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Dealing with SFRs and ASFRs - Substitutes for Returns - IRC 6020(b)

Presented by Claudia Hill, EA, MBA; Karen Brosi, EA;
or Frank Degen, EA, USTCP
on behalf of the
National Association of Enrolled Agents





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What Happens to Taxpayer Who Fails to File a Federal Tax Return?

- IRS will file a substitute return:
 - based only on info. IRS has from other sources
 - it will not include any additional expenses or exemptions to which they may be entitled
 - it may overstate actual tax liability.
- IRS will ask t/p to consent to proposed tax.
- If t/p fails to respond, IRS issues statutory notice of deficiency.





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What Happens to Taxpayer Who Fails to File... [CONT.]

- If the taxpayer fails to respond to the SND, tax is assessed & IRS will start collection process.
- IRS can then use any tools in its collection toolbox to encourage payment, including:
 - placing a levy on wages or bank accounts or
 - filing a federal tax lien against the taxpayer's property.





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Wait a Minute! How Can IRS do That?!?

- IRS relies on IRC § 6020(b) for its authority to file tax returns for delinquent taxpayers as part of the SFR program.
- IRS prepares a tax return for a taxpayer pursuant to IRC § 6020(b) after determining a taxpayer is liable for filing the tax return but has failed to do so upon due notice.





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When IRS Prepares a Return because a Taxpayer Failed to...

- Under the Automated Substitute for Return (ASFR) Program, IRS:
 - uses information returns from third parties (such as Forms W-2 and 1099) to identify tax return delinquencies;
 - constructs tax returns for certain nonfilers based on that third-party information; and,
 - assesses tax, interest, and penalties based on the substitute returns.





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When IRS Prepares a Return because a Taxpayer Failed to...

- The SFR may reflect income reported by third parties, but allow only
 - the standard deduction,
 - one exemption, and
 - a filing status of single or MFS.
- For more details, refer to:
 - IRM 4.12.1.25.3 (Oct. 5, 2010);
 - IRM 4.12.1.24.12 (Oct. 5, 2010)





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Information Reporting Program ASFR Numbers (FY12)

- Number of contacts/closed cases: 803,000
- Amount of additional assessments (tax, interest & penalties): \$6,664,843,000
- Number of full-time equivalent positions: 239
- ASFR call site toll-free number: (866) 681-4271

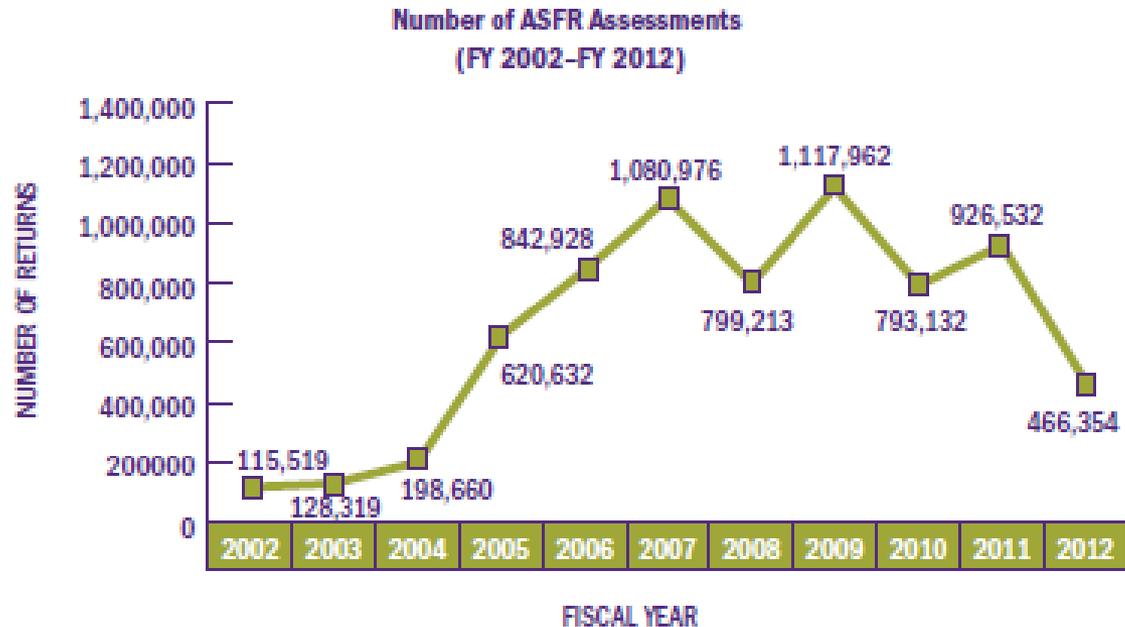




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ASFR Assessments (FY 2002—FY 2012)



Source: NO-5000-139





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Step 1: Proposed Individual Tax Assessment (Letter 2566 SC/CG)

- This letter notifies the t/p that IRS has no record of receiving a Form 1040, U.S. Individual Income Tax Return.
- It proposes a tax assessment with penalties and interest based on income reported to IRS by the taxpayer's employers, banks, etc.





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Step 1: Proposed Assessment

[CONT.]

- The letter also states that within 30 days, t/p must submit one of the following:
 - A completed and signed Form 1040, including all schedules and forms with cover letter;
 - A dated and signed Consent to Assessment and Collection form; or,
 - A statement explaining why t/p believes (s)he is not required to file, or information t/p would like IRS to consider.





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Step 2: Notice of Deficiency (Letter 3219 SC/CG)

- A Notice of Deficiency
 - is sometimes referred to as a 90-day letter
 - tells a t/p the tax IRS will assess plus interest and penalties owed
 - is required by law and
 - is to advise the t/p of his/her appeal rights to the U.S. Tax Court.





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Step 2: Notice of Deficiency [CONT.]

- The letter also states that within 90 days, t/p must submit one of the following:
 - A Form 1040 completed and signed, including all schedules and forms with cover letter;
 - A Consent to Assessment and Collection, or
 - An explanation of why (s)he has no filing requirement.
- If the t/p does not file a return, and does not agree with proposed tax, (s)he has 90 days to dispute amount the IRS proposes.





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Why Do We See So Many Problems with SFRs?

- No one touches the SFR to evaluate whether an assessment is reasonable.
- T/p receive notices in which their incomes as reported to IRS is the result of erroneous Forms 1099 issued in his/her name.
- But...simple human review could allow t/ps to avoid significant burden of fixing the many errors.



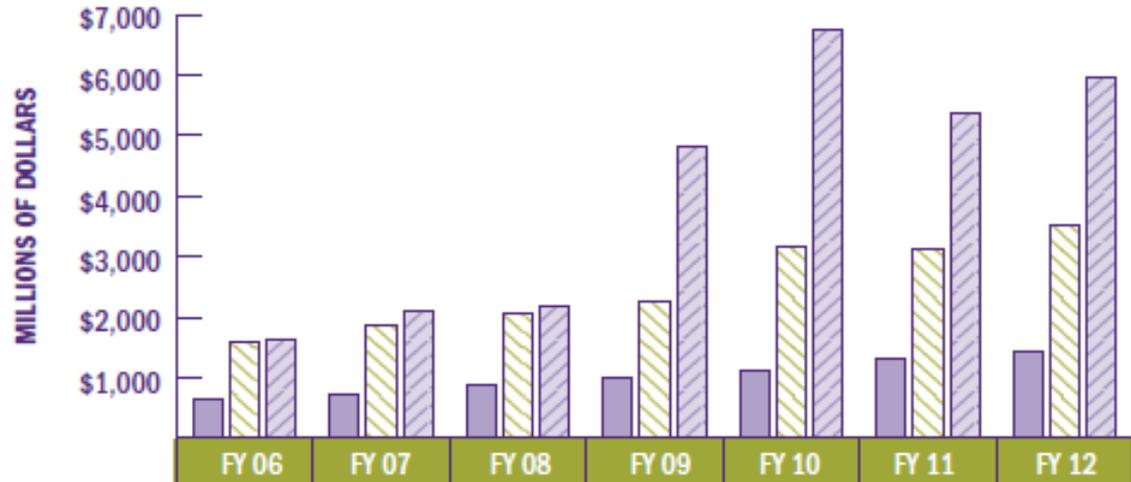


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ASFR Program Results (FY 2006–FY 2012)

ASFR Assessments Resolved - Millions of Dollars
(FY 2006–FY 2012)



	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
Collected & Offset	\$636	\$706	\$882	\$1,002	\$1,128	\$1,326	\$1,446
Abated	\$1,604	\$1,882	\$2,078	\$2,252	\$3,150	\$3,117	\$3,521
To CNC	\$1,646	\$2,120	\$2,195	\$4,807	\$6,757	\$5,368	\$5,975





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What Can a Taxpayer Do?

- Even if IRS has already filed a substitute return, it still makes sense for t/p to file his/her own return in order to take advantage of all allowed exemptions, credits, and deductions.
- IRS will generally adjust t/p's account to reflect the correct figures.





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But Wait, There's More!



- To protect your client and intervene in the next phase, you'll need to be admitted to practice before IRS...
- ...you'll need to be an EA, CPA or attorney holding a valid Power of Attorney.





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Responding to the ASFR Assessment

- If the tax has already been assessed, it's still not too late to try to get to the correct amount of tax.
- An Audit Reconsideration is the process IRS uses when a taxpayer contests the SFR determination by filing an original (*not an amended*) delinquent return.





Resource: IRS Publication 598

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What You Should Know About



THE AUDIT RECONSIDERATION PROCESS

If you decide to request audit reconsideration, please send your request to the address of the IRS campus shown on your Examination Report.

Andover Campus
Internal Revenue Service
P.O. Box 9053 Stop 823
Andover, MA 01810-0953
Phone 1-866-897-0177

Atlanta Campus
Internal Revenue Service
P.O. Box 48-389 Stop 54A
Doraville, GA 30382
Phone 1-866-897-0177

Austin Campus
Internal Revenue Service
P.O. Box 934 Stop 4103
Austin, TX 78767
Phone 1-866-897-0177

Brookhaven Campus
Internal Revenue Service
P.O. Box 9005 Stop 811,
Team 408
Holtsville, NY 11742
Phone 1-866- 897-0161

Cincinnati Campus
Internal Revenue Service
CIRSC
P.O. Box 308 Stop 8202
Covington, KY 41012
Phone 1-866-897-0161

Kansas City Campus
Internal Revenue Service
PS Stop 4200
Kansas City, MO 64666
Phone 1-866-897-0177

Fresno Campus
Internal Revenue Service
P.O. Box 12067 Stop 82206
Fresno, CA 93778
Phone 1-866-897-0177

Memphis Campus
Internal Revenue Service
P.O. Box 30088 Stop 8236
Memphis, TN 38130-0088
Phone 1-866-897-0161

Ogden Campus
Internal Revenue Service
P.O. Box 9038 Stop 4440
Ogden, UT 84201
Phone 1-866-897-0161

Philadelphia Campus
Internal Revenue Service
Exam Recon, W/S 4-E08-141
2970 Market Street
Philadelphia, PA 19104
Phone 1-866-897-0161





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If Audit Recon Won't Work...

- Pay the amount due in full and file a claim for refund. If the IRS disallows the claim, t/p will then have the right to Appeals.
- Follow the instructions in Form 656 and file an Offer in Compromise, Doubt as to Liability.
- Request a Collection Appeal (CDP or CAP).





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