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Practices for negotiating tax debts successfully: Exploration of offer in compromise judicial tax court case decisions

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Settling tax debts with the U.S. Internal Revenue Service (IRS) as a service to accounting clients is categorized among the high-level negotiations skills widely sought from accounting graduates by employers. Through purposive sampling and analysis of 272 federal tax court cases decided between 2004 and 2021, this paper proposes to elucidate effective tax debt negotiations techniques. Judicially accepted and rejected offers in compromise (OICs) that were appealed to tax court, but not necessarily setting precedent, provide a natural environment for observing pre-court and post-court negotiations and settlements with the IRS. It was found that IRS appeals officers and judges (adjudicators) primarily base OIC case rejections, and thus failed negotiations, on deficiencies in written evidence, procedural failure, and on inapposite reasoning. Deficiencies in written evidence and procedure typically result in the adjudicators granting a "redo's" and pathways to acceptance, whereas without the requisite case-specific analysis to match each unique set of facts, deficiencies in reasoning result in outright OIC rejections. In analyzing a narrow line of OIC tax court cases for the stated reasons for acceptance and rejection at both the IRS office of appeals and at the tax court level, valuable insights are gleaned into the fundamentals for successful OIC's.

Key words: Compromise, tax, appeals, US Supreme Court.

INTRODUCTION

Intellectual skills developed to solve problems, together with the interpersonal skills utilized to secure positive outcomes are perceived to add value to nascent accountants' employability (Tan and Laswad, 2018). The premise of this paper is to collect a cohesive portfolio of remanded tax compromise case outcomes. The authors thereby provide a valuable collection of tax negotiation fundamentals for teaching and learning the important

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nuances for successfully interpretating and settling tax court and offer-in-compromise cases. Comparative case study analysis as a practical matter should theoretically provide a more valuable and more natural teaching environment to enrich career ready professional accounting skills. As in the professional practice domain, this method of developing analytical and logical reasoning skills by differentiating the fact patterns for distinguishing the rationale for applying pertinent tax law in several cases provides clarity. Thus, this multi-case comparison strategy aids in developing enhanced planning, decision, and outcome prediction skills (Ridder, 2017). Literature was added through consistently experienced insights gleaned as practicing accounting professionals whose successful negotiation best practices utilize the multi-case method rather than merely teaching and learning tax statutes or simply reading one isolated tax case at a time.

Higher order skills' inculcation into accounting curriculum through practical training mechanisms is still a sorely underutilized approach in accounting education (Suleman, 2018). Employers of accounting graduates continue their decades-long reproaches to academia about the need for imparting analytical and critical analysis skills in the classroom (Chaffer and Webb, 2017). Case studies are continuously cited as one of the most suitable methods for advancing students' abilities to learn how to engage clients, and negotiate and act strategically. Curriculum designers, who strategize to embed such skills into professional accounting programs, and practitioners alike, report that accounting graduates who receive such strategic training through case studies exemplify this vital skillset (Keevy, 2016).

Deciphering judicially accepted and rejected OICs through a unique accumulation of appealed tax court cases give valuable perspectives for gleaning the interactive pre-court settlement negotiations phase between the IRS and taxpayers, as well as providing vivid clarification of key tax courtroom administrative procedures for both novices and experienced accountants alike. Focusing strictly on teaching successful negotiation skills, this study narrowly concentrates on remanded, precedential and Supreme Court offer-in-compromise cases.

Utilizing purposive sampling (Campbell et al., 2020) and analysis of 272 federal OIC tax court cases that were adjudicated between 2004 and 2020, this paper proposes to add to their accounting-professional skillset by providing elucidation of the most successful practices for effective tax debt negotiations techniques. Judicially accepted and rejected OICs that were appealed to tax court, including a few cases that set precedent, provide a natural environment for observing pre-court and post-court negotiations and settlements with the IRS.

Since the study seeks to discover the methodological reasons tax court judges discuss when accepting or rejecting an OIC when applying the publicly accessible Offer in Compromise Form 656 instructions (IRS OIC instructions) to the public[1] and Internal Revenue Manual instructions) to the public[2], and Internal Revenue Manual (IRM) standards, the following research questions were explored and answered.

Objectives of this study include promoting a prototype for success negotiations with the IRS

RQ1a. What are the methodological reasons judges state for remanding an OIC case back to IRS Appeals for a "redo" when applying the IRC standards?
RQ1b. What are the methodological reasons judges' states for concurring with the IRS' rejection of an OIC when applying the IRC standards?
RQ2. How are those judicially expressed reasons practically and thematically interrelated?
RQ3. In what way do the emerging judicial decisions correspond to the language of the IRC and the IRM and how might they diverge, if indeed they do?
RQ4: What is the frequency of OIC tax court decisions emergence as precedent setting cases?

The business of accounting in practice compared to academic instruction practices

Accounting academic traditionalists occasionally communicate to students that it is ethical sacrilege to challenge tax debts due to the oft-referenced view against the "frivolous tax argument" notion[3]. In the classroom, professors purveying barebones cautionary tales about the accounting world, and the obligation to retreat from a variety of accounting improprieties may stoke the fears among new accounting professionals as was the case when a tax court judge chastised a lawyer by asserting that "a member of the bar offers tax protester gibberish as a substitute for legal argument"[4]. Accounting graduates who tend to believe that adherence to the tenets of ethics repeatedly communicated in university classrooms means an absence of strategic representation of clients, often miss out on one of the most highly legitimate lessons for assisting taxpayers; which is how to successfully prepare and negotiate an OIC.

[1] Offer in Compromise Form 656 instructions https://www.irs.gov/payments/offer-in-compromise
[2] Offer in Compromise Form 656 instructions https://www.irs.gov/payments/offer-in-compromise
[3] The Truth About Frivolous Tax Arguments: https://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-tax-arguments-section-i-d-to-e
[4] See Edwards v. Commissioner, T.C. Memo. 2002-169, 84 T.C.M. (CCH) 24 (2002) – the court dismissed the argument that the IRS is not an agency of the United States Department of Treasury as "tax protester gibberish" and stated that "[i]t's bad enough when ignorant and gullible or disingenuous taxpayers utter tax protester gibberish. It's much more disturbing when a member of the bar offers tax protester gibberish as a substitute for legal argument."

Offer in compromise (OIC) astuteness, a context specific tax debt negotiation skill, characterizes one such skill most significantly valued by employers of accounting graduates. Expert tax professionals specializing in tax controversies, already on high frequency, rarely have the bandwidth to advise tax novices on the nuances for successful negotiations pre-employment or in the early stages of employment. Accordingly, for decades, countless international writers have suggested that curriculum changes are essential due to the widening gap between theories and practice (Low et al., 2016; Angolia and Reed, 2019). In furtherance of business professionals' advocacy of incorporating "employability" skills that support the understanding of business processes, to bridge the widening gap between education and work, accounting and business researchers propose a curriculum that includes early semester utilization of business simulations (Angolia and Reed, 2019).

OIC's have increasingly become one of the most prevalent techniques used by tax controversy and settlement specialists according to the IRS taxpayer advocate reports. Accounting practitioners specializing in tax controversies rarely provide instantaneous guidance in the nuances of negotiation strategies to novice accountants. Accounting apprentices often encounter a competitive post-graduation career marketplace which values their self-preparation with such knowledge of practical strategies pre-employment. However, it was reasoned that such educational activity as exploring the particular techniques that operate to logically confer government acceptance for successful IRS tax debt settlements in an OIC case produces beneficial externalities deriving from a well-conceived OIC methodology.

Moreover, since the tax court decrees that "instructions and other IRS publications are not authoritative sources of federal tax law (Casa de La Jolla Park, Inc. v. Commissioner, 94 T.C. 384, 396, 1990; Brombach v. Commissioner, T.C. Memo. 2012-265, Docket No. 7924-07L)" for successful negotiations, it is essential for taxpayer representatives to practice the use of high-level critical thinking skills. In delivering education, these beneficial externalities drive careers in accounting and law advancement through the use of classic examples of such a transformative activity.

There are three primary criteria within the OIC standard that are related to successful negotiations procedures. These successes correspond to (1) deficiencies in written evidence, (2) procedural failures including not submitting a Form 656 (or 656-L) or 433 (Form 433-A, 433-B, 433-D, 433-F, 433-H) and based on (3) unsuitable justification for IRS to accept the offer. The principal standard for tax court to remands back to the agency level for reconsideration is the settlement officer's misconduct, technically known as "abuse of discretion" by the IRS.

Access to the OIC program lessens economic hardships for taxpayers when successful negotiation skills are applied; especially for financially distressed taxpayers. Moreover, the National Taxpayer Advocate's (NTA) touts to Congress that achieving the recommended improvements to the OIC system would assist the IRS in reducing its cost for collecting the collectable portion of existing tax liabilities while raising United States (US) government revenue. The NTA describes the proposed newer collection model as a win-win for both taxpayers and the IRS. Indeed, three of the fifty-eight (58) NTA recommended changes to the tax collection system includes making changes in the OIC processes, especially such that access to the OIC system is easier for taxpayers[5].

IRS Rejection of an OIC

When the IRS settlement officer rejects an OIC, the taxpayer can appeal the rejection of an OIC to the Appeals Office.[6] There is no court review of the IRS's rejection of an OIC, except when the OIC is submitted in the Collection Due Process (CDP) process in which case the OIC offer will be considered in that process. If there is no resolution with the Appeals Office, a taxpayer can file a petition with the tax court. In Robinette v. Commissioner, 439 F.3d 455 (8th Cir. 2006, and 123 T.C. 85, 93 (2004), the Eighth Circuit Court of Appeals explained that the tax court is only authorized to decide whether or not the IRS has followed a valid rule. In other words, since the Tax Court review does not allow the Tax Court to substitute the court's own judgment regarding the decision to accept or reject the OIC except in situations where the IRS has "abused discretion" in following "the (Internal Revenue Manual, IRM) guidelines

[5] National Taxpayer Advocate 2020 Purple Book, Pages 113, 114 and 121: 16 Improve Offer in Compromise Program Accessibility by Repealing the Partial Payment Requirement and Restructuring the User Fee, NTA 2006 Annual Report 507 S. 2689, 115th Cong. § 17 (2018); H.R. 5444, 115th Cong. § 11203 (2018) (low income waiver); S. 3278, 115th Cong. § 504 (2018) (low income waiver); H.R. 2171, 115th Cong. § 206 (2017); H.R. 4912, 114th Cong. § 206 (2015) LR # Tax Administration Legislative Recommendations National Taxpayer Advocate (NTA) Annual Report References Congressional Bill and Committee Report References (Improve Assessment and Collection Procedures)

17 Modify the Requirement That the Office of Chief Counsel Review Certain Offers in Compromise N/A S. 1793, 15th Cong. § 303 (2017); S. 1578, 114th Cong. § 403 (2015); H.R. 1528, 108th Cong. § 304 (2004) (passed by Senate); S. 882, 108th Cong. § 104 (2003), see also S. Rep. No. 108-257, at 8-9 (2003); H.R. 1528, 108th Cong. § 304 (2003) (passed by House), see also H.R. Rep. No. 108-61, at 43-44 (2003) (Improve Assessment and Collection Procedures)

26 Send Change of Address Notices to an Employer's Old and New Addresses and Promote the Use of Offers in Compromise for Victims of Payroll Tax Fraud. NTA 2012 Annual Report, Most Serious Problem #23, 426-444. Pub. L. No. 113-76, Division E, Title I, § 106 (2014) and subsequent appropriations acts. (Improve Assessment and Collection Procedures)

[6] See e.g., IRS web page titled "Appeal a rejected OFFER IN COMPROMISE (OIC) - Online Self-Help Tool" (Page Last Reviewed or Updated: 08-Jun-2021, and viewed 10/31/2021. https://www.irs.gov/appeals/appeal-your-rejected-offer-in-compromise-oic

established by the IRS itself" such that if the IRS denies the OIC, the Tax Court may review the denial for abuse of IRS discretion, meaning that the IRS acted "arbitrarily, capriciously or without sound basis in fact or law."[7]

The US Government's Clemency Provision during Catastrophic Times

As publicized in the 2010 directive to "go easy" demonstrated, IRS employees of the US government's Collection Division (its "accounts receivable" department), in contrast to that of firms, the IRS' ultimate concern is "fairness." Hence, among other things, during specific epic disasters, there was a pattern of allowing substantial leniency for offer-resubmissions since IRS leaders advanced the notion that the "vast majority of the nation's taxpayers do the right thing" while still continuing to pursue tax evaders. Anecdotally, in discussions, practitioners conclude that due to the imbalances in the IRS's operations," coupled with IRS' case overload, tax practitioners are possibly more likely to prevail when presenting a well-crafted OIC. Prior to our case analyses, a short discussion was provided of the economic impact of a previous pandemic, along with institutional and doctrinal lessons learned through the experience.

Moreover, since the IRS invoked its mission of transparency, and to educate the public such that datasets were provided US Department of the Treasury for the public's inspection in 2010, opportune utilization of the practical results is propitious as accounting education evolves.

"These datasets are considered high value because they accomplish one or more of these criteria: increase agency accountability and responsiveness, improve public knowledge of agency and its operations[8] "

History of the US Tax Court, negotiations and offers in compromise

Accountants, businessmen and lawyers' tireless work as far back as the early 1920's, for eliminating excessive legalism, for conceptualizing the development of fair tax administration, and for improving the tax laws has long been lauded among national leadership, regardless of party politics (May, 1947). Resultantly, as an entity with certain jurisdictional authorizations, the US Tax Court emanated from the changed conditions brought on by the new taxes in 1924, that caused insufficiencies for the fair adjudication of tax case disputes in an acceptable manner by the then-established administrative and judicial institutions (Freytag v. Commissioner (90-762), 501 U.S. 868 (1991). The Tax Court's predecessor, the Board of Tax Appeals ("the Board") provided that attorneys as well as certified public accountants were then eligible to practice before the Board (B.T.A. RULE 2, July, 1924 ed.). Furthermore, self-representation before the Board was permitted for an individual taxpayer, a member-partner was permitted to represent his/her partnership, and a corporate officer could represent his/her corporation[9].

Early 1920's practitioners' unfamiliarity with notion of agency independence relative to the IRS (including the appeals department) contrasted to the Board (now, the tax court) caused confusion[10]. That is, many petitioners expected that the tax court had access to the IRS' files and thus ostensibly familiar with the details of their case. Moreover, this agency disconnectedness, in conjunction with the 1924 procedures' newness caused "between 30 and 40%" non-adherence to the Board's rules, especially in causing practitioners' ineptitude in presenting defective or insufficient petitions along with flawed supportive pleadings and evidence. Rather than blame the practitioners, however, the Board drew criticism for having overly technical procedural rules (of the Board, and now, tax court), notwithstanding attempts by the Board to make its procedural rules as simple as possible. Until taxpayer representatives became familiar with Board rules and pleadings, delays became prevalent.

Due to the substantial need to collect tax revenue, between 1924 and 1998, Congress' tradition was to enable the IRS to collect taxes without prior court intervention. Some members of Congress, however, expressed concern about the IRS's "almost unfettered collecting discretion" and thus were incentivized to take action to resolve this grievance (United States v. Boechler (2022), 403 U.S. 190 (1971) ["20-1472 Boechler v. Commissioner (04/21/2022)][11]). Hence, to give

[7] As stated in the Collection Due Process Desk Book "The Tax Court will overturn a determination it reviews for abuse of discretion standard in CDP cases if the determination is "arbitrary, capricious, clearly unlawful, or without sound basis in fact or law." Robinette v. Commissioner, 123 T.C. 85, 93 (2004), rev'd on other grounds, 439 F.3d 455 (8th Cir. 2006). Last accessed 11/07/2021 at https://www.irs.gov/pub/irs-utl/CDP%20Deskbook.pdf

[8] Open Government Plan 2.1: Department of the Treasury, September 2012 https://www.treasury.gov/open/Documents/open.htm#_Toc332177985

[9] Freytag v. Commissioner (90-762), 501 U.S. 868 (1991) involved a 14-week long trial in which US Supreme Justice Blackmun, delivered a considerable history lesson along with the Court's opinion to the taxpayers' attorneys. Justice Blackmun elucidated that there is a "distinction between the special trial judges' authority to hear cases and prepare proposed findings and opinions under subsection (b) (4) and their lack of authority actually to decide those cases, which is reserved exclusively for judges of the Tax Court." Freytag v. Commissioner (90-762), 501 U.S. 868 (1991).

[10] https://www.irs.gov/appeals/appeals-an-independent-organization

[11] Justice Roberts' asserted to the IRS: "Congress enacted this collection due process regime in order to protect taxpayers from IRS abuses. It would not have included a rare and harsh jurisdictional deadline to close those courthouse doors, let alone through a vague parenthetical reference to "such matter." And further Justice Roberts declared that "The amicus briefs are replete with examples of individuals who did not get their day in court because the Tax Court deemed this deadline to be jurisdictional and not subject to equitable tolling. Ms. Castillo's case is currently pending in the Second Circuit. It is a perfect example of why this Congress who passed this statute would not have wanted this to be the rare and harsh jurisdictional deadline." See In the Supreme Court of the United States http://www.supremecourt.gov › Docket and

taxpayers pre-collection rights within certain limits, Congress was prompted to enact the IRS Restructuring and Reform Act of 1998 ("RRA"). In Boechler, Chief Justice Roberts delivered an extensive history as a stark warning of why legislative protections and court permissions were devised to protect taxpayers from IRS's collection due process abuses.

RRA's passage granted numerous tax debt settlements, payment and relief options that are currently available to financially destitute taxpayers suffering or about to suffer a significant hardship. Besides those typically provided by the Internal Revenue Code (IRC), Taxpayer Assistance Orders[12], audit reconsideration, or bankruptcy, there are three additional categories of tax debt settlement and payment options for taxpayers without the resources to remit the full tax debt in one payment. Periodic payments, rather than a one-time payment is the second payment option for taxpayers who are able to pay the full tax liability. The third option is available to taxpayers who can pay part of the liability, but who conceivably will never have the ability to pay the full tax debt without causing the taxpayer to suffer undue hardship. The fourth option is available to taxpayers unable to pay any of their tax debt without suffering undue hardship[13].

As the US government's accounts receivable department, in contrast to that of firms, the IRS' ultimate concern is "fairness" as demonstrated in the 2010 directive to "go easy". Moreover, the IRS advances the notion that the "vast majority of the nation's taxpayers do the right thing" although it still pursues tax evaders.

Horizontal equity

Horizontal equity is a concept that calls for a fair tax system that treats similarly situated taxpayers similarly. Given the importance of government revenue from tax collection during periods of budget deficits, a fair and effective tax collecting system is essential. The IRS must endeavor to collect from delinquent taxpayers in order to treat everyone equitably in the collection context; otherwise, law-abiding, complying taxpayers would be at a disadvantage. US Supreme Court cases as far back as the 1930's and the 1950's ruled with care in consideration of fairness in Bull v. United States (1935) and Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955. [14].

Certificates of assessment, payments and other specified matters

A long line of cases following the US Supreme Court ruling in Welch v. Helvering established that IRS's deficiency determination is presumed correct, and, when seeking a reassessment and redetermination, the taxpayer bears the burden of persuasion and the burden of proof to contradict the presumption of IRS' assessment accuracy and validity[15].

The IRS examination (Audit) function

The IRS examination process may operationalize as "[a]n examination [that] may be conducted by mail or through an in-person interview and review of the taxpayer's records (United States v Clarke et al, U.S. Supreme Court, No. 13-301 (2014) citing prior Supreme Court cases United States v. Stuart, 489 U. S. 353, 359 (1989) and United States v. Powell, 379 U. S. 48, 57–58 (1964) and citing the statute in its ruling in Reisman v. Caplin, 375 U. S. 440, 449 (1964)[16]. The interview may be at an

see 20-1472- Supreme Court of the United States https://www.supremecourt.gov › oral arguments

[12] https://www.irs.gov/irm/part13/irm_13-001-020

[13] Madison, A. D. (2016). The legal consequences of noncompliance with federal tax laws. The Tax Lawyer, 70(1), 367-402. Retrieved from http://ezproxy.uhd.edu/login?url=https://www-proquest-com.ezproxy.uhd.edu/scholarly-journals/legal-consequences-noncompliance-with-federal-tax/docview/1869923483/se-2?accountid=7109

[14] Fairness regarding statute of limitations is primarily an instrument of fairness United States Supreme Court Bull v. United States (1935) No. 649 Argued: April 9, 1935, Decided: April 29, 1935; and see fairness regarding exemplary or punitive damages Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955) Commissioner of Internal Revenue, Petitioner, v. Glenshaw Glass Company and William Goldman Theatres, Inc. Supreme Court 348 U.S., 426 75 S.Ct. 473, 99 L.Ed. 483See 2006 Taxpayer Advocate Report, supra note 2, at 6–7 (explaining that compliant taxpayers help support shortcomings of delinquent taxpayers and in part that IRS enforcement against delinquent taxpayers could help collect more tax). For the purposes of this Note, a delinquent taxpayer refers to a taxpayer with a properly assessed tax liability that does not pay the amount owed to the IRS. A compliant taxpayer is a taxpayer who pays their tax liability in full and on time.

[15] Welch v. Helvering, 290 U.S. 111, citing Jones v. Commissioner of Internal Revenue, US Court of Appeals for the Seventh Circuit - 38 F.2d 550 (7th Cir. 1930) February 27, 1930 stating "The ruling of the Commissioner of Internal Revenue being prima facie correct, the burden of proof is upon the taxpayer to establish his right to the deduction claimed. United States v. Rindskopf, 105 U.S. 418, 26 L. Ed. 1131; Wickwire v. Reinecke, 275 U.S. 101, 48 S. Ct. 43, 72 L. Ed. 184.Welch v. Helvering, 290 U.S. 111. The citing list of cases appears at https://cite.case.law/citations/?q=3921184. See also Barrington v. Commissioner, T.C. Memo. 2022-68, July 6, 2022, Buch, J., Dkt. No. 1781-14, US v. Kimball, Civil No. 2: 14-CV-521-DBH (D. Me. June 24, 2016) quoting Stuart v. United States, 337 F.3d 31, 35 (1st Cir. 2003) (quoting Geiselman v. United States, 961 F.2d 1, 6 (1st Cir. 1992); Lefebvre v. Commissioner of Internal Revenue, 830 F.2d 417, 419 n.3 (1st Cir. 1987).

[16] Over as many years, the US Supreme Court continuously holds that except when operating in "bad faith" the IRS can conduct unencumbered audit examinations under its broad statutory authority in determining taxability (United States v Clarke et al, U.S. Supreme Court, No. 13-301 (2014) citing prior Supreme Court cases United States v. Stuart, 489 U. S. 353, 359 (1989) and United States v. Powell, 379 U. S. 48, 57–58 (1964) and citing the statute in its ruling in Reisman v. Caplin, 375 U. S. 440, 449 (1964) notes that compliance to the statute is unchallengeable except when the IRS an inappropriate purpose "7602. Examination of books and witnesses. "For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized - "(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry; "(2) To summon the person liable for tax or required to perform the

IRS office (office audit) or at the taxpayer's home, place of business, or accountant's office (field audit). Taxpayers may make audio recordings of interviews, provided they give the IRS advance notice." [17]

The IRS collection function

The IRS collection process starts with a bill from the IRS if a taxpayer does not pay the amount owed for a tax in full when filing a tax return. This collection process continues until the account is satisfied or until the IRS may no longer legally collect the tax; for example, when the time or period for collection expires. The unpaid balance is subject to penalties and interests that compounds daily and a monthly late payment penalty. In its January 8, 1991, decision in John L. Cheek v. United States, related to the validity of IRS's collection function the Supreme Court (498 U.S. 192 111 S.Ct. 604, 112 L.Ed.2d 617) refuted the taxpayer's claims to the contrary in ruling that the IRS does indeed retain the constitutional to collect taxes.[18]

Appeals Officer Responsibilities (regardless of court / or Pre-Court)

Appeals officers are required to "(A) verify that the requirements of any applicable law [such as confirming that the statute of limitations had not run][19], or administrative procedure have been met; (B) consider issues validly raised at the hearing under section 6330(c)(2); and (C) determine whether the proposed collection action balances the need for efficient collection of taxes with the taxpayer's legitimate concern that the collection action be no more intrusive than necessary (Aldo v. Fonticiella v. Commissioner, 2019 T.C. Memo. 74, United States Tax Court, Filed: June 13th, 2019, citing Tucker v. Commissioner, Tucker v. Commissioner, 135 T.C. 114 (2010), aff'd, 676 F.3d 1129 (D.C. Cir. 2012).[20]"

Issues within US Tax Court Jurisdiction

US Tax court is limited[21] to instances of abuse of discretion, and therefore cannot make determinations or alter proceedings such as liens that effect property title (clouds), credit ratings (creditworthiness), wrongs committed by IRS's employees, including unauthorized collection actions and only has refund jurisdiction in the context of deficiency proceedings. Issues within the tax court's purview were previously those raised at the administrative hearing, issues relating to the accuracy of Notices of Federal Tax Lien (NFTL) or the proposed levy, reviews as to whether IRS Appeals verified compliance with applicable law even if the taxpayer did not raise the particular issue at the administrative hearing, such as a defective or improper notice of deficiency (Macdonald v. Commissioner, 2014 T.C. Memo. 42, 107 T.C.M. 1223).

April 21, 2022 decision by the US Supreme Court

Clarification of differing jurisdiction decisions among Appeals court circuits was recently made on April 21, 2022, by the US Supreme Court. Circuit courts sporadically held that jurisdiction was not tolled unless taxpayers filed a petition seeking review of a notice of determination within 30 calendar days. Hence, prior to the Boechler decision by the US Supreme Court, a petition filed beyond the 30-calendar-day period was likely dismissed for lack of jurisdiction.[22] However, the US Supreme Court in its April 21, 2022, unanimous decision, reversing the United States Court of Appeals for the 8th Circuit, held that the Internal Revenue Code's 30-day time limit to file a petition for review is subject to equitable tolling. Justice Barrett delivered the opinion of the court writing that:

"Jurisdictional requirements cannot be waived or forfeited, must be raised by courts sua sponte, and, as relevant to this case, do not allow for equitable exceptions. ... To that end, a procedural requirement was treated as jurisdictional only if Congress "clearly states" that it is. ... This case therefore turns on whether Congress has clearly stated that §6330(d)(1)'s deadline to petition for review of a collection due process determination is jurisdictional. ... Section 6330(d)(1) does not expressly prohibit equitable tolling, and its short, 30-day time limit is directed at the taxpayer, not the court. ... None of this is to say that Boechler is entitled to equitable tolling on the facts of this case. That should be

act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and "(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry."

[17] FS-2006-10, January 2006, last accessed October 10, 2021: https://www.irs.gov/pub/irs-news/fs-06-10.pdf

[18] IRS Topic 201, last accessed October 10, 2021: https://www.irs.gov/taxtopics/tc201

[19] Macdonald v. Commissioner, 2014 T.C. Memo. 42, 107 T.C.M. 1223, Docket No. 26118-08L

[20] Collection Due Process Deskbook last accessed on 11/07/2021 at https://www.irs.gov/pub/irs-utl/CDP%20Deskbook.pdf See also Treas. Reg. §§ 301.6320-1(e)(3) Q&A-E1, 301.6330-1(e)(3) Q&A-E1.

[21] Macdonald v. Commissioner, 2014 T.C. Memo. 42, 107 T.C.M. 1223, Docket No. 26118-08L citing Kluger: "We are a court of limited jurisdiction, see sec. 7442; Kluger v. Commissioner, 83 T.C. 309, 314 (1984), and section 6330(d)"

[22] I.R.C. §§ 6320(c), 6330(d)(1); Treas. Reg. §§ 301.6320-1(f)(1), 301.6330-1(f)(1); Stein v. Commissioner, T.C. Memo. 2004-124 and see Guerrier v. Commissioner, T.C. Memo. 2002-3.

determined on remand. It holds that §6330(d)(1)'s filing deadline, like most others, can be equitably tolled in appropriate cases."[23].

In clarifying the valuable expert procedures utilized by professionals engaged in OIC cases that result in better outcomes the skills of both practitioner and academics are enhanced by this study's addition to the literature.

The remainder of the paper is organized as follows. Section 2 provides Materials and Methods including definitions, practical requirements for starting the OIC process, and a historical overview including institutional developments within the OIC program from the 2008 tax years to the 2020 and selection of OIC Tax Court cases, Section 3 provides Results and Discussion, Section 5 provides conclusions.

What is an Offer in Compromise (OIC)?

An Offer in Compromise (an "OIC") is a taxpayer-IRS process which allows distressed taxpayers to negotiate tax-debt terms with the IRS, and possibly ask for settlement of the proposal before falling to complete financial failure (Boechler, 2022).[24] Offer in Compromise is an increasingly popular means of collecting tax debts while allowing for reorganization by financially troubled individuals, families and small businesses ("distressed taxpayers"). OIC's are described in the IRS' Data Book (fiscal year 2017 and succeeding fiscal years) as "… a proposal by a taxpayer to the Federal Government that would settle a tax liability for payment of less than the full amount owed.[25] Slightly different from the IRS website (Topic 204 Offers in Compromise), the 2017 IRS Data Book states that "An offer in compromise is a proposal by a taxpayer to the Federal Government that would settle a tax liability for payment of less than the full amount owed. Absent special circumstances, an offer will not be accepted if the IRS believes the liability can be paid in full as a lump sum or through a payment agreement."[26]

Although the IRS has provided more consistent steps for applying to compromise the tax debts of a delinquent taxpayer, the provisions for a successful outcome in this process are quite intricate so as to include detailed sections for Forms to Use, Application Fee, Payment Options (Lump Sum Cash Offer and Periodic Payment Offer), Suspension of Collection, Right to Appeal, and the circumstances under which there is a Return of an Offer without consideration of the offer. An instructive booklet and a pre-qualifier tool to assist the taxpayer in determining their eligibility is also included.

IRS guidelines for taxpayer payments were initially adopted in 1996. Rules modifying the measurement of the taxpayer's ability to pay were revised in May 2012. By early October 2019 (superseding August 2015) clarifying legislation had been passed such that directives and explanations were included[27]. Among these directions in the Internal Revenue Manual, the utilization of discretion through "Effective Tax Administration" in hardship cases was highlighted.[28]

Absent special circumstances, an offer will not be accepted if the IRS believes that the taxpayer can pay more than what is offered; either in a lump sum or through a payment agreement."[29] The IRS provides the following OIC guidance, with explanations for the terms doubt as to liability, doubt as to collectability, effective tax administration:

"Reasons for the Offer
The IRS may accept an OIC based on one of the following reasons:
First, the IRS can accept a compromise if there is doubt as to liability. A compromise meets this criterion only when there's a genuine dispute as to the existence or amount of the correct tax debt under the law.

Second, the IRS can accept a compromise if there is doubt that the amount owed is fully collectible. Doubt as to collectibility [sic] exists in any case where the taxpayer's assets and income are less than the full amount of the tax liability.

Third, the IRS can accept a compromise based on effective tax administration. An offer may be accepted based on effective tax administration when there is no doubt that the tax is legally owed and that the full amount owed can be collected, but requiring payment in full would either create an economic hardship or would be unfair and inequitable because of exceptional circumstances."

Although doubt as to liability is available, in their

[23] [under section 6330(c)(1)]; compare United States v. Boechler (2022) , 403 U.S. 190 (1971) ["20-1472 Boechler v. Commissioner (04/21/2022"]

[24] Boechler explains an offer-in-compromise under § 6330(c)(2)(A)(iii) Under an offer-in-compromise," the IRS may absolve a portion of a taxpayer's liability if the remaining tax debt is paid in a lump sum or over an agreed upon period of time ; also see IRS Topic No. 204 Offers in Compromise, last viewed May 2, 2021: https://www.irs.gov/taxtopics/tc204

[25] Compare this to 2013 Data Book page 52, Table 16, footnote 8. "An offer in compromise is an agreement, binding both the taxpayer and the Service, which resolves the taxpayer's tax liability where it has been determined that there is doubt as to the taxpayer's liability, doubt as to the Service's ability to collect the balance due, taxpayer does not have the financial ability to fully pay the liability within the Collection Statute Expiration Date (CSED) plus 5 years, or there is a serious economic hardship or other exceptional circumstance which warrants acceptance of less than full payment of the taxes owed."

[26] IRS 2017 Data Book at page 41, note 6. Although the website expresses the meaning of an Offer in Compromise as a settled agreement, the IRS Data Books state that an Offer in Compromise is merely a proposal (not yet settled). This case will not focus on this slight difference in characterization of this conceptual tool.

[27]Effect on Other Documents "This material supersedes IRM 5.8.11 dated August 5, 2015. Audience SB/SE Compliance employees Effective Date (10-04-2019); Nikki C. Johnson, Director, Collection Policy. https://www.irs.gov/irm/part5/irm_05-008-011

[28] See Appendix B, excerpts from the Internal Revenue Manual (IRM), Part 5.

[29] IRS 2017 Data Book at page 41, note 6. Although the website expresses the meaning of an Offer in Compromise as a settled agreement, the IRS Data Books state that an Offer in Compromise is merely a proposal (not yet settled).

admonishment, the court in Baltic advised taxpayers not to delay. That is, delays are proposing an offer-in-compromise is contrary to the Code's urging to taxpayers to compromise rather than litigation to settle their IRS disputes[30].

Contesting the accuracy of putative tax debts – Examination versus collection function

When a taxpayer disagrees with the accuracy of a tax debt, they can simply submit an offer in compromise based upon doubt as to liability (OIC-DATL) on the IRS promulgated Form 656-L17. Since the OIC-DATL is not based upon the taxpayer's financial conditions, IRS does not require the inclusion of a collection information statement, nor does IRS require explanations of a taxpayer's financial information related to capacity to pay, nor is a user fee or deposit required in contrast to OIC's based on a taxpayer's economic circumstances[31]. However, the IRS does require a detailed explanation which included the underlying facts and law supporting the grounds for the taxpayer's assertion of the incorrectness of the assessed debt[32] as well as a nominal monetary offer of at least $1. Moreover, IRS' examination function is activated with an OIC-DATL since the liability doubts focus on legal or factual questions as to correctness alleged tax obligation, rather than on the taxpayer's economic hardship concerns evaluated in IRS' collection functions.

Strategic tax savings decisions by individuals and businesses

OIC's are leading indicators[33] of the importance of tax considerations in individuals' and firms' post-economic crisis, and post-pandemic reorganization decisions. Significant tax savings can result from successfully completing the OIC process, in contrast to such standard reorganization tools as business bankruptcy prepacks, or exchange offers; and/or even the uncomplicated Chapter 13 bankruptcy reorganization plans for individuals.

IRS' AR Collections and Funding Considerations[34]

Similar to accounts receivable departments that are charged with collecting money owed to an organization, the United States (US) Internal Revenue Service (IRS) serves in the unique role of leading the team for the US government's accounts receivable department charged with keeping the US's finances balanced. Because of differing missions in relationship its stakeholders, the objectives and goals of government accounts receivable departments may differ slightly in contrast to the accounts receivable departments of public company and private companies. Taxpayers are limited after a compromise is reached and Form 870 signed such that there is a waiver of their right to challenge liability in Tax Court. Hence, the implications are that OIC settlements reduce the inefficient use government resources.

OIC – past and present

On March 22, 2010, in an eerily similar US economy downturn[35], the IRS instructed its auditors to relax the criteria on taxpayers seeking an "offer in compromise" when taxpayers negotiate for a lower tax bill because of financial hardship due to lack of resources. In the two years prior to this 2010 announcement, the US government provided Economic Stimulus Payments, which were special payments associated with the Economic Stimulus Act of 2008 which were generally provided to eligible taxpayers in 2008 and 2009.[36] In the years following IRS' 2010 mandate to go easy on taxpayers seeking an OIC"[37], the acceptance rates of OIC's increasingly grew from twenty percent, then loomed around forty percent until the slightly precipitous 2019 drop to thirty-three percent. In the years following that critical 2010 fiscal year, in total, the IRS received four times the number of Offers in Compromise (reportedly incomplete submissions, and therefore untabulated) applications during that period. In case-advances beyond the initial application stage, the IRS Appeals division alone (to which application-denials are escalated for further consideration) received 11,043, closed 11,149 and had pending 5,182 Offers in Compromise cases (Figure 1 and Table 1).[38]

Simplification, accessibility, and other pandemic-driven IRS slowdowns – The simplicity and accessibility push

In late 2019, just coincidentally, a few months before the March, 2020 Covid-19 pandemic (hereinafter, the "2020-pandemic"), the National Taxpayer Advocate's (NTA)

[30] In Baltic, referring to IRC Section 6330: Although the Baltics had a chance earlier in the process to contest their liability in court, the Baltics made their offer too late and just as the IRS was preparing to seize the couple's property.

[31] I.R.M. 5.8.1.13.4. Indeed, the IRS is in fact statutorily prohibited from requesting a financial statement from the taxpayer in an OIC-DATL. IRC § 7122(d)(3)(B)(ii)

[32] I.R.M. 5.8.1.13.4.

[33] See Table 1 and Figure 1 that show the increased OIC submissions after the 2010 economic crisis

[34] 2019 Internal Revenue Service Data Book, October 1, 2018 to September 30, 2019 Publication 55-B (Rev. 6-2020) https://www.irs.gov/pub/irs-pdf/p55b.pdf

[35] This was ten years before the most recent March 2020 International and National shutdown and ensuing economic downturn due to the Covid-19 pandemic.

[36] 2010 Data Book, page 47; https://www.irs.gov/pub/irs-soi/10databk.pdf

[37] IRS relaxes OIC rules, by Jay Heflin - 03/22/10 04:56 PM EDT 2, Last viewed January 24, 2021: https://thehill.com/policy/finance/88315-irs-relaxes-oic-rules

[38] Id. IRS Table 21, Page 49.

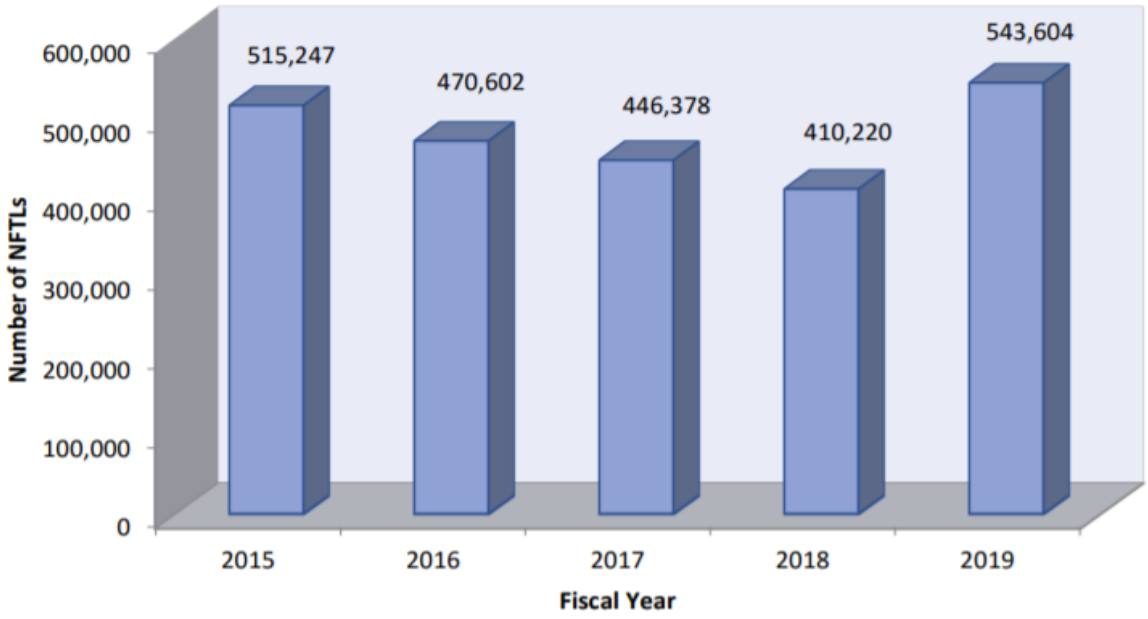

Figure 1. Number of NFTLS for Fys 2015 through 2019
Source: FRS Data book for FYs 2015 through 2019

submitted its annual report of recommendations in which it continuously advocates for taxpayer-favored improvements to Congress. The first of the two NTA's OIC recommendations is to make user fees less onerous for taxpayers already facing hardships. And, the second recommendation is to simplify the submission process by eliminating the step of a "Chief Counsel Review" for certain OIC cases.[39]

Tax lien notice suspensions[40]

During the ensuing months, following the pandemic's onset, the IRS introduced the People First Initiative[41] which suspended suspending new Notices of Federal Tax Lien (NFTL).

"In response to the economic impacts of the COVID-19 virus on taxpayers, the IRS initiated the People First Initiative, which included suspending new NFTL filings during the period of April 1, 2020 through July 15, 2020, unless exigent circumstances existed. However, the IRS would continue to take steps where necessary to protect all applicable statutes of limitations that were in jeopardy of expiring."[42]

Figure 1 shows the annual NFTL filings for the past five fiscal years. NFTL filings reached a peak of 1,096,376 in Fiscal Year (FY) 2010 and declined through FY 2018, reaching a low of 410,220 in that year. This decrease parallels the decline in the number of revenue officers of over 48 percent, from 5,922 at the end of FY 2010 to 3,028 at the end of FY 2018. However, NFTL filings increased by 33% from FY 2018 to FY 2019 (410,220 to 543,604).[43]

Congressional policy continues to evolve toward yielding authority to the IRS to accept reduced payment amounts in settlement of delinquent tax accounts. Discretionary decisions of the IRS in favor of the requesting taxpayer had been inconsistent, unreliable and unmet over the years since the inception of such provisions. Over time, however, the IRS intermittently developed more reliable, consistent processes and relaxed its policies for accepting reduced delinquent tax payments.

[39] 2020 National Taxpayer Advocate Purple Book, report to the US Congress, "Improve Offer in Compromise Program Accessibility by Repealing the Partial Payment Requirement and Restructuring the User Fee" and "Modify the Requirement That the Office of Chief Counsel Review Certain Offers in Compromise"

[40] Tax Lien Notice, also known as Notice of Federal Tax Lien (NFTL) is disseminated such that "The IRS files a public document, the Notice of Federal Tax Lien, to alert creditors that the government has a legal right to [a taxpayer's] property."

[41] See footnote 4 (below) .

[42] Treasury Inspector General for Tax Administration, Fiscal Year 2020 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures, September 17, 2020: Impact on Taxpayers After filing a Form 668(Y)(c), Notice of Federal Tax Lien (NFTL), the IRS must notify the affected taxpayers in writing, at their last known address, within five business days of the NFTL filings. Taxpayers may not be timely advised of their appeal rights if the IRS does not comply with this statutory requirement. https://www.treasury.gov/tigta/auditreports/2020reports/202030068fr.pdf

[43] Id. Fiscal Year 2020 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures https://www.treasury.gov/tigta/auditreports/2020reports/202030068fr.pdf

Table 1. Offer-in-Compromise (OIC) Data excerpted from Appeals Workload, by Type of Case, Fiscal Year 2001 through 2019 – IRS.

	Level of case	Change	Received cases	% Totalapp received	% Change received	Closed cases	% Totalapp closed	% Change closed	Pending Fiscal Year Ending 9-30	% Totalapp pending	% Change pending
2020	Totalapp FY Cases		57,573			62,997			54,554		
		Totalapp Change	-27,713		-32.50	-10,210		-13.90	-6,060		-10.00
	OICapp Cases		5,011	8.70		5,121	8.10		4,808	8.80	
		OICapp Change	-1,830		-26.80	-1,177		-18.70	-269		-5.30
2019	Totalapp FY Cases		85,286			73,207			60,614		
		Totalapp Change	-7,144		-7.70	-21,625		-22.80	11,047		22.30
	OICapp Cases		6,841	8.00		6,298	8.60		5,077	8.40	
		OICapp Change	-2,023		-22.80	-2,504		-28.40	376		8.00
2018	Totalapp FY Cases		92,430			94,832			49,567		
		Totalapp Change	-11,144		-10.80	-12,282		-11.50	-1,861		-3.60
	OICapp Cases		8,864	9.60		8,802	9.30		4,701	9.50	
		OICapp Change	-700		-7.30	-665		-7.00	-103		-2.10
2017	Totalapp FY Cases		103,574			107,114			51,428		
		Totalapp Change	-10,788		-9.40	-4,231		-3.80	-3,856		-7.00
	OICapp Cases		9,564	9.20		9,467	8.80		4,804	9.30	
		OICapp Change	178		1.90	893		10.40	-49		-1.00
2016	Totalapp FY Cases		114,362			111,345			55,284		
		Totalapp Change	492		0.40	-6,328		-5.40	2,315		4.40
	OICapp Cases		9,386	8.20		8,574	7.70		4,853	8.80	
		OICapp Change	-236		-2.50	-1,306		-13.20	675		16.20
2015	Totalapp FY Cases		113,870			117,673			52,969		
		Totalapp Change	262		0.20	2,201		1.90	-4,404		-7.70
	OICapp Cases		9,622	8.40		9,880	8.40		4,178	7.90	
		OICapp Change	391		4.20	893		9.90	-264		-5.90
2014	Totalapp FY Cases		113,608			115,472			57,373		
		Totalapp Change	-9,505		-7.70	-15,704		-12.00	-1,973		-3.30

Table 1. Cont'd

	OICapp Cases		9,231	8.10		8,987	7.80		4,442	7.70		
		OICapp Change	-464		-4.80	-870		-8.80	214			5.10
	Totalapp FY Cases		123,113			131,176			59,346			
2013		Totalapp Change	-11,948		-8.80	-13,277		-9.20	-6,947			-10.50
	OICapp Cases		9,695	7.90		9,857	7.50		4,228	7.10		
		OICapp Change	199		2.10	-307		-3.00	-183			-4.10
	Totalapp FY Cases		135,061			144,453			66,293			
2012		Totalapp Change	-13,266		-8.90	1,900		1.30	-10,340			-13.50
	OICapp Cases		9,496	7.00		10,164	7.00		4,411	6.70		
		OICapp Change	-806		-7.80	-237		-2.30	-704			-13.80
	Totalapp Cases		148,327			142,553			76,633			
2011		Totalapp Change	12,572		9.30	9,463		7.10	3,854			5.30
	OICapp Cases		10,302	6.90		10,401	7.30		5,115	6.70		
		OICapp Change	-741		-6.70	-748		-6.70	-67			-1.30
	Totalapp FY Cases		135,755			133,090			72,779			
2010		Totalapp Change	10,579		8.50	20,204		17.90	777			1.10
	OICapp Cases		11,043	8.10		11,149	8.40		5,182	7.10		
		OICapp Change	311		2.90	532		5.00	-45			-0.90
	Totalapp FY Cases		125,176			112,886			72,002			
2009		Totalapp Change	9,357		8.10	6,164		5.80	12,103			20.20
	OICapp Cases		10,732	8.60		10,617	9.40		5,227	7.30		
		OICapp Change	174		1.60	306		3.00	362			7.40
	Totalapp FY Cases		115,819			106,722			59,899			
2008		Totalapp Change	13,550		13.20	2,293		2.20	8,397			16.30
	OICapp Cases		10,558	9.10		10,311	9.70		4,865	8.10		
		OICapp Change	-239		-2.20	-978		-8.70	278			6.10
2007	Totalapp FY Cases		102,269			104,429			51,502			

Table 1. Cont'd

		Totalapp Change	5,131		5.30	1,870		1.80	-3,670		-6.70
	OICapp Cases		10,797	10.60		11,289	10.80		4,587	8.90	
		OICapp Change	335		3.20	-1,557		-12.10	-480		-9.50
	Totalapp FY Cases		97,138			102,559			55,172		
2006		Totalapp Change	-2,780		-2.80	-38		-0.04	-5,659		-9.30
	OICapp Cases		10,462	10.80		12,846	12.50		5,067	9.20	
		OICapp Change	-4,468		-29.90	-4,999		-28.00	-2,372		-31.90
	Totalapp FY Cases		99,918			102,597			60,831		
2005		Totalapp Change	1,241		1.30	-1,349		-1.30	-3,956		-6.10
	OICapp Cases		14,930	14.90		17,845	17.40		7,439	12.20	
		OICapp Change	-1,838		-11.00	-39		-0.20	-2,907		-28.10
	Totalapp FY Cases		98,677			103,946			64,787		
2004		Totalapp Change	299	0.30		19,269	22.80		-7,208	14.40	
	OICapp Cases		16,768	17.00		17,884	17.20		10,346	16.00	
		OICapp Change	-90	-0.50		4,423	33		-1,036	-8.10	
	Totalapp FY Cases		98,378			84,677			71,995		
2003		Totalapp Change	21,981		29	16,662		24	12,735		21.50
	OICapp Cases		16,858			13,461			11,382		
		OICapp Change	NA			NA			NA		
	Totalapp FY Cases		76,397			68,015			59,260		
2002		Totalapp Change	8,199	12		13,267	24		6,978	13	
	OICapp Cases		NR			NR			NR		
		OICapp Change	NR			NR			NR		
2001	Totalapp FY Cases		68,198			54,748			52,282		
		Totalapp Change	13,405	24		-238	-0.40		13,557	35	

Source: Appeals Workload, by Type of Case and Fiscal Year. https://www.irs.gov/statistics/soi-tax-stats-appeals-workload-by-type-of-case-irs-data-book-table-27 (from which the authors manually collected, isolated and analyzed only the applicable "Offers in Compromise cases" appeals data from the linked files [that] are available as Microsoft Excel® files)

Exceptional circumstances

Exceptional circumstances occur when a disadvantaged taxpayer, such as an individual who is disabled, chronically ill or when the taxpayer is unable to enter a typical OIC, that is, when the IRS recognizes that these unplanned events or life circumstances such as serious or chronic illness may reduce assets while incurring major liabilities. Hence, in exceptional circumstances, the IRS will greatly reduce the debt by accepting an OIC in such circumstances which could impair a taxpayer's ability to provide for himself or herself or a family, and it is impossible for the taxpayer to manage the financial arrangements set forth by the IRS even when the taxpayer is obligated to pay the full amount. In such an exceptional circumstances case, if the taxpayer does not have the assets to pay the full amount due after computing an offer amount for the OIC, the first step after this computation in negotiating with the IRS is to submit a narrative that accompanies the OIC explaining the taxpayer's exceptional circumstances. When properly presented, the IRS will usually accept the OIC due to these exceptional circumstances to help taxpayers avoid economic hardship.

Examples of exceptional circumstances were provided by Tax Court Judge Laro in Gregg Bartl et ux. T.C. Memo 2010-43 in which the tax court stated "One example that involves a taxpayer who provides fulltime care to a dependent child with a serious long-term illness. A second example involves a retired taxpayer who would lack adequate means to pay his basic living expenses where his only asset, a retirement account, has to be liquidated. A third example involves a disabled taxpayer with a fixed income and a modest home specially equipped to accommodate his disability, who is unable to borrow against his home because of his disability.

Initial screening of OIC

The Doubt as to Liability (DATL) Unit of the IRS is responsible for the initial screening for the processability of an Offer in Compromise. Classification as "processable" or "not processable" is determined when the DATL unit receives an OIC.

The IRS will return the OIC to the taxpayer upon identifying the following factors in an OIC submission, but only with the following specific resolution noted exceptions. That is, the IRS will declare the DATL offer not processable without further action by the IRS when not meeting such exceptions.

MATERIALS AND METHODS

In providing a teaching prototype, this study starts by highlighting and explaining the current policies and procedures that garner success in negotiating with the United States Internal Revenue Service (the "IRS) at the IRS Appeals level and US Tax Court. This exploration entails aggregating a collection of several cases adopted for the framework of this multi-case study's research design. Substantive coding methods are applied, including open and selective coding measures to the adjudicator's statements to focus on the pivotal issues of 272 tabulated summaries of offer-in-compromise (OIC) cases. Hence, this paper's analyses of cases provide a set of comprehensive strategies for navigating the demanding OIC system.

A case study research design was utilized. With particularity as to the complexity of a single framework of cases (OIC tax court cases), this study was designed for the purpose of coming to understand the IRS' and tax court's adjudicatory activities and decisions that affect significant tax obligations within a given timeframe (Creswell and Poth, 2016).

Qualitative inquiry and research design: Choosing among five approaches Sage publications) Identifying the collection of cases befitting the framework of this study of OIC tax court decisions is the preliminary step in a case study design. Since the context of this study informs both the boundaries of the selected cases and the various characteristics of each specific case (Ridder, 2017), the selected tax cases was describe as to its singularity linked with this study's specific framework such that the association among the cases and the framework of this study do not depict certain specific, isolated judicial decision outcomes. Hence, while using a bounded system for this case study design, the incongruity between or among the common context and the different types of OIC tax court cases studied herein, is not necessarily separate as to (1) the stated methodological reasons for judges rejecting an OIC when applying the IRC standards, (2) the practical and thematic interrelatedness of the judicially expressed reasons for a given decision, (3) the ways the emerging judicial decisions correspond to- or diverge from the language of the IRC and the IRM, or (4) the precedent setting frequency of OIC tax court decisions. Analogous to these inquiries, the (1) accepted offers (successful negotiations) contrasted with rejected offers, or (2) self-representation cases (pro se) compared to professional representation, or (3) precedent setting as opposed to non-precedential cases was mapped.

Population, sample selection and data

Population

Approximately thirty-two current United States Tax Court judges (United States Tax Court, 2021) comprise the judicial population of this study[44]. Within the population of 32 tax court judges, with 1 among the 8 judges designated at the Chief Judge, 20 are senior judges and 4 are Special Trial Judges, with one among the special judges designated as the Chief Special Trial Judge. In that the specialty of the tax court focuses generally on tax cases, while 5 of the judges majored in accounting, 3 are certified public accountants (CPA's), one of which is also Certified in Tax Law by a State Board of Legal Specialization and another two non-CPA's are Certified in Tax Law by a State Board of Legal Specialization and 6 specialized in tax litigation during their years of practice and 4 have worked with pro bono programs for low income taxpayers, 11 worked for the Department of Justice in the tax division, 14 worked as law clerks for federal judges of which 2 clerked for US Supreme Court Justices.

Sample selection and data

The authors manually searched and merged the data from Small

[44] United States Tax Court, 2021, https://www.ustaxcourt.gov/judges.html

Business Taxes and Management[45], Case Mine[46], Court Listener[47], Leagle.com[48], US Tax Court Judges website, United States Tax Court website case searches through its Tax Week Analytics repository at the US Tax Court Case Management System website[49], and the IRS Data Book / Taxpayer Advocate's Yearly Purple Book Report database for the OIC years 2004 through 2020. The first sample includes 741 tax court case observations. They exclude all non-OIC tax court cases. The final sample includes 272 tax year OIC-only tax court case observations. Precedential OIC cases starting in the year 2004 to August 3, 2021 were drawn from the Court Listener database since one of the precedential cases was remanded three times over the span of years between 2004 and was finalized in August of 2021. After examining the sources searched, the Court Listener database was utilized for our tabulated cases since each OIC case was available from this source.

Other than visual content analysis, the basic Excel software package was used to generate the frequencies of specific categories of Appeals, OIC's and outcomes included in the cases.

RESULTS AND DISCUSSION

It was found that IRS appeals officers and tax court judges (adjudicators) primarily base OIC case rejections, and thus failed negotiations, on deficiencies in written evidence, procedural failure, and on inapposite reasoning. Deficiencies in written evidence and procedure typically result in the adjudicators granting a "redo's" and pathways to acceptance, whereas without the requisite case-specific analysis to match each unique set of facts, deficiencies in reasoning result in outright OIC rejections. In analyzing the detailed reasons for acceptance and rejections, valuable insights are gleaned into the fundamentals for successful OIC's

Table 1 present's descriptive statistics for all accepted and rejected OIC's received by the IRS between years 2004 and 2020 for both tax court and non-tax court OIC's expressed in absolute value and percentage. Nine of the OIC tax court cases were for taxpayers seeking innocent spouse relief. Since the topic of these cases is pertinent to this research, these cases were not deleted from the sample. We deleted the eighteen cases that were related to a particularly predatory partnership coined the "Hoyt partnership" whose promoter was convicted to a criminal prison sentence.

Table 2 presents the names and applicable statutes of the OIC tax court cases that were cited by other tax court cases as precedent. Precedential OIC tax court cases comprise, as expected, a small, yet significant fraction of the overall tax court cases. The significance of the precedential cases is reflected in the fact that 4 of the 5 precedential cases were cited multiple times. That is, in reviewing the precedential OIC tax court cases were cited 34 times overall. One case was cited 1 time, one was cited 8 times, one was cited 5 times, another case was cited 11 times and another was cited 9 times in other opinions. On the other hand, one OIC tax court case's citations were significant enough to affect the cross-sectional variation among non-OIC tax court cases and OIC tax court cases, and non-tax-court OIC's. These results are consistent with the amalgamation of yearly Data Book results between 2004 and 2020 as to number of filings and changes in rates OIC acceptance and rejection by the IRS. Recent reports of the number along with the percentages of IRS Offers in Compromise received, accepted, and rejected are shown in Table 1. Figure 2 show the Illustrative summary of the IRS' OIC Initial screening for processability.

In untabulated results, OIC tax court case citations comprised a fraction (272 of 741 or 36.71%) of total OIC's to indicate that the lessons learned from applying dicta in the sample's tax court OIC's are significant enough to reflect the differences in successful compared to unsuccessful tax court OIC's and reasonably in the differences among the success rates of OIC's in general.

It was found that (21), 7.72% of the OIC tax court cases were remanded by the tax court for further proceedings at the IRS agency level for presumptive "abuse of discretion" by the IRS. The methodological reasons (RQ1a) judges stated for remanding an OIC tax court case back to IRS Appeals for a "redo" when applying the IRC standards when applying the IRC standards was that these cases were primarily remanded due to IRS settlement officers' noncompliant actions, thus eliciting the judge's admonishments to the IRS with an inference of IRS' "abuse of discretion" in these specific instances. Table 3 provides summary analyses and dicta as stated by each of judge in explaining the rationale for the 21 remanded case's decisions. Tables 4 and 5 show the IRS appeals workload by case type Fiscal Year of 2010 and 2019.

The majority (251) of the 272 OIC appeals cases in this sample were rejected by the tax court which stated in its decision dicta that the standard of proof was not met by the taxpayer, and therefore there was no abuse of discretion by the IRS. A summary of each methodological reason (RQ1b) judges stated for concurring with the IRS' rejection of an OIC when applying the IRC standards are provided in Table 3. Table 6 shows the precedential offer-in-compromise cases.

Further un-tabulated results show that during the seventeen years between 2004 and 2020 covered by this study, there were three-hundred, eight levy-related OIC tax court cases, of which 256 occurred before the IRS' tax levy against the taxpayer and 233 of these were collection due process OIC tax court hearings held between this sample's 2004 and 2020 case-hearing years. One-hundred, sixty-one (161) hearings were based on IRS' filing a lien notice. Eleven (11) of these were rejected due to failure to provide the requested

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[46] CaseMine last accessed 11/10/2021 https://www.casemine.com/

[47] the CourtListener Free Law Project database https://www.courtlistener.com/

[48] https://www.leagle.com/

[49] https://www.ustaxcourt.gov/find_a_case.html

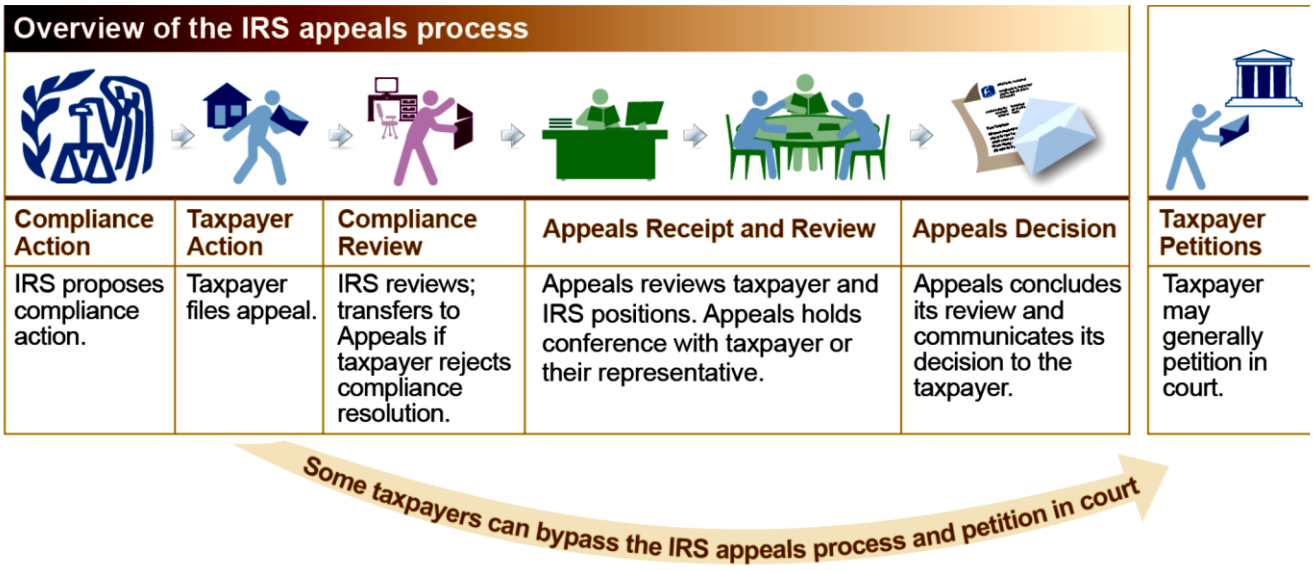

Figure 2. 2018 GAO image analysis of irs appeals process.
Source: GAO analysis of IRS appeals process (GAO-18-659.

evidentiary documents, 121 for failure to follow payment procedures. Eighteen cases were related to a particularly predatory partnership coined the "Hoyt partnership" whose promoter was convicted and sentenced to a criminal prison.

The findings do not indicate any divergence between the IRC and the IRM and the dicta in the emerging judicial tax court decisions. Conversely, the judicial tax court decisions correspond to the language of the IRC and the IRM. The main stated cause of departure from the rules is a noncompliant IRS settlement officer.

It was found that a different group of twenty-one OIC cases amounted to late filings, or extra-jurisdictional ("out-of-jurisdiction") actions filed to avoid the individual's noncompliance with trust fund responsibility. That is, these taxpayers who failed to remit employment trust fund taxes attempted to join the separate issues in a single OIC application.

In mapping the frequency of OIC tax court decisions (RQ4) emergence as precedent setting OIC tax court cases, we found six such cases. For further analysis, the 6-precedent-setting OIC cases were isolated and examined for determining each case judge's stated proposition in that decision's explanation. We find that the rationale for the precedential decision was not inconsistent with prior tax court decisions. However, in essence, each judge indicated that given the unique set of facts, it was the obligatory and appropriate for the tax court to provide further elucidation. Since abuse of discretion is the standard of review for tax court, several statements in the judicially expressed reasoning indicate that practical and thematic relationships are present, particularly when viewing whether the interaction between settlement officers and taxpayer is problematic or forthcoming toward reaching the common goal, a negotiated solution.

Conclusions

This research suggests that familiarity with tax settlement adjudicators' multifaceted reasoning for OIC rejections is mandatory for successful client representation by accountants functioning as tax controversy representatives.

Methodology in practice which is based on observing settlement -rejections revolved around the three central concepts of written evidence deficiencies, procedural failure, and on inapposite reasoning proves valuable. Strengths and weaknesses in rejected-offers due to adjudicators' penchants for strict adherence to written policies and procedures for each of those concepts were revealed through content analysis pinpointing the detailed structure of those concepts.

Predictably, methodological related rejections mapped to OIC procedural deficiencies (as compared to government administrative changes). This was particularly true for the concepts of evidence and methods when comparing the language of OIC with the language expressed by federal judges. However, deficiencies in the professional representative's reasoning, which were perceived as being grounds for rejection, are not specifically covered in the language of the IRS's OIC procedures. That is, for example, OIC does not specifically excluded evidence that is characterized by circular reasoning or is based on faulty reasoning in

Table 3. Summary analyses and dicta (for the 21 Remanded Case's Decisions).

No.	Code	Main Issues causing remand	Remanded offer-in-compromise OIC) cases Tax court dicta summary	Precedential
1	5	Abuse of discretion; the tax court suggested a new settlement officer be assigned to this case. failure to issue letter allowing taxpayer to cure noncompliance of offer in compromise	*Moore v. Comm'r, T.C. Memo. 2019-129 (U.S.T.C. Sep. 30, 2019)* Abuse of discretion – IRS' failure to follow administrative procedures; failure to issue letter allowing taxpayer to cure noncompliance of offer in compromise; employment and trust fund taxes. New settlement officer to be assigned to this case. Remanded f	*NO*
2	37	Abuse of discretion: inadequacy of the administrative record, economic hardship, family medical expenses, special circumstances	*Kevin R. Gurule et ux. T.C. Memo. 2015-61 (U.S.T.C. Mar. 31, 2015)* Abuse of discretion – inadequacy of the administrative record; economic hardship; family medical expenses; special circumstances are: (1) circumstances demonstrating that the taxpayer would suffer economic hardship if the IRS were to collect from him an amount equal to the reasonable collection potential (RCP) and (2) compelling public policy or equity considerations that provide sufficient basis for compromise. Factors indicating economic hardship include, but are not limited to, (1) the taxpayer's long-term illness, medical condition, or disability that renders him incapable of earning a living, where it is "reasonably foreseeable that taxpayer's financial resources will be exhausted providing for care and support during the course of the condition"; (2) the taxpayer's monthly income is exhausted each month in providing for care of dependents without other means of support; and (3) the taxpayer is unable to borrow against the equity in assets and liquidation of those assets to pay a tax liability would render the taxpayer unable to meet basic living expenses. Settlement officer knew that taxpayer could not work because of her **neurological condition**, and she also knew that taxpayer had to take several section 401(k) plan account loans to pay their son's **medical expenses** and other basic living expenses. Even though taxpayer had positive net realizable equity in his section 401(k) plan account at that time, it was quickly being depleted to pay basic expenses. Yet the notice of determination suggests that the Appeals Office rejected taxpayers' OIC pro forma because the offer fell below the calculated RCP. The tax court could not determine whether the Appeals Office gave due regard to potential special circumstances before rejecting the offer and similar to two other cases that (1) remanded when it was unclear whether the settlement officer properly considered the taxpayer's health in rejecting the taxpayer's OIC with special circumstances and (2) remanded when the settlement officer did not meaningfully consider the taxpayer's special circumstances before rejecting her proposed installment agreement. It was an abuse of discretion for IRS settlement officer to determine to proceed with the proposed collection action for taxpayers' 2009 tax liability. Because a remand would be "helpful", "necessary", or "productive". Upon remand the Appeals Office shall consider any additional information or evidence that taxpayers may wish to submit, any new collection alternative that taxpayers may wish to propose, and any asserted change in circumstances.	*NO*
3	54	Abuse of discretion	*Bogart, TC Memo. 2014-46, CCH Dec. 59,854(M) ; TRC IRS: 42,056.15* Taxpayers were victim of embezzlement; collection alternative rejected by IRS; abuse of discretion by IRS; effective tax administration on equity grounds. IRS settlement officer failed to adequately consider the ETA OIC on public policy and equity grounds. We conclude that IRS settlement officer has yet to adequately consider the ETA OIC on those grounds. Remand the matter for IRS settlement officer to consider the ETA OIC on public policy and equity grounds.	*NO*

Table 3. Cont'd

4	64	Taxpayer has not been treated in a fair and rational manner	*Szekely v. Comm'r, T.C. Memo. 2013-227 (U.S.T.C. Sep. 24, 2013)* Collection alternative remand to appeal office for consideration of offer in compromise; taxpayer missed deadline. IRS settlement officer's haste in closing taxpayer's file has prevented us from considering the centerpiece of his case—namely, his request for a collection alternative. The taxpayer is entitled to raise at the CDP hearing "any relevant issue relating to the unpaid tax," including "an offer-in-compromise." Sec. 6330(c)(2)(A)(iii). Taxpayer clearly and timely raised this issue. The SO expected him to submit an OIC; she sent him the required OIC forms; and he submitted his OIC shortly after the March 13 response date. Almost six months later, the IRS considered and rejected his offer because it was accompanied, not by Form 433-A (OIC), but by financial information intended to supplement the Form 433-A that he had previously submitted to the SO. This rationale for rejecting taxpayer's OIC, like other of IRS settlement officer's actions in the case, seems questionable. However, the propriety of this action is not before us because it postdated the notice of determination that is the subject of our review. The court stated that it had a firm sense that taxpayer has not been treated in a fair and rational manner and therefore remanded the case for a supplemental CDP hearing to consider taxpayer's OIC. Also, the court stated that "before the supplemental hearing, taxpayer may submit a revised OIC on Form 656 accompanied by a Form 433-A (OIC) with current financial information. If taxpayer is dissatisfied with the outcome of the supplemental hearing, he may pursue further review in this Court. "	*NO*
5	65	Two- pronged decision No proof of reasonable cause for failure to timely file a return, Yet, remanded for OIC since Tax Court found that IRS Abused its discretion by failing to respond to petitioner's request	*Dickes v. Comm'r, T.C. Memo. 2013-210 (U.S.T.C. Sep. 9, 2013)* 6330; 6651; 6654; hearing on filing lien notice; hearing before levy; failure to file or pay; failure to pay estimated tax; collection due process; case remanded to Appeals; opportunity to submit offer in compromise. Circumstances constitute reasonable cause for failure to timely file a return outside of the taxpayer's control, including, for example: (1) unavoidable postal delays; (2) the timely filing of a return with the wrong office; (3) the death or serious illness of the taxpayer or a member of the taxpayer's immediate family; (4) a taxpayer's unavoidable absence from the United States; (5) destruction by casualty of a taxpayer's records or place of business; and (6) reliance on the erroneous advice of an IRS officer or employee. Petitioner was incarcerated, business and tax records were stolen from his attorney's car and his tax software did not allow filing, asked an IRS employee for guidance with respect to the filing of his 2005 and 2006 returns, but he did not document the advice that the IRS employee provided. The issue of whether the facts recited above establish reasonable cause for purposes of the section 6651(a)(1) additions to tax for 2005 and 2006 is not before us. The only additions to tax that are at issue are those for 2007-09. Later year's records were not stolen ans should have timely filed the 2007-09 returns and later filed amended returns to correct any mistakes. Petitioner has failed to prove that he had reasonable cause for failing to timely and court held that petitioner has not shown that he exercised ordinary business care and prudence with respect to his failure to pay the amounts of tax on or before the payment due dates Whether Appeals Office abused its discretion because Settlement Officer Breazeale (1) did not allow him to submit an OIC during the section 6320/6330 hearing and (2) failed to address his interest abatement request in the notice of determination. By failing to respond to petitioner's request Settlement Officer Breazeale effectively caused petitioner to be under the mistaken impression that he would have an opportunity to submit his OIC—and to become current on his tax reporting obligations—if his penalty abatement request was denied. Court concluded that Settlement Officer Breazeale erred in failing to respond to petitioner's request and that therefore Settlement Officer Breazeale effectively denied petitioner an opportunity to submit an OIC during the section 6320/6330 hearing. Under these circumstances, remand is appropriate. See sec. 6330(c)(2)(A); Lunsford v. Commissioner, 117 T.C. 183, 189 (2001); Churchill v. Commissioner, T.C. Memo. 2011-182, 102 T.C.M. (CCH) 116, 118 (2011).	*NO*

Table 3. Cont'd

			The administrative record further shows that petitioner requested interest abatement pursuant to section 6404(e) during the section 6320/6330 hearing. The Appeals Office failed to address this issue in the notice of determination. Upon **remand**, the Appeals Office shall address this issue in a supplemental notice of determination. See Chenery, 318 U.S. at 93-95; Antioco v. Commissioner, at *24-*25; Jones v. Commissioner, at *22-*23.	
6	69	Whether taxpayer would suffer economic hardship	*Lane v. Comm'r, T.C. Memo. 2013-121 (U.S.T.C. May. 6, 2013)* Sec. 6320; 6330; 7122; hearing on filing lien notice; hearing before levy; compromises; offer-in-compromise; collection due process; consideration of economic hardship; remand to Appeals. If the taxpayer had to immediately liquidate his equipment to meet his obligations to the Internal Revenue Service this could place an unreasonable burden on him because it would essentially mean he would have to go out of business. Without this equipment he could not secure additional, meaningful work and would have to lay off employees and resort to government support himself. 19 The record does not establish that the Appeals Office considered any issues regarding whether taxpayer would suffer economic hardship in determining to reject taxpayer's offer-in-compromise. On the record before us, we are unable to decide whether we should sustain the determinations in the notices of determination. Accordingly, we shall deny IRS settlement officer's motion and remand this case to the Appeals Office for clarification and for further consideration.	*NO*
7	273	Administrative record was "insufficient	*Pomeroy v. Comm'r, T.C. Memo. 2013-26 (U.S.T.C. Jan. 22, 2013)* Sec. 6320; 6330p; 7122; hearing on filing lien notice; hearing before levy; compromises; collection due process; offer-in-compromise; remand to IRS appeals; medical condition and offer-in-compromise. In such cases, we can remand collection due process cases to Appeals to 0 develop the record. See Wadleigh v. Commissioner, 134 T.C. 280, 299 (2010) (remanding "to clarify and supplement the administrative record" when we determined that the administrative record was "insufficient to enable us to properly evaluate whether the Appeals Office abused its discretion"); Hoyle v. Commissioner, 131 T.C. 197, 204-205 (2008) (remanding so that Appeals could clarify the record as to why it determined that all requirements of applicable law were met). Accordingly, we remand these cases to the Appeals Office to allow the parties to clarify and supplement the record as appropriate. We will retain jurisdiction to preserve taxpayers' rights to judicial review of the final administrative determination. See Wadleigh v. Commissioner, 134 T.C. at 299.	*NO*
8	79	Taxpayer should have opportunity to amend its offer-in-compromise	*Alessio Azzari Inc. T.C. Memo. 2012-310 (U.S.T.C Nov. 6, 2012)* Sec. 6320; 6330; hearing on filing lien notice; hearing before levy; unpaid employment taxes; successor corporation; assets to be included in offer in compromise. Cross motions for summary judgement. Issue: whether on remand, the IRS Appeals Office abused its discretion by rejecting Petitioner's offer-in-compromise because the Appeals Office concluded that petitioner failed to include the assets of its successor corporation or by failing to provide petitioner the opportunity to amend its offer-in-compromise. The administrative record reveals no reason why taxpayer should not have been afforded the opportunity to amend its offer-in-compromise. Although, as discussed above, IRS settlement officer contends that taxpayer's transfer of assets to Artex made it impossible to determine taxpayer's reasonable collection potential, such a reason, standing alone, is insufficient. If the Appeals Office had provided taxpayer the opportunity to amend its offer-in-compromise, taxpayer could have included Artex's assets on its Form 433-B. Accordingly, we will again remand the instant case to the Appeals Office so that the Appeals Office may provide taxpayer the opportunity to amend its offer-in-compromise. Taxpayer will need to supplement the record by submitting a new Form 433-B that includes the value of Artex's assets.	*NO*

Table 3. Cont'd

8	79	Taxpayer should have opportunity to amend its offer-in-compromise	On the basis of the foregoing, we shall partially grant IRS settlement officer's motion for summary judgment insofar as we hold that Artex is a successor corporation to taxpayer and that its assets should be considered in determining taxpayer's reasonable collection potential, and we shall partially deny IRS settlement officer's motion for summary judgment because of the failure to give taxpayer the opportunity to amend its offer-in-compromise. Similarly, we shall deny taxpayer's motion for summary judgment insofar as we hold that Artex was its successor corporation, and we shall deny taxpayer's motion insofar as the Appeals Office failed to provide taxpayer the opportunity to amend its offer-in-compromise since we are remanding the instant case to IRS settlement officer's Appeals Office to give taxpayer the opportunity to do so and have it considered on the remand.	*NO*
9	80	Appeals must consider additional information, any new collection alternative petitioners propose, and any asserted change in circumstances	*Jones v. Commissioner, Docket No. 312-10L (U.S.T.C. Sep. 26, 2012)* Sec. 6320; 6321; 6330; 7122; hearing on filing lien notice; liens for taxes; hearing before levy; compromises; collection due process; offer-in-compromise; administrative record deficient; opportunity to substantiate valuation of property. (((*A. DeeWayne Jones et ux.* T.C. Memo. 2012-274 IRS settlement officer contends, and we agree, that the U.S. Court of Appeals for the Ninth Circuit, to which an appeal in this case would lie absent a stipulation to the contrary, see sec. 7482(b)(1)(A), has adopted the administrative record rule in section 6320 cases where the underlying liability is not at issue, see Keller, 568 F.3d at 718; Jordan v. Commissioner, 134 T.C. 1, 9 (2010); see also Robinette v. Commissioner, 439 F.3d 455 (8th Cir. 2006), rev'g 123 T.C. 85 (2004). Accordingly, under Golsen v. Commissioner, 54 T.C. 742 (1970), aff'd, 445 F.2d 985 (10th Cir. 1971), we must sustain IRS settlement officer's objections.))) Because the administrative record does not adequately disclose the analysis of the Appeals Office in determining that the OIC was not acceptable and that the filing of the NFTL should be sustained and because petitioners were not afforded a meaningful opportunity to substantiate their position with respect to the valuation of the Lake Arrowhead property, remand is appropriate in this case. Upon remand the Appeals Office shall consider any additional information or evidence that petitioners may wish to submit, any new collection alternative that petitioners may wish to propose, and any asserted change in circumstances. See Leago v. Commissioner, T.C. Memo. 2012-39, slip op. at	***NO***
10	97	Reasonable collection potential; offer-in-compromise rejection; Not an abuse of discretion	*Johnson v. Commissioner, 136 T.C. 475 (U.S.T.C. 2011)* Sec. 6330; hearing before levy; collection due process; reasonable collection potential; offer-in-compromise rejection. The determination of the IRS's Office of Appeals—i.e., not to accept Mr. Johnson's proposed collection alternative, but instead to sustain the filing of the notice of lien and the proposed collection by levy of his outstanding tax liabilities— was not an abuse of discretion. Respondent may proceed with collection. SO Hunt initially proposed to allow this expense in his draft determination, but the Appeals Office ultimately disallowed the expense in the supplemental notice of determination, because Mr. Johnson was not legally obligated to repay the loan and the payments were not a necessary living expense.	Precedential Cited by 11 opinions
11	107	Reported tax due; but did not pay the tax & appeals officer is not an "inferior" Officer	*Larry E. Tucker T.C. Memo 2011-67; 2011 Tax Ct. Memo LEXIS 65; 101 T.C.M. (CCH) 1307; March 22, 2011, Filed* Larry E. Tucker T.C. Memo. 2011-67 Sec. 6320; 6321; 6323; 6330; 7122; hearing on filing lien notice; liens for taxes; priority of liens; hearing before levy; compromises; collection due process; day trading losses; dissipation of assets; disregard of outstanding Federal income taxes; denial of offer-in-compromise.	*NO*

Table 3. Cont'd

12	112	Reported tax due; but did not pay the tax & appeals officer is not an "inferior" Officer	*Tucker v. Comm'r of Internal Revenue, 135 T.C. 114, 135 T.C. 6 (U.S.T.C. 2010)* Larry E. Tucker 135 T.C. No. 6 Sec. 6320; 6321; 6323; 6330; 6331; 7122; 7804; hearing on filing lien notice; liens for taxes; priority of liens; hearing before levy; levy and distraint; offers-in-compromise; IRS personnel; collection due process; authority of IRS appeals officer. P filed income tax returns for 2000, 2001, and 2002 that reported tax due; but he did not pay the tax. The Internal Revenue Service (IRS) assessed the tax and issued to P a notice of the filing of a tax lien (NFTL). P timely requested a collection due process (CDP) hearing, which is to be "conducted by an officer or employee" of the IRS Office of Appeals, I.R.C. sec. 6320(b)(3), and which is to conclude with a "determination by an appeals officer", I.R.C. sec. 6330(c)(3). P's CDP hearing was conducted by a settlement officer in the IRS Office of Appeals, and after the CDP hearing a team manager in that office issued to P a notice of determination upholding the NFTL. P filed with the Tax Court a timely appeal pursuant to I.R.C. sec. 6330(d)(1). After initial proceedings, this Court ordered a remand to the Office of Appeals for further consideration. A second CDP hearing was conducted by another settlement officer, and the team manager issued a supplemental notice of determination again upholding the NFTL. The team manager and both settlement officers had been hired by the Commissioner pursuant to I.R.C. sec. 7804(a) and were not appointed by the President or the Secretary of the Treasury. P moved for a second remand so that a CDP hearing could be conducted by, and a notice of determination issued by, an officer appointed by the President or the Secretary of the Treasury, in compliance with the Appointments Clause. See U.S. Const., art. II, sec. 2, cl. 2. Held: An "officer or employee" or an "appeals officer" under I.R.C. sec. 6320 or 6330 is not an "inferior Officer of the United States" for purposes of the Appointments Clause. P's motion to remand will be denied.	Precedential (2010 Tucker) cited by 7 opinions
13	117	Abuse of discretion Since the IRS was unable to locate the forms even for trial; the Court held that the tax assessments were invalid, because the IRS had made them without first issuing notices of deficiency.	*James E. Marlow et ux. T.C. Memo. 2010-113 (U.S.T.C. May 20, 2010)* Sec. 6013; 6213; 6320; 6330; 7122; joint returns; deficiencies and Tax Court petitions; hearing on filing lien notice; hearing before levy; compromises; collection due process; offer-in-compromise; waiver of restrictions on assessment; assessments invalid. Although reliance on a Form 4340 generally is sufficient for verification, if a taxpayer disputes the accuracy of the Form 4340, further verification may be necessary, and in this instance, the IRS could not produce evidence sufficient to establish that the taxpayers signed the waiver forms. The court held that remand was not necessary and would not be productive, because the IRS was unable to locate the forms even for trial. Thus, the Court affirmatively held that the tax assessments were invalid, because the IRS had made them without first issuing notices of deficiency. We conclude that SO Magee abused her discretion in determining that the requirements of applicable law or administrative procedure, as provided in section 6330(c)(1), were met in this case. Although IRS settlement officer contends that the IRS' internal procedures support the presumptive existence of signed valid waivers by taxpayers permitting deficiency assessments of their 2004 and 2005 income taxes and agreeing that they owe such taxes, we find there are some flaws, inconsistencies, and irregularities which lead us to conclude on the basis of this record that the weight of the evidence shows that IRS settlement officer has failed to carry his burden of proof under these particular facts and circumstances. Accordingly, we hold that IRS settlement officer's assessments on April 16, 2007, of taxpayers' additional income taxes for 2004 and 2005 are invalid. Having so held, we do not need to consider whether IRS settlement officer abused his discretion in denying the OIC taxpayers submitted.	*NO*

Table 3. Cont'd

14	123	Misapplication of the IRM directives; adjustments should be made for a taxpayer who is elderly or in poor health and whose ability to continue working is questionable	*Fairlamb v. Commissioner, T.C. Memo. 2010-22, slip op.* *Remington P. Fairlamb* T.C. Memo. 2010-22 Sec. 6330; 7122; hearing before levy; offer-in-compromise; collection due process; allowance to submit additional offer-in-compromise. *Inferring that Age of Taxpayer = compromise based on DATC* Applying this standard, the notice concludes that taxpayer did not qualify for an offer-in-compromise based on doubt as to collectibility with special circumstances because "you are able to meet your basic living expenses". This rationale is deficient for at least two reasons. First, the notice misstates IRM pt. 5.8.11.2(2), which states that an offer-in-compromise based on doubt as to collectability with special circumstances may be accepted where there are "economic hardship or public policy/equity factors that would justify accepting the offer". (Emphasis added.) More fundamentally, according to the IRM an offer-in-compromise is to be evaluated as based on doubt as to collectibility with special circumstances (as opposed to plain-vanilla doubt as to collectibility) only if it is "for an amount less than the reasonable collection potential". Id. Taxpayer's third offer was for the exact amount that the settlement officer had initially calculated to be his reasonable collection potential. Addressing this issue obliquely, the notice states (without citation of authority): "For a long term deferred offer, future income is projected over the life of the collection statute." The notice fails to take into account, however, IRM pt. 5.8.5.5(5), which, as previously discussed, directs that in computing a taxpayer's future income, adjustments should be made for a taxpayer who is elderly or in poor health and whose ability to continue working is questionable. Following this directive, the settlement officer initially calculated taxpayer's future income under the assumption that he would work until age 70. There is no indication in the record that any determination was ever made that taxpayer would be able to work beyond age 70. Rather, the record strongly suggests that the determination in the notice was based on a misapplication of the IRM directives. The Commissioner's internal procedures, as reflected in the IRM, do not have the force of law, and deviation from them does not necessarily render the Commissioner's action invalid. Vallone v. Commissioner, 88 T.C. 794, 807-808 (1987). Nevertheless, the determination in this case, which was based wholly on misapplication of internal procedures, cannot be said to have a sound basis in law or fact. Because taxpayer's various offers were all based on doubt as to collectibility rather than effective tax administration, this regulatory provision is not, by its terms, applicable.7 In any event, we do not believe that IRS settlement officer's ultimate determination, as explained in the notice, can fairly be construed as predicated on this rationale. In initially recommending taxpayer's third offer, the settlement officer expressed no concern about this issue, and there is no indication in the record that this consideration played any role in the decision to overturn the settlement officer's initial recommendation. In the light of the inadequacy of the reasons given in the notice for rejecting taxpayer's third offer, which the settlement officer, with seemingly more soundly reasoned analysis, had initially recommended accepting, we are unable to conclude whether it was an abuse of discretion for IRS settlement officer to determine to proceed with the proposed collection action for taxpayer's 2002, 2003, and 2004 tax liabilities. We will remand the case to respondent's Appeals Office for further consideration and clarification and to allow petitioner, if he wishes, to propose a new collection alternative. In Oman v. Commissioner, T.C. Memo. 2006-231, this Court found that IRS directives as contained in IRM pt. 5.8.7.6(5) (Nov. 15, 2004) and policy statement P-5-100 (Jan. 30, 1992) were inconsistent as to whether doubt as to future compliance is a sufficient reason to reject an offer-in compromise. The Court remanded for further consideration and clarification the Commissioner's determination rejecting on this ground the taxpayer's proposed offer-in-compromise based on doubt as to collectibility. The tax court remand the case to IRS settlement officer's Appeals Office for further consideration and clarification and to allow taxpayer, if he wishes, to propose a new collection alternative.	*NO*

Table 3. Cont'd

15	133	An offer-in-compromise should not be accepted even in a case of economic hardship if the taxpayer does not offer an acceptable amount	*Blair 2009 T.C. Memo. 232, 98 T.C.M. 333, 2009 Tax Ct. Memo LEXIS 234 Docket Number: No. 16510-07L* Kenneth Everett Blair T.C. Memo. 2009-232 Sec. 6330; 7122; hearing before levy; offer in compromise; OIC; collection due process; 48-month factor; hardship evaluation; health care costs. The settlement officer determined taxpayer's RCP to be $58,998. Therefore, it is undisputed that taxpayer cannot fully pay his $81,483.52 tax liability. The Commissioner evaluates economic hardship. See Internal Revenue Manual (IRM) pt. 5.8.11.2.1 (Sept. 1, 2005). In accordance with the Commissioner's guidelines, an offer-in-compromise should not be accepted even in a case of economic hardship if the taxpayer does not offer an acceptable amount. See IRM pt. 5.8.11.2.1(11) (Sept. 1, 2005). As we noted in Barnes v. Commissioner, T.C. Memo. 2006-150, n.8, affd. in part and vacated in part sub nom. Keller v. Commissioner, 568 F.3d 710 (9th Cir. 2009), IRM pt. 5.8.5.5 allows the calculation of future income using a 48-month factor where the taxpayer offers to pay the compromise amount in cash within 5 months. It appears that taxpayer's offer met the criteria set forth in the IRM, and it is unclear why the settlement officer used a 109-month factor instead of a 48-month factor. The difference between taxpayer's offer of $24,000 and the amount called for by applying a 48-month factor (approximately $27,156) is only a few thousand dollars. It is not clear to the Court from the record that the settlement officer took into account the 48-month factor allowed in the IRM as noted above. Consequently, we will remand this case to IRS settlement officer's Appeals Office for reconsideration of taxpayer's offer in the light of the 48-month factor.	*NO*
16	141		*Bradford M. Daniel T.C. Memo. 2009-28* Sec. 6320; 6330; hearing on filing lien notice; hearing before levy; collection due process; remand to appeals office; offer-in-compromise; doubt as to collectibility; opportunity to challenge liability. SWIFT, Judge: This matter is before us on IRS settlement officer's motion for remand to IRS settlement officer's Appeals Office and on taxpayer's motion for partial summary judgment. Because taxpayer does not object to IRS settlement officer's motion for remand, IRS settlement officer's motion for remand to IRS settlement officer's Appeals Office (on the issue as to whether taxpayer's offer-in-compromise (OIC) should be accepted on the ground of doubt as to collectibility) will be granted. We are left, however, with the question raised in taxpayer's motion for partial summary judgment to which IRS settlement officer objects (whether on remand to IRS settlement officer's Appeals Office taxpayer's OIC also should be considered on the basis of doubt as to liability). As indicated, taxpayer does not object to IRS settlement officer's motion for remand of this case to IRS settlement officer's Appeals Office for purposes of considering taxpayer's OIC on the ground of doubt as to collectibility. IRS settlement officer's motion for remand will be granted. Taxpayer, however, moves for partial summary judgment, seeking an order that IRS settlement officer's Appeals Office on remand consider taxpayer's OIC on the basis of doubt as to liability.	
17	169	Hardships related to tax lien and medical problems	Vincent F. Dailey et ux. T.C. Memo. 2008-148 Sec. 6320; 6330; 7122; hearing on filing lien notice; hearing before levy; offer-in-compromise; collection due process; economic hardship; remanded to IRS appeals office. Appeals Office considered (1) the ability of Ms. Dailey and Mr. Dailey, who at the time they submitted taxpayers' Form 433-A were 50 years old and 55 years old, respectively, to earn sufficient income to pay taxpayers' unpaid 2002 liability and taxpayers' unpaid 2003 liability as well as their reasonable basic living expenses; (2) the impact that a tax lien on petitioners'' residence might have on Mr. Dailey's ability to obtain a position as a stockbroker or a real estate agent or a similar position and to earn an amount of income that, when added to the amount of income from Ms. Dailey's position, was sufficient to pay those unpaid liabilities as well as those expenses;	***NO***

Table 3. Cont'd

			(3) the impact that taxpayers' payment of the medical bills attributable to the serious health problems of taxpayers' daughter and taxpayers' older son might have on taxpayers' financial condition, even though those children may not qualify as petitioners' dependents for tax purposes; and (4) the impact that the serious health problems of taxpayers' daughter and taxpayers' older son might have on taxpayers' ability to earn sufficient income to pay taxpayers' unpaid 2002 liability and taxpayers' unpaid 2003 liability as well as their reasonable basic living expenses.21 If in determining in the notice of determination that taxpayers were not a good candidate for an effective tax administration offer-in-compromise the Appeals Office had considered other factors or circumstances, such as those that we describe above, the record does not establish the other factors or circumstances that it considered and its evaluation of them. Accordingly, we shall remand this case to IRS settlement officer's Appeals Office for clarification and for further consideration.	***NO***
18	230	Abuse of discretion where current or past income does not provide an ability to accurately estimate future income for an offer, the use of a future income collateral agreement may provide a better means of calculating an acceptable offer amount	Al Sampson T.C. Summary Opinion 2006-75 Sec. 6320; 6330; 7122; hearing on filing lien notice; hearing before levy; compromises; collection due process; offer-in-compromise; collateral income agreement. We conclude the Appeals officer abused his discretion in rejecting taxpayer's OIC on the ground that taxpayer had sufficient future income to pay his 2002 tax liability in full. We therefore shall remand this matter to the Appeals Office for reconsideration of taxpayer's OIC. In some instances, a future income2006 Tax Ct. Summary collateral agreement may be used in lieu of including the estimated value of future income in reasonable collection potential (RCP). When investigating an offer where current or past income does not provide an ability to accurately estimate future income, the use of a future income collateral agreement may provide a better means of calculating an acceptable offer amount. * * * Example: A taxpayer is currently in medical school and it is anticipated that upon graduation income should increase dramatically. IRM sec. 5.8.5.5(6) (Nov. 15, 2004). Assuming taxpayer secures employment after graduation, he likely will earn significantly more income than he has over the past several years. For the reasons stated above, however, it is difficult to estimate the amount of his future income or when he will receive such income. The facts of taxpayer's case therefore appear to fit squarely within IRM sec. 5.8.5.5(6). Nevertheless, there is -- but chose to forgo, in order to pursue his studies (forgone earnings). The Appeals officer also determined that taxpayer's forgone earnings were sufficient to pay his 2002 tax liability in full. It is true taxpayer could have increased his income had he discontinued his education and found work; however, we can find nothing in the IRM suggesting that a student's forgone earnings are a component of future income. In fact, the example in IRM sec. 5.8.5.5(6) indicates a taxpayer can qualify for an OIC despite choosing to pursue education rather than employment. The example does not include forgone earnings as part of the taxpayer's reasonable collection potential. Even if taxpayer's future income did include forgone earnings, the difficulty of calculating the amount of such earnings is evident. Taxpayer's forgone earnings presumably depend on the type of employment he could obtain, which in turn depends on factors such as his work experience, job skills, and the strength of the labor market. There is no indication the Appeals officer considered these factors or attempted to calculate taxpayer's forgone earnings. 4 Rather, it appears the Appeals officer assumed that taxpayer would earn sufficient income, after allowable expenses, to pay his tax liability in full. Taxpayer's history of intermittent employment and modest wage income raises doubts about the validity of this assumption. Furthermore, it is unclear whether the Appeals officer considered that taxpayer might have increased expenses if he discontinued his studies, such as student loan repayments.	***NO***

Table 3. Cont'd

			Held: the Appeals officer abused his discretion in rejecting taxpayer's OIC on the ground that taxpayer had sufficient future income to pay his 2002 tax liability in full. We therefore shall remand this matter to the Appeals Office for reconsideration of taxpayer's OIC. Reviewed and adopted as the report of the Small Tax Case Division.	***NO***
19	234	Abuse of discretion in declining to accept taxpayers' offer dated November 2, 2001, and continuing the lien in effect.	*Speltz v. Comm'r, 124 T.C. No. 9 (USTC Filed: March 23rd, 2005; Citations: 124 T.C. No. 9, 124 T.C. 165, 2005 U.S. Tax Ct. LEXIS 9; Docket Number: No. 15382-03L* As IRS settlement officer points out, any levy on particular assets of taxpayers that the IRS proposes to pursue in the future will also require notice and an opportunity to be heard under section 6320 or 6330. Taxpayers may submit another offer in compromise. Taxpayers' income and expenses may change. We conclude, however, that there was no abuse of discretion in declining to accept taxpayers' offer dated November 2, 2001, and continuing the lien in effect.	Precedential Status: Precedential Cited By (61)
20	249	Abuse of discretion in determining to proceed with collection	*James M. Robinette 123 T.C. No. 5 123 T.C. 85, 2004 WL 1616381 (2004)* The issues relating to whether taxpayer defaulted on the offer-in-compromise are relevant issues that taxpayer raised in the Appeals Office hearing and which should have been considered by the Appeals officer in his determination, but were not. The Appeals officer failed to consider those relevant issues in his determination. On that basis, the majority is that "it was an abuse of discretion for IRS settlement officer to determine to proceed with collection of taxpayer's tax liability." Held, further, IRS settlement officer abused his discretion in determining to proceed with collection.	***NO***
21	274	Relegating taxpayer's liability challenge to the non-CDP context was an abuse of discretion.	*Rickey B. Barnhill v. Commissioner, 155 T.C. No. 1 (2020)* The Appeals officer may have considered Mr. Barnhill's initial (and only) appeal, but we cannot conclude that her subsequent action involved only harmless error. Harmless error rule does not apply where Appeals commits an abuse of discretion in upholding collection action for a TFRP where such action was not preceded by a final administrative determination of the assessment and may have affected the collection procedure for the penalty). Conclusion [by the Tax Court] Denied the Commissioner's motion for summary judgment. Footnote 13 *Similarly, any defect resulting from barring Mr. Barnhill's liability challenge in the CDP hearing is not cured by Appeals' consideration--outside of the CDP hearing--of Mr. Barnhill's offer-in-compromise based on doubt as to liability. By Appeals' lights that was an appropriate manner in which Appeals could consider Mr. Barnhill's liability challenge; but if, as we hold for purposes of denying summary judgment, he was entitled to challenge his liability in the CDP hearing (subject thereafter to judicial review under section 6330(d)), then relegating the liability challenge to the non-CDP context was an abuse of discretion.*	*Precedential* *Cited by (0)*

Source: Cases collected from the Court Listener Free Law Project database https://www.courtlistener.com/ selected "Download original" then "Combined opinions from our backup"

rejection and acceptance, including pinpointing a specific settlement officer's distrustful attitude or unreasonable brashness toward the taxpayer. This suggests the OIC written procedure is a general guideline and that professional representatives should pay particular attention to specific rationale that informs the concepts of evidence, methods, and reasoning. Further, despite the inferences that using the correct technical rules and guidelines result in successful, this study demonstrates soft skills are important such that tax court judges are cognizant of human behavior differences among settlement officers that may factor into inconsistent negotiation outcomes. Indeed, in most of the remanded cases the tax court cited the settlement officer's unreasonable actions in explicit detail, including stating the settlement officer's surname 95 times

Table 4. IRS appeals workload, by type of case, fiscal year 2019.

Type of case	Cases received	Cases closed [1]	Cases pending September 30, 2019
	(1)	(2)	(3)
Total cases [2]	85,286	73,207	60,614
Collection Due Process cases [3]	37,196	26,655	30,293
Examination cases [4]	24,862	22,626	18,476
Penalty appeals cases [5]	5,757	5,864	2,659
Offers in Compromise cases [6]	6,841	6,298	5,077
Innocent spouse cases [7]	1,575	2,429	1,384
Industry cases [8]	826	773	1,025
Coordinated industry cases [9]	42	89	129
Other cases [10]	8,187	8,473	1,571

Source: Appeals Workload, by Type of Case, Fiscal Year 2019 – IRS; https://www.irs.gov › pub › irs-soi

Table 5. IRS appeals workload, by type of case, fiscal year 2010.

Type of case	Cases received	Cases closed	Cases pending September 30, 2010
	(1)	(2)	(3)
Total cases [1]	135,755	133,090	72,779
Collection Due Process [2]	49,049	46,941	25,754
Examination [3]	42,144	41,943	28,057
Penalty Appeals [4]	10,918	11,910	5,028
Offers in Compromise [5]	11,043	11,149	5,182
Innocent Spouse [6]	5,341	4,610	2,988
Industry Cases [7]	2,099	1,698	1,991
Coordinated Industry Cases [8]	330	319	716
Other [9]	14,831	14,520	3,063

Source: Appeals Workload, by Type of Case, Fiscal Year 2010– IRS; https://www.irs.gov › pub › irs-soi.

Table 6. Precedential offer-in-compromise cases.

No.	Precedential offer-in-compromise cases main statutes §§ 6320(c) and 6330(d)(1) Tax Court Dicta Summary	# Citations
1	Carlson v. United States 394 F. Supp. 2d 321 (D. Mass. 2005)	2
2	Tucker v. Commissioner, 135 T.C. No. 6 (Tax Ct. 2010)	7
3	Kreit Mech. Assocs. v. Commissioner, 137 T.C. No. 9 (Tax Ct. 2011).	7
4	Johnson v. Commissioner 136 T.C. No. 23 (Tax Ct. 2011)	11
5	Rickey B. Barnhill v. Commissioner 155 T.C. No. 1 (Tax Ct. 2020)	0

Source: Court Listener https://www.courtlistener.com/ sponsored by the non-profit Free Law Project, a 501(c)(3) non-profit

in dicta and on the record in one of the harshest remanded cases. For example, regarding deficient procedures, professional representatives should pay particular attention to avoiding non-OIC-specialized approaches. IRS guidance refers to the use of specific taxpayer data in a conditional sentence, but does not clarify the limits of specific written evidence; IRS only specifies that reliable methods used by professional representative in determining the basis of the OIC submitted must also be applied reliably to the facts of each case.

Further, it is imperative that professional representatives actually have a strategic technique to begin with. Simply showing basic calculations is not enough. Tax

professionals should ensure that they are well versed in the settlement procedures that comprise the theoretical model and be prepared to explain why the settlement procedures used are, or are not, relevant to the test of the theory or the application of the theory to the taxpayer's case.

Finally, well-regarded tax practitioners known for successful negotiation and settlement of tax controversies requires diligence such that tax professionals must pay close attention to the important links among written evidence, procedural requirement, and reasoning. This research suggests that written evidence, proper procedure, and consistent reasoning are intertwined such that they do not function in isolation. When judges cited the absence of proper procedures, for example, they often cited lack of written evidence. Moreover, unsupported reasoning, particularly false assumptions (DATL, DATC), was associated with deficient procedures or deficient written evidence. Although the findings in this study apply to U.S.-based tax professionals appearing before adjudicator within the IRS and in U.S. federal tax court, these findings may apply to local adjudicators and non-U.S. government agencies and court as well. Inferences from our findings that show a different group of twenty-one (21) OIC cases were related to failure to remit employment trust fund taxes are that taxpayer will attempt whatever it takes to circumvent the rules.

Tax accounting and law practitioners subscribe to the idea that an OIC is one of the best methods for tax liability challenges while simultaneously complying with taxpayer obligations when administered appropriately (Landreth, 2018; Madison, 2016). Despite the increasing frequency of OIC submissions, and the persistent assertion of the benefits of an OIC in popular and financial press articles, existing evidence on the costs and benefits of OIC's is still anecdotal[50]. Undoubtably, however, the recent pandemic will heighten the need for successfully-proposed OIC's for years to come.

This study provides a map for navigating the nuances of the OIC program with a view to success in reducing deficiencies in evidence, procedures, and reasoning.

Proficiencies for successful OIC's are important to the IRS, the tax court system, accounting students, and practitioners alike. Hence, we add to the literature since society as a whole stands benefit from honing negotiation skills, thus heightening employable skills through research that informs teaching which activates practical implications.

Future research would add further value to the literature by extending the exploration of additional unanswered, or previously unanswerable questions. Hence, the limitations of this study are embedded in the possibility of inspecting added cases to answer future research queries. Such likely questions toward building a strong base of skills and knowledge entail asking (1) how important is the tax debt's dollar amount owed by each OIC proposer at each decision level, (2) does political administration effect the IRS actions or judicial outcome, (3) does the impact of such disasters as a pandemics matter; that is, do natural disasters influence or daunt the IRS' collection modality or IRS' clemency decisions, (4) does taxpayer's or the court's location in the nation or in the world impact the facts, including the taxpayer-IRS pre-court interaction or the judicial decision of tax court, (5) is varying judicial temperament, especially toward "abuse of discretion" a factor in the tax court decision, (6) might celebrity or influence in the community sway the OIC outcome either positively or adversely, and (7) do fraudulent misappropriations or negligence such as employment tax irresponsibility leading to trust fund recovery penalties, influence the taxpayer's credibility in IRS' or the tax court's view?

CONFLICT OF INTERESTS

The authors have not declared any conflicts of interests.

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[50]Table "1" (herein derived from the IRS 2016 -2019 Databook)