The Tactical and Practical Procedures in Tax Controversies

Robert E. Meldman
THE TACTICAL AND PRACTICAL PROCEDURES IN TAX CONTROVERSIES

ROBERT E. MELDAN*  

The scope of this article is limited to regular income tax examinations conducted by the Internal Revenue Service and is not applicable to an examination by a Special Agent of the Intelligence Division. When the latter type of examination occurs, normal procedures utilized during the investigation of any criminal case must be employed.

While there may not be universal agreement on the procedures to be employed during the pendency of an income tax audit, an examination of the various levels and authority of the Internal Revenue Service will aid the practitioner in bringing his case to a successful conclusion.

The formal procedures available to a taxpayer and his counsel in tax controversies with the Internal Revenue Service may be found in Revenue Rulings, Information Bulletins and Revenue Procedures. The tactical and practical factors for arriving at the most favorable settlement for the taxpayer, however, cannot be found in these technical releases.

No general rule can be formulated for the optimum procedure to be utilized in disposing of a particular case. Consideration must be given to such factors as the examining Agent's attitude, the merits of a case, the availability of evidence and finally, the taxpayer's financial situation.

Generally, the practitioner should make an intensive effort to settle a tax controversy at the lowest possible level. If these preliminary negotiations are unsuccessful, consideration must then be given to the various alternative courses of action available on behalf of the taxpayer.

CONFERENCE WITH INTERNAL REVENUE AGENT

A conference with the examining Internal Revenue Agent will usually be the practitioner's initial contact with the Revenue Service. The Agent is completely familiar with all of the facts and circumstances surrounding the items at issue after completing his examination. Consequently, if the practitioner has properly prepared for this conference by gathering the relevant facts from the taxpayer, the latter will have little to contribute to the conference. His presence may tend to disturb the rapport that has been established between the practitioner and the examining Agent.

During the conference with an Agent, the practitioner should direct his efforts towards disposition of those issues within the confines of

the Agent's scope of authority. Although a Revenue Agent technically has no "settlement" authority, he may exercise broad discretion concerning such items as travel and entertainment expenses, depreciation rates, reasonable allowance for salaries and capitalization of expenditures. However, an Agent has no discretion to negotiate in areas where the Commissioner of Internal Revenue has either non-acquiesced to Court decisions or promulgated rulings, regulations or guidelines.

When a satisfactory settlement can be reached with the Revenue Agent, the execution and filing of a Form 870 is recommended. This procedure eliminates the necessity of a formal notice of deficiency and will aid in expediting the final adjustment of the tax liability. However, since neither the execution of Form 870, nor the Revenue Agent's determinations are binding on the Internal Revenue Service, the taxpayer should be informed that a tentative settlement has been reached, subject however, to confirmation by the Internal Revenue Service. Requests by the Revenue Agent for an accompanying payment of tax and interest with Form 870, "to stop the running of interest," should be rejected. In the event the Review Staff of Internal Revenue Service does not ratify the Agent's recommendations, the payment of tax and interest submitted with Form 870 may not be automatically refunded.

If an impasse is reached with the Agent and the practitioner believes that it is not feasible to satisfactorily resolve the disputed issues, the Agent's integrity should be respected and the conference concluded. Further discussion of the case with the Agent's immediate supervisor is generally not recommended unless the negotiations have terminated as a result of a personality conflict and not as a result of a disagreement concerning the merits of the case.

**DISTRICT CONFERENCE**

The Internal Revenue Service provides the taxpayer with an opportunity for extensive administrative review in unagreed cases. The first level of review is the District Conference which affords the taxpayer an opportunity for an informal conference. This conference can be arranged after the issuance, by the District Director, of a fifteen or thirty day letter. This letter may recommend that the taxpayer re-

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1 Appendix A; Waiver of restrictions, 26 U.S.C. §6213(d) (1966), provides "The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right, by a signed notice in writing filed with the Secretary or his delegate, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency."

2 "Except as otherwise provided in Section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B and no levy or proceeding in court for its collection shall be made, begun, or presented until such notice [of deficiency authorized in Section 6212] has been mailed to the taxpayer . . . ." 26 U.S.C. §6213(c) (1966).


5 Appendix B.
quest a conference to discuss the proposed adjustments with a District Conferee, a member of the Conference Staff, and informs the taxpayer that such a request must be accompanied by a written protest setting forth the facts upon which he relies concerning each contested issue. Many practitioners subscribe to the theory that no opportunity should be ignored to convince the Internal Revenue Service of the merits of the case. Others believe that as the internal administrative review reaches higher levels, controversies become increasingly easier to settle and therefore, would advise foregoing an informal conference.

The danger of the Internal Revenue Service raising new or affirmative issues at any level of the administrative review must always be taken into consideration. However, this hazard is greatest prior to the issuance of a statutory notice of deficiency. A District Conferee, finding the record lacking in facts necessary for him to reach a proper determination, may review the entire audit de novo. Therefore, the likelihood of new or affirmative issues being raised is diminished with lesser exposure of the case to Internal Revenue Service personnel.

The practitioner must of necessity make an all out effort to win his case at any stage in the proceedings, and, therefore, should present all available facts and evidence. Where a question of fact is at issue, the practitioner’s presentation of evidence at the conference level will result in exposure of his defense and will leave him with no basis for a reversal of the Conferee’s decision at a higher level.

**Regional Appellate Division**

If an agreement is not reached at the District Conference level or if such a conference is not desired, the taxpayer may request consideration of his case by the Appellate Division of the Regional Commissioner’s office. A request for an Appellate Division hearing must be made in the form of a written protest, signed under the penalties of perjury by the taxpayer and the practitioner, setting forth a brief statement of the relevant facts and arguments which the taxpayer desires the Appellate Division to take into consideration.

The relative merits of submitting a controversy to internal review previously discussed in connection with the District Conference are equally applicable to the preparation and filing of a protest with the Appellate Division.

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6 However, a written protest need not be filed where the total amount of proposed additional tax does not exceed $2500 for any year. Rev. Proc. 62-27, 1967-1 Cum. Bull. 630.
7 See Disadvantages of Administrative Review infra.
9 Treas. Reg. §601.507 (1968); However, a written protest need not be filed where the total amount of proposed additional tax does not exceed $2500 for any year and the taxpayer has availed himself of the opportunity of a District Conference. Rev. Proc. 68-4, 1968-7 Int. Rev. Bull. 24.
Although no general rule can be stated regarding the advisibility of filing a protest with the Appellate Division, it is important that this decision be made only after full consideration of all relevant factors applicable to the particular facts of each case. If the decision is made to file a protest, the practitioner should do so within the required thirty day period.

The alternative is to allow the thirty day period to expire and await the Director's issuance of a Statutory Notice of Deficiency. The basic disadvantage of filing a protest with the Appellate Division is that the taxpayer must disclose the exact nature of his argument without the corresponding benefits of a disclosure by the government. Although the protest is not a formal pleading, it must include a complete statement, not only of the relevant facts, but also of the taxpayer's arguments. Failure to include all exceptions taken to the Agent's report in a protest, although not binding in future court actions, may prevent any settlement with the Appellate Conferee.

Generally, the Appellate Conferee will request that statements, affidavits or other supporting documentary data be submitted prior to the conclusion of negotiations. Although statements thus submitted might be self-serving, under the general rules of evidence, it is not advisable to have the opponent armed with statements under oath relating to the disputed issues in a case. In the event the case must be litigated, allowing the government's file to be documented by taxpayer affidavits and other supporting data may be detrimental.

When it can be anticipated that litigation will come before the Tax Court of the United States, another factor must be considered in making the decision to file the protest. The protest will again be considered by the Appellate Division after the commencement of an action in the Tax Court. The Appellate Division and Office of Regional Counsel have current jurisdiction in cases pending before the Tax Court until the actual commencement of the trial itself. The question thus presented is: At what stage of the proceedings is it best to have the case referred to the Appellate Division? Unless it is felt that there is some merit in having two opportunities to attempt settlement with the Appellate Division, before and after the case is in the Tax Court, time, and thus interest, can be saved by eliminating the first. Generally, the Appellate Conferee conducting negotiations prior to the commencement of a Tax Court action will be reassigned to the case concurrently with an attorney from Regional Counsel after the filing of a Petition in the Tax Court. Psychologically it is difficult for anyone to countermand a decision previously made.

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10 Appendix C.
The Appellate Division has a strict policy of not raising new or affirmative issues unless they are material to the existing controversy. However, a Conferee cannot "close his eyes" to a blatant error made by a Agent, and, therefore, there is no certainty that new or affirmative issues will not be raised by the Appellate Conferee.

Unlike the Agent and the District Conferee, the Appellate Conferee may consider an offer to settle based on the respective strengths and weaknesses of the opposing views. However, the Service's announced practice prohibits settlement of cases for so-called "nuisance value." Even though the Appellate Conferee may consider "litigation hazard" in considering the disposition of specific cases, he is not required to actually participate in the trial. If no settlement is reached, he does not bear the burden of conducting the trial himself. Therefore, the rapport normally established between two attorneys negotiating a settlement is not present.

Careful consideration of the discussion above must lead to the conclusion that generally, the practitioner should bypass the Appellate Division and proceed directly to the Court of his choice.

Disadvantages of Administrative Review

The greatest disadvantage of subjecting a tax controversy to any administrative review is the requirement that the taxpayer's facts and supporting law be submitted to the Internal Revenue Service without the corresponding benefits of disclosure by the government. The possibility of uncovering new issues prior to the issuance of a Statutory Notice of Deficiency, although discounted by Service representatives, must be cautiously viewed by the prudent practitioner. Affirmative issues raised by the Internal Revenue Service prior to the issuance of a Statutory Notice of Deficiency must be overcome by the taxpayer.

On the other hand, the burden of proof as to such issues raised after the issuance of a Statutory Notice of Deficiency rests upon the government.

Selecting the Court

When a tax dispute can be resolved only by litigation, the taxpayer may select his forum from among three Courts: The Tax Court of the United States, the United States District Court and the United States Court of Claims. Each Court has a distinct litigation procedure and the choice of forum may be the most important decision made concerning a tax controversy.

Theoretically, a choice of three Courts exists. However, administrative procedures utilized, the taxpayer's financial ability to pay the tax,
and prior decisions by one of the respective Courts may, as a practical matter, influence the practitioner's decision.

The practitioner is faced with the critical decision of his choice of forum upon receipt of a Statutory Notice of Deficiency or ninety day letter. To invoke the jurisdiction of the Tax Court, a Petition must be filed within ninety days from the date of the mailing of the Statutory Notice of Deficiency. On the other hand, refund procedures available in either the District Court or the Court of Claims may be utilized after the expiration of the "ninety day period," by filing a Claim for Refund after payment in full of the deficiency in tax and interest.

**TAX COURT OF THE UNITED STATES**

**Pleadings**

The "Petition" as the basic pleading in the Tax Court, should accurately, briefly and concisely set forth the assignment of errors and the facts upon which the petitioner relies. The sole purpose of the Petition is to set forth errors and facts sufficient to enable the parties to have a joinder of issues. The Petition should not contain arguments or substantiating evidence in the support of the case. Within sixty days after the filing of a Petition with the Tax Court, the government, as respondent, is required to file an answer.

In instances where the government's answer asks for affirmative relief, or alleges facts in support of issues where the respondent has the burden of proof, the petitioner is required to file a Reply within forty-five days, admitting, denying or stating that "he lacks sufficient knowledge or information to form a belief" as to those affirmative allegations. Although failure to file a Reply will constitute an admission of the government's affirmative allegations, the Tax Court Rules do not require the petitioner to furnish an explanation for admission or denial of such allegations.

**Settlement Conference**

After the pleadings are filed, the case is at issue and the practitioner must prepare for settlement or trial. Usually within ninety days after the case is at issue, the Appellate Division will send the practitioner a letter advising him that the Division has the case for consideration and will invite him to a settlement conference. Except in unusual circumstances, an attorney from Regional Counsel will be present and actively

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15 Appendix C.
18 Tax Ct. R. P. 4, 5.
19 Appendix D.
21 Appendix E.
23 Appendix F.
participate in the conference. As an advocate, the trial attorney from Regional Counsel can appreciate the problems of the availability, admissibility and probative value of evidence, the burden of proof and creditability of witnesses. The Appellate conferee functions as a technical advisor for the trial attorney and is concerned with the factual aspects of the case. Therefore, settlement negotiations at this level are usually more fruitful.

In preparation for a settlement conference, the practitioner must carefully evaluate his own case by considering the applicable law, the facts to be established and the evidence available for introduction at the trial. The practitioner should also again confer with the taxpayer prior to the conference, but should not generally, permit him to be present during settlement conferences.

Tax Court Rules make no provisions for discovery procedure. Therefore, practitioners should begin the settlement conference by making a generalized presentation of the facts and law in a conclusory manner. After evaluating the Internal Revenue Service's position concerning settlement, negotiations should terminate without further disclosure where the practitioner believes that a satisfactory settlement cannot be reached. On the other hand, where a realistic possibility of disposing of the case without the necessity of trial is evident, the practitioner should proceed to present his case in detail. However, under no circumstances should any original evidentiary material, exhibits or other statements be furnished to the Service until after a tentative settlement has been reached with the trial attorney from Regional Counsel and the Appellate Conferee.

In rare instances where settlement cannot be reached prior to the opening of the Tax Court's trial session, full jurisdiction of the case vests with the Office of Regional Counsel. Therefore, the government's trial attorney may at that time enter into a settlement agreement without the concurrence of the Appellate Division.

**Trial Before the Tax Court**

The Tax Court is a specialized national tribunal which hears only tax cases. Trials in the Tax Court are conducted in the same manner as any civil case before a Judge sitting without a jury. Under the Tax Court Rules, the respective parties are required to stipulate evidence to the fullest extent to which complete or qualified agreements can be reached including all material facts that are not, or generally should not be, in dispute. Except in cases of fraud, transferee liability or affirmative issues raised by the government after the issuance of a Statutory Notice of Deficiency, the petitioner has the burden of proof.
Therefore, it is generally to the taxpayer's advantage to enter into as complete a stipulation as possible before trial. Furthermore, the stipulation may also serve as a means of discovery for the taxpayer, since the facts to be presented by the government must of necessity be disclosed in preparation of a stipulation. After the conclusion of the trial, the presiding Judge will consider the evidence and request either oral arguments or the filing of briefs by each of the respective parties.  

**District Court**

**Pleadings**

As a prerequisite to the commencement of an action in the District Court, the taxpayer must pay the tax in full and file a Claim for Refund. Thus, in reality, the first pleading in an action in the District Court is a Claim for Refund. This "pleading" should set forth clearly, all the grounds upon which the taxpayer relies as a basis for the Claim. Grounds not raised in a timely Claim for Refund cannot later be asserted as a basis for recovery in District Court. Detailed statements, and reasons, as well as the practitioner's energy, should be saved for arguments and briefs submitted to the Court.

Under the provisions of the Internal Revenue Code of 1954, Claims for Refund may be filed within the latter of three years from the time the return was filed, or two years from the time the tax was paid.

After a Claim for Refund has been filed, the taxpayer will normally be afforded an opportunity to discuss the merits of his Claim with an Internal Revenue Agent. Generally, it is recommended that this conference be waived unless new evidence can be made available for submission to the Service.

The Internal Revenue Service, after careful consideration of the Claim for Refund will notify the taxpayer of its acceptance or rejection. If the Claim is granted in whole or in part, the taxpayer will be notified by appropriate correspondence and a refund check will be issued by the Service's disbursing office in Washington.

Generally, rejection of a Claim for Refund will be communicated to the taxpayer by the issuance of a thirty day letter and an accompanying report. This notice recommends that if the taxpayer does not ac-

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27 Id. 35.
28 Flora v. United States, 357 U.S. 63 (1958). However, in Withholding, F.I.C.A. or Excise tax cases, payment of the entire deficiency is not necessary. These taxes are divisible and therefore, payment of the tax or any one divisible item or period is sufficient to establish jurisdiction for a suit in District Court.
29 Appendix G.
30 United States v. Felt & Tarrant Co., 283 U.S. 269 (1931); Real Estate Title Co. v. United States, 309 U.S. 13 (1940); Cormack v. Schofield, 201 F.2d 360 (1953).
31 For the purpose of computing this time, a return shall be considered as having been filed on its due date, i.e., ordinarily for an individual, April 15. Int. Rev. Code of 1954, §6511(a).
32 Id. §6511(a).
33 Appendix H.
cept the Service's findings that he avail himself of the administrative review of the Internal Revenue Service, or in the alternative, execution of Form 2297 "Waiver of Statutory Notice for Claim Disallowance."

The execution of Form 2297 eliminates the requirement that the government send to the taxpayer by certified or registered mail, a Statutory Notice of Disallowance.

Since a suit for refund may not be commenced prior to the expiration of six months from the date the Claims are filed, no benefit may be derived by the taxpayer by the execution and filing of such waivers. Therefore, it is suggested that the practitioner await the expiration of the six month period or receipt of a registered or certified Notice of Rejection.

Commencement of an Action in District Court

A Complaint must be filed with the United States District Court within two years following the formal rejection of the Claim for Refund. The Complaint, however, may be filed upon the expiration of six months after the filing of the Claim for refund.

The Federal Rules of Civil Procedure provide that an action is commenced in United States District Court when a Complaint is filed. However, in the broadest sense, a tax refund action actually begins with the Claim for Refund. Therefore, if a proper Claim has been filed, the Complaint in a tax refund suit should be brief and to the point, containing only those allegations necessary to bring the matter before the Court. The rules governing tax refund suits are identical to those applicable to all other civil actions in Federal Courts.

A diligent practitioner will take full advantage of all of the methods of discovery available under the Federal Rules of Civil Procedure. These include depositions, interrogatories, requests for admissions and motions to produce.

One of the principal advantages in commencing an action in District Court is the discovery apparatus available. The practitioner may uncover the government's nonparty witnesses heretofore unknown. Production of books, records and other documents can be compelled for examination before trial.

Secondarily, depositions of government employees affords the practitioner an opportunity to question the facts on which the examining

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24 This affords the taxpayer an opportunity to discuss his Claims for Refund at the District Conference level and at the Appellate Division. The relative merits and disadvantages of such review have been previously discussed in connection with additional assessments.

25 Appendix I.

26 INT. REV. CODE of 1954, §6532(a) (1), (3).

27 Id. §6532(a).

28 FED. R. CIV. P. 3.

29 Appendix J.

30 FED. R. CIV. P. 31.

31 Id. 34.
agent's conclusions are based. Utilization of these procedures may encourage a satisfactory settlement prior to trial by eliminating the element of surprise. CAVEAT: Discovery apparatus is a two-edged sword, available to the government as well as the taxpayer.

Pretrial Conferences

Customarily, the District Court Judge orders a pretrial conference with the respective attorneys. As a result thereof, the attorneys are required to prepare a stipulation of facts, exchange exhibits to be offered in evidence, prepare a pretrial brief setting forth a list of witnesses to be called and a short excerpt of their testimony. Most Federal Judges also utilize the pretrial conference as a means of eliminating time for discovery and attempting to encourage settlement.

Settlement Procedures

No one can state the most effective way to conduct all the details of negotiating a settlement in a tax case. There is, of course, a substantial amount of bargaining inherent in any settlement process. However, the procedural steps involved in compromising a tax refund suit with the government will suggest some considerations to be kept in mind.

Generally, after completion of discovery, the trial attorney representing the Department of Justice will be susceptible to discussions concerning settlement of the issues. Although the trial attorney does not have absolute discretion in terms of binding the Justice Department to a settlement, as a practical matter, his recommendations weigh heavily. The procedures set forth concerning settlement conferences in a Tax Court case are equally applicable here, and therefore, will not be repeated. However, the attitude of the Justice Department may more closely parallel that of the private practitioner, in that compromise discussions are an accepted part of the proceedings of any law suit. The general attitude of the Tax Division of the Justice Department concerning a compromise of refund litigation is aptly expressed by the former Assistant Attorney General, Tax Division, Mr. Louis Oberdorfer, in an address to the Tax Section of the American Bar Association, where he stated:

Where a case does not involve a question which should be litigated to a conclusion in order to clarify the law, we will consider a compromise on the basis of our appraisal of the likelihood that we will prevail on the issues being tried. We do not insist on "all or nothing" on every issue. We accept offers in compromise which reflect a fair estimate of the chance that the Government will prevail on a particular issue. And where we are convinced that the Government is wrong, we authorize or recommend administrative refund.\(^{43}\)

\(^{42}\) Id. 16.

Unlike a Tax Court settlement, however, the practitioner is required to submit a written settlement proposal to the Justice Department. No settlement is final until written confirmation is received from the Justice Department. Although the Justice Department is required to confer with the Office of Chief Counsel, Internal Revenue Service, unless the issue raised by the law suit may continue to reoccur in subsequent years, the District Director who originally proposed the tax deficiencies is generally not a participant in the settlement negotiations.

**Trial of the Case**

The trial of a civil tax refund case in the District Court is identical to the trial of any other civil action. It may be held with or without a jury and all of the rules and decorum of Federal practice are applicable.

A number of criteria must be taken into consideration in making a decision whether to commence an action in the Tax Court of the United States or the District Court. The five most prominent issues to be considered are: (1) availability of discovery procedure; (2) settlement possibility; (3) the burden of proof; (4) additional deficiencies, and; (5) trial by jury.

Discovery procedures and settlement possibility have been previously discussed and will therefore not be repeated here.

**Burden of Proof**

An action in the Tax Court of the United States is commenced by the taxpayer for the review of an administrative determination that a deficiency in tax is due. The taxpayer's burden is simply to prove that the Commissioner of Internal Revenue erred in assessing a deficiency in tax with regard to the adjustment stated in the Notice of Deficiency. The burden of proof as to the allegation of fraud or new issues raised by the government after the issuance of the statutory notice of deficiency rests with the government.

A tax refund suit in the District Court is an action commenced by the taxpayer for a refund of an overpayment of taxes. Therefore the taxpayer must carry the burden of showing that the Commissioner of Internal Revenue erred with respect to the specific tax adjustments AND establish his correct tax liability. The practical aspect of the dual burden of proof is to place on the taxpayer the burden with regard to new issues raised. However, where fraud penalties have been assessed, the rules change and the burden of proving fraud (in the basic assessment) is still upon the government.

A unique area of tax litigation is that surrounding an assessment based on unwarranted accumulation of earnings under Section 531, Internal Revenue Code. In theory, the burden of proof in these cases can be shifted from the taxpayer to the government in a proceeding brought before the Tax Court of the United States.44 This theoretical

shift of burden is not applicable in cases commenced in the District Court. (A discussion of the complicated and unique situation may be found in Effective Tax Procedures, 27 J. Tax 2 (1967).)

Additional Deficiencies
The filing of a petition in the Tax Court of the United States suspends the statute of limitations on assessments for the duration of the proceedings, and therefore, should the Commissioner of Internal Revenue assert an increased deficiency and satisfy the Tax Court that it is correct, the taxpayer may be required to pay a greater tax than he chose to originally contest.

Tax refund litigation can be handled so as to avoid the payment of a higher deficiency than asserted during the administrative process. By virtue of the statute of limitations on claims for refunds and refund suits, it is almost always possible to commence a refund suit after the time for additional assessments has expired. New deficiencies discovered in the course of preparation for trial can be used by the government, therefore, only as an offset against the amount of the taxpayer's refund claim. Regardless of the size of the new adjustment proposed by the service, the taxpayer's net loss is limited to the deficiencies which were timely assessed.

Trial by Jury
The determination of whether or not a trial by jury is advantageous to the taxpayer should precede the selection of a forum. Taxpayers going before the Tax Court may not have a trial by jury. Refund suits in the District Court, however, allow the taxpayer a jury trial. The right to a jury trial is available to the government and the taxpayer in District Court. Therefore, careful consideration should be given before any determination is made.

United States Court of Claims
The United States Court of Claims has jurisdiction of all suits for refund of all Federal taxes. The discussion concerning the advantages of the District Court is equally applicable here and, therefore, will not be repeated. An additional advantage of the Court of Claims is that its opinions are subject to appellate review only by the Supreme Court of the United States. Therefore, unlike a Tax Court or District Court decision, relatively few tax cases from the Court of Claims are appealed.

45 Id. §6213(a).
46 Id. §6214(a).
Dear Mr. and Mrs. Taxpayer:

In accordance with the provisions of internal revenue laws, this notice of disallowance in full of your claim(s) is hereby given.

No suit or proceeding for the recovery of any internal revenue tax, penalty, or other sum for which this notice of disallowance is issued may be begun after the expiration of 2 years from the mailing date of this letter.

Very truly yours,

District Director

Social Security Number or Employer Identification Number: 987 65 432, 876 54 321 (wife's)

Type of Tax: Income

Document Locator Number: 11181944

Period Ending: Dec. 31, 1960

Amount Claimed: $8,377.60

Date Claim Received: July 20, 1967

FORM L-60 (REV. 3-67)
Pursuant to section 6213(d) of the Internal Revenue Code of 1954 or corresponding provisions of prior internal revenue laws, the restrictions provided in section 6213(a) or corresponding provisions of prior internal revenue laws are hereby waived and consent is given to the assessment and collection of the following deficiencies, together with interest on the tax as provided by law; and the following overassessments are accepted as correct:

<table>
<thead>
<tr>
<th>TAXABLE YEAR</th>
<th>TYPE OF TAX</th>
<th>AMOUNT OF TAX</th>
<th>PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>Income</td>
<td>$4,480.00</td>
<td>$2,240.00</td>
</tr>
</tbody>
</table>

**OVERASSESSMENTS**

<table>
<thead>
<tr>
<th>TAXABLE YEAR</th>
<th>TYPE OF TAX</th>
<th>AMOUNT OF TAX</th>
<th>PENALTY</th>
</tr>
</thead>
</table>

**NAME AND ADDRESS OF TAXPAYER(S) (Number, street, city or town, state, ZIP Code)**

John Q. Taxpayer and Mary A. Taxpayer  
1234 North America Avenue  
Milwaukee, Wisconsin 98765

**SIGNATURE**  
**DATE**

**SIGNATURE**  
**DATE**

**SIGNATURE**  
**DATE**

**BY**

If the taxpayer is a corporation, the waiver must be signed with the corporate name followed by the signature and title of the officer(s) duly authorized to sign. It is not necessary that the corporate seal be affixed. The space provided for the seal is for the convenience of corporations required by charter or by the laws of the jurisdiction in which they are incorporated to affix their corporate seals in the execution of instruments.

The waiver may be executed by the taxpayer's attorney or agent provided such action is specifically authorized by a power of attorney which, if not previously filed, must accompany the form.

If the waiver is executed by a person acting in a fiduciary capacity (such as executor, administrator, trustee, etc.), Form 56, "Notice of Fiduciary Relationship," should, unless previously filed, accompany this form.
Dear Mr. and Mrs. Taxpayer:

Enclosed is your copy of an examination report explaining adjustments to your tax liability for the years shown. We have carefully reviewed this report.

If you accept the findings, please sign and return the enclosed Waiver Form. If additional tax is due, you may prefer to make payment at this time. See paragraph 1 of the enclosed instructions for details.

If you do not accept the findings, we recommend that you request a conference to discuss the proposed adjustments with a member of our Conference Staff. Most cases considered at a conference are brought to a satisfactory conclusion.

If you do not desire a District conference, you may request a hearing with the Appellate Division of the Regional Commissioner's Office.

Your request for either a District conference or an Appellate hearing must be accompanied by a written protest. If a hearing is requested, we will forward your protest to the Appellate Division. That Division will contact you to arrange a hearing. See paragraphs 2, 3 and 4 of the enclosed instructions for details concerning a District conference, preparation of a protest and representation.

If you do not respond within 30 days from the date of this letter, we will process your case on the basis of the adjustments shown in the examination report.

Important: Please send all communications concerning your case to the above address using the symbols in the upper right corner of this letter.

Very truly yours,

District Director

Enclosures - 3:
Examination report
Waiver Form
Instructions - Unagreed Income, Estate, or Gift Tax Cases
INSTRUCTIONS—Unagreed Income, Estate, or Gift Tax Cases

Reasonable people can and do sometimes disagree on tax issues. For this reason the Internal Revenue Service maintains a system of appeals. This system has been remarkably successful in that a great majority of the disputed tax cases are settled without trial.

1. If, However, You Now Agree and Desire to Pay Without Waiting for a Bill—Your remittance should be made payable to the INTERNAL REVENUE SERVICE and should include interest on the additional tax (but not interest on penalties, if any) at 6% a year from the due date of the return to the date of payment. Please do not send cash—use a check or money order.

2. District Conference—Your first right of appeal is a District conference; more than half of all the cases considered at conferences are brought to a satisfactory conclusion at this point. If you request, we will arrange for a District conference at a mutually convenient time and place. You may appear personally or be represented by an attorney or agent, and bring anyone to the conference as a witness who has knowledge of the facts and can furnish evidence to support your position. To avoid the time and expense of further conferences, you or your representative should come prepared to discuss all the issues at one conference. If agreement is not reached at a conference, you may request consideration of your case by the Appellate Division of the Regional Commissioner's Office.

3. How to Prepare a Protest—The protest must be filed in duplicate and should contain:
   A. Your name and address (individuals should show the residence address and corporations the address of the principal office or place of business);
   B. The date and symbols on the letter which transmitted the proposed adjustments or findings covered in the protest;
   C. The taxable year(s) involved;
   D. A statement that you desire a District conference; or,
   E. If a District conference is not desired, a statement that you desire consideration of your case by the Appellate Division of the Regional Commissioner's Office;
   F. An itemized schedule of the adjustments or findings to which you take exception;
   G. A statement of the facts upon which you rely (generally, this statement is not required in Offer in Compromise cases); and
   H. A statement outlining the law or other authority upon which you rely (generally, this statement is not required in Offer in Compromise cases); and

   1. Whether he prepared the protest.
   2. Whether he knows of his own knowledge that the information contained therein is true.

4. If You Plan to Be Represented by an Attorney or Agent—Your representative must qualify to practice before the Internal Revenue Service either by enrollment or under the provisions of section 10.7 of Treasury Department Circular No. 230, (Revised). In addition, if you are not present at a conference which your qualified representative attends, a true copy of a power of attorney; specifically authorizing him to act for you, must be filed for each taxable year on or before the date of the conference.

5. Further Right of Appeal—If agreement is not reached at a District conference, or if such a conference is not desired, you may request consideration of your case by the Appellate Division of the Regional Commissioner's Office. If agreement cannot be reached with the Appellate Division and your case involves a deficiency, a statutory notice of deficiency will be sent to you; you are given 90 days within which to file a petition with the Tax Court of the United States. A statutory notice of deficiency is a final statement of intent by the Internal Revenue Service to adjust your tax liability.

If a petition is filed and docketed, the Appellate Division will give you an opportunity to settle your case without the necessity of a trial before the Tax Court. If a settlement cannot be reached, your case will be scheduled for trial before the Tax Court.

Appeal from the decision of the Tax Court may be made to the appropriate U. S. Court of Appeals.

If an overassessment only is proposed, the procedure is the same as above except that your appellate rights do not extend beyond the Appellate Division unless the case involves a claim for refund disallowed in whole or in part. In such case, you may file suit with the appropriate United States District Court or the United States Court of Claims.

IMPORTANT: If you wish to exercise your rights of appeal in the Internal Revenue Service, you must, within 30 days from the date of the letter which enclosed these instructions, use one of the options of appeal presented in that letter.

1 In Offer in Compromise cases, your rights of appeal do not extend beyond the Appellate Division of the Regional Commissioner's Office.

2 150 Days if addressed to a person outside the United States.

3 60 Days if addressed to a person outside the United States.

U. S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE
Publication No. 5 (Rev. 6–64)
Address any reply to DISTRICT DIRECTOR at office No. ____

In accordance with the provisions of existing internal revenue laws, notice is given that the determination of your income tax liability discloses a deficiency or deficiencies in the amounts and for the taxable years shown above. The enclosed statement shows the computation of the deficiency or deficiencies.

If you do not intend to contest this determination in the Tax Court of the United States, please sign the enclosed Waiver, Form 870, and return it promptly in the enclosed envelope. This will permit early assessment of the deficiency or deficiencies and limit accumulation of interest.

If you do not sign and return the Waiver, the deficiency or deficiencies will be assessed for collection, as required by law, upon the expiration of 90 days (150 days if you are outside the States of the Union and the District of Columbia) from the date of this letter, unless within that time you contest this determination in the Tax Court of the United States by filing a petition with that Court in accordance with its rules. A copy of the rules of the Court may be obtained by writing to the Clerk, Tax Court of the United States, Box 70, Washington, D. C. 20044.

Very truly yours,

Commissioner
By
District Director

Enclosures - 3:
Statement
Waiver, Form 870
Return envelope
John Q. Taxpayer and
Mary A. Taxpayer
1234 North America Avenue
Milwaukee, Wisconsin 98765

<table>
<thead>
<tr>
<th>TAXABLE YEAR ENDED</th>
<th>DEFICIENCY</th>
<th>Fraud Penalty Sect. 6653(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>$4,480.00</td>
<td>$2,240.00</td>
</tr>
</tbody>
</table>

It is determined that all or part of the underpayment of tax for the taxable year ended December 31, 1960 is due to fraud. Consequently, the 50 per centum addition to the tax provided by Section 6653(b) of the Internal Revenue Code of 1954 is asserted for said year.
<table>
<thead>
<tr>
<th>NAME</th>
<th>TAXABLE YEARS ENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Q. Taxpayer</td>
<td>1960</td>
</tr>
<tr>
<td>Mary A. Taxpayer</td>
<td></td>
</tr>
</tbody>
</table>

(A) TAXABLE INCOME OR (B) ADJUSTED GROSS INCOME AS SHOWN IN

- $4,000.00
  - RETURN AS FILED
  - PRELIMINARY LETTER DATED
  - STATUTORY NOTICE DATED

INCREASES (DECREASES) IN INCOME: (See attached explanation of items)

- (a) Business Receipts: $15,000.00
- (b) Advertising and Promotion Expense: $1,000.00

(A) TAXABLE INCOME AS REVISED OR (B) ADJUSTED GROSS INCOME AS REVISED

- $16,000.00

TAX:

- $5,280.00

ADD: SELF-EMPLOYMENT TAX

SUBTOTAL

- $5,280.00

LESS TAX CREDITS

TAX LIABILITY

- $5,280.00

LIABILITY PREVIOUSLY ASSESSED

- 800.00

DEFICIENCY (OVERASSESSMENT)

- $4,480.00

Fraud Penalty

- $2,240.00 (50% of $4,480.00)
John Q. and Mary A. Taxpayer

(a) It is determined that you realized business receipts of $30,000.00 for the year 1960 in lieu of $15,000.00 reported on your income tax return for said year. Accordingly, your taxable income is increased $15,000.00.

(b) The deduction of $2,500.00 claimed as advertising and promotion expense on your 1960 return is disallowed to the extent of $1,000.00 since you have not established that the amount in excess of $1,500.00 constituted an ordinary and necessary business expense or was expended for the purpose designated.

Accordingly, your taxable income is increased $1,000.00 for 1960.
THE TAX COURT OF THE UNITED STATES

JOHN Q. TAXPAYER and:
MARY A. TAXPAYER,
Husband and Wife,:

Petitioners,:

v.:

COMMISSIONER OF INTERNAL REVENUE,:

Respondent.:

PETITION

The above named petitioners hereby petition for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency, (Bureau Symbols: A:R:ZZZ) dated May 1, 1967, and as a basis for their proceeding allege as follows:

1. The petitioners are individuals, husband and wife, and reside at 1234 North America Avenue, Milwaukee, Wisconsin 98765. The joint Federal income tax return for the petitioners for the year 1960 was filed with the District Director of Internal Revenue for the District of Milwaukee.

2. A notice of deficiency (a copy of which is attached hereto and marked as Exhibit "A") was mailed to the petitioners, on or about the 1st day of May, 1967.

3. The deficiency as determined by the Commissioner is in income tax for the calendar year 1960 in the amount of $4,480.00; additions to tax provided by Section 6653(b) of the Internal Revenue Code of 1954, in the amount of $2,240.00; making a total amount of $8,720.00, all of which is in dispute.
4. The determination of taxes set forth in the said notice of deficiency is based upon the following errors:
   a. In determining the taxable income of the petitioners for the year 1960, the Commissioner erroneously increased the income for said year in the amount of $15,000.00 and considered said amount as "Business Receipts".
   b. In determining the taxable income of the petitioners for the year 1960, the Commissioner erroneously increased the income for said year in the amount of $1,000.00 by reducing the deduction claimed by petitioners for "Advertising" and "Promotion", from $2,500.00 to $1,500.00.
   c. The Commissioner has erroneously added a fraud penalty to the deficiency for the year 1960, in the amount of $2,240.00. No grounds or reasons are stated by the Commissioner for the assertion of this penalty. The petitioners contend that there was no intent to evade payment of income taxes for the year 1960.
   d. The Commissioner has erroneously determined a deficiency in income tax for the year 1960 in that assessment of any deficiency for said year is barred by the Statute of Limitations.
5. The facts upon which petitioners rely as the basis for this proceeding are as follows:
   a. The Commissioner erroneously determined additional "Business Receipts" for the year 1960 in the amount of $15,000.00. Petitioners contend that they properly reported the "Business Receipts" on the joint federal income tax return for the year 1960 and that petitioners' books and records properly reflected the income for said year.
b. Petitioners allege that the amount claimed as a deduction for "Advertising" and "Promotion" expenses for the year 1960 represented expenses actually paid and incurred and said amount constituted ordinary, necessary and bona fide business expenses pursuant to the provisions of Section 162(a) of the Internal Revenue Code of 1954.

c. It is the contention of these petitioners that no deficiency or addition to tax for the calendar year 1960 can be assessed for the reason that the period of limitations upon assessment and collection under Section 6501 of the Internal Revenue Code of 1954 expired prior to May 1, 1967, the date of the issuance of the statutory notice of deficiency.

WHEREFORE, petitioners pray that the Court may hear the proceedings and determine that there is no deficiency due from the petitioners for the year 1960.

/s/ A. B. Defender
Counsel for Petitioners
A. B. Defender
1010 East First Avenue
Milwaukee, Wisconsin
STATE OF WISCONSIN ]
MILWAUKEE COUNTY ] SS.

John Q. Taxpayer and Mary A. Taxpayer, each being first
duly sworn on oath dispose and say, that they are the
petitioners above named; that they have read the foregoing
petition, or have had the same read to them, and are familiar
with the statements contained therein, and that the statements
contained therein are true, except those stated to be upon
information and belief and that those they believe to be true.

/s/ John Q. Taxpayer

/s/ Mary A. Taxpayer

Subscribed and sworn to before me
this 3rd day of June, 1967

/s/ A. Witnesser
Notary Public, Milwaukee County, Wis.

My Commission expires: 6/24/70
THE TAX COURT OF THE UNITED STATES

JOHN Q. TAXPAYER and
MARY A. TAXPAYER,
Husband and Wife,

Petitioners, :

v.

COMMISSIONER OF INTERNAL REVENUE, :

Respondent. :

Tax Court Docket
No. 9999-67

REQUEST FOR PLACE OF HEARING

The above named petitioners respectfully request that the hearing on the merits of the above entitled case be held at Milwaukee, Wisconsin.

/s/ A. B. Defender
Counsel for Petitioners
A. B. Defender
1010 East First Avenue
Milwaukee, Wisconsin
TAX COURT OF THE UNITED STATES

JOHN Q. TAXPAYER and
MARY A. TAXPAYER,
Husband and Wife,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 9999-67

ANSWER

THE RESPONDENT in answer to the petition filed in the above-entitled case, admits, denies, and alleges as follows:

1. to 3., inclusive. Admits the allegations contained in paragraphs 1. to 3., inclusive, of the petition.

4. (a) to (d), inclusive. Denies the Commissioner erred as alleged in subparagraphs (a) to (d), inclusive, of paragraph 4. of the petition, or in any manner.

5. (a) to (c), inclusive. Denies the allegations of fact contained in subparagraphs (a) to (c), inclusive, of paragraph 5. of the petition.

6. Denies generally and specifically each and every allegation contained in the petition not hereinbefore expressly admitted, qualified or denied.
FURTHER ANSWERING the petition and in support of respondent's
determination that all or some part of the under payment in tax
for the taxable year 1960 is due to fraud on the part of the
petitioners, with the intent to defeat and evade tax, respondent
alleges affirmatively as follows:

7. (a) That petitioners filed with the District Director
of Internal Revenue for the District of Wisconsin, Federal income
tax returns for the taxable year 1960, reporting taxable income
and disclosing a tax liability thereon as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Taxable Income</th>
<th>Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>$4,000.00</td>
<td>$800.00</td>
</tr>
</tbody>
</table>

7. (b) That petitioners knew and were aware that they had,
in fact, realized and should have reported taxable income and
tax thereon, as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Taxable Income</th>
<th>Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>$20,000.00</td>
<td>$5,280.00</td>
</tr>
</tbody>
</table>

8. (a) During the year 1960 petitioner, John Q. Taxpayer,
operated a widget distributorship at 666 South Industrial Lane,
Milwaukee, Wisconsin.

(b) That during the year 1960 petitioner failed to report
business receipts which he had received in conducting his widget
distributorship in the following amount:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>$15,000.00</td>
</tr>
</tbody>
</table>
Docket No. 999-67

(c) Petitioners were aware that they had additional business receipts which they failed to report on the income tax return filed by them and they wilfully omitted the amount specified in subparagraph 7. (b) above, from their return in an attempt to defeat and evade payment of taxes which they knew to be due.

9. That as a result of the facts alleged in paragraphs 7. and 8. above, petitioners filed false and fraudulent income tax returns for the taxable year 1960, wherein they wilfully and with intent to defeat and evade tax, understated their correct taxable income and their true tax liability for said year, and that all or part of the deficiency in doubt resulting therefrom, is due to fraud with intent to defeat and evade tax and accordingly, the additions to the tax produced, pursuant to Section 6653(b) of the Internal Revenue Code of 1954 are due.

FURTHER ANSWERING the petition and as a defense to the assignment of error that the statute of limitation bars the assessment and collection of the deficiency in income tax determined by the respondent for the taxable year 1960, respondent alleges:

10. That as a result of the facts alleged in paragraphs 7. and 8. above and pursuant to the provisions of Section 6501(c) of the Internal Revenue Code of 1954 and the regulation promulgated
Docket No. 9999-67

thereunder, there is no recommendation on the assessment of
deficiencies in taxes and additions to the taxes for the taxable
year 1960.

WHEREFORE, it is prayed:

1. That the relief sought in the petition be denied;
2. That the deficiency in income tax for the year 1960 as
   set forth in the statutory notice of deficiency be in all respects
   approved;
3. That the additions to the tax for the year 1960 pursuant
   to the provisions of Section 6653(b) of the Internal Revenue Code
   of 1954, as set forth in the statutory notice, be in all respects
   approved;
4. That the Court determine that the assessment and collection
   of the deficiency in income tax for the taxable year 1960 as set
   forth in the statutory notice of deficiency is not barred by the
   statute of limitations.

(SIGNED)
Chief Counsel
Internal Revenue Service
THE TAX COURT OF THE UNITED STATES

JOHN Q. TAXPAYER and
MARY A. TAXPAYER,
Husband and Wife,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

---

REPLY

The above named petitioners, for reply to the allegations affirmatively set out by respondent in his answer, admit and deny as follows:

7(a) Admit the allegations contained in subparagraph 7(a) of respondent's answer.

7(b) Deny the allegations contained in subparagraph 7(b) of respondent's answer.

8(a) Admit the allegations contained in subparagraph 8(a) of respondent's answer.

8(b) Deny the allegations contained in subparagraph 8(b) of respondent's answer.
8(c) Deny the allegations contained in subparagraph 8(c) of respondent's answer.

9 Deny the allegations contained in subparagraph 9 of respondent's answer.

10 Deny the allegations contained in subparagraph 10 of respondent's answer.

11 Deny generally and specifically each and every allegations contained in respondent's answer not hereinbefore expressly admitted, qualified, or denied.

WHEREFORE, it is prayed that the affirmative relief prayed for by respondent in his answer be denied.

A. B. Defender

Attorney for Petitioners
1010 East First Avenue
Milwaukee, Wisconsin
An examination of the taxpayers' income tax return for the calendar year 1960 was made by an Internal Revenue Agent who determined that the final corrected taxable income for said year should be $20,000. In arriving at said corrected income, the Agent erroneously determined that:

1. "Business Receipts" for said taxable year were $30,000; in lieu of $15,000, as reported on the return.
2. "Advertising" and "Promotion" expenses claimed on the return in excess of $1,500, did not constitute an ordinary and necessary business expense during the year 1960.

**COMPUTATION OF INCOME TAX REFUND**

<table>
<thead>
<tr>
<th>Description</th>
<th>Income Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Tax withheld</td>
<td>$0.00</td>
</tr>
<tr>
<td>2. Estimated tax paid</td>
<td>$0.00</td>
</tr>
<tr>
<td>3. Tax paid with original return</td>
<td>$800.00</td>
</tr>
<tr>
<td>4. Any additional income tax paid</td>
<td>$8,377.60</td>
</tr>
<tr>
<td>5. Total tax paid (Add lines 1-4)</td>
<td>$9,177.60</td>
</tr>
<tr>
<td>6. Less: Your computation of correct tax</td>
<td>$800.00</td>
</tr>
<tr>
<td>7. Amount of overpayment</td>
<td>$8,377.60</td>
</tr>
<tr>
<td>8. Amount previously refunded</td>
<td>$0.00</td>
</tr>
<tr>
<td>9. Net overpayment (Enter in item 1 above)</td>
<td>$8,377.60</td>
</tr>
</tbody>
</table>

Under penalties of perjury, I declare that this claim, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief it is true and correct.

Signed: 

Dated: 19-68
3. All or part of the underpayment of tax for the taxable year 1960 was due to fraud, subjecting the deficiency in tax to a penalty under Section 6653(b) of the Internal Revenue Code of 1954.

These taxpayers allege that during

1. That during the calendar year 1960 "Business Receipts" constituting taxable income were $15,000 as set forth in their return and that the additional business receipts as set forth in the Agent's report are incorrect and did not constitute taxable income.

2. That the amount claimed as a deduction for "Advertising" and "Promotion" expenses represented expenses actually incurred and amounts actually expended and said amounts constituted ordinary and necessary business expenses under the provisions of Section 162 of the Internal Revenue Code of 1954.

3. That the assertion of a fraud penalty for the year 1960 in the amount of $2,240.00 under Section 6653(b) of the Internal Revenue Code of 1954 was erroneous.

These taxpayers contend that there was no intent to evade or defeat any taxes or the payment thereof for the calendar year 1960 and, therefore, the assertion of a fraud penalty is unwarranted.

Taxpayers further contend that the assessment and collection of a deficiency or addition to tax for the year 1960 was barred by the Statute of Limitations. The time within which a deficiency or addition to said tax for the year 1960 could be assessed had expired prior to May 1, 1967, the date of issuance of the statutory notice of deficiency.

The corrected taxable income, therefore, for the calendar year 1960 is $4,000.00 instead of $20,000.00 as erroneously determined by the Internal Revenue Agent and the correct income tax liability for the taxable year 1960 is $800.00.

* Tax $4,480.00
  Penalty $2,240.00
  Interest $1,657.60
  $8,377.60

** Plus interest accrued and accruing
Type of Tax: Income
Years or Periods Ended: Dec. 31, 1960
Amount of Claims: $8,377.60

Dear Mr. & Mrs. Taxpayer:

Enclosed is your copy of a report on the examination of your claims referred to above. We have carefully reviewed this report. The examination did not disclose any basis for reducing your tax liability.

If you accept the findings, please sign and return the enclosed Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit. We will appreciate it if you also sign and return the enclosed Form 2297, Waiver of Statutory Notification of Claim Disallowance.

If you do not accept the findings, we recommend that you request a conference to discuss your claims with a member of our Conference Staff. Most cases considered at a conference are brought to a mutually acceptable conclusion.

If you do not desire a District conference, you may request a hearing with the Appellate Division of the Regional Commissioner's Office.

Your request for either a District conference or an Appellate hearing must be accompanied by a written protest. If a hearing is requested, we will forward your protest to the Appellate Division. That Division will contact you to arrange a hearing. See paragraphs 2, 3 and 4 of the enclosed instructions for details concerning a District conference, preparation of a protest, and representation.

If you do not respond within 30 days from the date of this letter, we will send you a certified or registered notice formally disallowing your claims.

Please send all communications concerning your case to the above address, using the symbols in the upper right corner of this letter.

Very truly yours,

District Director

Enclosures - 4:
Examination report
Acceptance (Form 3363)
Waiver (Form 2297)
Instructions
John Q. Taxpayer and
Mary A. Taxpayer

<table>
<thead>
<tr>
<th>YEAR ENDED (OR PERIOD)</th>
<th>INCOME TAX</th>
<th>OTHER TAX (Specify)</th>
<th>PENALTIES - INCREASE OR (DECREASE)</th>
<th>PARTNERSHIP, FIDUCIARY OR SMALL BUS. CORP. INCOME INCREASE OR (DECREASE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/31/60</td>
<td>$4,480.00</td>
<td>$</td>
<td>$2,240.00</td>
<td>$</td>
</tr>
</tbody>
</table>

**TOTALS**

As no additional information was offered to alter the findings of the previous examination of the year 1960, it is recommended that your claim be rejected in full.
The undersigned has reviewed and accepts the proposal of the Internal Revenue Service to disallow in full the claim or claims described above. This acceptance means only that the undersigned does not desire the Service to consider further the claim or claims, and does not waive the right of the undersigned to file suit on the disallowance.

<table>
<thead>
<tr>
<th>YEAR OR PERIOD</th>
<th>DATE CLAIM FILED</th>
<th>TYPE OF TAX</th>
<th>AMOUNT OF CLAIM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dec. 31, 1960</td>
<td>July 20, 1967</td>
<td>Income</td>
<td>$8,377.60</td>
</tr>
</tbody>
</table>

NAME AND ADDRESS OF TAXPAYER(S) (Number, Street, City or Town, State, ZIP Code)

SIGNATURE          DATE

SIGNATURE          DATE

BY (Signature)     

TITLE             DATE

If the acceptance relates to a year or years for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, it must be signed by both unless one, acting under a power of attorney, signs as agent for the other.

If the acceptance is executed on behalf of a partnership having excise or employment tax liability, all partners must sign unless one partner is shown by appropriate evidence to be authorized to act for the partnership.

If the taxpayer is a corporation, the acceptance must be signed with the corporate name followed by the signature and title of the officer(s) duly authorized to sign. It is not necessary that the corporate seal be affixed. The space provided for the seal is for the convenience of corporations required by charter or by the laws of the jurisdiction in which they are incorporated to affix their corporate seals in the execution of instruments.

The acceptance may be executed by the taxpayer’s attorney or agent provided an appropriate power of attorney has been filed. If not previously filed, the power of attorney must accompany the form.
**Form 2297**  
U.S. Treasury Department - Internal Revenue Service  
Waiver of Statutory Notification of Claim Disallowance

<table>
<thead>
<tr>
<th>Taxable Year or Period</th>
<th>Type of Tax</th>
<th>Amount of Claim</th>
<th>Amount of Claim Disallowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dec. 31, 1960</td>
<td>Income</td>
<td>$8,377.60</td>
<td>$8,377.60</td>
</tr>
</tbody>
</table>

Pursuant to section 6532(a)(3) of the Internal Revenue Code, there is hereby waived the requirement under section 6532(a)(1) that a notice be sent by certified or registered mail of disallowance of the part of the claim(s) for credit or refund shown in column (d) above.

I understand that the filing of this waiver is irrevocable, and it will begin the two-year period provided in section 6532(a)(1) of the Internal Revenue Code for filing suit for refund of the part of the claim(s) disallowed, as though a notice of disallowance had been sent to the taxpayer by certified or registered mail.

**Name and Address of Taxpayer(s)**  
John Q. Taxpayer and Mary A. Taxpayer  
1234 North America Avenue  
Milwaukee, Wisconsin 58765

**Signature**  
[Signature]  
[Date]

**Signature**  
[Signature]  
[Date]

**By (Signature)**  
[Signature]  
[Title]  
[Date]

**Corporate Seal**

---

**NOTE:** The execution and filing of this waiver within six months from the date the claim was filed will not permit filing a suit for refund before the six-month period has elapsed unless a decision is rendered by the Service within that period.

If the waiver is for a year for which a Joint Return of a Husband and Wife was filed, it must be signed by both husband and wife unless one, acting under a power of attorney, signs as agent for the other.

If the taxpayer is a corporation, the waiver must be signed with the corporate name followed by the signature and title of the officer(s) duly authorized to sign. It is not necessary that the corporate seal be affixed. The space provided for the seal is for the convenience of corporations required by charter or by the laws of the jurisdiction in which they are incorporated to affix their corporate seals in the execution of instruments.

The waiver may be executed by the taxpayer's attorney or agent, provided an appropriate power of attorney has been filed. If not previously filed, the power of attorney must accompany the form.

If the waiver is executed by a person acting in a fiduciary capacity (such as executor, administrator, trustee, etc.), Form 56, "Notice of Fiduciary Relationship," should, unless previously filed, accompany this form.
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JOHN Q. TAXPAYER and
MARY A. TAXPAYER,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

COMPLAINT

NOW COME the above named plaintiffs by their attorney,
A. B. Defender, and for their cause of action allege as follows:

1. That this action is brought under the provisions
   of Section 1346(a)(1) of Title 28, United States Code.

2. That plaintiffs are, and during all times herein
   mentioned were, husband and wife, and presently reside at
   1234 North America Avenue, Milwaukee, Wisconsin.

3. That in conformity with the provisions of the
   Internal Revenue Code of 1954, plaintiffs duly filed on or
   before the 15th day of April, 1961, with the District Director
of Internal Revenue at Milwaukee, Wisconsin, a joint individual income tax return of all income received and all deductions allowable therefrom for the calendar year 1960.

4. That plaintiffs' joint individual income tax return for the year 1960 disclosed a tax liability in the amount of $800.00, which amount was assessed against the plaintiffs and duly paid to the District Director of Internal Revenue at Milwaukee, Wisconsin.

5. That, thereafter, the Commissioner of Internal Revenue, as a result of an examination and audit of plaintiffs' joint individual income tax returns for the year 1960 increased plaintiffs' taxable income for the year 1960 in the amount of $16,000.00, from $4,000.00 as shown on the return, to $20,000.00.

In accordance therewith, the Commissioner of Internal Revenue determined a deficiency in income taxes for the year 1960 in the amount of $4,480.00.

That as a further result of the examination and audit of the plaintiffs' joint individual income tax return for the calendar year 1960, the Commissioner of Internal Revenue determined that plaintiffs were liable for additions to tax under Section 6653(b) of the Internal Revenue Code of 1954, in the amount of $2,240.00.
Thereafter, there was assessed against plaintiffs an additional income tax for the year 1960 in the sum of $4,480.00, additions to tax in the sum of $2,240.00 and interest of $1,657.60.

6. That plaintiffs on June 15, 1967 paid to defendant through its District Director of Internal Revenue at Milwaukee, Wisconsin, the amount so wrongfully and unlawfully assessed, together with interest in the total sum of $8,377.60.

7. That the aforesaid amount was wrongfully and unlawfully collected from the plaintiffs by the defendant in that the Commissioner of Internal Revenue erroneously determined that:

a. "Business Receipts" for said taxable year were $30,000.00 in lieu of $15,000.00 as reported on the return.

b. "Advertising and "Promotion" expenses claimed on the return in excess of $1,500.00 did not constitute an ordinary and necessary business expense during the year 1960.

c. All or part of the underpayment of tax for the taxable year 1960 was due to fraud, subjecting the deficiency in tax to a penalty under Section 6653(b) of the Internal Revenue Code of 1954.
8. The facts on which plaintiffs rely in support of their claim against the defendant are as follows:

a. These taxpayers allege that during the calendar year 1960 "Business Receipts" constituting taxable income were $15,000.00 as set forth in their return and that the additional business receipts as set forth in the Agent's report are incorrect and did not constitute taxable income.

b. These taxpayers allege that the amount claimed as a deduction for "Advertising" and "Promotion" expenses represented expenses actually incurred and amounts actually expended and said amounts constituted ordinary and necessary business expenses under the provisions of Section 162 of the Internal Revenue Code of 1954.

c. These taxpayers allege that the assertion of a fraud penalty for the year 1960 in the amount of $2,240.00 under Section 6653(b) of the Internal Revenue Code of 1954 was erroneous.

These taxpayers contend that there was no intent to evade or defeat any taxes or the payment thereof for the calendar year 1960, and therefore, the assertion of a fraud penalty is unwarranted.
Taxpayers further contend that the assessment and collection of a deficiency or addition to tax for the year 1960 was barred by the Statute of Limitations. The time within which a deficiency or addition to said tax for the year 1960 could be assessed had expired prior to May 1, 1967, the date of issuance of the statutory notice of deficiency.

9. That on or about the 20th day of July, 1967, and within the period within which such claims might be legally filed, plaintiffs duly filed with the District Director of Internal Revenue for the District of Wisconsin on Form 843, a claim for refund of said income taxes, additions to tax and interest illegally collected in the amount of $8,377.60, plus interest accrued and accruing, for the calendar year 1960. A copy of said claim for refund is attached hereto and made a part hereof as though fully set forth herein and marked Exhibit "A".

10. That on or about the 10th day of January, 1968, the District Director of Internal Revenue for the District of Wisconsin, sent by certified mail, notice of disallowance of the claim for refund, Exhibit "A" hereof, filed for the year 1960. Attached hereto and made a part hereof as though fully set forth herein and marked Exhibit "B" is a copy of said notice of disallowance.
11. That by reason of the additional taxes, additions to tax and interest paid, the defendant became and is indebted to the plaintiffs in the amount of $8,377.60, together with interest thereon from the date of payment thereof.

12. That plaintiffs are and have always been the sole owners of the claim herein and have not assigned or transferred the whole or any part thereof or interest therein.

WHEREFORE, plaintiffs demand judgment against the defendant in the sum of $8,377.60, together with interest from the date of payment as hereinabove stated, and for costs and disbursements of this action.

A. B. Defender  
Attorney at Law  
1010 East First Avenue  
Milwaukee, Wisconsin
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JOHN Q. TAXPAYER and
MARY A. TAXPAYER,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

DEMAND FOR JURY TRIAL

COME NOW the plaintiffs by their attorney, A. B. Defender and pursuant to Rule 38, Federal Rules of Civil Procedure, made demand for a trial by jury of the issues in the above captioned cause.

A. B. Defender
Attorney at Law
1010 East First Avenue
Milwaukee, Wisconsin