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When the “Routine” Morphs into a “Ticket to Tax Court”

February 9, 2021 by [Guest Blogger](#) [6 Comments](#)

We welcome guest blogger Steve Jager. Steve is a regular reader of PT with a commercial and a pro bono tax practice. He devotes a lot of time to the LITC at California State University Northridge [known as the Bookstein LITC], serving as one of their “Tax Court Advisors” and regularly working with clinic staff/students and clients in resolving issues. He is also a partner in private practice with the firm of Fineman West & Company, LLP. Although licensed as a CPA, [he has passed the test to practice before the Tax Court](#) which a small percentage of practitioners pass each time the Court offers the test.

Steve brings us the story of one of his clients driven to Tax Court by the pandemic and the inability of the IRS to process its mail. Steve’s case probably represents one of many in this situation where taxpayers receive a notice of deficiency (or notice of determination) not through any fault of their own or of the IRS but because the significant delays in processing mail cause the IRS system to move the case into the deficiency procedure process rather than allowing resolution at the administrative stage. This by-product of the pandemic certainly occurred in pre-pandemic times but not to the extent of the current level of cases caused by the failure to match correspondence which could resolve the case with the taxpayer’s file. This causes extra work for the practitioner which is not compensated in the current attorney fee structure, extra anxiety for the taxpayer (and costs) and extra work for Chief Counsel attorneys forced to work on cases that would have been resolved at a lower level. Taking the case to Tax Court does buy a taxpayer the personal service of an attorney or paralegal rather than the impenetrable correspondence unit of a Service Center but at a high price for all. Hopefully, the cost here will obtain for Steve’s client the desired result. Because the client paid the tax prior to the mailing of the notice of deficiency, I expect the IRS will file a motion to dismiss. Keith

I feared it could happen, but prayed it would not. I knew the cogs in the IRS machinery were still churning out Notices, and I also knew that the IRS was not keeping up with all the correspondence it was creating with these Notices and I wondered what would happen IF an IRS failure to quickly process a reply to Notice CP2000 occurred... And then it did.

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Most of us are probably already familiar with the CP2000 Notice – that Notice that the IRS uses when a “routine matching” of the W2’s and 1099’s are matched

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Leslie Book

up against the tax returns that are filed, and when there is a "mismatch," the letter that is sent out to the Taxpayer is the CP2000, which assumes that the "mismatch" is unreported income (or an incorrectly deducted interest expense amount), and the IRS gives the taxpayer the opportunity to either pay the calculated tax or otherwise offer explanations as to why the "mismatches" are already reported or not taxable or correctly deducted, as the case may be. So the possible responses from the Taxpayer (or his/her practitioner) would be either: (i) concession of the amount requested, with or without payment of the additional tax; or (ii) partial concession with a full explanation as to why the concession was only partial – i.e., agreeing with one or more, but not all of the adjustments proposed by the IRS; or (iii) no concession due to a full explanation as to why the proposed adjustments are not correct. Under "normal" conditions [read that as prior to the pandemic], any of those responses made within 30 days would be considered and at least acknowledged by the IRS. This, of course, would mean that someone at the Service Center has opened the mail, read the response and within those 30 days, has generated a reply letter back to the Taxpayer.

But what happens now when the IRS is behind in opening mail, *reading* the correspondence and writing replies?

Well, it would appear that under the current conditions the CP2000 "machinery" is assuming there has been no response and "pulling the trigger" by issuing the Statutory Notice of Deficiency! Yikes! Once the IRS has issued a Statutory Notice of Deficiency, it is really hard to convince the IRS to rescind the Notice (made especially hard, once again, by the fact that the IRS is not running at full capacity), so the Taxpayer has little choice except to file a petition with the United States Tax Court. Let me relate my own clients' story.

Let's call these clients, Mr. and Mrs. Taxpayer. When I prepared their 2018 income tax return, I was unaware that Mr. Taxpayer had begun receiving social security income during that tax year, and he did not give me the 1099 from the Social Security Administration, and I certainly did not know to ask him for it. Therefore, that income was omitted from the tax return. The IRS computer, however, when matching the social security administration payments against the tax returns, realized a "mismatch," and a CP2000 was issued last October. My client received the Notice and contacted me, whereupon we quickly figured out that the income should have been reported, but was not, so I instructed my client to write a check for the tax and the interest as calculated by the IRS. My client wrote that check IMMEDIATELY, and mailed it with the correct payment stub to the address, as instructed by the IRS. The IRS cashed the check within 7 days of its receipt, so we know they are still opening the mail quickly, but then things obviously break down. Notwithstanding the fact that I have had to elevate this to the Tax Court (more on that in a moment), the truly insidious part of this now all-too-common saga, is that the IRS had apparently not credited the payment to the account for Mr. and Mrs. Taxpayer, which resulted in the Statutory Notice being issued! Once the check was noted as received, I must ask *why* the IRS machinery wasn't stopped?

Regardless of why this has happened despite Mr. and Mrs. Taxpayer's compliance, the reality is that I have had to file a Petition in the Tax Court. This



Professor Book is a Professor of Law at the Villanova University Charles Widger School of Law.

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Keith Fogg



T. Keith Fogg is a Clinical Professor of Law at Harvard Law School where he started a tax clinic in 2015. Prior to joining the faculty at Harvard, he began his academic career at Villanova Law School in 2007 after working for over 30 years with the Office of Chief Counsel, IRS. [Read More...](#)

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Christine Speidel



Christine Speidel is Assistant Professor and Director of the Federal Tax Clinic at Villanova University Charles Widger School of Law. Prior to her appointment at Villanova she practiced law at Vermont Legal Aid, Inc. At Vermont Legal Aid Christine directed the Vermont Low-Income Taxpayer Clinic and was a staff attorney for Vermont Legal Aid's Office of the Health Care Advocate. [Read More...](#)

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Stephen Olsen



Stephen J. Olsen's practice includes tax planning and controversy matters for individuals, businesses and exempt entities for the law firm [Gawthrop Greenwood, PC](#).

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Nina Olson



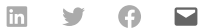
Nina E. Olson is the Executive Director of the Center for Taxpayer Rights, a 501(c)(3) organization dedicated to advancing taxpayer rights in the US and internationally.

was certainly not my first petition filed with the Court, but it is my first which was filed electronically, pursuant to the new DAWSON system which the Tax Court has been so excited to roll out. Preparing the petition was exactly the same as before – that is to say that the Petitioner or practitioner still drafts the Petition as before, and merely uploads the petition as a pdf file, which is a fairly simple process. Paying the \$60 filing fee, which in the past would have been paid by writing a check out of my Client Trust Account, was fairly easy to do by establishing an account with Pay.gov.

Now that the Petition is filed and the IRS is "served," relatively expensive IRS resources are going to be needed. Since I have asked for the Trial to be conducted in Los Angeles, I believe that at least a paralegal will need to be conscripted into drafting the Answer to the Petition. Once that has happened and the Commissioner and my clients are "at issue," only then will I be able to offer the copy of Mr. and Mrs. Taxpayer's canceled check to prove that they timely paid the tax that they conceded as soon as they were notified, plus interest.

In this case, my clients, Mr. and Mrs. Taxpayer, are fortunate. They are being represented and I expect to resolve this case easily. But how many other folks are there who are compliant, law-abiding taxpaying citizens who will also need to go through a similar ordeal on their own... unless, of course, they find their way (and are eligible for services) by one of the many LITC clinics. And for those who do not qualify for LITC Service? How much will those folks need to pay a professional lawyer or qualified Tax Court practitioner if they wish to be represented?

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Comments

Norman Diamond says

[February 9, 2021 at 9:43 am](#)

'Most of us are probably already familiar with the CP2000 Notice – that Notice that the IRS uses when a "routine matching" of the W2's and 1099's are matched up against the tax returns that are filed, and when there is a "mismatch," the letter that is sent out to the Taxpayer is the CP2000'



She served as the National Taxpayer Advocate from March 2001 through July 2019. [Read More...](#)

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Designated Order Authors

Samantha Galvin



Samantha Galvin is an Associate Professor of the Practice of Taxation and the Director of the

Low Income Taxpayer Clinic (LITC) at the University of Denver. Professor Galvin has been teaching full-time at the University of Denver since October of 2013 and teaches courses in tax controversy representation, individual income tax, and tax research and writing. In the LITC, she teaches, supervises and assists students representing low income taxpayers with controversy and collection issues. [Read More...](#)

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William Schmidt



William Schmidt joined Kansas Legal Services in 2016 to manage cases for the Kansas Low Income

Taxpayer Clinic and became Clinic Director January 2017. Previously, he worked on pro bono tax cases for the 3 Kansas City metro area Low Income Taxpayer Clinics. He records and edits a tax podcast called Tax Justice Warriors and is now an adjunct professor for Washburn University School of Law. [Read More...](#)

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Caleb Smith



Caleb Smith is Visiting Associate Clinical Professor and the Director of the Ronald M.

Mankoff Tax Clinic at the University of Minnesota Law School. Caleb has worked at Low-Income Taxpayer Clinics on both coasts and the Midwest, most recently completing a fellowship at Harvard Law School's Federal Tax Clinic. Prior to law school Caleb was the Tax Program Manager at Minnesota's largest Volunteer Income Tax Assistance organization, where he continues to remain engaged as an instructor and volunteer today. [Read More...](#)

I discovered by accident what a CP2000 is supposed to be. I asked the IRS and they said that they had entered an assertion of mathematical or clerical error into their records but they refused to send me a CP2000. I demanded abatement and a Notice of Deficiency but they still refused.

When the IRS produces an invalid Notice of Deficiency the IRS has to refund the taxpayer's overpayment, but when the IRS refuses to produce a Notice of Deficiency the IRS gets to keep the overpayment. Anyway, when there is a mismatch, the letter that is sent out to the Taxpayer might not exist.

'Under "normal" conditions [read that as prior to the pandemic], any of those responses made within 30 days would be considered and at least acknowledged by the IRS.'

A Notice of Mathematical or Clerical Error should get 60 days not 30. 60 used to be enough for US citizens living in some countries but not in others, and 60 isn't likely to be enough anywhere now.

'the truly insidious part of this now all-too-common saga, is that the IRS had apparently not credited the payment to the account for Mr. and Mrs. Taxpayer'

When an IRS data entry clerk credits payments to her own account instead of the account for Mr. and Mrs. Taxpayer, this is not a surprise.

[Reply](#)

David M. Fogel, CPA says

[February 9, 2021 at 10:08 am](#)



If I understand the facts correctly, the only adjustment that the IRS proposed in the notice of deficiency was the omitted Social Security income. If that's the case, I would NOT have filed a petition with the Tax Court because that issue is not in dispute. The dispute involves crediting the taxpayer's payment, which is a collection issue that can be resolved once the IRS assesses the tax shown in the notice of deficiency, plus interest.

[Reply](#)

Norman Diamond says

[February 9, 2021 at 5:47 pm](#)



If the taxpayer receives a Notice of Deficiency then they lose the opportunity to dispute the underlying liability in a collection case. Maybe there's some ambiguity about the meaning of the underlying liability, but I wouldn't want to lose a chance to dispute whether a liability remains after payment was tendered.

[Reply](#)

David M. Fogel, CPA says

[February 10, 2021 at 11:23 am](#)



But the underlying liability in this case isn't in dispute, so why would a taxpayer file a petition with the Tax Court to dispute a deficiency when the deficiency isn't in dispute? Based on the facts as outlined by the author, the only dispute in this case is the crediting of the taxpayer's payment, not the underlying liability or the deficiency shown in the notice. If I were the IRS, I would file a motion to dismiss because the crediting of the payment is not a dispute over which the Tax Court has jurisdiction. The facts as outlined by the author are that he instructed the taxpayer to immediately pay the tax and interest after receiving the Notice CP2000. Apparently, this was before the notice of deficiency was issued. IRM 35.3.2.9 instructs IRS Counsel to file a motion to dismiss when the deficiency has been paid before the notice of deficiency has been issued.

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Patrick Thomas



Patrick W. Thomas is the founding director of Notre Dame Law School's [Tax Clinic](#), in which

he trains and supervises law students representing low-income clients in disputes with the Internal Revenue Service. Prior to joining the law school faculty in 2016, he received an ABA Tax Section Public Service Fellowship to work as a staff attorney for the LITC at the Neighborhood Christian Legal Clinic in Indianapolis. [Read More...](#)

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[Reply](#)

Daniel Stearns says

[February 9, 2021 at 1:11 pm](#)



Currently there are three clients that have had to docket cases because the IRS doesn't open and read mail anymore. One of them has been calandered for trial and I can't get ahold of anyone at appeals or at chief counsel. This is one of the cases where for some reason the IRS attached someone else's w2 to my clients transcript and would easily be resolved if an actually human looked at the transcript (different taxpayer name, tax id number). It will be interesting if the case makes it to trial before the IRS can look at case or if they will ask for a continuance.

[Reply](#)

Larry Hess CPA says

[February 13, 2021 at 1:39 am](#)



Responding to CP2000s and paying electronically may have avoided the headaches in this case. It has been my practice for many years to send as little mail as possible, mailing only when electronic means cannot be utilized.

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