

# Case Shows Tricky Issues with Making “Deposits” with the IRS to Stop Interest Accrual during Lengthy Tax Disputes

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## I. Introduction

Tax disputes with the Internal Revenue Service (“IRS”) can last a very long time, even under normal circumstances. The duration of these battles has increased significantly in recent years because of delays triggered by the Coronavirus. These holdups cause taxpayers ongoing anxiety and uncertainty. They also hurt taxpayers financially, as interest charged by the IRS on the ultimate liability (which covers both taxes and penalties) continues to accumulate while the fighting ensues. Taxpayers who are aware of this economic reality often seek potential solutions, among them making a “deposit” with the IRS to halt interest. The rules and issues associated with doing so are complex, of course, and they prevent some taxpayers from achieving their goals. This article analyzes key issues related to making “deposits” with the IRS, using a recent Tax Court case, *Ahmed v. Commissioner*, as a point of reference.<sup>1</sup>

## II. Taxpayers Face a Conundrum

When taxpayers are embroiled in a dispute with the IRS, and the IRS “proposes” additional taxes and penalties, they generally have three main options, each of which has its pros and cons.

### A. First Option—Fighting without Paying

A taxpayer can fight the IRS to conclusion *without* first paying the IRS anything. This is the typical scenario where (i) an individual taxpayer files his Form 1040

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(*U.S. Individual Income Tax Return*) on April 15 of Year One, (ii) the IRS starts an audit about two years later and then issues an unfavorable Examination Report, (iii) the taxpayer disputes the Examination Report by filing a Protest Letter and then participating in an administrative conference with the Appeals Office, (iv) if the taxpayer is unable to reach an acceptable settlement with the Appeals Office, then the IRS issues a Notice of Deficiency, and (v) the taxpayer elevates the fight by filing a Petition with the Tax Court. During this lengthy process, the taxpayer retains his money, investing or otherwise using it. This may be financially beneficial for the taxpayer. However, if the Tax Court ultimately determines that the IRS was completely or partially correct in its Notice of Deficiency, then the taxpayer must pay not only the outstanding taxes and penalties but also interest on both items. To exacerbate matters, interest runs from the date on which the Form 1040 in dispute was due (*i.e.*, April 15 of Year One) until the taxpayer finally makes full payment in response to the decision by the Tax Court.<sup>2</sup> This often means many years of interest accumulation.

## B. Second Option—Paying and Then Fighting

In an effort to avoid the buildup of interest on potential taxes and penalties, the taxpayer could pay the entire amount proposed by the IRS right away, file a timely Claim for Refund with the IRS, and if the IRS either ignores the Claim for Refund or rejects it by issuing a Notice of Disallowance, then the taxpayer can file a Suit for Refund in the appropriate District Court or Court of Federal Claims.<sup>3</sup> The upside to this method is that the taxpayer avoids interest charges because, well, there is no underpayment on which they can run. There are several downsides, though. The biggest might be that the taxpayer will no longer be able to invest, spend, pledge, collateralize, bet, loan, or otherwise utilize his money because he paid it to the IRS. Another problem is that the taxpayer will lose access to the Tax Court, because it generally lacks jurisdiction over refund actions. Additionally, if the taxpayer were to change his mind about the payment to the IRS, he could not recover the money on demand; he would have to wait until final resolution of the refund action. One final drawback is that even if the IRS or District Court were to agree with the taxpayer that an overpayment existed, the taxpayer might still not get the corresponding refund because the IRS has the authority to unilaterally use such overpayment to “administratively offset” other liabilities of the taxpayer.<sup>4</sup>

## C. Third Option—Depositing and Then Fighting

As explained later in this article, the taxpayer could make a “deposit” with the IRS pursuant to Code Sec. 6603 and Rev. Proc. 2005-18. The most significant advantage of depositing money with the IRS is that it generally stops interest accrual during the pendency of the dispute. Several disadvantages exist, the most important being that the IRS has the right not to return a deposit, if the IRS determines that doing so would jeopardize its ability to collect the relevant liability and/or if the taxpayer has liabilities for another period that could be “administratively offset” using the funds on deposit. Also, making a deposit deprives the taxpayer of gainful use of the money during what might turn out to be a multi-year dispute with the IRS.<sup>5</sup>

## III. Making a “Deposit” with the IRS

Readers need additional information about making “deposits” with the IRS in order to appreciate the recent Tax Court case addressed in this article, *Ahmed v. Commissioner*.

### A. General Description

The notion of depositing money with the IRS, instead of simply making an advance payment to the IRS, is not new. The courts have recognized it since 1945, the IRS has issued six separate Revenue Procedures on the subject over the years, and Congress codified it in 2004 by enacting Code Sec. 6603.<sup>6</sup> Notwithstanding its lengthy existence, many taxpayers and their advisors are unaware of the “deposit” option. Even if they know of it broadly, they often lack details about critical procedures, as this article demonstrates.

Under current law, taxpayers generally have the option of making a “deposit,” as opposed to a “payment,” with respect to certain tax liabilities that have not yet been assessed.<sup>7</sup> To the extent that the IRS ultimately uses the deposit to satisfy the liabilities, the taxes shall be treated as having been paid by the taxpayer on the date that he made the deposit.<sup>8</sup> Simply put, the “deposit” rules essentially provide a device for taxpayers to halt the accrual of interest (on both tax liabilities and penalties) during the pendency of a dispute with the IRS, which might last years.<sup>9</sup>

The legislative history provides a helpful example:

[A]ssume a calendar year individual taxpayer deposits \$20,000 on May 15, 2005, with respect to a disputable item on its 2004 income tax return. On April 15, 2007, an examination of the taxpayer’s year 2004 income tax return is completed, and the taxpayer and

the IRS agree that the taxable year 2004 taxes were underpaid by \$25,000. The \$20,000 on deposit is used to pay \$20,000 of the underpayment, and the taxpayer also pays the remaining \$5,000. In this case, the taxpayer will owe underpayment interest from April 15, 2005 (the original due date of the return) to the date of payment (April 15, 2007) *only* with respect to the \$5,000 of the underpayment that is not paid by the deposit. The taxpayer will owe underpayment interest on the remaining \$20,000 of the underpayment *only* from April 15, 2005 to May 15, 2005, the date the \$20,000 was deposited.<sup>10</sup>

## B. Key Aspects

Taxpayers must be aware of several limitations on making “deposits.” For instance, taxpayers can only make deposits of certain types of taxes. Code Sec. 6603(a) states that deposits are available for taxes imposed under “Subtitle A or B or Chapter 41, 42, 43, or 44” of the Internal Revenue Code. What the heck does that mean? Well, this is vexing to even seasoned tax professionals. Suffice it to say that taxpayers can only make deposits of income, gift, estate, generation-skipping, and certain excise taxes.<sup>11</sup>

Another important tip is that taxpayers can only make deposits with respect to taxes that the IRS has not yet “assessed.” Several sources explain that deposits only pertain to taxes that have “not been assessed at the time of the deposit.”<sup>12</sup>

## IV. Substantive and Procedural Issues

Understanding *Ahmed v. Commissioner* would be impossible without some background on a few substantive and procedural issues.

### A. Trust Fund Recovery Penalties

Several situations exist where the Internal Revenue Code forcibly deputizes a party, making it serve as an involuntary tax collector for, and information reporter to, the IRS. For example, employers must withhold income taxes and certain other amounts from the compensation they pay their employees, safeguard such funds for the IRS temporarily, and then remit them to the IRS at the appropriate time, along with various returns. If employers fail to complete these duties, then the IRS can make various individuals affiliated with the employers personally liable for the unpaid amounts. This mechanism is called the trust fund recovery penalty (“TFRP”). Despite its name, the TFRP does not function like a “penalty,” but rather as a secondary tax collection method for the IRS.

Before the IRS may assert a TFRP, it must show that (i) the relevant individual was a “responsible person,” *and* (ii) such individual “willfully” failed to collect, truthfully account for, and pay over certain amounts.<sup>13</sup> A Policy Statement by the IRS affirms that “[r]esponsibility and willfulness must both be established.”<sup>14</sup>

The term “responsible person” is not defined in the Internal Revenue Code or the corresponding regulations. Accordingly, one must turn to other sources. Some courts have held that an individual will be considered a “responsible person” only if he has the last word, ultimate authority, or absolute control regarding a company’s financial affairs and the payment of creditors.<sup>15</sup> However, most courts have adopted a lower standard, determining that an individual is “responsible person” if he had a significant authority or control.<sup>16</sup> The IRS’s own standards are instructive, too. According to the Internal Revenue Manual, responsibility for purposes of the TFRP is generally “a matter of status, duty and authority.”<sup>17</sup> In summarizing the relevant case law, the Internal Revenue Manual explains that certain acts that an individual performs and certain positions that he holds tend to indicate that he is a “responsible person.” Among these are where the individual (i) is an officer, director, and/or shareholder in the company, (ii) controls the company’s voting stock, (iii) can hire and fire employees, (iv) decides which creditors to pay, (v) signs or files employment tax returns, (vi) makes federal tax deposits, (vii) controls payroll and other disbursements, (viii) sign checks, or (ix) controls the financial affairs of the company.<sup>18</sup>

Even if an individual is a “responsible person,” he will not be liable unless his actions or inactions were “willful.” Some courts dictate that “willfulness” exists where the responsible person (i) was aware that taxes remained outstanding, yet signed checks paying other creditors, or (ii) acted “grossly negligent” or in “reckless disregard” of the fact that the taxes were due and would not be paid.<sup>19</sup> Other courts have held that where a responsible person lacks knowledge that the trust fund taxes were not being paid to the IRS, “willfulness” does not exist, unless the responsible person’s ignorance is the result of recklessness.<sup>20</sup> Still other courts have determined that mere negligence by an individual does not equate to “willfulness” for these purposes.<sup>21</sup> The IRS, for its part, takes the position that “willfulness” means “intentional, deliberate, voluntary, reckless, knowing” failure to pay employment taxes.<sup>22</sup>

### B. Collection Due Process Hearings

Readers also must have a basic understanding of collection due process (“CDP”) hearings.

Taxpayers often have trouble paying their taxes, and the situation has worsened in recent years as the economy has struggled in the wake of the Coronavirus. Given this reality, the IRS frequently finds itself taking forced collection actions, including actions to collect TFRPs.

Within five days *after* filing a tax lien, the IRS must provide the affected taxpayer a Notice of Federal Tax Lien informing him of various things, including the amount of the liability and his right to request a CDP hearing.<sup>23</sup> Likewise, the IRS is required to send the taxpayer a Final Notice of Intent to Levy at least 30 days *before* it seizes his property to satisfy tax debts.<sup>24</sup> This, too, informs the taxpayer of his legal right to demand a CDP hearing.

To contest either the tax lien or proposed levy, the taxpayer must file a timely Form 12153 (*Request for a Collection Due Process Hearing*) with the IRS. The taxpayer is entitled to raise “any relevant issue relating to the unpaid tax or the proposed levy” at the CDP hearing.<sup>25</sup> This includes challenges to the appropriateness of the IRS’s collection activities, the applicability of innocent spouse relief, and the taxpayer’s entitlement to a payment alternative, such as offer-in-compromise or installment agreement.<sup>26</sup> In cases where the taxpayer did not receive a Notice of Deficiency or have another chance to question an alleged tax liability earlier, he can do so during the CDP hearing.<sup>27</sup>

The Appeals Officer who conducts the CDP hearing must decide whether the IRS’s tax lien or proposed levy “balances the need for efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.”<sup>28</sup> It should come as no surprise to tax practitioners that the Appeals Officer often concludes that the need for swift tax collection prevails. In such cases, the Appeals Officer issues a so-called Notice of Determination upholding the tax lien or proposed levy. Down but not altogether out, the taxpayer still has the right to seek further review, this time from the Tax Court.<sup>29</sup>

It is important to note that IRS collections actions ordinarily are suspended from the time a taxpayer requests a CDP hearing until the Appeals Office issues its Notice of Determination.<sup>30</sup> This halt on IRS collection efforts also tends to continue throughout any subsequent Tax Court litigation.<sup>31</sup> At a time when the Appeals Office is inundated with work and the Tax Court’s docket is consistently full, this collection suspension could last many months. According to a recent report by the Government Accountability Office, “the delay in collection activity until Appeals issues its [Notice of Determination] may be an incentive to request an Appeal, even though penalties and interest continue to accrue during the time the case is with Appeals.”<sup>32</sup>

## C. Dismissal of CDP Cases on Grounds of Mootness

Before getting to the case at hand, *Ahmed v. Commissioner*, readers need some background on another issue: when the Tax Court can dismiss CDP cases filed by taxpayers as “moot.” Several cases elucidate this circumstance.

In *Chocallo v. Commissioner*, the taxpayer filed a Petition with the Tax Court to contest a Notice of Determination.<sup>33</sup> The IRS later determined that the tax liability it was trying to collect by levy had been improperly assessed, refunded certain amounts previously collected, represented to the Tax Court that it would not pursue any further levy action against the taxpayer, and moved to dismiss the case as moot. The Tax Court explained that its jurisdiction in CDP cases was limited to reviewing the appropriateness of the proposed levy action. Since the IRS agreed that there was no longer a tax deficiency on which it could levy, the Tax Court dismissed the case for mootness.

In *Gerakios v. Commissioner*, the taxpayer filed a Petition with the Tax Court to dispute a Notice of Determination.<sup>34</sup> At some point during the litigation, the taxpayer voluntarily paid the full liability, and the IRS indicated that it no longer intended to pursue the levy action. The IRS moved to dismiss the case as moot, and the Tax Court granted its request.

The taxpayer in *Greene-Thapedi v. Commissioner* also filed a Petition contesting a Notice of Determination.<sup>35</sup> Later, the IRS applied the taxpayer’s overpayment in a subsequent year to offset her liability for the year at issue. In other words, the taxpayer involuntarily paid the full liability. Thus satisfied, the IRS informed the Tax Court that it had no intention of taking further collection actions and requested that the case be dismissed for mootness. The Tax Court approved.

In *Bullock v. Commissioner*, the IRS initiated collections actions, and the taxpayer ultimately filed a Petition for judicial review with the Tax Court.<sup>36</sup> During the administrative portion, the Appeals Office allowed the taxpayer to file amended income tax returns for 1993 through 1996. Those returns revealed that the taxpayer had ample tax withholding in the relevant years to cover the proposed deficiency. The IRS indicated that it would not be taking additional collection actions, and the Tax Court granted the IRS’s request to dismiss the case for mootness.

Finally, in *Demos v. Commissioner*, the IRS took collection actions and the taxpayer sought protection from the Tax Court. Subsequently, the proposed deficiency was satisfied through a combination of voluntary and involuntary payments. The IRS suggested that the case was moot because all the liabilities had been paid and the tax liens had been released. The Tax Court thus dismissed the case as moot.<sup>37</sup>

The IRS's own CDP Handbook contains portions regarding mootness. Citing several of the cases described above, it summarizes Tax Court precedent as follows:

If subsequent to [*i.e.*, the CDP hearing] the tax, including all interest and penalty accruals, is fully paid and the assessment abated, generally the case should be dismissed as moot. There is no tax liability to collect, the [Notice of Federal Tax Lien] will be or has been released, the proposed levy will be abandoned, and there is therefore no case or controversy for the Tax Court to adjudicate.<sup>38</sup>

#### D. Withdrawal versus Release

The final background issue that readers need to appreciate *Ahmed v. Commissioner* is the difference between “withdrawal” and “release” in the context of tax liens.

If a person liable for taxes cannot or will not pay them after a demand by the IRS, then a lien for the total amount due (including taxes, penalties, and interest) is created in favor of the IRS.<sup>39</sup> Such a lien covers all personal and real property belonging to the tax debtor.<sup>40</sup> Generally, the lien remains in effect from the time the IRS assesses the taxes until the taxpayer fully satisfies them or the general 10-year collection period expires.<sup>41</sup> Once either of these two events occurs, the IRS will “release” the lien by issuing a Certificate of Release.<sup>42</sup>

Even better for a taxpayer, the IRS can “withdraw” a Notice of Federal Tax Lien in a number of situations, such as when the IRS issued it prematurely, the IRS did not follow all administrative procedures, the taxpayer has entered into an acceptable installment agreement with the IRS, withdrawal will facilitate tax collection, or withdrawal would be in the best interests of the IRS and the taxpayer.<sup>43</sup> The IRS accomplishes this by issuing the Notice of Withdrawal, publicly filing it, and “promptly making reasonable efforts to notify any credit reporting agency and any financial institution or creditor identified by the taxpayer of the withdrawal.”<sup>44</sup>

In simplified terms, taxpayers normally prefer to have the IRS “withdraw” a Notice of Federal Tax Lien instead of “release” the tax lien. The former essentially causes public knowledge of the tax-payment problems to disappear, and taxpayers might enjoy higher credit ratings, lower interest rates, more positive background checks, better job opportunities, and more as a result. The latter, on the other hand, never obviates the negative stigma associated with being a tax debtor. The Notice of Federal Tax Lien and Certificate of Release remain on a taxpayer's record, which tells the entire world that he

previously had tax issues, even if he ultimately managed to resolve them.

## V. Recent Tax Court Case

With that extensive preamble under the reader's belt, this article now turns to the recent Tax Court case, *Ahmed v. Commissioner*.

### A. Procedure and Disputed Issues

This case involved unpaid employment taxes, which triggered the assessment of TFRPs against the taxpayer with respect to four periods in 2016. Apparently, the taxpayer disputed certain aspects of the TFRPs by filing a request for a CDP hearing. The Appeals Office disagreed with the taxpayer's positions and issued an unfavorable Notice of Determination. Dissatisfied, the taxpayer filed a Petition with the Tax Court.

The Tax Court then issued an Order, remanding the case back for a “supplemental” CDP hearing to determine whether the Appeals Officer had received from the IRS the required “verification” that all applicable law and administrative procedures had been met.<sup>45</sup> In particular, the taxpayer demanded that the Appeals Officer verify that the IRS met the conditions for assessing the TFRPs in the first place, obtained the managerial approval for imposing penalties necessitated by Code Sec. 6751(b), and calculated interest abatement amounts correctly.

The Appeals Office conducted the “supplemental” hearing. About three weeks later, the taxpayer sent the IRS a check for \$625,000. In the corresponding cover letter, the taxpayer (i) stated that the funds constituted a “cash bond deposit” for the TFRPs, (ii) claimed that the check slightly exceeded the total amount due, (iii) referenced the rules and procedures for making deposits contained in Code Sec. 6603 and Rev. Proc. 2005-18, (vi) instructed the IRS to use any overpayment to cover a future tax liability, and (v) directed the IRS to issue a refund of any amounts remaining after satisfaction of the overpayment.

After approximately three more weeks, the IRS characterized the taxpayer's remittance of \$625,000 as a “payment” of the TFRPs, not as a “deposit.” The IRS's records thus indicated that the taxpayer had paid in full. As a result, the IRS issued a Certificate of Release of the tax lien related to the TFRPs. The next step was for the IRS attorneys to file a Motion with the Tax Court, asking it to dismiss the case filed by the taxpayer on the grounds of mootness because the liability had been paid, the IRS had released the lien, no further dispute existed, and the Tax Court lacked jurisdiction to continue addressing the matter.

The taxpayer, of course, disagreed with Motion filed by the IRS attorneys. He maintained that the TFRPs had not been paid because the check for \$625,000 was a “deposit,” and such a deposit did not nullify the taxpayer’s challenges to the invalidity of the assessment, the supposed lack of managerial approval, the calculation of interest charges, and whether the IRS should have “withdrawn” the Notice of Federal Tax Lien instead of “releasing” the tax lien.

## B. Decision by the Tax Court

The Tax Court rejected the taxpayer’s arguments for several reasons. First, the Tax Court noted that the taxpayer had already paid the TFRP for one of the three relevant periods before he sent the check for \$625,000 to the IRS. Thus, the it-was-a-deposit-not-a-payment position was inapplicable to that period, leaving only three in question.

*Failure to identify and diligently follow all relevant procedures can lead to several negative things for taxpayers, including the IRS applying their remittance as a “payment,” missing out on the benefit of interest suspension, losing access to Tax Court review, and more.*

Second, the Tax Court pointed out that both the taxpayer’s counsel and the IRS attorneys overlooked a “fundamental impediment” to classifying the check of \$625,000 as a deposit.<sup>46</sup> As explained above, Code Sec. 6603(a), the legislative history, and Rev. Proc. 2005-18 state that taxpayers can *only* make deposits of income, gift, estate, generation-skipping, and certain excise taxes.<sup>47</sup> The items at issue in *Ahmed v. Commissioner*, TFRPs assessed under Code Sec. 6672, do *not* fall into any of these categories of taxes.<sup>48</sup>

Third, the Tax Court underscored that taxpayers can only make deposits with respect to certain taxes that have “not been assessed at the time of the deposit.”<sup>49</sup> Not to get overly technical, but TFRPs are “assessable penalties.” This means that when the IRS unilaterally determines that TFRPs are appropriate, the IRS can immediately impose them against a taxpayer, without first granting the taxpayer a chance to dispute matters, and without waiting for a court to intervene.<sup>50</sup> Because the IRS had already assessed

the TFRPs against the taxpayer well before he sent the check for \$625,000, it was impossible for the taxpayer to qualify for the deposit rules.

Fourth, the taxpayer suggested that even though the check did not constitute a deposit under Code Sec. 6603 because the IRS had already assessed the TFRPs, it nevertheless should be treated as a deposit under a facts-and-circumstances test, derived from case law, which existed before the enactment of Code Sec. 6603 in 2004. The Tax Court swiftly rejected this argument, emphasizing that the two cases that the taxpayer cited as authority involved situations where taxpayers made remittances to the IRS before the relevant amounts had been assessed, not after.

Fifth, this article summarized above several cases that the Tax Court dismissed based on mootness, including *Greene-Thapedi v. Commissioner*.<sup>51</sup> That case involved the issue of whether the Tax Court had authority to review a refund claim by a taxpayer during a CDP hearing. The Tax Court noted there that it would not completely rule out the possibility that it might consider during a CDP hearing whether a taxpayer has overpaid, if such issue were necessary to correctly and completely decide the collection aspects. The taxpayer in *Ahmed v. Commissioner* suggested that he fell precisely within that narrow exception created by the Tax Court in the earlier case. The Tax Court disagreed, explaining that it had previously reviewed and rejected a similar “misreading” of *Greene-Thapedi v. Commissioner*. The Tax Court clarified that its earlier hypothetical presupposed the existence of an unpaid tax liability, not TFRPs that have been fully satisfied.

Sixth, the Tax Court distinguished a previous case, which the taxpayer cited for the notion that his current case should not be moot, even if the check for \$625,000 were considered a payment, instead of a deposit. The earlier case involved a taxpayer who challenged the accuracy of the underlying tax liability triggering the tax lien, where the IRS abated the related penalties and then released the lien.<sup>52</sup> The Tax Court held that the prior case was not moot because, unlike in *Ahmed v. Commissioner*, the taxpayer there still disputed the tax liability, the IRS specifically reserved the right to restart collection actions regarding penalties, the IRS abated the penalties, and the taxpayer did not satisfy them with a check.

Seventh, the taxpayer suggests that the case was not moot because the IRS should have “withdrawn” the Notice of Federal Tax Lien, as opposed to “releasing” the tax lien. The Tax Court noted that this position was premised on treating the check for \$625,000 as a deposit, which the Tax Court previously rejected. The Tax Court emphasized that the IRS assessed the TFRPs, the IRS then filed the Notice of Federal Tax Lien, and the IRS finally “released”

the tax lien after receipt of full payment, in accordance with the Internal Revenue Code.<sup>53</sup>

The Tax Court concluded that the case was indeed “moot” because the taxpayer fully paid the liabilities, the IRS released the tax lien, there was no outstanding liability on which the IRS could take further collection actions, and there remained “no justiciable case or controversy” to grant Tax Court jurisdiction over the matter.

## VI. Conclusion

This article shows that taxpayers must make a complicated decision when they get audited and the IRS “proposes”

additional taxes and penalties. One available option is to send a “deposit” to the IRS in order to stop the accrual of interest while the tax dispute plays out. As demonstrated here, this task might appear simple, but like most things involving the IRS, it is not. Failure to identify and diligently follow all relevant procedures can lead to several negative things for taxpayers, including the IRS applying their remittance as a “payment,” missing out on the benefit of interest suspension, losing access to Tax Court review, and more. Therefore, taxpayers facing IRS scrutiny should always retain experienced defense counsel with a serious understanding of “deposits” and other obscure, yet critical, tax dispute issues.

### ENDNOTES

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<sup>1</sup> *Ahmed*, 122 TCM 386, Dec. 61,966(M), TC Memo. 2021-142; Kristen A. Parillo, *Taxpayer's Remittance Wasn't Deposit, Says Tax Court*, TAX NOTES TODAY FEDERAL 248-3 (Dec. 29, 2021).

<sup>2</sup> Code Sec. 6601(a); Code Sec. 6621(a)(2); Code Sec. 6622(a); U.S. House of Representatives, American Jobs Creation Act of 2004, Conference Report, 108th Congress, Second Session, Report 108-755 (Oct. 7, 2004), p. 646.

<sup>3</sup> See *Flora*, SCT, 60-1 USTC ¶9347, 362 US 145, 80 SCT 630 (1960); Code Sec. 6532(a)(1); Reg. §301.6532-1(a); Code Sec. 7422(a).

<sup>4</sup> U.S. House of Representatives, American Jobs Creation Act of 2004, Conference Report, 108th Congress, Second Session, Report 108-755 (Oct. 7, 2004), p. 646-647.

<sup>5</sup> U.S. House of Representatives, American Jobs Creation Act of 2004, Conference Report, 108th Congress, Second Session, Report 108-755 (Oct. 7, 2004), p. 647.

<sup>6</sup> See Rev. Proc. 58-18, 1958-2 CB 1131, Rev. Proc. 63-11, 1963-1 CB 497, Rev. Proc. 64-13, 1964-1 CB (Part 1) 674, Rev. Proc. 82-51, 1982-2 CB 839, Rev. Proc. 84-58, 1984-2 CB 501, and Rev. Proc. 2005-18, 2005-1 CB 798. See also *Principal Life Insurance Company & Subs*, FedCl, 2010-2 USTC ¶50,723, 95 FedCl 786 (2010), 106 AFTR 2d 2010-7034, p. 2010-7041 through 2010-7042 (explaining the evolution of court decisions and IRS pronouncements about “deposits” starting in 1945).

<sup>7</sup> Code Sec. 6603(a). In some circumstances, the courts and IRS refer to “deposits” as “unassessed advance payments.” See, e.g., IRM 8.17.3.6 (Sept. 3, 2019).

<sup>8</sup> Code Sec. 6603(b).

<sup>9</sup> U.S. House of Representatives, American Jobs Creation Act of 2004, Conference Report, 108th

Congress, Second Session, Report 108-755 (Oct. 7, 2004), p. 647.

<sup>10</sup> U.S. House of Representatives, American Jobs Creation Act of 2004, Conference Report, 108th Congress, Second Session, Report 108-755 (Oct. 7, 2004), p. 647-648.

<sup>11</sup> Code Sec. 6603(a); Rev. Proc. 2005-28, 2005-1 CB 1093, Section 2.02.

<sup>12</sup> Code Sec. 6603(a); Rev. Proc. 2005-28, 2005-1 CB 1093, Section 2.01; IRM 8.717.5.1 (Feb. 1, 2021).

<sup>13</sup> Code Sec. 6672(a); Reg. §301.6672-1.

<sup>14</sup> IRS Policy Statement P-5-60. IRM 1.2.1.5.14 (Feb. 2, 1993).

<sup>15</sup> See, e.g., *Maggy*, CA-9, 77-2 USTC ¶9686, 560 F2d 1372, 1374-1375, cert. denied 99 SCT 86.

<sup>16</sup> P.J. *Winter*, CA-2, 99-2 USTC ¶150,955, 196 F3d 339, 345, *Hochstein*, CA-2, 90-1 USTC ¶50,205, 900 F2d 543, 547, cert. denied 504 US 985, 112 SCT 2967, *Caterino*, CA-1, 86-1 USTC ¶9452, 794 F2d 1, 5, *Neckles*, CA-5, 78-2 USTC ¶9701, 579 F2d 938, 940, *Brown*, CA-5, 72-2 USTC ¶9568, 464 F2d 590, 591, cert. denied 410 US 908, 93 SCT 962.

<sup>17</sup> IRM 5.7.3.3.1 (Apr. 1, 2005).

<sup>18</sup> IRM 5.7.3.3.1 (Apr. 1, 2005).

<sup>19</sup> See, e.g., *Muck*, CA-10, 93-2 USTC ¶50,592, 3 F3d 1378.

<sup>20</sup> *Honey*, CA-8, 92-1 USTC ¶50,253, 963 F2d 1083, cert. denied 506 US 1028, 113 SCT 676 (1992).

<sup>21</sup> See, e.g., *Kalb*, CA-2, 74-2 USTC ¶9760, 505 F2d 506, 511, cert. denied 421 US 979, 95 SCT 1981; *Dudley*, CA-9, 70-2 USTC ¶9520, 428 F2d 1196, 1200; *Calderone*, CA-6, 799 F2d 254 (1986).

<sup>22</sup> IRM 5.7.3.3.2 (Apr. 1, 2005).

<sup>23</sup> Code Sec. 6320(a).

<sup>24</sup> Code Sec. 6330(a).

<sup>25</sup> Code Sec. 6330(c)(2)(A).

<sup>26</sup> Code Sec. 6330(c)(2)(A).

<sup>27</sup> Code Sec. 6330(c)(3); Reg. §301.6320-1(e)(1); Reg. §301.6320-1(e)(3) Q-E2 and A-E2.

<sup>28</sup> Conference Report 105-599, 105th Cong., 2d Sess., Jun. 24, 1998, p. 263; Code Sec. 6330(c)(3)(C).

<sup>29</sup> Code Sec. 6330(d); Tax Court Rule 331(b).

<sup>30</sup> Code Sec. 6330(e)(1).

<sup>31</sup> Code Sec. 6330(e)(2).

<sup>32</sup> U.S. Government Accountability Office. Little Evidence of Procedural Errors in Collection Due Process Appeal Cases, but Opportunities Exist to Improve the Program. GAO-07-112 (Oct. 2006), p. 33.

<sup>33</sup> *Chocallo*, 87 TCM 1432, Dec. 55,675(M), TC Memo. 2004-152.

<sup>34</sup> *Gerakios*, 88 TCM 218, Dec. 55,740(M), TC Memo. 2004-203.

<sup>35</sup> *Greene-Thapedi*, 126 TC 1, Dec. 56,401 (2006).

<sup>36</sup> *Bullock*, 91 TCM 658, Dec. 56,409(M), TC Memo. 2006-6.

<sup>37</sup> *Demos*, TC Summ. Op. 2006-15.

<sup>38</sup> Notice CC-2006-019 (Aug. 18, 2006).

<sup>39</sup> Code Sec. 6321; IRM 5.12.3 (Jul. 15, 2015).

<sup>40</sup> Code Sec. 6321; IRM 5.12.3 (Jul. 15, 2015).

<sup>41</sup> Code Sec. 6322.

<sup>42</sup> Code Sec. 6325(a)(1); Reg. §301.6325-1(a).

<sup>43</sup> Code Sec. 6323(j); Reg. §301.6323(j)-1(b); IRM 5.12.9 (Sept. 6, 2019).

<sup>44</sup> Reg. §301.6323(j)-1(a).

<sup>45</sup> See Code Sec. 6330(c)(1) and (c)(3)(A).

<sup>46</sup> *Ahmed*, 122 TCM 386, Dec. 61,966(M), TC Memo. 2021-142, footnote 4.

<sup>47</sup> Code Sec. 6603(a); Rev. Proc. 2005-28, 2005-1 CB 1093, Section 2.02.

<sup>48</sup> Code Sec. 6672 is found in Part I (General Provisions) of Subchapter B (assessable penalties) of Chapter 68 (Additions to the Tax, Additional Amounts, and Assessable Penalties).

<sup>49</sup> Code Sec. 6603(a); See also Rev. Proc. 2005-28, 2005-1 CB 1093, Section 2.01.

<sup>50</sup> Code Sec. 6671(a) (explaining that TFRPs “shall be assessed and collected in the same manner as taxes.”); Reg. §301.6671-1(a).

<sup>51</sup> *Greene-Thapedi*, 126 TC 1, Dec. 56,401 (2006).

<sup>52</sup> See *Vigon*, 149 TC 97, Dec. 60,972, 149 TC 4 (2017).

<sup>53</sup> See Code Secs. 6322 and 6325.

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