns that are statistically relevant to various industries over the entire United States, so they'll rebuild the database and then they know what to expect to see, given the industry you're in. They'll look at so many plumbers and how many plumbers that make X dollars and what

does a normal plumber deduct and then if you are a plumber and you are deducting a lot more than a normal plumber, your chances of being audited are higher.

They generate what's called a DIF score, and DIF is very similar in a way to kind of like your FICO score for your consumer credit report. No one really knows what's in that black box, but I can tell you from my experience as an auditor for 2 years, the higher the DIF score the higher the likelihood that the IRS selected the return for exam. I never saw a DIF score of 100 or 150. I saw DIF scores of 350, 400, 500. The higher your number in your DIF, the "discriminative income function" is what it stands for, the more likely you are to be selected for exam.

The IRS has a limited number of people. They can't audit everybody every year and IRS puts out numbers every year on what your chances of audit are. If you end up on a tax compliance officer's desk, which is a desk auditor, or a revenue agent who's going to come out to your home or your business and conduct the audit, then the chances are there's something either really wrong on your return, you underreported income significantly or you've taken inordinately large expenses that you drove that DIF score so high that the IRS is all but certain that when they spend the time in an audit, they're going to find adjustments.

Your client should think of an adjustment as a big fat tax bill. Anymore, if you get an audit from the IRS and you're talking to a human, you're likely to get a tax bill. The likelihood that you're going to get out of the audit unscathed and not owe taxes is very low.

John: You mentioned a revenue agent coming out to your home

or your place of business. That doesn't always happen though. They may just be able to handle it through the mail with the revenue agent.

Jeff: That's known as a correspondence audit. They'll ask you to send in your bank statements and proof of your expenses. The IRS is going to look at your three largest expense items. They'll look at four things; they'll look at your income, always. If you have cost of goods sold or inventory, if you're in business and then they're going to look at cost of goods sold, and inventory is the second item. Then they'll look at your second, third, or fourth largest expense item.

That's generally what an audit is. Income and the three largest expense items.

John: You could wind up with a higher DIF score just by virtue of the fact that you make a lot of money.

Jeff: If you have a large jump from one year to another you can raise your DIF score or if you are performing a lot better than the industry average. Or a lot worse. If you are a brain surgeon and you only made \$10,000 in the year, I'm thinking your DIF score goes through the roof because brain surgeons probably make that in a week or less.

My practice is mostly collection matters, but when I did a lot of audit representation, I used to tell people, "Pigs eat and hogs get slaughtered, do not get greedy." When I worked at the IRS, I did about 900 audits of small business/self-employed taxpayers in Phoenix, Arizona. Almost without exception, not only would you see some underreporting of income, but you would just see obscene

expenses. The person doesn't want to report income, but they want to nickel and dime the IRS and take every expense. For example, if they take their family along on a business trip to Los Angeles and visit Disneyland and that costs \$10,000, then every single thing they did at Disneyland is deductible. It's not.

John: What should somebody expect once they've been notified and they've set the appointment. Take us through the process, what's in the examiner's head?

Jeff: The examiner has already made a lot of assumptions. They have a lot of information at their disposal. They're looking at all of your income, they're checking with the DMV, which automobiles you own, they're looking if you have a website, they're certainly going to look at a business website, and even Facebook. If you're on there bragging about how great your business is. There are just so many ways that the revenue agent or auditor can put together information on you. They're coming into this with a lot more information about you than you're aware of. You have to make that assumption.

The next assumption they're going to make is that your books and records are less than adequate. I'll give you a perfect example. Most people who are in business have business mileage they take for their car.

The IRS requires you to have a written car and truck expense log. You must log where you go, you have to at least once a week categorize where you went, what the purpose was, how many miles you drove. They're also going to bookend that by looking at some kind of third-party documentation. Some kind of receipt from a

mechanic or something that locks down mileage at the beginning of the year and the end of the year, something that supports what the actual mileage was.

I'll give you an example of a case that I remember, a realtor that I was auditing who claimed 60,000 miles in mileage that year. "Well, where's your mileage log?" "I don't have a log." Well, I'm not required to ask any further question as an auditor. I think she claimed the standard mileage rate, I think it was 48, 50 cents a mile. I disallowed the \$30,000 deduction, and I assessed the 25% accuracy-related penalty.

John: There is some give-and-take in certain areas, but it all depends on the discretion of the IRS examiner.

Jeff: If you have no records of an expense item, then the IRS is not required to look at it at all. There was the old Cohan rule, George M. Cohan, the music composer who won a case against the IRS where the court ruled that if the IRS is going to assume you're in business and you have business income then they're going to have to assume some minimum amount of expenses. But the IRS has chipped away at that over the years. That rule no longer applies in most cases.

In an audit, if you can't come up with receipts for deductions, they will be disallowed. And your credit card statement is not a receipt. It's not proof of payment. It's not the full chain for proof of payment. The IRS doesn't have to spend any time at all. They disallow that expense item and move along. Documentation is critical if you're to survive an audit.

John: What can you do if you don't agree with their findings?

Jeff: If you don't agree with their findings you have an appeal right. They're going to mail you a bill. If you don't appeal, then you get 90 days to petition the US Tax Court. If you didn't have expense receipts at the audit, can you find them before you have to appear in Tax Court? Not likely.

In my experience, people don't fare that much better in Tax Court. I will say to you though, that Tax Court is limited in every jurisdiction. The Tax Court judge only wants to hear 10 to 12, maybe 15 cases every 90 days or 120 days that they're in town. I know that in the Phoenix, Arizona area there were 300 cases docketed every quarter.

The IRS does not want to anger the judge and have him listen to 300 cases, so they'll whittle it down to 10.

There is a strategy that I employed to help my clients when I used to do audit defense. File a petition in Tax Court, \$65 I believe it is, to docket into Tax Court, and hope that the IRS will apply what they call the "hazards of litigation" test. What are the chances that we're going to have to litigate this and if we do, what are the chances we lose? It's not a 50/50 proposition. The IRS needs to be confident, in their own estimation, that they're going to win two-thirds of the time. If they don't think it's more likely than not they'll win, then the hazards of the litigation test tells them they need to settle.

Let's not forget that if your case makes it to Tax Court, it's now a matter of public record. You should consider that before you petition the Court.

John: Let's talk about the collection division of the IRS. Let's look under the hood there.

Jeff: The reason I moved when I was in IRS from audit to collection was that I knew that one day I didn't want a career in the IRS, a 30-year career. I eventually wanted to get out. Hang my shingle and represent taxpayers. It occurred to me after sliding hundreds and hundreds of bills across the table and just winning every case. I think only 3 or 4 taxpayers won in the 900 cases. What I mean by win is the return was found to be substantially correct and they had no additions to tax. Those are the odds that you have.

It occurred to me as a future representative, that it doesn't matter to me how much a client owes. It matters at the end of the day how much the IRS makes you pay and how painful is the collection process. I decided early in my career to cross-train and become a revenue officer, otherwise known as an RO, and I spent close to 4 years as a tax collector for that very reason.

I think there's the stick and the sharp end of the stick. The stick is audit, they'll thump you with it. The sharp end of the stick is collection. They poke you with the sharp end. Most of my time at the IRS was spent in the collection division and that's where 99% of my business is now—working the collection matters, not the audit matters.

John: In your view, how does the IRS look at the delinquent taxpayer in general?

Jeff: The delinquent taxpayer is guilty till proven innocent. Given the manning of the IRS now, not only just in audit

but particularly in the collection branch, there are so few revenue officers left that if your case actually percolates out and is assigned to someone, they'll be knocking on your door. They know you owe the tax.

They're going to assume you owe the tax, and if you're one of the many people who has ignored the notices that IRS has been sending you in this long stream of letters, then you really don't know where you are in the process, but the IRS is going to assume that you are a "won't pay". They're going to be ready to move rather quickly to levy you, levy your bank, they're going to levy your wages, and most of your readers would know that as a wage garnishment. They'd be very quick to put the notice of Federal tax lien down and notify the world that you will not pay the IRS and that they're owed a large sum of money. In rare cases, they actually seize property.

If you're a business, they may seize some assets. If you have a second house they certainly wouldn't mind seizing your rental property. Generally, they will not seize a primary residence from a taxpayer. The only cases I've ever seen of that is some kind of fraud-related situation or if it was a criminal tax evader who was likely to leave the country, then they would go ahead to try to seize the house under what they call a jeopardy seizure.

100% of the time they assume that this taxpayer is a "won't pay" and that they're going to have to use what they call enforced collection methods. That's levy, garnishment, seizure—rare, but it happens, and lien, which is public notice that you owe a significant amount of money and that IRS is in first place, generally, to get paid before anyone else does.

John: Most people will say to the IRS, "It's not that I won't pay, it's just that I can't pay," or, "I need more time."

Jeff: If I'm representing you, my goal is to get them, as soon as possible from the first contact with the IRS, to have them change gears and no longer see you as a won't pay, but see you as falling into one of the other two categories, either a "will pay", or a "can't pay".

Revenue officers, 90% of them are very professional people, they don't have a personal stake in the case, they really do work the case professionally. But they've got very draconian guidelines in the Internal Revenue Manual, though, about what you're allowed to live on if you owe money to the IRS.

I think that most taxpayers, if they try to represent themselves, the first thing they're going to do is to appeal to the humanity, the empathy of the revenue officer and that's simply not going to cut it. The IRS doesn't care what your personal problem is. If your personal problems are severe enough to where you can't put food on the table, then they are required to look at that, but the average taxpayer doesn't even know how to document their case properly to show what would be considered a hardship case. You have to prove it.

John: Let's talk about that for a minute because almost 100% of the cases that come to me, they're pleading poverty when they've got two kids in college at a private school and they've got a house at the lake and they're living in a 4,000-sq. ft. home and certainly in their view they're living paycheck to paycheck.

Jeff: I would say to you that unless you're Bill Gates or Warren Buffet, then there's always somebody who's living better than you. It's too easy to get credit, it's too easy to have two \$900 car payments, and it's too easy to have a big house payment.

Many clients have a minimum of \$2,500 a month in credit card bills. IRS barely allows you anything for credit cards if they allow you anything at all when you start getting into negotiations on how much they expect you to send to them every month and how much they're going to allow you to live on. There's a stark difference between the IRS guidelines and what the taxpayer views as a reasonable monthly payment.

You have to remember that an experienced revenue officer might be making 70, 80, \$90,000 a year and they're probably not driving a \$900 a month car, and they're definitely not living in a house that has a \$5,000 a month note on it. They're not likely to be sympathetic to your case.

To take the emotion out of this process and to make it seem fair and professional, the IRS uses Bureau of Labor Statistics standards, which are similar to the criteria used if you were to go into a Federal bankruptcy court and they have, based on the county and then some cases the city that you live, they have a breakdown, guidelines based on the number of people in your home, as to what you're allowed to live on a month. X dollars for housing, X dollars for utilities, X for food, X for cars. For example, in California, they allow \$517 per month for car ownership. Regardless of how much you really spend.

John: They're trying to come up with what they call, "Reasonable Collection Potential," commonly referred to as RCP.

Jeff: How much you earn per month less your "allowable living expenses"—that's RCP—they're expecting you to pay that excess.

John: The RO has quite a bit of discretion, and it depends on how well you're able to present the case and document the case.

Jeff: That's the knowledge that a seasoned representative has that the average taxpayer trying to represent themselves simply cannot bring to the table. I read probably 3 or 4 hours' worth of Tax Court cases a week, I'm always looking for the nuance. All of this is gray, it's a very nuanced thing and I fight for every expense item for my client. If my client has a \$5,000 a month house payment, then I need to show why they need to live in that house. Do they entertain a clientele at their home that helps them earn significantly more than an average income in the United States? And I win that all the time.

I won one with an attorney that wanted, I believe it was, \$1,200 a month for a country club membership. The revenue officer initially just laughed so loud they almost fell out of their chair, but I proved to them that something on the order of 30 to 40% of the income for this attorney came from people that he met at the country club. After walking them through the facts, they agreed, and they allowed him \$1,200 a month in "advertising". I said, "Well, he's a walking billboard, he's in there, he's meeting people." We won that one.

I don't think that the average person trying to represent

themselves, and for that matter, even some practitioners out there that just aren't as well-versed in collection, would know how to properly argue that.

John: There is a common misconception that most taxpayers have, and it's largely due to these large resolution firms that promise the sun and the moon. They all seem to make the same claim: "We can settle your case for a fraction of what you owe."

leff: They're referring to what's called the "offer compromise" program. It exists, the IRS approves those day in and day out but the bar you must reach for offer in compromise is very high. Do you have any assets at all? A lot of people have equity in their home, they can't reach it, and they're tapped out. They couldn't possibly get a home equity loan because their FICO score is low, but the IRS goes on zillow.com, they say, "Wow, this house is worth \$660,000." Let's say the balance of the mortgage is \$400,000, therefore the taxpayer has \$260,000 in equity. If you only owe \$100,000, or for that matter, if you owe \$250,000, the IRS is not going to settle for less than what they believe your net assets are worth plus a multiple of your remaining monthly income.

The offer in compromise program is wonderful but here again, you get into these draconian limits on monthly expense items that the IRS will allow when determining your remaining monthly income. Much like Reasonable Collection Potential in the context of Installment Agreements, similar guidelines apply. I'll go back to the \$517 a month car payment. If you have two car payments that are significantly higher than the standard, you could, conceivably have \$2,000 per month of car payments.

You're only allowed about \$1,000 per month. The IRS will disregard the excess when they compute your remaining monthly income. You're between a rock and a hard place.

John: The number that you're throwing out for automobile expense, that varies depending on where you live. I know here in Missouri, at least in the Midwest, it's closer to \$470.

Jeff: Few people have a car payment that low. I think that the IRS looks at probably a 20 or \$25,000 car as average and if you've shopped for cars lately, I'm not sure if a \$20,000 car exists in the United States, but that's the kind of car that they would allow you to have.

John: There's no polite way to say it—if you owe taxes and you have net assets and discretionary cash flow, the IRS will be expecting you to change your lifestyle. Negotiating becomes a matter of justifying your current lifestyle.

Jeff: It gets much worse than that. For example, I've had revenue officers tell my business clients that they are spending too much on advertising. Now, how can the IRS tell my client how to conduct business? They'll try, but it's my job as a representative to really whack them back and say, "No. He's not spending anything more than anybody else in the industry; in fact, he may spend a little bit less. Every time he runs an ad he gets three new clients and that ends up being X dollars so don't tell my client how to operate their business."

Once you've got the IRS looking at you as either "can't pay" or the "will pay" category rather than a "won't pay", then you're getting into the collection information statement, where they're really going to look at all of your finances.

How much have you had come in over the course of the last year, what's the average month? Do you like to eat out? A lot of my clients can spend \$300 on a meal out. I don't know where they do that, but I can tell you that when a revenue officer sees a \$300 charge for a meal out when the IRS is apt to allow you 4 or 5 or maybe \$600 a month in total for your meals, and you've got a \$300 expense item for one meal out, then they are not going to be sympathetic to your cause.

John: If you can't document any reason for your expenses to be higher than what the IRS is going to allow you, you're going to wind up with a monthly payment that you didn't see coming.

In a very broad sense, assuming you're not a "Won't pay" and you've convinced the IRS to negotiate, then you'll fall into one of two categories: "Can't pay" or "Will pay". If you're a can't pay, then you're either currently not collectable or you're a candidate for an offer in compromise. If you're a will pay, then you're negotiating an installment agreement, and you're going to want an affordable monthly payment.

Jeff: Now you're in a discussion about a payment plan with the IRS, what's formally called an installment agreement. For allowable expenses, we go right back, particularly if you owe \$50,000 or more, we go right back to the same formula. What they will allow you for housing, utilities, medical, all your expenses, cars. We haven't mentioned how they compute your gross income. The IRS comes up with a number that will shock you. They will look at your gross earnings, particularly if you are seasonal. So, you're in retail and you're paid a lot of bonuses at the end of the

year. If they look at the three months of your bank statements that just happen to be the last three months of the year and they extrapolate that out over 12 months, when maybe 60, 70% of your income is in the last quarter, then they're going to come up with a totally different number that's not pegged to reality at all on how much you make per year. That's where you need to go in and say, "No, you need to look at the seasonality of my income."

I've had cases where I've had to have the IRS look at a 3 or 4-year income stream to try to come up with some realistic averages.

John: The average person isn't going to know what to do at this point. The IRS just puts it on your plate and you pretty much are expected to accept it.

Jeff: I'll tell you one of the first questions they ask you and it sounds innocent enough, but when you're trying to represent yourself the IRS will say, "Thanks for the call, can you tell me where you bank?"

The IRS is doing its job. They're trying to locate what they call levy sources. Who can we send a letter to have them involuntarily send us the taxpayer's money? Where do you bank, what's your bank account number? They know where you work. If you've got a W2 and you've worked there for over a year and if you're still with the same employer they know it, they'll ask you that anyway. Where do you work? They want to know where to send the wage garnishment order.

John: We ought to mention that there are streamlined agreements out there that are available where you don't

have to reveal all your financial information or very little of it.

You must first qualify for those streamline agreements before the IRS will accept them, and if you've defaulted on an installment agreement in the past there's a good chance that they're not going to give you a streamline agreement and you're going to wind up having to provide financial information.

Another situation that I see often is defaulted agreements. They're in an installment agreement and it comes time to file their current year's tax return and they can't afford to pay it. They'll file the return in October, say, with a balance due, hoping that they can come up with the money before the end of December. But they're in technical default of their installment agreement and the IRS can begin enforced collection.

Jeff: The IRS computer, no human at IRS knows you've filed a return with another balance due on top of a balance due that you were already paying on. Instantaneously the IRS computer says this taxpayer has defaulted. Within a number of weeks, you get a letter that says you defaulted your installment agreement. The IRS doesn't do a very good job of explaining to you all the things that will get you in trouble. If you have a representative, your representative certainly should tell you cannot file another tax return now where you haven't paid in full because that puts us right back to square one.

The problem is a lot of clients, by the time that I've seen a client, they have defaulted three or four times on

installment agreements. The IRS is not required to work with that taxpayer anymore.

They can go straight to levy, they're just going to levy you into oblivion. If you're a business, they're going to levy your receivables. They've got a list of your accounts receivable. Except for the notice of Federal tax lien, I can't think of anything worse for a businessperson than to have a collection letter showing how much you owe sent to each of your customers. It's a business killer, but they will do that.

John: Can you describe, briefly, the difference between a levy and a lien?

Jeff: Most tax representatives around the United States do not spend any time looking at the lien, either. In my practice, I'm certain that liens are business killers and career killers.

Let's step back and examine the nature of a lien. The difference between a lien or a levy, the levy is the IRS taking something, generally your money. The lien is the IRS filing public notice at your county courthouse or Recorder of Deeds that you owe the IRS an amount of money. They have a claim on all of your assets. The assets that you now own and any assets you later acquire.

The document has a ton of information on it. It's got the last 4 of your social security number, the last 4 of your EIN, it gives your exact name, it gives your last known address, it gives the tax form that the tax was generated off, so say the 2015 form 1040, the dollar amount of tax that you owe, the date that the tax was assessed and then the last date to

collect, which is generally 10 years from the date the tax was assessed.

John: Why should any of this matter to the taxpayer?

It destroys your FICO score, it's picked up by the 3 major Jeff: consumer credit bureaus and you must really understand that it serves notice to potential or current creditors and even your employer, customers, and competitors that this person will not pay the IRS. So why would a creditor loan you any money when IRS has so many more tools than a normal creditor? The IRS can send a levy to your employer and get your whole paycheck. The IRS can send a bank levy and wipe out your entire bank account. Except for the state and certain other state Federal entities that also have similar power to levy, you have no other creditor who can take your money and cause you pain like that in your life. If you stop making your car payment in 90 or 120 days somebody's going to come out, repossess your car. They can't send a notice to your employer and say, "Hey, send us the equivalent of 3 months' worth of car payments."

The hit to your FICO score or, if you're a business, your DUNS number or any other of the newer business credit rating agencies is just terrible because you've had telegraphed to the world that you will not pay the IRS and the IRS is serving public notice when they file the lien, "We couldn't get the person to pay this money." It's public knowledge, available to anyone—including your competitors.

John: Is it easy to get a lien released or withdrawn?

Jeff: It is not easy. The lien release is only granted if the taxes

have been paid, if a taxpayer bankrupts, if the IRS filed the lien in error and they rarely do that, or if the ten-year collection clock runs out. The IRS has 10 years from the time that they ask you to initially pay, generally, unless you filed an appeal or bankruptcy, which can add to that time. Generally, the IRS has 10 years to collect. If that 10-year clock ran out you were one of the fortunate few where the IRS just never got around to collecting from you, then you can get a release. Those are the only situations where you can get a release.

A withdrawal is different. They've only been around for, I believe, a little bit less than even 20 years where you could get a withdrawal at all. Withdrawal terminology is "as if the lien had never existed". So, it's an erasure. The release is not an erasure. In fact, on your consumer credit report, a release is viewed as a derogatory and it's on your consumer credit report for another 7 years.

I do a lot of work to get the liens withdrawn. I'll also get the liens released if that makes sense. It's no simple thing, and most practitioners don't address the lien.

John: What's the first thing a troubled taxpayer should do when they're the target of enforced collection efforts?

Jeff: Obviously, I would recommend that you reach out and find a tax professional that practices in the field. If you want to engage the IRS yourself probably the last thing you should do is to rely on the good nature or empathy of the revenue officer. As we mentioned earlier, you are likely to have been characterized as a "won't-pay" taxpayer and you must convince the revenue officer and in many cases that

revenue officer's manager, that you're either a can't-pay or a will-pay.

As you mentioned, John, classification as a can't pay can result in your being classified as what they call "currently not collectible" or "CNC". Where the IRS, when they use their formula and determine how much you're allowed to live on monthly, it appears that you just do not have enough to live on. The IRS cannot collect from you in that case. Your status as CNC is not permanent. They might grant you CNC initially for either a year or two. They're going to look at subsequent tax returns you file, and if your income ticks up over an amount that they key into the computer, then you're right back into collection.

Maybe at the two-year point they're going to come back and ask you to resubmit your documentation, collection information statement, all your bank statements, the financial snapshot all over again to see if anything's improved.

The IRS has the 10 years to collect. The lien, most certainly, will be filed in most of those cases because the IRS isn't going to let you just sit there and have penalty and interest continue to accrue but not pay the bill without them having the lien out to shield them from other creditors establishing a higher-priority position. That's currently not collectible.

We've mentioned the offer in compromise program. Now, offer in compromise is a wonderful program. But generally, you're talking about a taxpayer who has very little ability to earn in the future, they have no assets that can be sold. In the case of people who have equity in their home or

something else, it's more difficult. I love the offer in compromise program. If a client comes to me, I first determine if they qualify for that program, but so few actually qualify.

Most will end up with a full-pay installment agreement. For individual taxpayers, wage earners, the IRS will grant you up to 6 years, generally, to pay back the IRS. A business taxpayer generally will not get more than 24 months to pay in full.

If you're ineffective at demonstrating that you can't pay or will pay, then you're still a won't pay and so now they are levying your social security if you had that—they can levy up to 15% of that. If you're a medical doctor and you're getting Medicare payments, they can levy up to 30% of that. If you're a Federal contractor and you're being paid for a Federal contract, they can take up to 100% of that. You definitely do not want to be in the won't pay category. You've got to pivot to can't pay or will pay.

Next thing I'll say to you is do not lie to the IRS. Despite what you may think, they can verify and will verify almost anything you say. They'll also find omissions.

If they find you lied about your income, or assets, or trying to overstate your expenses, you may leave the won't pay category and become a fraudulent taxpayer. Someone who needs to be referred to the criminal investigation division. You don't want to get into that. That's a totally separate bucket. That's the "potentially-will-go-to-jail" bucket that we really haven't talked about here. They still do send people to jail for tax evasion or perjury.

John: I've had people ask me, "I have a safe deposit box, do I need to disclose that." Because that's right on the form, "Do you have a safe deposit box?"

Whether it's empty or not, you should disclose that you've got one, because they're going to find out. You'd be surprised.

Jeff: As a revenue officer, I probably seized a dozen safe deposit boxes and I don't believe that any taxpayer told me that they had those. Generally, taxpayers bank close to their home. The accounts are easy to find.

I could get authorization to seize the contents of that safe deposit box. I had a few that were full-pays because there was enough cash or jewels to pay the tax.

Another source of information are these maildrops or "Mailboxes-R-Us" places. The revenue officer can walk in there with a pocket summons. They'll have a payment source on file as well as a driver's license.

John: It's just not worth it.

Jeff: It isn't, and the IRS puts people in jail every year. Admittedly they're putting a lot fewer people in jail for tax evasion than they used to, but I'll tell you that over this past year the IRS is redoubling its efforts and going after people for what they call criminal evasion to pay. These are people who are filing their tax return, but they don't have proper withholding or proper estimated tax and they're doing it year after year. Now, they're prosecuting people for criminal evasion to pay. The term the IRS uses is "bad actor".

John: We mentioned earlier about the difference between tax preparation and exam defense and collections work. Because I'll get frequent referrals from other CPA's as well as tax attorneys. I think it should be obvious that if somebody gets behind in their taxes it's a good idea to ask your preparer if they can handle the collection case.

Jeff: Let's say they'd like to do the work or they feel that they're capable to do the work. They are quite literally too busy from January 15th to April 15th to take a call from a revenue officer.

As a former revenue officer, I can tell you when that situation occurred where there was a representative who was mostly a tax preparer who asked me to delay the case for a few weeks or months so that they could get through the filing season, once I collected myself back up off the floor from where I fell out of my chair laughing I just went ahead and enforced on the levy. I'm going to go ahead and keep moving. The collection division could care less about the filing season.

The practitioner who is primarily your accountant or tax preparer, even if they want to do your representation, you need to ask a very serious question. Most cases are going to last for at least a year. So, you're going to get into a tax filing season. Does that professional have the ability to stop doing tax preparation and spend the hours and hours needed to meet the deadlines that the revenue officer sets?

The threat could easily be, "We are going to levy every bank, and we're going to levy every account receivable." I've seen over 200 accounts receivable levies go out for one taxpayer before. It took 4 days for that revenue officer to

put together 200 accounts receivable levies. This was the entire list of every client of the business taxpayer and they sent an account receivable levy to every single one of them. That's a serious fight.

As I interviewed Jeff, I realized he was providing more insights than could fit in just one chapter. Up next, he gives us an inside look at the process you would go through when completing the IRS collection forms. For the next chapter, I recommend you download IRS Form 433-A from irs.gov.

## **CHAPTER 10**

# Jeff Long

Know Where You Stand - Before You Act

John: We'll be taking you through the IRS Collection Information Statement, specifically form 433-A. We continue with Jeff Long.

What is the IRS after when they're looking at these Collection Information Statements, the 433-A? What they're trying to reach is what they call reasonable collection potential, or "RCP." Can you talk about that for a minute?

Jeff: Any time you owe a significant amount of money to the IRS, that's depending on which door of the IRS you walk into. Did you get an automated letter with no human that said, "You owe us money, pay us?" Have you had a revenue officer come and knock on your door and say, "Pay us?" Once you owe over a certain threshold (you'll find that number to be \$50,000, for an individual), you're going to have to give detailed financial information to Automated Collection System, (ACS), which is the person on the phone. They send you a letter saying, "Call us now and pay us, or the tax collector will come to your home or your business."

Think of it as snapshot, a picture of your financial condition as it sits today and, in some instances, as it sits sometime in the future. We'll get into that in a bit when we discuss the "Offer In Compromise" (OIC), and specifically, reasonable collection potential, for OIC's. Those are

calculations that the IRS makes to determine "how much can we collect now." And, "how much are we likely to collect in the future?" What's a reasonable amount? You go forward on that.

John: What they may think is reasonable, you're going to think is unconscionable.

Jeff: Many Americans are living paycheck to paycheck. A lot live in a home that's has a two or a three-car garage, and they've got their cars parked out front because their garage is now a storage unit. Some people have filled those up and have an off premises storage unit or two, because Americans collect "stuff". Many Americans have very high payments on their stuff, and IRS doesn't like the fact that you've got thousands per month going out in credit card payments to pay for stuff when they view that you should have paid your tax bill first.

John: In their view, they don't want you living large on their dime.

Jeff: When we get into these situations whether it's an installment agreement, where the taxpayer has the means to payback in full, or it's an offer in compromise, where the taxpayer doesn't have the means to pay back in full, and the IRS will settle for some amount less. As a representative, it's my job to get the IRS to understand that the client's story is different than the average guy. What is reasonable for me and my family, or reasonable for my business, is different than what your IRS manual says. That's our goal as we walk through the form. Whether you've hired a representative in an IRS tax matter, or whether you're doing this alone, it's vital that you are able

to tell the story of your financial condition, not only today, but going into the future.

A "hard-luck" story doesn't appeal to the ACS person, (the "1-800" person on the line when you call the number on your notice), or the revenue officer's sensibilities as a human. They don't care. They've heard it all before. If a revenue officer's been on the job for five years, it's very unlikely that you've come up with a story that they haven't heard before.

Whether it be bad health, or an employee that ripped you off, a bad divorce, they have heard it before. It's incumbent on a representative, and that's my job and your job when you represent your clients, to be able to frame that debate in a different way, and help the IRS understand that I'm not a number. I'm a person and I have a unique set of circumstances and you need to move heaven and earth to get the IRS behind that.

John: There are several Collection Information Statements that the IRS uses. Among them is the 433-A and 433-F. Can you talk about when the 433-A is used and when the 433-F is used, and when you'd prefer to use one over the other?

Jeff: The 433-F is a two-page document. It's built for speed. That is the form of choice when you talk to a person on the 800 number, when you're responding. If you have called the IRS because you want to pay, or you've gotten a letter and it says, "call us now" or "pay us now," when you call the 800 number, you're talking to ACS. Their form of choice is the 433-F.

The 433-A is the form that revenue officers use, and it is eight pages. The meat of it is on the sixth page on the 433-A.

The 433-A and the 433-B—the Collection Information Statement for businesses that revenue officers use, asks a lot of questions that the 433-F doesn't. Are you party to a lawsuit? Have you filed a bankruptcy? Have you lived outside the U.S. in the past 10 years? Are you beneficiary of a trust, an estate, or life insurance policy? Are you a trustee of any of these? Do you have a safety deposit box, and if so what's in there? In the past 10 years have you transferred any assets for less than their full value? At least for the 433-B, you're asked if you anticipate any increase or decrease in your income.

There are times where you would prefer not to share this information with the IRS, if it's not required. Let's say you have a safe deposit box and it has assets in it. I'm not saying do not tell the IRS what you've got, but the question is, "Are they going to ask the specific question?" If you want them to know as little as possible, then your form of choice would be the 433-F. That option is only going to be available to you at the ACS, on a call.

John: On the other hand, though, it doesn't give as complete a picture of your financial situation either.

Jeff: It doesn't, because you've got to keep in mind what's going on. That's a one-time phone call. That person you're talking to does not "own" your case anymore once they hang up. Not saying you can't call the IRS back, but if you call the IRS back, the chances of you getting that same ACS person is very tiny. The ACS wants to get in and out of a case. They

want to get you on a payment plan as soon as possible. In the interest of speed, the IRS has said, "we won't ask these other questions." Much of the information requested on the 433-A doesn't apply to most taxpayers. That's why it's used primarily by your local revenue officer, who peels your onion all the way down to the core.

There are other situations where at ACS, you want to tell a full, complete picture. If I want that full story told in ACS, I request they allow the 433-A. The first person you're talking to is going to say no, but you can request to speak to a group manager and request that they use the 433-A. They will allow you to use that 433-A, but they're going to do it over the phone with the manager. It's extremely rare that a revenue officer (the tax collector in your local area) will accept a 433-F. They want the 433-A. That's their form of choice.

Let's say that the case is barely above the threshold for a revenue officer, around \$50,000. Let's say it's \$55,000 or \$60,000 and the taxpayer is fairly compliant. They filed all their tax returns. They've paid their current estimated taxes, if they're a business owner. If they're an employee, they have the right amount of current year tax withholding. What if you go ahead and generate the 433-F and fax it over to them? They're going to ask for a Collection Information Statement, because you're above \$50,000.

Every now and then, the revenue officer will come back and say, "I need the 433-A." Generally, if all their returns are filed, and all their deposits are made for future tax, you'll get the revenue officer to close the case based on the 433-F.

As a representative, I'm not one to let my client be herded through that chute, and shot in the head, and sent off to the slaughterhouse. My client always has a very tough story. They don't have a hard-luck story. I'm not going to win a hard-luck story. You're not going to win with a hard-luck story. You can't say "My wife left me and I'm an alcoholic, and I've got this, and I've got that," the IRS doesn't care. There is no form to check on any of these forms to indicate, "I'm an alcoholic," or "I have a gambling addiction". All those affect your life.

A lot of my clients have had mental health issues, or addictions, and I get to know my client. I don't ask those questions because I'm nosy or I want to be indelicate. I ask those questions so I can frame the debate when I'm talking to the IRS and say, "This isn't on your form, but you need to know this. This person has this problem that affects their ability to get out of bed and work." I'm setting up the situation where I'm telling the story. When we start talking about reasonable collection potential for a settlement, for an offer in compromise.

If we're talking about how much the IRS is going to require on a monthly full-payment installment agreement, when I start going down the road of what the problems are with my client, I can verify through a third-party such as medical history or doctor's statements. I'm setting the groundwork for the IRS to understand that even though income may be here today, it's likely to drop much lower in the future. Very rare we want to convince the IRS that the income's going to be higher in the future.

That sums up the difference between the 433-A and the 433-F. I would recommend that they print out the 433-A,

print out the 433-F, and fill them out at home. Be prepared before you contact the IRS.

If you see something on there that you think you'd rather not disclose to IRS, and I'm not telling you don't tell the IRS about your assets. If you'd like to take a chance that they'll accept the 433-F, then attempt that. Don't try to hide anything from IRS, and I'll tell you the one that shocks me that I see clients trying to hide all the time. That's either real property or vehicles. Not all revenue officers have the ability to tap into the state DMV, but most do, and I can't tell you which states have it, and which don't. I know that I work nationwide, so I assume that the RO has the ability to pull DMV records.

John: What do you mean by vehicles?

Jeff: Cars, boats, aircraft. Anything that you insure that's got a license on it, like an aircraft. When you get into the high-dollar cases, the RO is going to the FAA and check against ownership. It's amazing how many clients sometimes, when they come into my door, and I accept a lot of cases from other representatives that have gotten in over their head, and I dig the case out. It's amazing how I find assets that I'm positive the IRS knows about. They're going to find them.

John: You know that because you worked for the IRS?

Jeff: That's right. It's highly unlikely that you're going to have a vehicle that's got a plate on it or a serial number that IRS isn't going to know about.

John: We're getting ahead of ourselves. We're looking at the 433-

A. Section 1 is personal information. Include the names of the liable person. If your spouse is not liable for the taxes, then you don't necessarily have to include them there. Employment information, that's straightforward. Jump to Section 3, Other Financial Information. I wanted to point out the question where they ask if you've transferred any assets for less than their full value in the past 10 years. What they're getting at there is what's referred to as "dissipated assets." Talk about that for a minute.

Jeff: Dissipated assets are any assets the IRS believes that you gave away, sold for less than its fair value, or transferred to someone else to try to prevent the IRS from putting their claws into it and getting the money out of it. The IRS's opinion of what a dissipated asset is almost always favors the IRS. I had this in a case about three months ago where my client had gifted his new Chevy Camaro to his son upon graduation from college; it was worth \$26,000. He had done that within two years.

We're in a very contentious discussion. This person is in the entertainment industry, makes a lot of money, lives in multiple mansions, and the IRS is angry about this. They don't like the fact that this guy would not pay the IRS, and from their perspective, was living high on the hog. The first thing that pops up is "Where's this 2015 Chevy Camaro?" I had advised the client that we needed to put that on the form. The client opted not to do so. I told the client in writing that I thought that would come back to haunt them. It did. The revenue officer found that asset, saw that it had been titled and then re-titled, given to someone else, and even knew who the vehicle went to. In this case, the son's last name is the same as my client.

They're looking for \$26,000, and what do they want? They want that vehicle sold, and they want \$26,000 given to the IRS. That puts my client into a tough situation. Is he going to ask for the vehicle back? Is it unusual to give someone a gift at graduation? I would say no. We don't have that case resolved yet, and I'm not sure how that's going to go. The client opted to omit that. I had to tell him as his representative, "I believe they're going to find it. You're required to disclose that." That's the very definition of a dissipated asset.

I disagree that he shouldn't be able to give his son a car. The IRS may win this one. I'm fighting it diligently, but the IRS is going to say, "You don't get to owe us a million dollars and, in the case of this client, I think it's \$2 million, and give away a \$26,000 car to anybody you want. You don't get to do that." That's almost the very definition of a dissipated asset.

I will say that, in the past, the IRS used this provision all the time, and seem to use that less and less now. It comes down to the discretion of the group manager in the local revenue officer's office. That's what it comes down to. Can the IRS spend the time drilling down that deep on a case now? I would say in a lot of cases, and particularly in the past two or three years, they don't have as much time to take a deep dive into the dissipated asset question.

John: If you've transferred any assets in hopes of putting it beyond the grasp of the IRS, it's probably a dissipated asset, and needs to be disclosed. There's not necessarily a problem with transferring assets. Just be aware that they may include it in the computation of reasonable collection potential.

Jeff: They may add that in, and now in the case of my client that's \$26,000, he must come up with that he didn't anticipate.

John: Other questions in Section 3, there's a specific reason why they're asked, for example, they want to know if you're a party to a lawsuit. That's in the case of, if you've got a personal injury suit out there, they may talk to your attorney and find out what the likelihood of prevailing in the case is.

Jeff: These are higher dollar cases where they would consider that. Litigation runs in years and decades, not months. If you're a party to any litigation, there's something you do not want to do. Let's say that you think you have \$2 million coming your way. You found an attorney that's working on contingency so you're not out any money, and he or she has told you, "I think we've got \$2 million coming."

Would I put down \$2 million there? No attorney is going to say to you in writing, we think you've got a \$2 million case. They might say it to you verbally, but at the end of the day, almost everything is settled out of court, if it even gets its day in court.

If you put \$2 million on that line, is that wishful thinking on your part? I temper my clients' hopes and dreams a lot when we're filling these forms out, because what did we tell the IRS? We told them a best-case scenario of a dollar amount that might be realized if we win, and the other side doesn't appeal, and if they lose—and the outcome won't be known for years from now.

I would say in a case like that, yes, indicate that you are party to a lawsuit, put it down, have the revenue officer ask you the anticipated amount to be received. Put "unknown" in there, because isn't that a more realistic answer? The chances that you get nothing, I would say, are much higher than that you get \$2 million. The amount is unknown, an acceptable answer. The IRS can drill down on that if they want to.

John: They go on to ask if you've lived outside the U.S. for six months or longer within the past 10 years, and the reason they ask that has something to do with the running of the statute of limitations, and I don't want to get too deep in the weeds here, other than to say that there's nothing nefarious going on for their part. They want to see if they can add a tolling event to the statute of limitations if they need to.

Safe deposit boxes—we discussed this earlier. They'll find them, so disclose safe deposit boxes. They know where you bank. They can summons to find out what the contents are, so just disclose.

Moving onto Section 4: Personal Asset Information for All Individuals. They ask you for how much cash you have on hand. That's what you've got in your wallet, and sitting in your change jar. They go on to ask about your bank accounts. You list your bank accounts. If it's a joint bank account, you want to indicate that. Give the account number. They will find them, so disclose all your bank accounts.

Jeff: One of the first questions a client will ask me is, particularly if they have large sums of money in a bank

account, "Should I withdraw those funds?" You're delving into criminal tax evasion if, let's say you've got \$50,000. That you owe \$100,000, and you've got \$50,000 in your checking account or in a savings account, and the RO comes knocking on Monday, and on Friday you take \$50,000 out of the account. That's insane. Many people don't have that much money in their account, so I get the other question, "I've got \$5,000 in my account. What should I do with that money?"

First, we report it, but I'm going to attach a schedule that shows where that \$5,000 is going to go in the next month, and generally since a lot of Americans unfortunately live paycheck-to-paycheck, that \$5,000 will be drawn down to pay living expenses. I'm going to create a schedule that shows the house payment, car payments and so forth. We're going to show that it's needed for basic living expenses. There is an offset for basic living expenses, but I like to go further to remind the IRS here that the money is not to be seized. That's for the family to live on or it's to be used for our business to operate.

John: In Section 4, Investments, if you've got stocks or bonds with a brokerage house, CDs, any retirement assets including your 401(k)s or IRAs, that's where those live, on lines 14a through c, and attach a schedule if you need more space. There are some things that you can plan for here, but in general terms, disclose all your investments here. With the name and address of where the assets are and the current value.

Jeff: Most of my clients say, "I don't want to tell them about my retirement account. They're going to seize that." They can't. The general rule is that if the taxpayer can get their

hands on it, then the IRS can get their hands on it. With three or four asterisks hanging out behind that. The IRS does not want to seize your retirement account, and in my experience the only time that they will, is that the taxpayer simply is not cooperating at all. It is a lot of work to seize a retirement account. It takes at a minimum a manager's approval. At certain levels it takes IRS attorneys to sign off on it.

Think about what IRS is saying there, "Our need to get money from you now trumps your need to have money to live on in the future." If I've got a client who is very close to retirement age, or already in retirement, or I have a client who has poor health, or some extenuating circumstance where we can make a plausible argument that their income is going to crater, drop off—I'll vigorously argue against the forfeiture of that asset. Think of sales people, real estate people, anybody in sales. As they get older, you hit your peak earnings in your 50s, and then it drops off. We always want to make that case to IRS. If you seize it, you're going to affect the ability of this person to survive in the future. We're always coming back to that, we're not simply telling a hard-luck story.

John: I had this come up in a case where my client did not want to have to pay that 10 percent early withdrawal penalty on the IRA, and I did everything I could to get the revenue officer to levy the IRA, and he wouldn't do it.

As it turns out, it works out either way for my client because they have high medical expenses, either way they're not going to be subject to the penalty, so I let it drop, but that's why you'd want the IRS to seize a retirement account, so you can avoid that 10 percent

penalty, but they're not going to do it for your convenience, because it's a lot of work for them.

Jeff: There is an IRS directive in the Internal Revenue Manual, their bible, which says you won't seize a retirement account so that the taxpayer can avoid the 10 percent penalty. But I've won that before and the way that I won that case was to say, look if you seize the account, the IRS gets 100 percent. If you don't, you get 90 percent. It's hard for me when IRS is holding my client's feet to the fire, and I know we're going to discuss individual expense items later, but when they're holding my client's feet to the fire; for example, my client's a woman in sales that needs a \$100 haircut, styling, every third week.

They're going to push back on that. I argue that a salesperson needs to look sharp, and that she's not being lavish or extravagant—it's just not within the IRS guidelines. They'll push back on your grooming while they're willing to accept 90 cents on the dollar on the retirement account? That's fundamentally inconsistent. As a representative that's what I'm hired to do is to know that little nuance.

Your readers, if they're representing themselves, will find it difficult to get their heads around the nuance, but I put that example out there to get your reader to understand we didn't tell a hard-luck story about why we don't want to pay the 10 percent penalty. We turned that discussion into, "Wait a minute IRS, you want to collect all that you can, and yet over here you're beating me up on my hairstyling bill?" Call them out for their inconsistency. You can win a lot of cases that way.

John: Moving through Section 4. They're looking for how much you've got out there in available credit. In the old days, I'd have revenue officers request that the taxpayer go out and borrow up to their credit limit and use the proceeds to pay the tax, but that doesn't happen anymore.

Jeff: The IRS does permit you to subtract minimum monthly payments on credit cards to offset monthly income.

John: Subject to other limitations.

Jeff: The IRS is not in the business of forcing you to go out and get loans at high interest rates to pay them back. If you go on an installment agreement and you calculate what the underlying interest rate is, by the time you roll in penalties for failure to pay, you're looking at a combined effective rate of 7 percent, but those rates change.

You calculate what your cost of funds is, but very few of your readers have a credit card at seven percent. You don't see it very often, where the IRS asks you to borrow on your credit card. Normally you see it the other way, where the taxpayer volunteers to max out their cards. That may not be a bad move if you can negotiate an increase in the offset for monthly payment credit card payments. The revenue officer may agree to that.

John: This is not often an issue, because if people owe the IRS money, chances are, they're maxed out on their credit cards anyway.

Jeff: Or, the IRS has filed a lien and they have no credit!

John: Moving on to the life insurance section of personal asset

information. If you've got any life insurance policies that have a cash value, you're going to need to disclose that information as well, including the name of the insurance company, the policy numbers. They're looking at what the cash surrender value is because they're going to expect you to borrow that out.

Jeff: Rarely anymore do you see anyone with a whole life policy or one of these universal policies or anything that's got cash value. Most of your readers have a term policy which has no cash value at all, and so I sometimes see a client wrongly show the death benefit on their term policy, say a \$400,000 death benefit, and they put \$400,000 there. That is not the question they're asking. The question is, how much is the net cash surrender value? Term policies have no cash value.

John: If you do have a cash surrender value, and the IRS expects you to borrow from it, you might be able to make the case that you should be allowed increased living expenses because of the increase in the amount of your monthly premium payment.

Jeff: If they're going to benefit from you cashing that out or taking a loan against it, then you want to get the benefit of the monthly hit that you take from the insurance company.

John: Moving into real property, you've got your residence, even if you rent. That information is going to become important as well. Property description, if it's your principal residence, put "principal residence" in there. What's the biggest mistake people make when listing real property on the form?

Jeff: Let's work with an example. Let's say that your home is worth \$500,000, and you have a mortgage remaining of \$250,000. Equity is \$250K, right? I would say no it's not. The first thing I want to know is, what would it cost to get this house market-ready? Does it need a roof? Does it need carpet? I've got clients I'm working on at the moment that have a home in an area where a ton of NASCAR drivers live, so—gated community, multimillion dollar McMansions, and this community was built in an area that has limestone caves under it, and the foundations on most these houses are cracking.

As it turns out for my client, the front corner of their house is falling into this hole. Even though the house is a million-dollar property, it was very easy for us to get three estimates from companies that would come and remediate, rebuild that land, and one of the estimates was greater than the value of the home, but none of the estimates were under half a million dollars. The clients, when we initially looked at that house, had \$600,000 or \$700,000 in equity in the home, and then when we got the estimates to come in, lift the house up, put in gravel, concrete, steel, reinforce it. This house is not in a salable condition.

There is no equity in that home. I would remind a lot of your readers that if you have a large house and most of it's carpeted, and that carpet is 15 years old, go out and price what it costs to put carpet in a home and you find that's \$20,000 or \$30,000. If you had \$100,000 in equity, and you've got estimates from carpet installers that it's going to cost \$30,000, then I'd take that \$30,000 off. The IRS will use zillow.com. They'll look at the house and they'll say, it's worth this much money. They've got your mortgage statement. They subtract the two, and they say, this is the

equity of the house. They take the quick sale value, so they reduce that by a factor.

John: To sell the house, you might need to put a new roof on it. You might need to put a new furnace in or replace the air conditioner and put up a new fence.

Jeff: One extremely contentious case I had three or four years ago, where IRS simply would not budge on my numbers, and I produced the mortgage document that said that the home had to be retained in a resalable condition. The bank was in first position; the mortgage came before the tax lien on this client. The bank is going to be paid before the IRS gets anything. Is the bank going to waive that requirement that it be in resalable condition? Absolutely not. They're going to come in and put the carpet in, put the roof on, and paint it.

The bank is going to run all this up, and the bank's not going to go out there and get a bunch of bids either. The bank's going to take whoever they work with, and then the title agent's going to cut the check to the bank, and it's going to cut the check to the carpet guy and all that. Don't roll over for the IRS when you're trying to define what the value of this real property is. You need to fight that one.

John: What about rental property?

Jeff: Rental property you're going to get into the 433-B, the business side, because you've got income coming in from that.

John: If it's income-producing property it needs to be disclosed, but not here.

Jeff: You've got a totally different situation there. Income property, you've got a management company that's getting between 5 percent and 10 percent right off the top, so there are a lot of expenses in rental properties.

John: I'll point out that when they talk about what to do with your net rental income, they specifically mention that you don't include depreciation.

I'll move onto personal vehicles leased and purchased. That includes vehicles, four-wheel, street legal. It also includes boats, RVs, and motorcycles, ATVs and off-road vehicles, trailers as well. What I want to point out here is that they ask for the current fair market value, and most people think their car is in clean shape. They go online, and they look at Kelley Blue Book, and it gives a fair market value. They put in that it's in excellent or good condition, when most cars, if it's got a small scratch in it or a blemish on the upholstery it's in fair condition, at best.

Jeff: I never use the "excellent" category when determining the value of a vehicle. Here's why. If you are not the original owner of the car, and many people aren't, then chances are slim that you have the maintenance records. If you bought it from a car dealer, the maintenance records have long since been destroyed. You might get lucky and buy it from someone who had it serviced at the same dealer, and they have the maintenance records, but generally you know nothing about the car.

If you look at Kelley Blue Book, one of the qualifiers for what an 'excellent' car is that the maintenance records are intact. That's one of the first things I point out. I've got a checklist for my clients for each vehicle, and I have them

tell me about the condition of the car. People are prouder of their car than they should be. This is not the time to be bragging about your car.

Maybe you have a '74 Corvette, one that you take out on the weekend or for special occasions with your significant other, and you take it to car shows. Do not brag about the fact that this is a show car. Put down "1974 Corvette". As soon as the revenue officer sees Corvette, they've got an opinion. They're going to go on Kelley Blue Book, and that's what they use now. They go on Kelley Blue Book, and they're going to take that value, some of them are reasonable and they take it a fair or good, a lot of them take it at excellent.

By not having maintenance records alone, you've taken it out of excellent. When you've got these little typical door dings, and it needs tires—you're probably "fair" at best. If you had to take this to a car dealer and have them write you a check for it assuming you own it outright, what are they going to say to you? The way you find that is going to the trade-in value on Kelley Blue Book, and look at fair or poor if your car is in poor condition.

Poor condition means you've got a beater, but fair condition—it's shocking the difference between what the trade-in value is on a fair vehicle, and what excellent value is on private party sale on Kelley Blue Book, and often you'll find a revenue officer using excellent and private party, when I would say we need to be using fair, and trade-in value. So, this is not the time to be proud of your vehicle. If it's got windshield dings, a windshield can be \$1,000.

When you work down the price of that, if you're going significantly below anything that Kelley Blue Book says, then I would want a little worksheet to explain my logic. Maybe even some pictures. Here's a huge dent. Here are the tires, the tires are bald. I've got this price from Discount Tires, \$900 to put tires on my car, just subtract it all out, and you'll drive the value of that car down.

John: Let's move on to personal assets. Furniture, personal effects...

Jeff: This is where people make a huge mistake. You've got a house full of stuff and you sit down and you run your spreadsheet, and you figure you've spent \$30,000 on the goodies in your home. That doesn't mean anything. You paid retail for that, even if you bought it used. This is not the time to be proud of your stuff. This is the way you need to think about your personal assets: If you had to put it out on the street and sell it today, what would somebody pay for it? In other words, "fire-sale value."

If you go to these estate sales, or you go to flea markets or whatever, it's amazing, or on Craigslist, it's amazing how cheaply you can buy furniture and household goods. Don't go on Craigslist though and look for prices of stuff like yours, because there are idiots on Craigslist asking for new value for their stuff. That's that person being proud of their goodies. Generally, is an RO going to come out and say well look you put down \$1,500 for your items here, that couch over there is worth more than \$1,500. I've never had an RO go to the house, walk room by room, take pictures of stuff, and then try to do their own assessment.

They don't have the time, and are they going to seize the

stuff from your house and sell it? Absolutely not. The rule book says that your primary residence is all but untouchable, unless it's in jeopardy. That applies to contents as well. Unless they think that you're going to transfer a valuable asset to place it beyond their reach.

If they're not going to seize a primary residence, are they going to seize the goodies in it? No. Do you need those goodies to provide for your family, sleep, be ready to go to work, get to school? Absolutely, so don't be proud here. Don't run up a huge number.

John: I had a case where a woman was concerned about a diamond ring, that it was a family heirloom passed down a couple generations, and I said, "What do you think it's worth?" She said, "I've got it insured for \$30,000," and she asked, "Are they going to want me to sell my ring?" I said, "Do you think you can get \$30,000 for it," and of course it's got sentimental value. As it turns out, we had it appraised, and it appraised around \$2,500.

Jeff: I'll tell you what I would do in a case like that. I'm not sure I would even have gotten an appraisal. I'd have her take it to a pawn shop and have them provide an offer in writing. Isn't that quick sale value? A pawn shop? Of course it is.

John: That's as good as an appraisal.

Jeff: You'll get it all for \$500, or \$100. Heirloom jewelry valued at \$250 at S&S Pawn Shop. That's one of the better ways that I've found to handle that.

John: If you've got a collection that's worth anything, disclose it,

because you don't want to get caught in the position where the IRS determines that you're not being forthcoming.

Jeff: This is not the time to be proud of your collection. Five or six years ago, I represented a client who had a huge Beanie Baby collection, and she had paid a fortune. She valued it at \$40,000. It was a whole room in her house. Beanie Babies only ever worked out for the guy who invented them. That guy is something else. I went on Craigslist, and I found a collection that was about half of what hers was, and this person needed \$1,000 for it. We did a screen capture, we printed that. I took \$1,000, multiplied it by two because she had double the stuff, and that's what the revenue officer accepted.

She was a little bit put off, responding, "Wait a minute, you're saying my Beanie Babies are only worth \$2,000?" That's all they're worth, and they might not even be worth that. That's what a person wanted for them on Craigslist. I think that had been on Craigslist for a week or longer, so it was obvious that nobody looking for Beanie Babies that week had thought that it was a good deal, even at that cutrate price. I printed the page and presented it with the 433-A.

Try to be creative but reasonable, and provide the revenue officer with verifiable third-party documentation that supports your value. Don't go out there and find a Beanie Baby collection where a guy has 500 Beanie Babies, and he wants \$20,000. That doesn't make your case, and that's not representative. That guy's never going to sell those at that price. That's just wishful thinking. Be creative, but always think about telling the story that includes a document from an independent third-party.

John: At the bottom of that page, they come up with total equity. If you recall, earlier we mentioned they come up with total available cash. You've got total equity. As I said at the top of the discussion, the IRS is trying to determine what reasonable collection value is, and the sum of these two go into that calculation of reasonable collection value. Now, we'll get into what is arguably the most contentious area of the Collection Information Statement, and that is Monthly Income and Expenses, because rarely have I had a revenue officer agree with me on anything that I put on this schedule.

You won't. It's going to be contentious, and I would like to Jeff: start on the left-hand side of that form "income" first, before we dive into allowable expenses on the left. Unless a taxpayer is paid a salary, or a flat 40 hours a week, and there's no chance that they're getting a raise or anything like that, unless you have that case, then you have a situation where the IRS is going to take three months of bank statements, and extrapolate them out, or they're going to take last year's 1099 information, or they're going to take your last tax return, and they're going to extrapolate that into the future. Some revenue officers even add an extra 10 percent, or they'll take the last three tax years and then they'll say, well it's going up so they're going to extrapolate that increase into the future. Those are merely guesses.

Those don't have much basis. The conversation I have with a revenue officer's manager, or the manager's manager, the territory manager says, "If you are stuck on this extrapolated number for my client's income, then you can read the future. If you can read the future, then why are you working at IRS? Can't you play the lottery or

something like that? I'm not allowing you to play the lottery with my client's income. We have demonstrated the likely future income to you, and my spreadsheets prove it." I'll also have statements not just from my client, but from other people in their field that income has peaked in this industry.

Salespeople are the toughest to handle. A 1099 salesperson, with either a nominal wage or no wage at all, it's feast or famine. If they don't sell, they don't eat. Inevitably, they had a wonderful two or three years, and a lot of my clients weren't filing tax returns, so now they owe a boatload to IRS, and IRS wants to take those wonderful years and extrapolate them to compute monthly income.

When IRS asks for three months of bank statements, and I've got a car salesman who sells 80 percent of his cars between February 15th and May 15th to all the people who are getting their income tax refunds and then he starves to death the rest of the year, and the bank statements just happen to be in that first and second quarter. If they take that number and extrapolate on my car salesman client, then they come up with an unrealistic number.

I want to take the three-month number at a minimum, and average over a year, but I often take a longer period and average that. First, any salesperson who's been in business more than a year understands that it's feast or famine.

I make a case, I always fight the income side well before, and get the income locked down long before we get into too much discussion on what they're going to allow for expenses, and that's a tough negotiation.

John: When I submit these, I put together a detailed analysis about how I've arrived at gross monthly income, and why my number is much different if you were to average the prior year's tax return over 12 months.

Jeff: The IRS will look at the previous year and divide by 12. That's not always an indicator of future income. Whenever you present a number much lower than the IRS's, be prepared to defend your number. Ask them how they came up with their number, and ask them to submit that to you in writing. How did you come up with your figures for average monthly income? They may have merely looked at the bank statements for the most recent 3-month period. Your income may be seasonal, and you should be prepared to provide other third-party verification that this is a seasonal business or whatever.

If a three-year average of income is unrealistic because you really killed it during that period, and now you're on the skids, then don't use that average. Use something that helps you, and be prepared to support it. But, don't go in and pick nine bad months out of a year and forget the three good months. That won't work for you either. Have a reasoned response in writing of why you picked what you picked, and why theirs is wrong, and why yours is the best forecast of the future income.

John: A lot of the numbers on the left side for income are fixed. There's no wiggle room there, because like alimony and child support, social security, pensions, all those numbers are fixed. The others: wages, and net business income in particular, and K-1 distributions, they vary all over the map from year to year, and month to month. You have to be able to point that out and prove it.

One of the other things I wanted to point out is that when they talk about what to do with your net rental income, they specifically mention don't include depreciation. They also say if it's a loss enter zero, but I include the loss and make a case for it. Some revenue officers will permit that, others won't.

Jeff: Remember, the RO is going to use creativity to work against you. Just be prepared to back up what you have on the form.

John: Let's move onto living expenses.

Jeff: I have a discussion with every one of my clients as soon as I decide to take them on as a client, and that is, I understand that it costs you X dollars a month to live on, and I understand you're living paycheck to paycheck. I understand that this is the minimum number you need. That's got nothing to do with this form, and what the IRS is going to allow. Believe it or not, the IRS has tried to be as fair as they can to all taxpayers, so the way they do that is they use Bureau of Labor Statistics information, BLS information which is updated annually.

What they do, if you live in a large metropolitan area then there's some different calculations, but they take the city that you live in or the region that you live in, and they calculate your allowable living expenses based on some national standards and some local standards depending on how many people reside in your home, and they arrive at a dollar amount. You'll notice the middle column under Total Living Expenses is Actual Monthly. That's what you're spending, and then the right column, "IRS USE ONLY", Allowable Expenses.

This is what IRS is going to allow you to live on, and so I wanted to walk through an automobile, I know you operate around the country, but many of your clients are in the St. Louis market. But I just kind of wanted to walk through how automobiles work, and some of the tricks and traps there, because this is one of the bigger areas that people have trouble with.

There's a local or regional standard for ownership cost. In St. Louis, for one car, the IRS is going allow \$471, and for two cars they're going to allow \$942. You've got clients, and I certainly have them, who have two cars and pay more than \$900 on each car. \$471 a month doesn't buy a lot of car. Even in a lease, it's not a lot of car, but this is what the IRS says is what an average car should cost to own. Does that mean that they're going to say you can't drive the Jaguar anymore, the \$90,000 Jaguar? No, they don't do that. First off, you probably don't have much equity. If you've got a car payment, you probably don't have much equity.

The IRS doesn't say you don't get to drive the Jaguar anymore. They simply say in a very non-emotional way, we're only going to allow \$471 a month for your first car, and if you're a two-car family we're only allowing \$942. You say, well our two car payments are close to \$2,000 a month. Well, too bad.

John: They don't care.

Jeff: They're going to allow \$942. You've got a quandary there. You can't sell your car, because you may be upside down in it. Very few people make money when they sell their car, very few. That is the first bone of contention. I would say to

you that these are averages, and if you allow the IRS to force you into averages, on average you're going to get a terrible situation from the IRS. I want to switch gears momentarily and talk about the difference between an installment agreement where you're paying the IRS in full, whether it be applying these numbers, or an offer in compromise where you're hoping that they'll settle for less.

John: There are a handful of differences depending on the situation.

Jeff: Here's the main point I wanted to make. For offers in compromise, Internal Revenue Code section 7122 (c) says that these schedules cannot be used by the IRS if it won't provide for basic living expenses. That's for offers in compromise, settling for less. I've been successful in getting the IRS to agree to that same position under installment agreements where the taxpayer's going to pay in full. There's actually an Internal Revenue Manual section that says the IRS will look at individual cases where these one size fits all numbers don't fit.

If I've got a real estate broker, a real estate agent who needs a car that looks sharp, that can't show up to an appointment in a very old "beater" car. They wouldn't have any sales at all, and I would say \$471 a month is not enough. I'm prepared with some documentation, because I fight this all the time. Third-party verification that the average realtor uses a car that costs \$700 a month, and if they don't, then they're not giving the best impression, and therefore their income will suffer. I provide a document from a study that was done. It's probably a little bit dated now, but I win that argument often. If your reader is a

retail salesperson at a Wal-Mart or something like that, are they going to win the debate that they need more than \$471 a month to drive back and forth to Wal-Mart? Probably not. It's a case-by-case situation.

John: Before we leave the ownership costs, something I wanted to point out is that a lot of folks have a car that they've fully paid for. If that's the case, then your allowable ownership cost drops to zero.

Jeff: First off, you can go get a newer car, and you can get into a \$471 a month payment. Can the IRS say, "Wait a minute now, you went out because we contacted you, and then the next day you went and got a newer car?" No, they can't. They must allow you \$471 a month. I've had clients in the past who were frugal, and they liked to drive their old car. I said, well here's the situation, you own your car outright. They're going to allow you nothing in that potential \$471 box. Do you want to go get something newer and more reliable, or do you want nothing? That's my client's decision and that's your reader's decision. You can either pay the IRS \$471 a month and continue to drive your beater, or pay \$471 to a lender for a newer vehicle.

You can make up some of this in the operating cost side of it, so that's the next box in the column. I want to stay with a potential two-car household in St. Louis, just because some of your clients are in St. Louis. I'll also say, does a third or fourth car ever come into play? Rarely. The IRS just doesn't allow more than two cars. You get into the situation where you've got adult children living at home. They're your dependents. I have won third, fourth. I don't think I've ever won the fifth car, but I have won third and fourth cars, but it's a hardcore fight.

The next thing is operating expenses, and these are either by region, or in some select situations in very large cities it's by city. St. Louis does not rate its own city ranking, so you would fall into the Midwest region. The first car you're allowed \$191 for operating expenses, and for the second it's just double that at \$382. There's a caveat. If your car is six years old or older, and it has 75,000 miles or more on it, then IRS should allow \$200 a month additional over this amount. You've got to ask for it. A lot of ROs, and ACS will really fight you on this one if you're talking to somebody on the phone, but it's in the Internal Revenue Manual.

The idea behind that is, what are the chances that you now have a car payment above \$471 if it's six years old or more? A lot of people do, but that's the point that I wanted to make. Maybe you've got a car that's in good shape. It's older. It's six years older and it's got 75,000 miles on it. In St. Louis, instead of being allowed \$191 a month for that car, you need to ask for it, but they're going to allow \$391. That helps make that up.

John: That happens more often than one might think.

Jeff: If you've got an older car, then even \$391 a month may not work for you. Some of these cars, engine goes out, or transmission, whatever. The form itself, on line 10, Vehicle Operating Cost, lists all the expenses, and I want to mention insurance as an example. Say you've had a DUI, or reckless driver; you've had recent wrecks. Let's say you're under 25. Some people under 25 already have IRS tax problems. Your car insurance alone may exceed \$191 per month. There's no room for maintenance or fuel or other operating expenses.

The Internal Revenue Manual says that IRS only has to allow the lesser of actual expenses or the \$191, but I win this one all the time. I say, look I hear what you're saying. You're trying to apply the one size fits all standard. My client's car insurance is \$225 a month. If you allow \$191, then they can't even buy their car insurance. You're telling my client that they have to drive around without insurance?

I'll come back to the rule that says that the IRS cannot use these schedules if it won't provide for basic living expenses. In America, are we required to have a car to get back and forth to work? If you've got a really contentious RO they might say that you can use public transportation, and then they've got a nice little line that says they will allow you \$173 a month for public transportation—instead of the vehicle expense! I've never lost that argument, though. Put it in writing where you're now requiring my client to ride public transportation. Not going to happen.

I wanted to tally up now where we are for a car in St. Louis under two situations. Regular, two cars at \$942, operating at \$382, would be \$1,324 a month all-in for their cars. That's how most of the readers here are going to have their first problem with the IRS, is there's no way \$1,324 approximates actual expenses. Now, remember the rules, six years and 75,000 miles, if both cars are at that we can add \$400. The most the IRS is going to allow in St. Louis for two cars, if they're older vehicles, is \$1,724 a month. If you're anywhere north of that number, then you've automatically got a problem.

You've got a problem if your house payment is higher than what they allow for a family of however many in St. Louis,

and those are by county for housing expenses. I've got a lot of clients in Phoenix, Arizona. I've got them in Utah. I've got them in the desert sections of California, that have \$400, \$500, \$600 a month electric bills that totally blow the standards for that local area for utilities out of the water. It's pretty easy to prove. Say, okay IRS, you want them to turn their air conditioning off in 120-degree heat, or are you going to allow a little bit more here? We went back, we've got one year of electric, and this is where our number is.

John: The IRS typically works off the national or local standards. You can always make a case that your situation justifies a higher number. For example, for food, clothing, and miscellaneous, if you've got special dietary needs, you have to have a gluten free diet for example, and that costs extra.

Jeff: You'd need a letter from your doctor. That's not you showing that you decided to buy that on your own. You won't get that overridden. I've had revenue officers and managers say we're not going to look at that, so you just elevate that up the chain, you talk to the territory manager and say, really? You guys are now better doctors than this doctor who is a medical doctor licensed in this state? I'm not going to allow that to happen.

John: Those are the items that are based on national standards or local standards. Many of these living expenses the IRS allows what you're able to substantiate. For example, your health insurance, which should be fairly easy to document.

Jeff: I'd like to share a story about that one. I had a client a couple of years ago who did not have health insurance, was in his mid-60s, and he drove a fuel truck from a fuel farm

to the airport. He'd done that for all his adult life. The IRS wanted \$1,500 a month from them. The clients were full-pay, this wasn't an offer in compromise situation. They wanted \$1,500 a month. I said to the client and his wife, "You guys tell me what your health insurance is. You don't have any health insurance on your form here." Their response was, "Well, we don't have any. We haven't had any for 30 years." I told them to go out and price health insurance.

It was \$1,800 per month. You remember what I said the IRS wanted, \$1,500. We put \$1,800 on the form. As a result, they were placed in currently not collectable status, and we are hoping to run out the 10-year clock We went from a situation where he was a full-pay at \$1,500 a month to now he pays IRS nothing, and he now has health insurance. Here's the icing on the cake. A couple of months later, he found a lump and went to the doctor. He could afford to, because now he had insurance. It was a very aggressive cancer. They treated it, and the guy's still alive.

In his case, I would say that his IRS tax problem, and my advice to buy health insurance rather than pay the IRS \$1,500 a month and have no health insurance, saved his life. I've never had IRS push back on how much they're going to allow for monthly health insurance. They don't do it. You've got to prove you're paying it, but once you prove you've got a viable policy and you're paying it, they allow it.

We saved the guy's life. It's a wonderful story, and you've got people out there that have these high deductible health plans, or very, very minimal coverage. I have often told a

client, look would you rather pay the IRS \$500 a month, or would you rather get that hip fixed?

Can we make the decision that our health insurance isn't adequate? Now that Obamacare is going away it sounds like, nobody knows where that is. I have not had the IRS pop up and say, "Boy you went and got health insurance after we started our negotiations." No, we priced in what proper health insurance was. We were making a budget so that we could repay you as you require, and that's what we came up with.

John: Health and welfare of the family. Out-of-pocket healthcare costs, they allow you a set amount, or the higher of what your actual out-of-pocket healthcare costs are. If you've got a prescription that requires that you spend \$500 a month or more, I'm working a case right now where it's almost \$2,000 a month that the taxpayer is paying just in prescription medication, in addition to copays for doctors. They allow you actual expenses to pay for healthcare.

Moving on to court-ordered payments, those are things like alimony, child support, things of that nature. Be prepared to provide them your divorce decree or the court order.

Child and dependent care, if you must pay a daycare facility so that you can work, just be able to provide documentation for that. I just worked a case last year where I was representing a highly-paid professional, his spouse was a doctor, and they had a live-in nanny they were paying roughly \$4,000 a month. The thing that you need to keep in mind is that in some cases if you get a revenue officer that's contentious, they're going to look at

some items and say, well that's not reasonable. You just have to be prepared to make the case, and it is reasonable.

Jeff: I'm going to go out on a limb and say that you had to fight that one tooth and nail, because they believe that a live-in nanny is insane. You obviously made some case that it would have cost more to go a more traditional route? How did you handle that?

John: I had my client go out and find out what it would cost for the same service if provided by one of these brand-name daycare facilities. I won that.

Jeff: That goes back my point at the start of this discussion. As soon as a revenue officer sees \$4,000 a month. They see it's a live-in nanny; they're going to fall out of their chair laughing. "We're not going to allow that."

John: You were a revenue officer. You've been on that side.

Jeff: If you happen to be in the office, you go around, and you show, even though you're not supposed to show stuff to people, you say, "Look at this guy, \$4,000 a month for a live-in nanny." They don't like unusual stuff, but I think your point was made that you had two professionals in the home and it was necessary that they provide otherwise extraordinary care their children, and you really went in on the presumption that that was a basic living expense.

You didn't come in saying, "It would be hard on my clients if they had to take care of their children". You didn't even think about that, right? You demonstrated what the alternative would look like. This is what it could cost to pick the children up. This is what it would cost to take

them there. This is what it costs to feed them. I'm sure these clients work extra hours, and they're on call. They've got to go in sometimes on the weekend or whatever, and you ran the bill up for offsite care. You showed that the onsite nanny was cheaper than the other approach. That's why you won that.

John: We made the argument that it was ordinary and necessary for the production of income.

Jeff: You've got two professionals. If one of them now has to stay home, then the income side of the ledger goes down, and the government loses, so always best to finish up the argument with, "this would hurt the government and their ability to collect the tax."

John: Moving on to life insurance premiums. A situation here similar to the health insurance. I have a lot of folks come to me and they don't even have life insurance, and they've got small children. A family with small children. They have no life insurance. Either get life insurance or pay the money to the IRS. They will allow whatever your monthly premium is, as long as you can document it.

John: Moving on to current year taxes.

Jeff: Almost everybody overlooks this. You've got a client who hasn't been paying their taxes to IRS. They probably haven't been paying to the state. Some people have to pay it to a local jurisdiction. You're going to have to come clean with everybody, so go ahead and get it factored in.

John: When you compute your taxes on this line include selfemployment tax, and FICA tax as well as income tax. There

are a lot of tools out there on the web that will allow you to estimate what your tax is going to be for the year based on what you're projecting for gross monthly income.

Jeff: I use one of those tools, and I put everything through, and I've got a nice clean spreadsheet that goes out to the revenue officer or to ACS. It's rare that my cases are ACS, but it shows exactly what our taxes are. I've never had the tax questioned when you put it in a worksheet format.

John: The tax should be based on what you're projecting for your gross monthly income and the nature of the income, and divide it by 12. Don't simply take last year's number and divide by 12.

Jeff: No. That's what IRS may do, and that may help you. If you've lost the argument for what IRS is going to project your income to be, then take that higher number and project higher taxes. They can't have it both ways.

John: Next, under the caption "secured debt," what types of debt does this pertain to?

Jeff: That's basically all mortgages; for a business, that's something under a UCC, where a lender has a preferred status, ahead of the IRS. Those are things that if you don't make the payment then someone's going to come get the asset, or they're going to take title to the asset.

John: The next line, delinquent state or local taxes we've already touched on it briefly. The IRS has a formula that they use. It's proportionate. If you owe the IRS \$9,000 and you owe the state \$1,000, and you've worked out an installment agreement with the state where you're paying \$500 a

month, they're only going to allow \$50 a month, 10 percent.

Jeff: That is one of those situations where this trips up every taxpayer out there. The IRS is tough, and I don't let the IRS do this to my clients. This is one of the reasons I've got clients that hire me for this very purpose of making the case to the IRS that, well you can use this pro rata share, and you assert the fictional case that I should pay less than what I've already agreed to send to the state, but here's what happens if I do that. The state can levy my wages, and some of your readers would know that as a wage garnishment, or they've got the ability to levy my bank, or if I'm a business they've got the ability to levy my accounts receivable. Make me pay less than what I've negotiated to pay the state, or make me pay less than what I'm already being levied for on the state, and see how long it is before I'm bankrupt. If I'm bankrupt, then chances are that you're getting nothing.

Now, do not use the bankruptcy card in these negotiations!

John: Please elaborate on that.

Jeff: I always fight the IRS when they threaten to file a lien on my client, but they file a lien on almost everybody. You need to know that as soon as the revenue officer or ACS hears that you might file bankruptcy, they're going to file the lien if it wasn't already filed. Just automatic. They're in trouble with their manager if they don't. They're going to document that the taxpayer said BK, or bankruptcy or whatever, and now the IRS is in a position where they want to move first, particularly for filing the lien.

This is one of those minefields that you just danced on and you blew yourself up. The only reason I mention that, and unfortunately for your readers there are a myriad of situations when negotiating with the IRS where you don't even know you walked into a minefield and you put yourself in there. I don't threaten bankruptcy, but I sometimes mention it while negotiating for my client. For example, I mention bankruptcy when negotiating for a higher allowance for delinquent state taxes. The state or local taxing authority is the only party other than the IRS that has the ability to lien and levy like the IRS does,. The IRS will attempt to limit your allowance for delinquent state taxes, and I just don't let the IRS do this to my client.

Some of these discussions go on for years. When IRS is owed a lot more money than the state is, then it's a real pissing contest between the IRS, and the IRS isn't going to call up and negotiate on your behalf with the state department of revenue, and the state DOR has even fewer employees and less funding than the undermanned and demoralized IRS does. They don't care either. The state doesn't care that you owe IRS this money, but the practical matter is, both of these entities can wipe out your bank account. They can get the lion's share of your income. They can file a lien. And your phone stops ringing.

Be careful in that discussion, but be prepared for the IRS to use that ratio. Often clients come to me and they've already rolled over to the state, and they've got some very onerous payments. A lot of states require full payment within one year or less.

John: I don't know of any state that has a mechanism similar or comparable to the IRS in terms of its ability to evaluate a delinquent taxpayer's ability to pay.

Jeff: States generally have longer to assess new tax, so they've got longer to audit. Some states, you look at California, and as an example if you owe employment tax, back employment tax, then there is no statute of limitations. The states have rules that allow them to collect faster with more shortcuts. The state has often moved where the IRS hasn't, and you're locked into a monthly payment that's not allowable as an offset on the 433-A. It's a tough discussion.

John: The next line item here for "other expenses". In other expenses, you put in things that are unique to you. For example, they allow you your monthly minimum credit card payments, but they push that into food, clothing, and miscellaneous.

I think they give you like \$25 a month, but if you've got a lot of minimum payments that you've got to make I'll list those here under "other expenses." Another item I list here is professional fees. As part of my engagement, if my clients choose, they sign an engagement letter that grants me the permission to monitor their compliance with the agreement we've negotiated with the IRS, and I charge a monthly fee for that. I include that under other expenses.

If you've got extraordinary circumstances, going back to the gluten-free diet. If you've got an incremental amount that's more than what the IRS would allow under food, clothing, and miscellaneous I'd put that here. You've got a loss in your rental property; I'll sometimes put that in here. Jeff: A lot of those things they'll want to shoot down, but I would say that particularly for your reader, if they are attempting to represent themselves, then it's a catchall bucket, what you'll get and what you won't get—who knows. Just remember that anything you include must pass the giggle test. Will the revenue officer fall out of his chair laughing, or do you have a reasonable position supported with some verifiable third-party document? I had a guy who was making a huge monthly payment on a backyard pool that would just bring a tear to your eye. It was wonderful. It was an oasis, but he had a letter from his doctor that he needed to swim to maintain his health.

We got into this back and forth and the RO says, "He can have a \$20 a month for a gym membership and go swim there." I responded with, "No, he can't. His disability makes it impossible for him to drive." Of course, I could document that as well. The IRS hates to allow something like that, but if you documented it and it makes sense, then more likely than not, you'll eventually prevail.

John: Now that we're through with the form, let's make some general observations. One thing I wanted to point out, because I've had this happen before, is where the revenue officer, much to my surprise, informs me that my client has a roommate, so there's not one person in the household. There's two. The IRS can find out how many are in your household. This other person is not liable for the tax. They contribute to the housing, utilities, food, and some other expenses. What the IRS does is, they allocate the allowable expenses based on the ratio of your income to the total household income. Things get worse.

Jeff: I'll tell you a way to win some of that. First, when you have a roommate, only one of them is paying the rent, or only one of them has the mortgage, the other one is not on the mortgage or the lease. If the other individual moves out, then my client's on the hook for that full amount. You should be able to argue for the national standard.

John: You can likewise argue for the national standard if you're not on the lease or mortgage but your writing checks to your roommate.

Jeff: Oftentimes you've got a freeloader situation, or you've got a girlfriend or a boyfriend that you're helping out or whatever, or granny's living with you. It gets complicated, and it gets even more complicated in community property states.

You'll also have those situations, and I see this every now and then, where granny lives in the home and we want to bring granny in because having one more dependent helps, and granny's getting almost nothing in social security for whatever reason. Sometimes, including another person in the household can help. The IRS may or may not ask if that person is claimed as a dependent on your income tax return. The sharper revenue officer says, she's not a dependent; we're not going to include her in the household. You can win that part of that argument too. We're getting into the esoteric stuff now where your readers' heads are swimming, but these are those landmines that you step on.

You can win some battles and lose the war when that very bottom line, and that difference, line 34 minus line 49, so income minus expenses is rarely what you expect. And the

expenses are not the "Actual Monthly" column. The relevant column is under the caption, "IRS USE ONLY, Allowable Expenses." This is where the IRS determines what you get to live on. 90 percent, 95 percent of my clients, when we first crank this form out with my assistance and using just the IRS guidelines and formulas, they're in shock because the first-pass installment agreement payment is \$2,000, \$3,000, \$4,000, sometimes \$10,000 or more per month. So now, we're not an offer in compromise settle-for-less. The IRS doesn't care that you've got two \$1,000 a month car payments in St. Louis, and what were those numbers we had? In St. Louis they're going to allow you \$1,324 for your car ownership and your operating expenses, and now right off the bat we're \$700 in the hole, just on cars alone.

This is the biggest bone of contention generally for those people trying to represent themselves where they've made the mistakes, and really inflated the value of their furniture, and all those other things we discussed. There are so many other mistakes that are beyond the scope of this discussion. Just know that you really hurt yourself in negotiations without even being aware that you've screwed the pooch. I'm in the business to help clients, so I would say if you try to represent yourself, good luck, but the Internet's out there. Try to get smart. If you have to represent yourself try to get as smart as you can.

If you expect the revenue officer to listen to your story and be compassionate and show empathy, to be on your side—that's naive and unrealistic. You're not going to have a good result if you say, "I think my husband's divorcing me." Or, "I've been feeling sick." Or, "I've heard my hours are going to get cut." You haven't given the IRS anything that

they can verify. They aren't heartless, but they need proof before they'll exercise their discretion in your favor. I have a few clients right now that I am compelling to go to the doctor to document a very bad mental health situation. No adult wants to admit to someone else that they've got a problem that's affecting them.

I've got one client in particular who cannot get out of bed on the weekend. She can't do anything other than go to work, and she's barely holding her life together, and the IRS wants \$15,000 a month over what she makes. She is a high net worth earner, but she's got real problems, and one of the problems is she suffers from PTSD. She's had very bad things happen to her. She won't go to a doctor. She needs, she believes, the two dogs that live with her that keep her sane. I would agree with that. She spends \$1,900 a month on doggy daycare so she can go to work. If she will go to a doctor and get the diagnosis, PTSD, and I think she's clinically depressed, she may even be bipolar. In any event, if she gets a letter from the doctor stating that these dogs are vital to her recovery and vital to her ability to function, then I have a fair chance, believe it or not, of winning \$1,900 per month in doggy daycare.

My point about that is, sometimes you've got to be willing to be somewhat vulnerable, to swallow your pride, when you're in these negotiations. Those things that you would never tell anybody else: addictions, mental health problems, health problems that you just don't want to go to the doctor because you don't want to hear the bad news. All of this, if you thought that you could just tell the IRS, "I've got mental health problems, I can't get out of bed on the weekend," that won't sway the IRS.

A letter from a doctor that says you're under a treatment plan, and these are the costs associated with that. With that doggy daycare, if you can get a letter that the doctor says that you need these animals and that these expenses will facilitate the care of those animals and your recovery, or your mental health, then wow. You see the difference?

You've got to make the appointment. You've got to go to the doctor and you've got to come clean with the doctor, and you've got to come clean with me as your representative. You eventually have to come clean with the IRS. Is that ever going to be a document out there for anybody to see? No. Though, you should know that if your offer in compromise is accepted, then that documentation is at a reading room. Can't be searched or downloaded electronically, but there are a few IRS reading rooms where people can go and look at your offer in compromise. But it doesn't include these details.

If you have medical discussions inside of that then I would put a cover letter on that that says this is not to be released to anyone. This is private medical information not to be released, and make sure you've got a cover letter on that. You need to tell your story. It's not woe is me. It is I've got a problem, and this is my third-party verification of that problem, and this is why I get the expense for it, or this is why it's going to affect my income.

John: We've gotten through pretty much the meat of the 433-A. I just wanted to sum up here, because going back to the earlier parts of the discussion, what is the IRS going to want from you? They're going to want your total available cash. They're going to want your total available equity, generally. They want your "remaining monthly net

income." All based on their calculations, not yours. There are exceptions and special rules. Unless you know that, you're not going to have much luck if you're attempting to negotiate on your own behalf.

Jeff: I know that this has gone longer than we had planned. I wanted to spend one second on the offer in compromise, so the 433-A (OIC).

One of the biggest problems that I see with that, and there are some changes on those forms, one of the biggest problems always in section three where it says specifically in bold letters, "Do not include clothing, furniture and other personal effects." The form 433-A that we walked through, I talked about how you properly value those assets. Here you're not to include it at all, and yet I see representatives all the time that go ahead and throw that number in there, and taxpayers who try to represent themselves put that number when it says in bold letters thou shalt not put these numbers in here. Why step on your own landmine?

You've got to read these documents. These documents come with instructions that give limited guidance on what to do, but at the end of the day the IRS is seeking a result favoring the government. You're going to want a result in your favor. As a representative my job is to get the IRS to see it our way, and your readers, if they're representing themselves—your job is to get the IRS to see it your way, and you have a lot of homework to do to get these accepted in a way that you can continue your life or continue your business without too much discomfort. If you're not comfortable with the result, you'll likely default the agreement.

John: Moving on to the Offer in Compromise itself, the Form 656, anything there you want to point out? That's a straight forward form. Is there anything there that you want to point out?

Jeff: That's basically the cover letter. It's the cover letter that says we want an offer. The 433-A (OIC) is going to be included with the Form 656. That form is accompanied by a decent booklet that explains how to fill that out, so be very knowledgeable of that. Understand that unless you meet a hardship threshold, which is low income, then you have a filing fee for that, and those are soon to increase if they haven't already. Based on which type of offer you're proposing, you may be required to make a significant deposit. If you are making a periodic payment against the offer, you should know that the IRS has two years to either accept or reject your offer.

If they don't accept or reject your offer within two years, then the offer's accepted by default. You don't see those cases, very rare. I have two of those that are very soon going to be accepted just because the IRS never got around to them. It's vital that if you are under a periodic payment plan, either the one year or the two-year flavor of that, that you make that payment every month. If you don't, you give the IRS the ability to default your offer as soon as they discover it.

Sometimes, I like to put my clients on the 24-month payment plan. Most folks wrongly presume that their monthly payment is  $1/24^{th}$  of the amount of the offer. It used to be that let's say that our offer was \$10,000, so we'd have to take that divided by 24, or about \$400. Even the IRS used to assume that that monthly payment had to be

 $1/24^{\rm th}$  of the total amount, and that's not true. IRS is wrong on that, and I've been winning that for six or seven years.

On a \$10,000 offer I might offer \$100 a month for the first 23 months, and then the balloon payment at the end. I believe that's even in the Internal Revenue Manual, but I know they've lost at least one tax court case where you can have a balloon payment at the end. The thought process there is that you can never be entirely certain that the IRS is going to accept the offer. If you've done a good job they will, if you meet the criteria. The IRS accepts roughly 40 percent of offers that are submitted. If only 40 percent get approved, then close to 60 percent get disapproved. If I was sending in  $1/24^{th}$  of \$10,000, and it took them a year and a half to get around to the offer, then I've spent \$7,500. If they take 18 months at my \$100 proposed plan, then I'm only out \$1,800. That's a really big difference.

John: You could come out of the OIC with a currently not collectable, or "CNC."

Jeff: You could come out of the offer group as a "full-pay" if the IRS rejects your offer. You could come out of there on a partial-pay installment agreement where the IRS is going to write off one or two tax periods, and then you're paying the rest of it. There are a lot of times where, you know, your situation can change. You're making more income than you did when you put it in. Those are the main topics that I have for the Form 656.

John: The only other thing I might mention is as part of the 433-A there's a whole section at the end, after the Monthly Income and Expenses that deal with self-employed individuals.

Where you basically go through the very same exercise, just about, as you did for your personal side of the equation. However, this is for your business income and expenses. It's not so much a question of what's allowable and what's not. It's what's real. You report from your financial statements, and report what you expect.

Jeff: That gets tough, because a lot of businesses out there barely even have a business checking account, so they don't have financial statements. I know you run into those clients every now and then, as a CPA you probably grit your teeth, wow they don't even have books and records, but IRS is used to seeing that.

Don't be afraid to put your business assets out there. The IRS will generally not seize an income-producing asset.

What's income-producing? I would say that if I'm in business, unless I have a bunch of extra stuff, I've got 10 of something. I only need two of those. Those items that are required to produce income are exempt. What's the logic of IRS seizing those assets if it's going to put you out of business?

John: To wrap up here, you should know that completing these Collection Information Statements, that's only the start of negotiations.

Jeff: That's the start to enter into the negotiation for what program they're going to put you into. Are you a full pay? Are you a partial-pay? Are you currently not collectible and the IRS will revisit your case in a year or two? Should you consider bankruptcy?

John: This goes back to our earlier discussion, where we talked about can't pay, and will pay, and won't pay.

If you're going to file an offer in compromise, the assumption is that you're a can't pay, and the 433-A, or the Collection Information Statement, will determine whether you're a can't pay or a will pay.

Jeff: That's going to dash the hopes of a lot of your readers in that they all want to pay only a fraction of what they owe, or a lot of them believe they already paid the tax.

A lot of them believe they've already paid the tax due and it's the penalty and interest that's killing them, and the IRS doesn't see it that way. This is not for the weak of heart, but it's certainly worth knowing what the IRS will accept and won't accept, and I would just caution everybody to go out there and get as smart as you can. I'll leave you with this, that the Taxpayer Advocate is available in situations where the IRS is taking very harsh measures—levies generally where you're not left with enough money to operate on or feed, clothe, and house your family. But the Taxpayer Advocate will not come in and negotiate your agreement for you. The Taxpayer Advocate is there. It's a free service. It's standalone from the IRS, and they can at least get the initial levy off your neck so that you can fill out these forms and start the negotiations with the IRS.

# CHAPTER 11

# Mike Rozbruch

Inside A Tax Resolution Firm

Michael Rozbruch is nationally recognized entrepreneur, and the founder of Michael Rozbruch's Tax and Business Solutions Academy™, a training and consulting services company that and helps CPAs, trains attorneys, Enrolled Agents and other professionals



build highly profitable practices through proven marketing systems and strategies.

Michael helped pioneer the tax resolution industry in 1998 when he founded and built one of the most reputable tax resolution firms in the country. On the verge of a personal bankruptcy, he started Tax Resolution Services, Co. on his dining room table with zero clients and grew it into a nationally marketed powerhouse registering \$23 million in sales, 4,000 clients and 125 employees. It was twice named to the Inc. 5000 list of America's fastest-growing companies.

As a Certified Tax Resolution Specialist (CTRS) and CPA, Michael has represented thousands of taxpayers who owe the IRS, but simply cannot afford to pay. He is an author, frequent speaker at conferences, and has been interviewed by numerous media outlets, including the Fox News Network, Inc. Magazine, U.S. News & World Report, and The Wall Street Journal. In 2012, Michael became the host of a weekly TV show, "TAXMAN", on the BIZ TV Network.

Michael has also received many prestigious awards, including CPA Magazine's national recognition of Top Tax Advisor to Know during Recession, and ASTPS's Top Practitioner Award, which recognizes distinguished members for their exemplary professional accomplishments, dedication, and contributions to the organization and the profession, and a Bronze Stevie Award for the "2012 Maverick of the Year" on behalf of the American Business Awards.

John:

In this session, we'll be discussing how to negotiate with the IRS. We'll also be talking about the benefits of hiring a professional and what to look for when choosing a representative.

Welcome, Michael.

Michael: Hey John, thank you so much.

John:

I often refer to you as the godfather of the tax resolution industry. Can you tell us what got you started in the business? What's your backstory and what inspired you?

Michael:

Being the godfather kind of makes me feel old. It was ironic. I didn't plan for years or months to get into tax resolution. It came to me out of suffering through the pain of being fired and let go from a corporate job. I worked in the corporate world for 18 years before I decided to follow my dream. I was 42-years-old before I got into tax resolution.

When I was let go from that position, which wasn't the

first time, I transitioned from job-to-job looking for a better job, better pay, and trying to better myself.

John: You worked yourself out of that one.

Michael: I was hired at that company as CFO to clean house. The books were messed up and the bank accounts weren't reconciled. I changed out the staff, reconciled the books, got the place running like a Swiss watch and decided that I was going to take my wife and 2 young daughters on vacation. I hadn't been on a nice vacation for about 4 or 5 years. We went on a 10-day vacation and my biggest problem was I didn't sabotage anything at the company for something to blow up so that they really needed me when I got back. So much for integrity.

John: No good deed goes unpunished.

Michael: I got called up into the CEO's office and he said, "Mike, your services are no longer required." No advance warning. No severance. I packed up my office. I put my stuff in the car and headed home on the freeway, I pulled off to the side of the road. To this day, I don't remember how long I was there. I think I was there for a couple of hours, just contemplating and a couple of things popped into my head.

One of the things that popped into my head was I knew I was unemployable. I knew that I could never work for anybody ever again. It just wasn't in the cards for me, so I had to figure this thing out. Miraculously, I was a CSPAN nerd at the time. I remember watching CSPAN a few months earlier where the average American got up

before the TV cameras. It was a Senate-financed televised hearing about how the IRS ruined their lives. Padlocked their businesses, ruined their lives, and relatives dropping dead from the stress via heart attacks et cetera. I said at that time, "You know what? I'm going to help these people. I'm going to figure out a way to help these people." These people were not bad people. It wasn't like they were criminals or putting their money in offshore bank accounts, or trying to evade taxes. They were average Americans that a negative life-altering event happened in their lives like death of a wife, a husband, God forbid a daughter or son, serious illness, loss of a job, or if they were self-employed, the loss of a major customer. Life happens.

These people got behind the 8-ball and owed money. The IRS tore them to shreds and I said, "I'm going to help these people." I always liked the David versus Goliath fight. I'm a street kid from Brooklyn. I never back down. I got my butt kicked many more times than I ever won a fight, but I never backed down.

John: Back then it was the Wild West days with the IRS.

Michael: They can go into your bank account, or garnish your wages basically carte blanche without notice, without any notice, and no appeal rights.

John: You decided to embark on a career in tax resolution. Tell me about that.

Michael: I was a CPA and I figured I'm going to hang my shingle and the masses will come just because I'm a CPA and I'm good at what I do. I'll go to a few networking meetings, maybe put an ad in the Yellow Pages. I followed the herd like everybody else was doing, but that didn't work because I couldn't pay my bills. I was already in debt from doing some transitioning on the job front from a few years earlier. I was \$100,000 in debt. I went outside the industry to learn everything I could about marketing. I read books. I went to as many seminars and conferences and ran my credit cards up to the limits.

Through that, I met Dan Kennedy, J. Abraham, Bill Glazer, and Paula Artunian, those are the godfathers of direct response marketing. I saw what they were teaching was so successful in other industries because I was rubbing shoulders with other business owners, not in the tax or accounting business, but other businesses brick and mortar, other professional type practices and they were doing well using these strategies. I figured that let me port some of that over to the tax resolution world and the rest is history. I just put the blinders on and did direct response marketing, which as you know goes to the core of somebody's issue. It goes to the emotional triggers, the pain and discomfort somebody is in wanting to get out of that, wanting to put the IRS in the rear-view mirror.

John: When I mentioned in your introduction that you represented thousands of taxpayers, that wasn't an exaggeration.

Michael: I personally represented close to 2,000 individuals and small businesses over a 16-year span. We can talk for hours here about war stories. I was a one-armed paper hanger the first 2 to 3 years. I was doing most

everything myself. I had one assistant answering the phones. I had another part-time assistant helping me get the client documents and helping with getting the client documents and doing the 433A.

When I got into it, I think you got into it at the same time, in the late 1990s, early 2000s, the IRS was sitting on their laurels, after the 1998 Tax Act. They weren't seizing assets, or levying people, or issuing liens. Those are the years that I had that phenomenal growth the late 1990s early 2000s, mid-2000s and then the IRS came around and then they started to really enforce collection around 2002 through 2012.

John: You're still doing tax resolution work?

Michael: I don't hold myself out as doing rep work now. I do consult. I'm on a few powers of attorney on some major cases that some regional CPA firms want me involved on as a consultant, advisor or coach, but I'm not representing clients on a day-to-day basis.

John: Now you're helping practitioners, CPAs like myself, attorneys, and enrolled agents connect with troubled taxpayers. Tell us about that.

Michael: I took my 16 years of in-the-trenches experience and I packaged that up into an information product as well as doing high-level mastermind coaching and a membership. I'm teaching other CPAs, EAs, and attorneys to do what I did. Like a bolt-on system A through Z. I teach practitioners how to attract troubled taxpayers, how to generate leads, how to answer the phone when their marketing is working, and a

prospective client calls off their marketing. What questions do you ask a prospective client? How do you schedule the appointment? How do you make sure they show up for the appointment? Once they're in your office or on the phone, how do you talk to them? How do you get retained? How do you close the deal? How do you get paid? Someone who owes the IRS thousands, hundreds of thousands of dollars, you're not getting paid if you send them an invoice after you're done resolving their case. If the most brutal collection agency on the planet can't collect, what do you think your chances are after you resolve the case and send the invoice? I teach how to get paid in advance, before the case settles and what to charge, how to charge, how to turn that client into a referral machine.

John:

One of the other things that you coach the folks on is customer service, client service, how to manage the client relationship and connecting with them, follow-up, and things of that nature.

Michael:

Any accounting or tax business—you're really in the retail business. I define retail as dealing with the public. Number one is you shouldn't get into any business unless you feel like helping the people who are your customers and clients. That should be first and foremost, being of service, liking what you're doing because you're really saving someone's financial life.

I always tell people, "Look, if you tell me your clients are a pain in the butt, and you only have 50 of them, imagine how you're going to feel if you have 500 of them." In other words, you've got to love, not only the

work, but you've really got to love helping people, relating to people, and being a people person because that's what the business is. It's trust in you as their trusted advisor.

John: You're dealing with people that are usually at a low-point in the arc of their life.

Michael: I used to say that a lot of these folks that have IRS problems feel so relieved just by reaching out, just by picking up the phone and dialing your number. That's a huge step because they've probably not wanted to face the music on this for a long time out of maybe embarrassment or shame or denial. They're in a world of hurt and they're vulnerable at that point.

John: It's amazing the transformation that you can feel over the phone when you're able to show them that there is a way out.

Michael: People want to be led. People want to be told what to do. If they're in a particular problem, they're relying on you the expert, the guru, the professional to lead them, to tell them this is what you've got to do, and this is when you've got to do it. They're looking for that guidance. They're looking for that direction from you.

John: Why should people retain an expert when they can essentially represent themselves?

Michael: That's like going into a shark tank. It's like going to court without a lawyer. You can't do this yourself.

You'll get creamed. The IRS is not your friend. They don't have your best interests at heart. If you got

arrested for a serious misdemeanor or a felony, would you go pro se? Would you go to represent yourself in court?

The IRS has unbridled authority. They have more authority than the President of the United States because the President of the United States can't go into your bank account, or take your wages without a court order. You're dealing with someone who has unbridled power to basically ruin your life.

John:

You have a great deal of experience, and you rose to the top of the tax resolution industry in a short time, despite relentless competition. I'm sure you've seen the best and the worst. Are all tax practitioners created equal?

Michael:

There are so many subpar firms out there. People hear ads all the time on the radio, and they heard my ads in the day on the radio and on television, but for the small, local practitioner that's good news because that brings awareness to folks who would never otherwise know that there was professional help for something as personal and as detrimental as a tax problem. It makes the local practitioner more available to somebody who didn't know that this service even exists. There are a lot of subpar firms out there, a lot of firms, as you know, we're familiar with the Tax Masters of the world, J. K. Harris, Ronnie Lynn Deutch.

We won't mention those names, but the bottom line is, for those firms, if you had a pulse and a credit card, you were an offer in compromise candidate, or at the very

least a penalty abatement candidate. They didn't qualify the client and they didn't do much of the work.

John:

Before I'll take on a client, and I'm sure you went through the same process, I vet the prospect to determine if there's anything I can do and if there's not, I won't take them on as a client.

Michael: That's the whole reason to have an in-depth financial interview at the initial consultation. You can ascertain whether you can help them. You can also ascertain if it's somebody that you want to work with. It's okay to say "no" to business if it's not going to be beneficial to you with regard to it being aggravation and a pain in the butt and a big energy waste. It's okay to say no to prospective clients if you don't think it's a good fit.

John:

I often have prospects call me and they've already been through the process with one of these less-than-ethical tax resolution outfits and they've spent thousands of dollars and I look through their IRS transcripts and see that basically nothing's been done.

Michael:

I tell prospective clients, if you're looking for someone to represent you, you're looking to hire somebody, you should ask that professional what's their success rate? How many people have you represented in offers in compromise with the IRS? How many have you submitted? How many have been accepted? What was the average settlement rate? How many penalty abatements have you done? If I'm looking for a properly structured installment agreement, talk to me about how many you have set up where the monthly payment was something I could handle? Those are

some of the questions a prospective client should be asking when they are looking to hire a professional.

John:

I think the most recent statistics show that somewhere between 35% and 40% of offers in compromise are accepted by the IRS. In my opinion, that just means that somewhere between 60% and 70% shouldn't have been filed or they weren't filed properly.

They were filed by somebody that didn't know what they were doing, or the offer shouldn't have been filed in the first place. They should have looked for some other mechanism.

Michael: It could have been the taxpayer filing one on their own without help.

John: In most cases taxpayers should not represent themselves.

What are some of the most common and costly mistakes taxpayers make when representing themselves?

Michael: When they represent themselves, they don't know that some expenses from a cash flow standpoint, from a 433A standpoint, are allowed, or not allowed. They may think that they're a great offer in compromise candidate because they're paying a \$5,000 mortgage not realizing that the IRS isn't going to allow anything near that due to the national standards for housing. They make mistakes with putting their actual expenses on the forms not realizing there are certain caps, or ceilings to certain expenses and they incorrectly

assume that they're great offer in compromise candidates.

Clients make mistakes by, and sometimes it's not a mistake, sometimes it's intentional where they omit something from the 433-A. Like a bank account or home that may be in another state, in another country, in somebody else's name and they don't realize that they're signing that form, the 433A form, under penalties of perjury. Not only can they get in trouble with regard to not having their offer or case settled, but they could be facing criminal prosecution by lying to a federal officer of the Internal Revenue Service.

John: Most people aren't aware that it's a simple process for the IRS to find that information that you think that they won't.

Michael: Especially today, because of the technology. It's not like 15 years ago, where you could play hide the salami to some extent with the IRS, those days are gone.

John: Beyond that, the layperson tends to overlook the rules that favor them. For example, they often tend to overstate their equity in real estate.

Michael: I was reviewing a case that one of my members had me look at that was prepared by a CPA who had no tax resolution background and you're right. He inflated the home values by like almost double what Zillow had. Not only do laymen folks make mistakes, but I've seen professionals who don't have any training in this area make big mistakes.

John: If somebody's representing themselves, the only way

to avoid these mistakes is to learn the Internal Revenue

Manual like we do.

Michael Well, good luck with that, because there's only 72,000

pages.

John What are some secret strategies that one should know

when negotiating with the IRS?

Michael: That the IRS will pay for your representation fees.

don't realize that if they have to borrow money to hire a professional, the money that they borrowed, if they pay it back over time with a promissory note is a

They'll subsidize your representation fees. Most people

deductible expense on the 433A. You lower the offer amount, so in essence, the IRS is subsidizing 100% of

the representation fee. People don't realize that if they replace their old clunker, their 10-year-old car with

100,000 miles on it with a brand new one with a payment of just under \$500 they would get almost a

\$450 or plus more deduction when you count in the maintenance costs and the ownership costs for that vehicle, thereby the IRS is subsidizing a new car

payment.

I can't tell you how many people I would send out of my office to the closest Nissan dealership telling them, I don't care what the interest rate is, go get yourself a car. Keep the payment around \$450 and we'll be able to settle your offer in compromise for \$20,000 less or something to that effect.

John:

With respect to what are known as "National Standards." The IRS is hard-nosed about sticking to those, but in special circumstances, you can even get them to accept a higher number for food/clothing and housing/utilities.

Michael:

If the client or individual is on a special diet prescribed by a physician, the IRS will allow higher than the national standard for food. The same thing, sometimes, for housing. If you're in a certain zip code that has a much lower allowance for housing and right across the street you're in the Beverly Hills zip code, where the housing's an extra \$1,500 more. You can make that argument and get more than the national allowance based on your zip code, for extenuating circumstances like that.

Iohn:

Most of the clients that come to me, come to me after they've either failed epically in their own efforts negotiating with the IRS or someone else has failed on their behalf. They call the IRS with high expectations because they're living paycheck to paycheck, but once the revenue officer gets through with them, they're on the phone looking for help because the IRS is usually wanting a lot more than they can afford given the lifestyle that they've become accustomed to.

Michael:

A good installment agreement is a properly structured payment plan because what a properly structured installment agreement or a properly structured payment plan means, is that the IRS is not managing your cash flow. If an individual wants to represent themselves and do this themselves, I guarantee you, they will be paying more on a monthly basis, probably

more than they can afford to really pay versus if they had a representative who knew what they were doing.

John:

I have a lot of folks that can afford to pay the IRS, they have assets, they have some cash flow, but \$50,000 of delinquent tax is more than they want to pay. Can you work something out for me? I quickly have to explain to them what the offer in compromise is.

Michael:

The offer in compromise is as close to what bankruptcy is for unsecured debt to what IRS debt is. The IRS will accept a much lower amount based on your financial ability to pay over the life of the remaining statute of limitations on collection. The more destitute one is, the better deal you're going to get from the IRS. It's an exercise in cash flow. It has nothing to do with accounting. It has nothing to do with taxation. It is cash inflows versus cash outflows and then there are some national standards that you bump up against, but if you can show you cannot pay the amount of the full balance over the remaining life of the statute, the IRS will accept less than what's owed and in a lot of cases a lot less than what's owed to them.

John:

They call that reasonable collection potential. They include all your income, but they only give you an offset for necessary and allowable expenses.

It's at their discretion. One of my secrets is understanding that a lot of their calculations are discretionary, in spite of what you're told. The key is to get them to exercise their discretion in favor of my client.

Michael: You call them on it when there's an abuse of discretion because they abuse that discretion every day. You've got to call them on it if you feel that they have discretion to go one way or the other and they're going way too far to the other side, which is detrimental to your client, that's an abuse of discretion. I used those terms very stringently when I had discussions with the IRS. Clients would come to me wanting to do an offer and let's say they weren't good offers in compromise candidates. I would explain to them, in my world good is bad, and bad is good.

In other words, if you're doing good, it's bad for an offer in compromise. If you're doing bad financially, that's a good starting point for an offer in compromise. The world is flipped upside down when it comes to the IRS. The same thing as you can't use the word "fair" and "IRS" in the same sentence. That's an oxymoron. A lot of folks have trouble with that. They look at the offer in compromise program and a lot of other IRS settlement programs from a viewpoint of it being fair to them. It couldn't be further from the truth.

John Well, it's fair in the sense that everybody's treated the same. Exercising discretion hopefully in favor of your client. What are the strongest collection-related defenses do you use?

Michael: If they had true financial hardship, that's probably the best defense around. If you can prove your client is suffering financial hardship whether it's medical bills, childcare payments, if their electricity or gas were shut off, I would produce those documents and show the IRS, and we'd get any type of levies released or monies

returned to the bank account. We'd start on the road to doing an offer.

Other defenses include innocent spouse where one spouse was either coerced into signing a return or signed the return under his or her own free will, not knowing that the other spouse was absconding with the quarterly estimated tax payments, or started a business on the side and used all the money that was supposed to go towards taxes for this business, or gambled it away, or had a bunch of mistresses. I've heard it all in 16 years; those are some of the defenses.

The offer in compromise is a good defense. Doubt as to liability. We're just talking here from the financial aspect. Let's say they were a shareholder of a corporation and they happened to be, the president of the corporation and they were also on the signatory card. In other words, they could sign checks, but the reality is they were never in the office. They never signed a check. They were a figurehead. They were out in the field serving clients, or selling and had no idea what was going on in the office. The IRS can assess that person the trust fund recovery penalty for the unpaid 941 payroll taxes of the corporation. The defense for that person would be an offer in compromise doubt as to liability where you're not contesting on the basis of the wherewithal to pay. You're contesting it based on the presumption that liability is itself invalid in the first place. It should never have been assessed against this person.

John: You mentioned at the top of our discussion that a lot of people end up owing the IRS because they hit a rough

patch. The last thing they want to do, in many cases, is open a letter, it might be the third or fourth notice that they've received from the IRS saying, we want our money and we want it now. There's a tendency to just ignore it with the hopes that it's going to go away on its own.

Michael: People used to come into the office with stacks of unopened envelopes. I called it the "opening envelope ceremony". I'd take out my trash can and my letter opener and I'd just go through letter after letter. If it was 6 pages, there's only one page that matters most of the time on a collection notice, throwing away all the other paraphernalia, you know the publication notices, et cetera. I would stack them and sort them by year, but you're right. People think out of sight, out of mind. They have their head buried in the sand, but the IRS, in a lot of cases, is like an elephant, they don't forget. They have 10 years. They have 10 years to collect from you. If you owe payroll taxes they have 13 years to collect from you.

John:

People are surprised that if they don't collect within 10 years of the date that it's assessed, with certain exceptions that stop that statute from running, the IRS can't collect.

It is an amazing and unbelievable strategy if used Michael: correctly.

John: They call it a partial pay installment agreement.

Michael: Sometimes a partial pay installment agreement can be a heck of a lot better than an offer in compromise

because it's not as intrusive. Though they can review your financial situation, they can ask you to submit a new 433-A every year or two. I've rarely, in my experience, seen them pull somebody out of a partial pay installment agreement. Once you get that set up, they're good for the duration.

John: It's not like they have the manpower to follow-up.

Michael: I think with this new administration, I think taxes will go down for everybody. From an enforcement standpoint, I predict that people who are in the tax resolution business are going to see a spike in business over the next 12 to 48 months and beyond. I think you're going to see the economy improve. And what happens in a strong economy? People pay taxes.

John: Yes, people pay taxes and there's a lot of folks out there that have income that's not subject to withholding and a lot of times those are the folks that get in the most trouble.

Michael: I was reading a couple of weeks ago, Nina Olson's report to Congress where, this is the first time in four or five years that Congress is going to grant a 9.3% increase in the IRS's budget. Half of that increase is going to enforcement. They're going to hire 828 new revenue agents, new auditors this year with an appropriation of \$128 million. I've seen the pendulum swing three times now over the last 18 years between more enforcement and less enforcement. It's been in the past four or five years, there's been less enforcement than the eight years preceding that.

You're going to start to see a pendulum swing towards more enforcement.

John:

I don't object to the enforcement as much as I object to the enforcement without the manpower to serve it. Things that used to take three months now take over a year to get through the IRS.

Michael:

The IRS has what they call their "future state," which is supposed to be rolled out in five years. I don't know if that's going to happen or not where they're going to close all 400 of the walk-in offices, so there won't be any walk-in offices anymore at the IRS for people to go to. They're going to curtail the phone service, not for the practitioners, but the taxpayer's phone service. I think last year the IRS did courtesy hang-ups on 68 million people.

John:

The one thing that they don't understand is the first question the revenue officer's going to ask is, "Where do you bank? Can you afford to pay the full balance today?" They've already made a judgment about the taxpayer before they even hear from them, and that judgment is that these people won't pay. I try to explain to my clients is that their assumption is you won't pay. We need to convince them that you either can't pay or will pay over time. If you can't pay, you're either an offer candidate or currently not collectible. If you're a will pay, you'll end up with some type of installment agreement. If you remain in the won't pay, you're looking at nothing but a nightmare.

# CHAPTER 12

# Larry Lawler

Know Your Pro

Lawrence Lawler is Chairman of the Board of Lawler & Witkowski CPAs, PC, which he founded in 1973. The firm derives seventy percent of its annual income from Tax Problem Resolution work.

Larry is a Certified Public Accountant, Certified Tax Resolution Specialist, IRS Enrolled Agent, and National Tax Practice



Institute Fellow. He is also the National Director of the American Society of Tax Problem Solvers (ASTPS), a nationwide, non-profit, professional association whose members include CPAs, EAs, and attorneys.

Larry is a frequent public speaker, a writer on professional topics, and a regular trainer of tax professionals nationwide. He is a dynamic and knowledgeable speaker who offers a mix of information, personality, and humor in his presentations and interviews. His audiences enjoy him as much as he enjoys speaking. He is nationally recognized for his skills in solving tax problems, his marketing expertise, and exceptional practice management abilities.

John: Today we're talking about hiring a tax professional to represent you, where to find one and what to look for. It's my pleasure to have Larry Lawler join me.

Larry has represented thousands of taxpayers before the Internal Revenue Service.

Welcome Larry and thanks so much for spending some time with us today.

Larry: I'm glad to be here with you. Just like you, we're practitioners, we represent taxpayers and we're all in it, they call it 'practice' for a reason.

You learn new stuff every day and that's something that we've learned over these years, 45 years it is in practice, you learn new stuff every day. Those skills and credentials are great, but you've got to keep doing the work to know what's going on.

John: I know about your expertise personally because I've been to your national conferences since I became an ASTPS member in 2014. How did you get into the tax resolution business?

Larry: I use the simple phrase that, "I stumbled into it." It is true because maybe about 15 years ago, we became aware of the fact that we were successful in solving IRS problems and helping troubled taxpayers. It wasn't because we went out looking for that work. We'd get a referral from somebody who hadn't filed, paid, or the IRS was going after them and we'd get it straightened out.

One day I saw an ad for a seminar on tax problem resolution. I said, "That looks interesting." I'd never seen anything written about it. I went to the seminar and sitting in the meeting room, I'm listening, and the speakers were five years behind in the strategies they

were talking about. The stuff they said, while it was true, it was out of date.

I went up to the gentleman who had organized this little event and I said to him, "I'm just a little concerned because your speakers, I've listened to three in a row now, they're all a little out of date." He looked at me with a funny look on his face because I'm sure he wasn't quite sure how to take me and he said, "Do you think you could do it better?" I said, "Truthfully, yes I do because I know those aren't the current rules." He said, "How about you speak next year?" Going from that moment two years forward, I was running his company for him. He transferred the whole thing from his home office into our offices and we started running it and building it.

I kept trying to tell him, we need a non-profit professional association. He didn't want to do that. He didn't want to do anything non-profit, he wanted to run seminars to make money and nothing else. Finally, I said, "You know what? I'm going to start this ASTPS. I think it's something the industry needs." That's what we did. We started it up and we've been growing it ever since. Our whole idea was to get something where practitioners who were trying to do this work and get some education and get support of some sort because we could find so little about how to handle tax problems and even about the IRS procedures and cases in this area of practice.

When people think of an accountant, CPA or an EA, they think along the lines of tax preparation and compliance work. This area is a little bit different, but it's not substantive tax law where you're trying to do a tax return properly or you're trying to figure out if a transaction

results in a capital gain or ordinary income. Rather, it's an area of practice and procedure and how does the IRS work and what are their rules and what are the programs that they have available. I kept saying, "There's so little on the practice and procedure area." There were a couple books out there, a couple of professionals that I knew throughout the country, but nothing was organized. That's where ASTPS came from. I saw a need there and said, "Let's see if we can fill it." Here we are some 14 years later. We're doing it and running regularly scheduled seminars now covering IRS practice and procedure.

John: How would you describe the purpose or the mission of the ASTPS?

Larry: To provide educational opportunities for the tax problem resolution practitioners. We're primarily focused on technical materials, but we also do offer some education in the areas of practice management, specifically related to tax problem resolution, marketing tools, software, trying to fill the need for practitioners who are looking to represent troubled taxpayers. Our mission is to have the resources for them and provide education, that's why we do all the seminars and things that we do. As a member, we do webinars monthly.

John: You get some of the top minds in the country to speak at your conferences and on the webinars as well. That's not the only resource you offer, it's my colleagues that I get to interact with face-to-face at each conference. You get together at dinner and you trade war stories and you find out how people around the country are handling matters differently than you and maybe better in some cases and you get to share some of your experience as well.

Larry: The best part of any seminar is the people you meet there and the connections you make. Somebody you can pick up the phone and call and talk to easily. I couldn't agree with you more.

At our events, we sponsor an event where people can get together for exactly what you said, fostering that relationship and getting the attendees to know each other and talk to each other. We're a small community when you look at the overall picture.

John: Comparatively.

Larry: There's not a lot of people who want to face the IRS dragon.

John: Compared to traditional practice of tax, your members are very eager to share their knowledge and reach out and help when you need it. I know that there are various user groups out there where if you run into a snag or you hit a brick wall you can reach out and see if anybody's had a similar experience.

Larry: Even as part of your membership, we know how important that is. Our members can call in and talk to me or my partner, John Witkowski, or one of our staff members. Most of our staff members have over 15 years' experience doing this too, and they can get answers to questions.

We made that part of the membership because we know it's a very lonely place sometimes. If you're a small practitioner and you're representing taxpayers before the IRS and have no one to talk to, you're always going to

worry about, "Am I coming up with the best solution for my client here?" This is a way to help relieve that anxiety. I want to relieve the anxiety of being alone. Smaller practitioners may be very independent people and very able to think for themselves, but it's nice to have somebody to bounce it off of and that's one of the things that you get out of what you're talking about, the socializing at the events as well as the calling in with questions.

John: You mentioned the word 'anxiety'. I've got to tell you, that accurately describes what it's like when you first start out in this business of tax resolution. You've gotten off the phone with a revenue officer and they've beat you about the head and shoulders.

The thing is that what you allow practitioners to do is to learn more about tax procedure, collection procedures, or at least as much as the revenue officer knows, and when that's the case you find yourself educating them, rather than the other way around.

Larry: It's funny because that does happen so often where you'll say to them, "I understand what you're saying, but that's not how it works. If you look in your manual..." and you direct them to their own internal revenue manual that governs how they do their job and say, "In there it says you're supposed to do this."

I get a kick out of it when they come back and say, "We're going to go along with you on that." Of course, you're going to go along with us on that, it's because it's what's in your manual. If they don't know what's in their manual and we point it out to them, that works to our clients'

benefit because we are always looking to protect their rights and get them the best resolution of their problem.

John: How does someone become a member of the ASTPS? Can anybody do that? Are there any prerequisites?

Larry: You've got to be able to represent a taxpayer before the IRS to become certified, but to be a member you can join if you're in the tax arena doing tax returns, but you want to know about tax problem resolution, you can join simply by filling out the membership application. You've got to agree to industry best practices because we do enforce that and if we get complaints about somebody we get right on it. Typically, they agree to industry best practices and, paying annual dues, just so we don't scare anybody away here by the way, our annual dues are very reasonable. You can simply fill out the application form and join the organization and have all the benefits that go along with it.

There is the other side of it, of being certified.

John: Let's talk about that for a minute, the Certified Tax Resolution Specialist. What is that credential and why is it important?

Larry: We usually refer to it by the acronym of CTRS because it's so much easier to say and all.

A CTRS must be licensed to represent a taxpayer before the IRS, that's the number one criteria. That means you must be a CPA, an enrolled agent, or an attorney. Those are the only three people who have that credential.

To earn the CTRS credential though, the candidate must demonstrate that they have the knowledge to work in this area. There's an examination, it's 150 objective questions plus a case study.

In addition to that, we have an experience or education requirement. Though not required, we prefer the candidate have a college degree. I don't care if your college degree is in sociology, you've shown that you know how to study and learn things.

We look for experience in tax problem resolution. You must have a minimum of one year of full-time experience or its equivalent.

Lastly, the candidate must have completed at least 16 hours of continuing professional education specifically on the topic of IRS problems resolution in the two years immediately preceding the examination.

John: You say that experience matters when you practice before the IRS. I have friends and colleagues that are CPAs or attorneys or enrolled agents that have been in business for 30+ years and have never done any collection work, or very little. Why is it that many tax practitioners don't handle IRS collection work, even though they do tax returns and they're active in IRS exam defense?

Larry: Most people, including professionals, are intimidated by the IRS. I constantly have colleagues who will say to me, "Why in the world would you want to deal with the toughest collection agency in the world?" I say, "There's people who need representation and help in solving their problems."

A lot of people are intimidated by the IRS in general. They think it's this 'we're going to steamroll over them' type organization. Once you learn what you're doing, they don't steamroll over you, they can't. There are taxpayer rights and things like that and I enjoy solving problems. A lot of people don't want to go outside of their comfort zone and deal with what they see to be an adversarial situation.

Even as far as the adversarial side of it goes, we work very cooperatively with most of the personnel from the IRS because they know we're trying to solve the problem and get the taxpayer back into compliance and back on track. We are certainly going to stand up for their rights in every possible way, but by the same token, if they know that we're trying to get the right result they deal with us well. It takes a while to learn how to deal with the IRS that way. I think that's what maybe some of the barriers are—people are just somewhat intimidated by their perception of what it's like to deal with the IRS.

John: It's not so much that you try to stymie their efforts as much as it is that we're trying to help them use their own rules to exercise their discretion in favor of our clients.

Larry: That brings to mind one of my favorite thoughts. I do not represent taxpayers who are out to beat the government. People come in, and I've had many of them come into my office telling me, "The 16th amendment was never ratified," or "Taxes are only voluntary," and these various tax protester type arguments. I will ask them to please excuse themselves, we don't represent tax protesters. The people we represent are people who have had some problem in life; often a tax problem is a side effect of it.

John: They hit a rough patch.

Larry: It could be things like a business failure, a divorce, loss of their employment, often out of their control and the taxes end up being part of the problem but it wasn't that they started out trying to beat the government. Once they get in trouble and they're behind in their filings, behind in their payments, they don't know what to do and they come to somebody like us to get straightened out.

John: Why should somebody retain an expert when they can essentially represent themselves?

Larry: You can always represent yourself and no one should ever feel like they cannot represent themselves, however most people will take the position of they don't want to deal with the IRS. They don't know the rules. They don't know what things to do to stay on the right side of the revenue officer they're dealing with. They sign a power of attorney and they say, "I don't even have to talk to them anymore. You can take care of it and protect me and protect my rights." The reason that they want to do that is, would they go to court without an attorney? Why would you go before the IRS without representation?

John: The thing that most folks don't know is that the IRS is going to start from their position of strength in negotiations and a taxpayer on his own, it's more a matter of luck if they get a favorable result.

Quite often they'll end up with an installment agreement they can't afford, or they'll get an offer rejected because they didn't prepare it correctly. Larry: They don't know what the best result is because they don't have the experience in that area. Most people don't go around learning about IRS programs and ways they can get back on track and the things that it takes to become successful in following those programs. You hear numbers all the time about how the IRS rejects so many offers in compromise. It's because they're poorly filed. They aren't being filed by people that know what they're doing. Our acceptance rate in our firm is very high.

The offers that we submit, we know they're good offers that meet the criteria of an offer. If it's not an offer candidate, then we look for the next best solution and that sort of thing. People who don't know what they're really doing, whether they be a practitioner or a taxpayer themselves, if you submit an offer and the offer doesn't meet the criteria, then it's rejected. That's why the numbers look so bad. When you know what you're doing, they aren't that bad.

John: Normally a taxpayer on their own, they don't know what the criteria are.

It's not even clear from the IRS's resources that they give you on their website what the criteria are. They are surprised when they have an offer returned because it doesn't qualify.

Larry: Especially when they send it in with money and then the only thing that gets returned is the application form and the IRS keeps the money.

John: That's something to consider before you submit an offer. They keep the money.

Larry: Now they're out the money, but they still haven't accomplished what they were trying to do. We try and avoid those situations happening by doing it the right way and making sure when we submit an offer we think it's a viable offer.

John: I think the acceptance rate on offers in compromise is currently somewhere between 35 and 40 percent. I've heard you say at conferences that's not because the IRS isn't granting or accepting offers in compromise, it's that 60 percent, they're not prepared correctly, or they don't qualify.

That acceptance rate would be closer to 100% if all the offers submitted were done correctly.

Larry: I honestly think the rejection rate is higher than 60 percent. I don't think they accept that many of them. Even as practitioners, we may submit an offer. Let's say we're going to try and settle a \$50,000 tax problem and we end up offering the government \$10,000 to settle it. We may not get our offer done at \$10,000 but by the time we get done negotiating with the IRS, because we're looking to get the best we can for the taxpayer, we might end up settling at \$11,000. To me that's a successful offer because the taxpayer owed \$50,000 and if he can come up with \$11,000 we've negotiated a good situation for him.

We get a high percentage of them done, it is when we come out somewhere around what we think is the right offer amount. I've had people come in and tell me they offered the government 50 percent of what they owed. I said, "How are you going to pay that?" They didn't figure

that out, they just thought they would try and get it done for half.

The IRS would look at them and say, "You can't pay it so what good is it if we accept it" and they reject it on that basis alone. It is an art as well as a science to put together a good offer and know what the proper things are, what are allowable expenses and what items of income have got to be counted, what equity has got to be counted.

I had one come in here the other day who had prepared their own offer, they thought they had it all ready to go but they wanted to hire us to look it over. The first thing I looked at is that he had an income-producing property, a piece of real estate that was producing significant rental income. He had included the full value, the fair market value, of that property in his offer. You know what the rules are, it's an income-producing asset, you don't have to include it. That's what happens is that people don't know what they're doing, they submit offers, and they end up rejected because of it.

John: I have many people who come to me where they've already had representation and whoever was representing them did such a bad job, it's a matter of cleanup.

There are different shades of tax professionals. Are there any red flags that you can think of when somebody's out looking for a professional to represent them that they should be on the lookout for?

Larry: What they want to do is they want to look for somebody who's got experience in the area. An indicator of that

would be that they belong to ASTPS because we are the only organization there is that is exclusively focused on taxpayer representation work. Within our organization, to go a step further and even look and see if they're CTRS, if they're certified. Regardless, when they're considering hiring a professional, they should do some good, serious questioning and ask, "What's your experience? Do you do a lot of offers? Do you have a good acceptance rate on it? Do you do a lot of representation work?"

It's up to the taxpayer to ask all those questions. If they find out that somebody who says, "I've done a couple of offers." The first question I'd have, "A couple of offers this month or a couple of offers this year or over five years?" Do you have experience in this area? If they don't, they probably don't even know what the current rules are.

John: There are some rules that apply across an industry and not to another industry and they may not be in the manual. You've got a body of knowledge based on experience and interacting with professionals like yourself where you know what will fly in a certain industry like truckers, or law firms or things of that nature.

Larry: When I said it's an art and a science to some degree, the art part of it is knowing how different industries work and what kind of arguments you can make on behalf of your client and creative thinking around that industry. For example, representing an attorney is totally different than representing an over-the-road truck driver or a realtor or some other individuals, whatever industry they happen to be in, whatever their occupation. There are different approaches that are industry-specific. Experience is what

helps you figure out the best way for each particular industry.

John: Part of my client selection criteria is that I won't take on a client if I don't think I can improve their position substantially.

Larry: You named one of the number one things and I'm glad to hear you do that because I hope everybody in our group does that, that they will not take on something that they don't have the wherewithal to handle. That is a feather in your cap. The way I look at it is, "This is something that I'm comfortable with. I have experience in it and I can get a good resolution." If not, "I don't want to take the people's money and have them go down the road unhappy when it doesn't work out."

There are enough people out in the world holding themselves out to be practitioners when they're only worried about collecting fees. That's a problem that any industry has, as does ours. That's why we started the ASTPS to give somebody a way of differentiating.

John: Something that just occurred to me as you were talking is that, in terms of red flags, if you're considering hiring someone who has already quoted you a fee and they haven't asked you enough questions to even understand what your issues are, you ought to give it a second thought.

Larry: That's a red flag for sure.

John: Unless I do a lot of investigation up front, I don't know what I'm facing. When I negotiate with the IRS, I want to

have all the information the IRS has. Through folks like you and the ASTPS I've been lucky enough to be able to find what tools were out there to help me do that.

I don't make promises I can't keep and I know that none of your members do.

Larry: Exactly. The plan is to have the best practices in place. Best practices are there to protect the consumer or the taxpayer, but they also protect the professional. If you do things the right way, you don't have to worry about people being unhappy and tarnishing your reputation. You don't have to worry about people suing you, because you've done a great job, the best that could be done. Those best practices are intended to protect both sides. Like you said, if they start quoting you a fee and they don't even know the details surrounding the case, that should be a big red flag. There are some big national firms that are doing telemarketing and radio advertising and things like that you've got to be careful of them because that's what they're really concerned about is collecting their fee.

John: If the taxpayer insists on representing themselves, what would you think is the biggest mistake that people make?

I find that people tend to ignore the IRS and that's their biggest mistake, but beyond that, what's the biggest mistake people make?

Larry: If they're going to represent themselves, I think that is the biggest mistake they make. It's one of those things where you can start picking out the individual things that they do wrong. One of them was ignoring the IRS, not returning phone calls, not responding to letters. We call it the ostrich method of tax problem resolution, when people

think that, "If I don't open the letter it doesn't count." They take the certified letter they got from the IRS and put it in a drawer and kind of forget about it. Eventually, it's going to crawl out of that drawer and bite them.

Ignoring the IRS is a huge problem. A good practitioner will be calling the IRS before the IRS calls them to let them know what's going on and keep them up to date, and they'll work with us. I have a list in my computer with people who have IRS calls to be made by a certain date so that I'm calling them before they call me and then they know we're on the case and they know we're following through and they'll work with us. Taxpayers don't have that situation most of the time where they know who to call, when to call and what they should be saying to them. When they go and try to represent themselves it's, a lack of knowledge as to how the system works that defeats them.

The revenue officers have rules they have to work within. They have supervisors they have to report to and so on. Sometimes, one of the best things I can do for a taxpayer is to help the revenue officer answer the questions that his supervisor is going to ask him.

John: You help them close the case because that's how they get evaluated.

Larry: If I can show them progress in the case that they can take to their supervisor, then the revenue officer's willing to work with me. If he goes back and tells his supervisor, "Nothing's happening" or "I haven't heard from them" his supervisor is all over his back and says, "Well, go levy, go lien, do whatever you've got to do." We understand what

situation they're in, so we try and give them those things so that they can work with us. That's not an approach that a taxpayer typically would take.

John: Another mistake people make is they don't understand that timing is everything in a lot of cases and they'll go down a certain path, where if they would have waited a couple of weeks they could have gotten an entirely different result.

Larry: Understanding what you're talking about generally is statutes of limitations or what we might call drop-dead due dates. You can wait 30 days on something and be fine if you get it in within 30 days, but on the 31st day you lose certain rights because you didn't act in time. There are different timing issues that people have got to be aware of. The taxpayer's not going to learn all those things. It's the reason you must have someone who knows what they're doing representing you to get a good result, and to protect your rights.

There are times when you might deliberately forfeit certain rights because that's in the taxpayer's best interest to do that. There's a statute of limitations on how long the IRS has to collect. If they send in the wrong form to the IRS at the wrong time, they may keep that statute from running out when the problem would have been solved by the collection statute running out. These are all things that, I don't want to get into all the technical stuff here, but these are all the kinds of things that taxpayers would not understand on their own.

John: Another thing that people have mentioned to me when they've represented themselves and they finally cry

"uncle" is the endless on-hold time that they spend when they call the IRS and it's only getting worse because congress won't fund the IRS appropriately.

What's the current state of the IRS?

Larry: They're currently understaffed and underfunded and some of it's truthfully their own fault. Some of the IRS personnel brought it down on themselves by the way they handled certain requests for non-profit status by organizations and so on, so congress got angry with them, mostly the republican congress got angry with them, because the more conservative groups weren't getting their approvals.

The funny thing about it is though, congress, and I don't care what party you're in. Congress likes to spend money. It seems strange that they would stop funding an organization that for every dollar they invest, the organization brings them back seven dollars that they can spend. The IRS does bring in the bulk of the money for the government.

I expect that what we're going to see in the future here is that congress is going to get over their anger and they're going to start to fund the IRS and let them do their job. To give them adequate funding, and what we're going to see then is more collection activity because they'll have more revenue officers, better computer tools, more revenue agents doing audits and the various automated collection systems will be beefed up. That is their plan in the long run; they just need to get the funding to do some of it.

John: That's not necessarily bad news for the taxpayer because I can't tell you how frustrating it is sometimes to deal with a revenue officer who is basically still in training.

It's maddening because you typically need to go to the group manager at some point or points in the process just so that that green RO can learn.

Larry: You're also seeing another indication of the under-staffing in the IRS is they're going back for the third time now to try and use private collectors for collecting certain tax debts. This effort has failed twice in the past and, by the way I'll make a prediction for you right now, it'll fail again. I do not believe that turning over IRS collection activities to private companies is going to be something that ends up working in the long run. I think it's going to go the same way as the last two attempts did. Maybe that's what it will take for congress to look at it and say, "IRS needs their own personnel. They need the staffing to do the job the right way."

The return on investment is there, they get basically a seven to one return.

John: What should a taxpayer do if they get contacted by a private collector?

Larry: Tell the private collector, "I'd like you to turn my case back over to the IRS. I don't want to deal with a private company." You have the right to do that. These collectors are somewhat unrestrained in the kinds of threats they make and that sort of thing, so I would start out by making the request to have the case turned back over to

the IRS and say, "I would rather deal with the IRS than deal with you."

The reason you would do that is because when you're dealing with the IRS, you have certain rights as a taxpayer. The collectors are a little bit more like "cowboys" and they're going to get it done their way, whether that fits in all the rules and the way they should be done. I think that's one thing that they could do, but they should also pick up the phone and find themselves a professional to represent them and get it done the right way. There may be a fee that they've got to pay for that professional, but the fact of the matter is, they're going to end up with a much better solution, one that they can live with rather than one they can't meet.

When they deal on their own, they get into installment agreements and offers and things like that, but they can't meet them. They do it because they're intimidated by the IRS trying to collect from them.

John: They tend to agree because they're just tired of dealing with the IRS. They'll default within two or three months and then they're right back at it.

Larry: We see it happen all the time and then they come back in and they've now got a black mark a little bit because they had an agreement, they defaulted on the agreement. Well, the revenue officer should have realized that they couldn't keep that agreement but it's his job to collect money so if he got them to agree then hopefully they'll pay. So many of them can't.

John: The case is closed, and they'll be dealing with a fresh revenue officer the next time in most cases.

Larry: They're right back at it again, whereas if they get the proper solution and one that is designed to fit into their financial position and things they can do, then at least most taxpayers will attempt to do it and get out of the problem. We have a lot of techniques we use that we're getting people out of problems and then we also have a lot of recommendations for them as to how to avoid default so they don't turn right around and get back in it again.

John: Many of the clients I represent, it's not their first bite at the apple. They defaulted on an agreement that they made, just like you said, because they were intimidated by the IRS and just wanted to get them out of their hair.

Larry: You hear people confessing to a crime they didn't commit because they've been grilled for hours and hours and finally they just confess to it when they really didn't commit the crime. It's a little of that kind of scenario, because when the IRS is chasing them long enough they just cave in and agree to whatever the IRS agent wants and turn around three months later and they're in default and they can't do it and they can't keep up with it. We don't like to see them get into that position. That wouldn't be doing our job the best way.

# CHAPTER 13

# Doug Mueller

True Professionalism...

Douglas Mueller is the co-founder and president of Mueller Prost, a CPA and business advisory firm which was named to the Inc. 5000 in 2017, and is committed to providing high-quality, timely and creative solutions for its clients.



He is regarded as a leading business advisor

for corporate and emerging tax issues, as well as a nationally recognized consultant and guest contributor in various local, regional, and national publications, including *Money Magazine* and *The Wall Street Journal*. Doug focuses on and provides highlevel tax planning and consulting for high-net worth individuals, business owners and their related businesses across a broad range of industries including; real estate, construction, technology, healthcare, professional services, and manufacturing.

Doug sits on multiple professional and charitable boards, including the Missouri Society of Certified Public Accountants (MSCPA) and the Executive Board for Lindenwood University. He has earned numerous awards, including Who's Who in Law and Accounting by the St. Louis Business Journal, Beyond the Best by Small Business Monthly, St. Louis Top Accountant by a leading business publication, winner of the Fourth Annual Money Magazine Tax Contest, 2012 UMSL College of Business Distinguished Career Achiever Award and many others.

John: We're talking about professional services in general and CPA firms specifically. Doug, let's learn about you. Where did you grow up?

Doug: I grew up in St. Paul, Missouri, which is a little farm area in St. Charles County. It's about 40 miles west of Clayton and St. Louis.

John: What was that like?

Doug: It was great. We rode our bikes to town and played ball every other day. You get to drive farm implements when you're l2 or 13 because that's what farmers do. My mom and dad still live there. It's changed now, there are a lot of homes in the area. But it was great.

John: So, what inspired you to become a CPA?

Doug: A lot of the kids I see in college today, they know exactly what they want to do. I didn't. I thought I might want to be an engineer. I couldn't ace calculus, mainly because I couldn't understand my teacher. That said, I took some accounting courses and absolutely fell in love with it and thought, "This is a lot of math. This is a lot of logic, a lot of problem-solving issues. I like that."

John: I have a similar background with my educational experience. How did you get started?

Doug: I interned in college for a sole proprietor. That was a good experience for me because it had everything. I was his coffee guy; I did the audits, schedules, payroll, and tax returns, under his guidance of course. Then Peat Marwick and Mitchell made me an internship offer, which I

accepted while finishing up college. Then I got a job with them after graduation. I was there five or six years, and then decided to try and open my own accounting firm with three other gentlemen. And here we are.

John: I think your firm is at the pinnacle in terms of your innovation when it comes to providing tax services. To what do you attribute your success?

Doug: Well, I don't know that we're any better than anybody else, but we do read a lot, and we look at issues. One thing that concerned me when I left Peat Marwick is we had our national tax office, as you know, in Washington. Which was kind of interesting. You passed the problem off and then you were devoid of ever solving it. If you think about that, here I had to really look at the issue. So, I looked at the BNA authors and all the authors that write for tax journals and treatises, and look at those that are the brightest in those areas. Let's say we're looking at inventory. I call Leslie Schneider in Washington, at Ivins, Phillips & Barker. He is the nation's renowned expert in that area. He takes my call. I call those people. We get world-class expertise at a fraction of the cost, because I don't have to carry them as inventory or overhead.

John: I'm guessing you also get calls from folks like yourself who are looking for information.

Doug: I do, but not as much as these experts. We're talking about people that spend their entire career on one or two sections of the code. They should know that area better than anybody. So, that's what we'll do. I'm not afraid to pick up the phone and ask for help.

John: What's your biggest challenge now?

Doug: Running a CPA firm, the biggest challenge is finding the right staff. In the future and even now. Also, some of our lower level staff aren't used to bringing in business. Those are probably our two biggest challenges. I think the third one would be keeping up with the changes in the law.

John: Absolutely. Who knows what's coming? So, your big challenge is not so much a competition for clients, as much as a competition for talent?

Doug: That's what it's becoming for all firms. St. Louis is not a growing area. We have offices in other parts of the country that are growing very rapidly. I think that diversification has helped our firm in general. I hate to say that. I wish St. Louis was growing a lot more. But competition for talent is huge.

John: Could you describe your client base?

Doug: Our clients are not publicly-traded companies; they're privately-held companies. We have some niches in manufacturing. We have some niches in healthcare. We do some specialty tax work, like the research credit, all over the country. Those guys travel a lot, as you might imagine.

For the most part, we do small to medium sized business owners. They have accounting needs from QuickBooks to Peachtree to whatever the ERP software they're on, to tax issues. Sometimes those can be complicated because a lot of times, they don't have tax staff like bigger, publicly-traded companies do, so they really need a lot of tax help.

John: Where do most of your clients come from?

Doug: They've come from referrals over the years. It's taken a lot to build that base, a lot of word of mouth. We help other practitioners, and we agree to play well in the sandbox that we won't take that client if we help them. Say they've never done the research credit, and they'd like us to help them, and we do that.

John: I was tempted to call you when the repair regulations came out; instead, I spent 40 hours learning it.

Doug: Yes, we did a lot of that work. And we have an expert in the office who's certified now. What we found is the guru in the country in that area is Eric Wallace, in Pennsylvania. I make sure I send staff to some of this training with Eric. By doing that, guess what? I can pick up the phone and call Eric on just about any issue that I've never seen before and he'll take my call.

John: Now, what are some of the biggest mistakes you see your clients making and how do you help them?

Doug: Well, we really like to emphasize planning here, as you probably see with other clients. You'd like them to plan. You like to know things ahead of time. If they call us after the fact, say they've done a transaction, then we're kind of stuck. Maybe we could have made it better. Also, planning for year end. We'll try to drill into many of our clients, "Please let us come out and talk to you about year-end. Let's run some scenarios to see that you're not surprised, number one. Number two, what else can we do?" For instance, it's 2017, as you and I sit here. We're thinking next year the tax rates might go lower. What do you think

a lot of people are going to do? They're going to try and find ways to accelerate expenses this year, and defer income to the next year.

John: The old game.

Doug: You want to do that legitimately. There are a lot of legitimate ways to do that.

John: What drives you crazy about the business and how have you built systems to respond to that?

Doug: I think it's the growing pains in the business. As you go from a small practice to where we are now, which is about 150 people, it's a very different environment. When you do get bigger, the pain is on the administration side. I still love the client side. I love dealing with our staff, especially if they have an attitude where they want to learn.

John: Scaling is a tough chore for any business, and it's not any easier for a CPA. Who's an ideal client for you?

Doug: All kinds, really. Clients that are open to having us be a partner with them, where they'll let us learn their business and they'll take our advice. They don't have to follow it all the time, but they'll listen to the advice. Actually, the more sophisticated accounting help they have on staff, the better. We like bright clients. We'll deal with all kinds of clients, but we really like the ones who are willing to learn. Family-held businesses are great as well, privately-held businesses that are growing and want to know how they can get better.

John: As you know, I deal with troubled taxpayers. To what

extent does your firm deal with the IRS on behalf of troubled taxpayers?

Doug: We're not really set up to deal with troubled taxpayers at all. We can represent IRS audits of our clients on their business and personal returns a lot of times. If they get in any kind of trouble with the IRS where it's back taxes or they're having to have a nasty fight and it's with spouses and things of that nature, we have conflicts in that case. It is my personal belief that most CPAs really aren't in that area. We're not schooled in that area. We don't work a lot in that area. It's intimidating for us because the first thing we think is we're not going to get paid.

We just don't work in that space a lot. If we pick up a client that's in that type of situation, as I said earlier, we're very open to getting expertise in our firm that we don't have. I'll be glad to pick up the phone and call someone like you who has that expertise because we'd be misleading clients if we told them that we were the experts in that area.

John: Doug, I want to share a story with you. I've never mentioned this to you before, but we worked together at Peat Marwick. I came in after you'd been there for a couple years. You were already in management. I had the privilege of working under your leadership. I considered you a mentor in a lot of respects and continue to. I remember where you had given me a project to research. I spent days in the library researching the issue. I brought my conclusion to you, which was basically the client can't do it. You looked at me and smiled, and you said, "John, you don't understand. The client doesn't want to know what they can't do. They want to do what they can do.

Come back and tell me when you find something that the client can do." I've used that principle throughout my career.

Doug: I think people might take that out of context, John. That we're going to go do something illegal. That's not the point.

John: No, exactly. I took your meaning to be that when the ideal solution is not workable, find the next best solution.

Doug: The point is if the client is set on a certain path, maybe we can question, "Well, what are you really trying to accomplish? Share that with us." Because sometimes they don't. Sometimes they're giving us what they think is the tax issue, when it all boils down to an economic issue or a leadership issue for the client. "Well, why are you trying to do this? Perhaps there's another legitimate way, another planning tool." Oftentimes, there is. But if there isn't, we'll be glad to tell them that.

John: There again, they have certain expectations and they want a certain result. They can't get that result, but there may be some way that they can structure the transaction, so it will at least be somewhat fair.

Doug: Try and give them some alternatives.

John: I'm not surprised, given our history, that you are a highly regarded thought leader in St. Louis and throughout the country. Where do your ideas come from? When we worked together, I remember seeing you in your office all the time. You had books spread out everywhere. This was before the internet and before microcomputers. You had

three or four books going at the same time. You're saying, "Go research this. Go research that." Where does all that come from?

Doug: Of course, we now have the internet. We try and subscribe to other, again, bright people who are in the legislature. You've seen this. There are a lot of people who say, "Well, we can make this process a lot easier. Tax preparation and the whole process of collecting taxes across the country could be a lot easier." The answer is, "Absolutely, it could." But the issue is it's in the politicians' hands. If it's in the politicians' hands, it will never be easy because it's political. Because somebody's got a different idea that comes from a different jurisdiction. And there's money involved, let's face it. If that's the case, it's going to be complicated. I try and read as much as I can with Tax Notes, BNA, CCH, RAA, outside magazines.

Then I try to see the picture from our auditors, who aren't tax geeks and come in and look at a problem. They'll say, "Look, Doug, you're too deep in the weeds. Here's the bigger issue." Sometimes we do that. Sometimes tax people drill down too far in the weeds and you need other people's perspective to say, "No, no, no. We're up here. We're up in the clouds. You're way down low. We need the issue up here." I tell our staff, "You can never know it all. It's okay to come into my office or anybody's office and say, 'What do you think about this?'" It's a matter of not being afraid to look dumb.

John: That's a great way to wrap it up, Doug. Thanks for sitting with me today and talking shop.

Doug: Thanks for having me. I appreciate it very much.

# **CLOSING THOUGHTS**

I hope you got as much out of reading these interviews as I did conducting them. These professionals shared a wealth of inside information about taking on the IRS. Their experience and insights, not written in legalese or accountant-speak, but in plain English, will benefit any taxpayer, not just those who are trying to dig out of tax debt. And the first-hand stories shared by those interviewees who found themselves the target of the IRS provide important lessons on what to do and what mistakes to avoid.

Tax trouble can be a scary thing. The IRS can be downright terrifying.

If you owe taxes, it's understandable to be afraid of what will happen to you. But the best way to overcome that fear is through knowledge. Having a realistic understanding of your situation and your options.

The best way to do that is to talk to someone who has experience in this area. Many of the people in this book fit that category. I'm happy to be that someone as well. Over the years, I've helped thousands of people overcome their fears, overcome their obstacles, and get back on the right track.

I have this type of conversation with people nearly every day. No strings attached. Just an honest assessment of the situation, the goals, and the potential outcome.

I recently lost 100 pounds over a 16-month period. I'd been struggling with my weight for over a decade, but I wasn't making any progress. No matter how determined I was, I couldn't lose the

weight. That is, until I reached out for help. I used an app to manage my diet and I hired a personal trainer to help me get fit. I immediately began seeing results.

My point is this: Determination alone yields nothing unless accompanied with action.

Whatever you do, please use the information in this book and get going. Owing back taxes to the IRS isn't easy to overcome. But you can do it, if you just know where to turn, what to do, and how to get started.

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