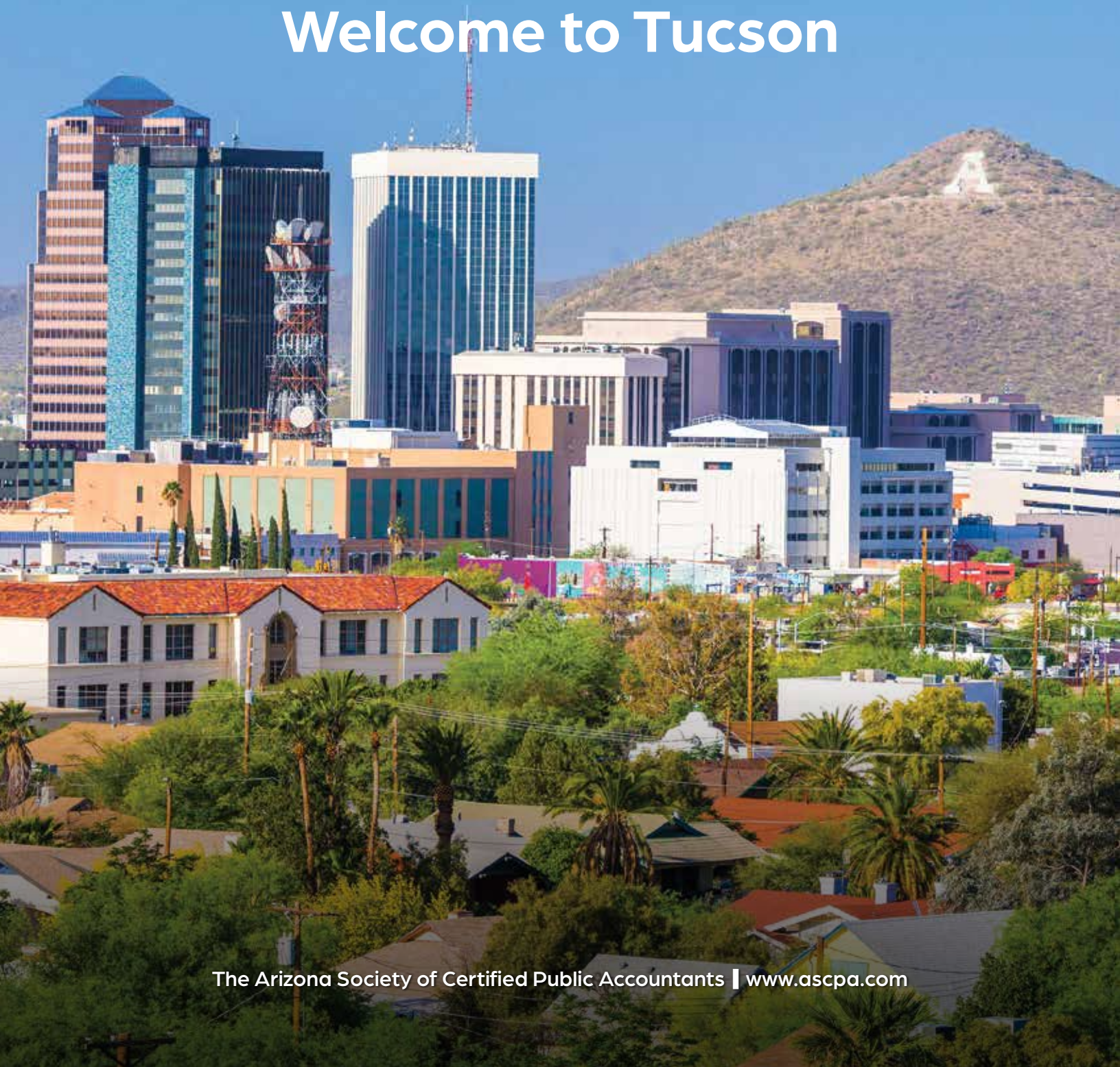


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City Snapshot: Welcome to Tucson





Top Tips to Resolve Federal Tax Disputes

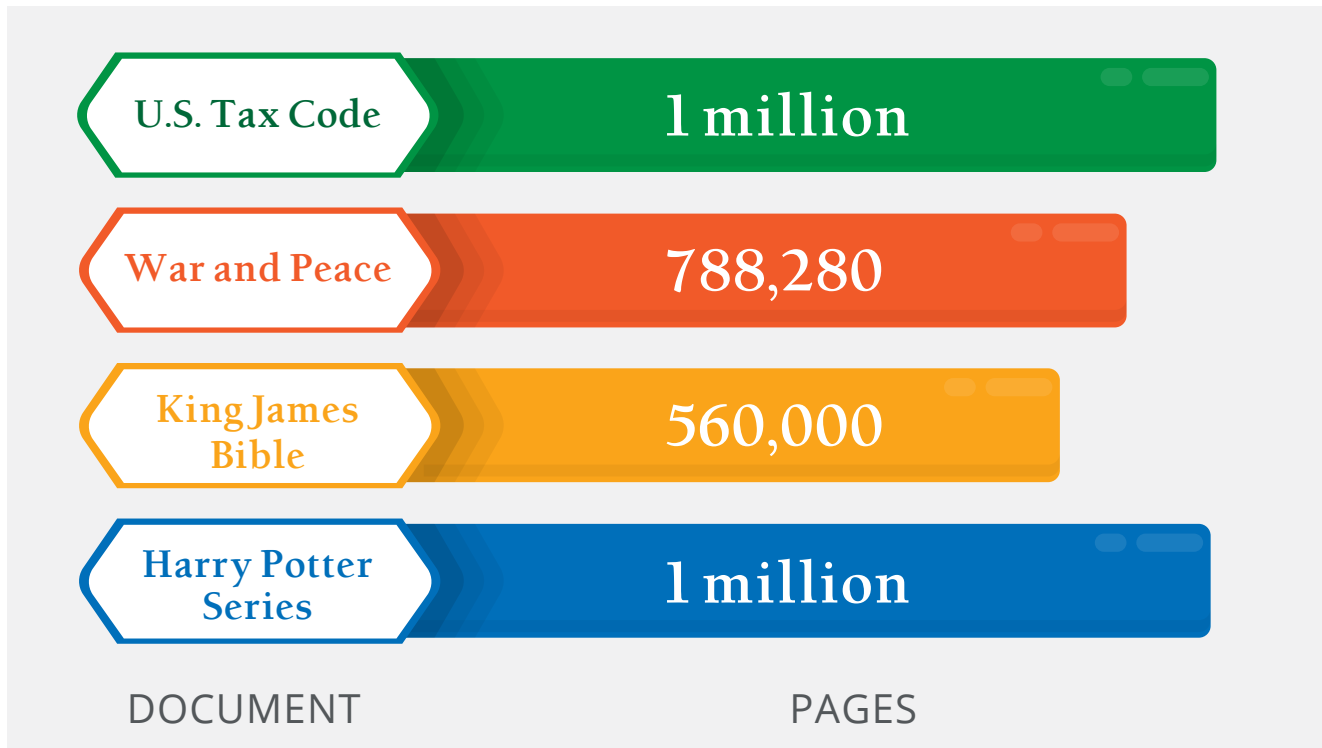
By Adrian Ochoa

Resolving federal tax disputes starts as a science and becomes an art. Federal tax disputes often arise because the taxation system depends on voluntary compliance. The primary purpose of the federal income tax is to raise revenue for the federal government and, to achieve this purpose, there must be a high degree of voluntary compliance.

A healthy tax system is crucial to the economy because everything of value that a federal government provides to its citizens — such as national security — flows from the federal tax system. To have a high degree of compliance, however, taxpayers must understand the tax system. Rightfully so, many taxpayers see the income tax as a composite or jumble of statutory provisions resulting from numerous ad hoc legislative decisions.

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Unfortunately, despite its complexity, tax disputes are on the rise. As reported by the Tax Foundation, the U.S. Tax Code is about 2,600 pages. At perhaps 450 words per page, that puts the U.S. Tax Code at well over 1 million words. In addition, so much of federal tax law is in IRS Treasury Regulations, Revenue Rulings and other IRS guidance. The National Taxpayer Advocate did a Microsoft Word count of the tax law once and came up with roughly 4 million words, approximating 9,000 pages. Given its complexity, it is important to hire a qualified and competent tax representative to resolve tax disputes.



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Tip #1

Resolve Tax Disputes on the Lowest Possible Level

The ideal time to resolve a tax dispute is at the lowest possible level. The tax practitioner should always treat the IRS agent with utmost respect and have the perspective that both parties are working as a collective team to resolve the examination issues. IRS agents are usually spread thin. Making their job easier goes a long way.

The IRS examiner will request information from the taxpayer in advance of the meeting via an Information Document Request (IDR). Although a complete response to an IDR is generally best as a rule, sometimes a different approach is needed to conserve resources. For the most part, IRS agents are competent. Like in any field, there are bad apples. See the article from Forbes “Tax Court Saves Taxpayer from the Agent from Hell.”

If the IRS is being unreasonable, an important fact is that IDRs are voluntary. Thus, providing sufficient information that, from the tax practitioner’s perspective is necessary to prove the tax item reported on the tax return(s), is sometimes the best way to conserve resources when there’s an impasse. Sometimes, getting to IRS Appeals quickly may be the best way to resolve the tax dispute. Similarly, when there is a standstill, requesting a meeting with the IRS agent’s manager is helpful. IRS employees are required to provide their manager’s contact information.

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Tip #2

Request Taxpayer Advocate Service Assistance

When it appears that the IRS is being unresponsive or unwilling to resolve an important tax issue, a good recommendation is to have the Taxpayer Advocate Service (TAS) involved. The TAS recommends taxpayers request their assistance when the problem is causing financial difficulty to the taxpayer or his business, the taxpayer is facing an immediate threat of adverse action, and/or an IRS office does not grant the tax assistance the taxpayer requested or does not grant the tax assistance the taxpayer requested in time. For taxpayers who do not have the resources to hire representation, there are also Low-Income Taxpayer Clinics that represent people in disputes with the IRS.

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Tip #3

Protect Sensitive and Privileged Information

Depending on the taxpayer or scope of the audit, consideration may want to be given to a taxpayer's risk of criminal prosecution. If these are a concern, consideration may be given to potential incriminatory statements by the taxpayer and/or preserving Fifth Amendment, attorney client and other privileges.

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Tip #4

Use the IRS Independent Office of Appeals

If any issues remain outstanding, the IRS examiner will issue a 30-day letter notifying the taxpayer of their right to appeal the examiner's adjustments within 30 days of the date of the letter. The IRS Appeals mission is to resolve tax controversies, without litigation, on a basis that is fair and impartial to both the government and the taxpayer. The Appeals Office is separate from and independent of the IRS office that proposed the adjustment and provides a fresh look.

Most cases are settled during the Appeals process. Importantly, the Appeals Office has settlement authority. Appeals settlements are generally based upon the IRS's "hazards of litigation" or the likelihood that the taxpayer's position would prevail if the tax issues were litigated. Appeals have flexibility with settlement parameters and can consider "hazards of litigation" discounts or percentages with respect to particular issues. Appeals may also concede one issue in consideration for another and may move or allocate adjustments between or among the years or periods within Appeals' jurisdiction.

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Tip #5

Petition to the Courts

The only judicial forum that permits judicial review prior to full payment is the Tax Court. To litigate in the Tax Court, the taxpayer must receive a Notice of Deficiency and file a timely petition.

Discovery rules are more informal, and jury trials are not available. The taxpayer can also sue in the United States Court of Federal Claims or United States District Court, but a full payment in satisfaction of tax liability is required.

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Tip #6

Request a Collection Due Process Hearing

Once the IRS assesses the taxpayer, the IRS can either place a lien on or levy the taxpayer's property if the taxpayer does not pay within the allotted time. The collection due process (CDP) hearing is utterly important and cannot be overstated. The CDP process gives taxpayers the right to appeal levy or lien actions to the IRS Appeals Office. The alleged abuses of the IRS in its collections activities led to reform of the IRS and its practices, including the creation of the CDP hearing prior to enforced collection.

If a timely CDP hearing is requested, collection action is suspended. If a CDP hearing is not requested within the 30-day period, the taxpayer is only entitled to an equivalent hearing. An equivalent hearing does not give the taxpayer the right to go to Tax Court.

At the CDP hearing, the taxpayer has the right to raise any relevant issues related to the unpaid tax, including collection alternatives. Once Appeals issues a determination, a taxpayer has the right to judicial review of the determination. Although the hearing can take place by telephone, in person meetings are much more effective and should almost always be requested.

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Tip #7

Stay Proactive

It is also vitally important for the tax practitioner to be up to date on new laws and procedures. It has been said that tax law changes every day. Tax Notes and/or the Tax Adviser are a great resource for daily updates. For instance, IRS commissioner Danny Werfel recently announced a plan to focus more tax enforcement efforts on the wealthy and those who abuse the law. The specificity is new, particularly an announced focus on large partnerships. Werfel discussed using artificial intelligence to find patterns and trends among large partnerships and to identify possible non-filers who hold millions in foreign bank accounts.

Adrian Ochoa is an ASCPA member and a tax attorney who practices at Burch & Cracchiolo in Phoenix. He devotes a substantial portion of his legal practice to helping his clients successfully navigate and resolve their federal tax disputes. Adrian leverages his unique insight into government processes to offer his clients cost-effective solutions to their tax problems. He has represented clients in all phases of a federal tax dispute, including IRS audits, appeals, litigation, and collection matters. He earned his J.D. from Cornell Law School in 2013 and an LL.M in tax law from NYU School of Law in 2014. He received a B.A. in accounting, summa cum laude, from the University of Arizona in 2008.