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Advocating in Gross Income and Trade and Business Expense Cases





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What is a Most Litigated Issue?





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The Most Litigated Issues Over the Years

2013	(Rank)
Accuracy Related Penalties	178 cases (1)
Collection Due Process	105 cases (5)
Trade or Business Expenses	134 cases (2)
Gross Income	117 cases (3)
Summons Enforcement	117 cases (4)





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The Most Litigated Issues Over the Years

2014	(Rank)
Accuracy Related Penalties	153 cases (1)
Collection Due Process	76 cases (5)
Trade or Business Expenses	115 cases (2)
Gross Income	89 cases (4)
Summons Enforcement	102 cases (3)



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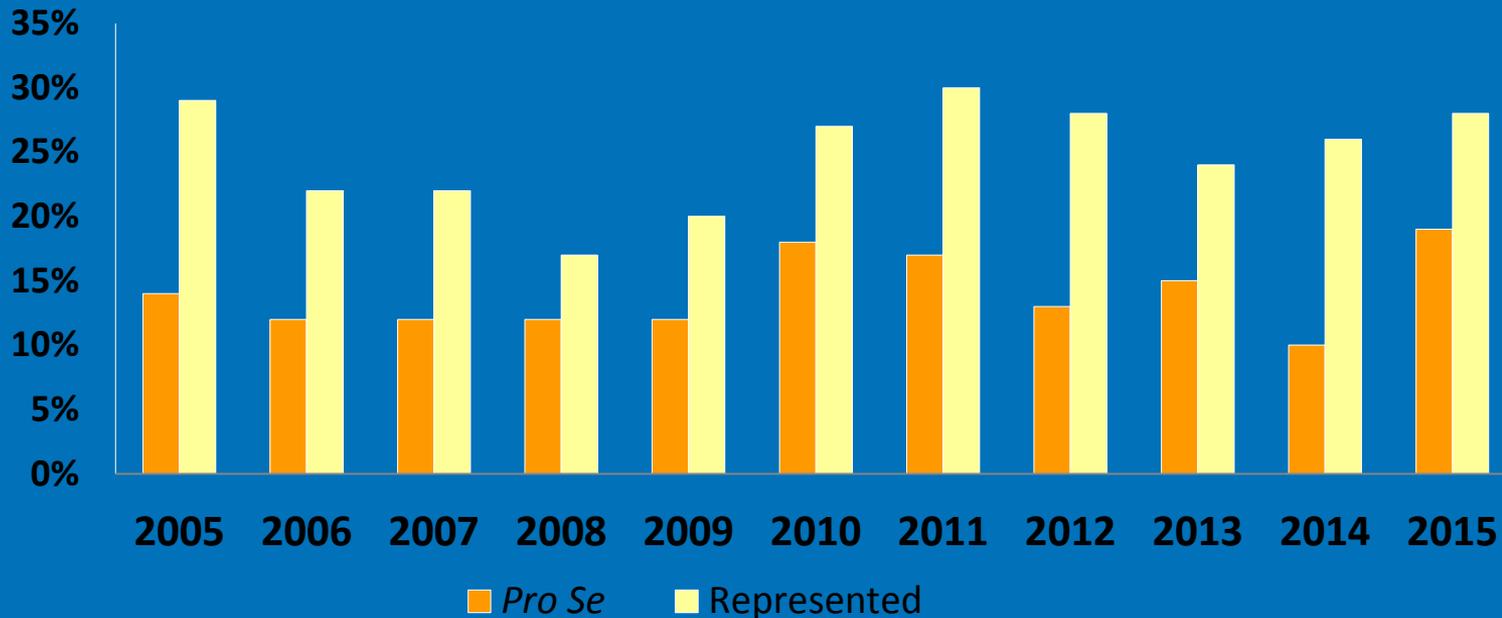
The Most Litigated Issues Over the Years

2015	(Rank)
Accuracy Related Penalties	113 cases (1)
Collection Due Process	79 cases (5)
Trade or Business Expenses	99 cases (2)
Gross Income	80 cases (4)
Summons Enforcement	84 cases (3)



Success Rates:

Pro Se vs. Represented Taxpayers*



* "Success" defined as cases in which taxpayers prevailed or there was a split decision.

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Gross Income

IRC §61





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**What happens if the
IRS determines a
deficiency in gross
income?**



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Common Gross Income Issues

- Damage Awards (IRC § 104(a)(2))
- Distributions from IRAs (IRC § 408(d)(1))
- Discharge of Indebtedness (IRC § 108(a))
- Rental value of Parsonage (IRC § 107)



Damage Awards under IRC § 104(a)(2)

- Several cases every year
- IRC § 104(a)(2) includes damage awards in income except in cases of:
 - Personal physical injuries or
 - Physical sickness





Damage Awards under IRC § 104(a)(2)

- Taxpayers must demonstrate the award is in lieu of damages for physical injuries or sickness to exclude settlement proceeds from their gross income





Recent Case Examples

- *Perez v. Commissioner* (144 T.C. 51 (2015))
- *Molina v. Commissioner* (T.C. Memo. 2013-266)
- *Simpson v. Commissioner* (144 T.C. 331 (2013))





Distributions from IRAs

- IRC § 408(d)(1)
- Generally includible in gross income
- Taxpayers try to exclude under “rollover” provisions





Recent Case Examples

- *Bohner v. Commissioner*
 - (143 T.C. 224 (2014))
- *Bobrow v. Commissioner*
 - (T.C. Memo. 2014-21)



Discharge of Indebtedness under IRC § 108(a)

- Generally includible in income under IRC § 61(a)(12)
- Taxpayer may receive a Form 1099-C, *Cancellation of Debt*, for the income
- May be excludible in certain circumstances





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Insolvency

- A taxpayer may be able to exclude cancellation of debt income if they were insolvent at the time the debt was forgiven
- IRC § 108(a)(1)(B)
- Publication 4681





Recent Case Examples

- *Pinn v. Commissioner*
 - (T.C. Memo. 2013-45)
- *McAllister v. Commissioner*
 - (T.C. Memo. 2013-96)



Parsonage Income Under IRC § 107

- IRC § 107 allows ministers of the gospel to exclude parsonage income
- Exclusion amount must not exceed fair market rental value of the property, furnishings, and utilities





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Trade and Business Expenses Under IRC § 162





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What is a trade or business expense?



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Trade or Business Expense – Reported Decisions



Cohan Rule

- Allows courts to grant reasonable deductions even without proof



IRC § 274(d)

- Taxpayers must have substantiation for the following expenses:
 - Travel expenses;
 - Entertainment, amusement, or recreation expenses;
 - Gifts
 - Certain “listed property”



Who has the burden of proof in a substantiation case?

- Generally the taxpayer has the burden of proof





Common Trade or Business Expense Issues

- Substantiation
- Personal vs. Business Expenses
- For Profit Activity
- Ordinary and Necessary Expenses





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Substantiation

➤ Most cases involve issues of substantiation





Recent Case Example

- *Engstrom, Lipscomb & Lack, APC v. Commissioner* (T.C. Memo. 2014-221)





Personal vs. Business Expenses

- Must prove a business purpose





Recent Case Example

- *Peterson v. Commissioner* (T.C. Memo. 2015-23)





For Profit Activity

- Taxpayers must be actively engaged in an activity, with the intent of making a profit, to qualify to deduct trade or business expenses





Recent Case Example

- *Crile v. Commissioner*
(T.C. Memo. 2014-202)



IRC § 162(a)

Ordinary and Necessary Expenses

- Salaries or compensation for personal services actually rendered
- Travel expenses incurred in the pursuit of the trade business
- Rentals or other payments for property for the trade or business





Recent Case Example

- *Guardian Industries Corp. v. Commissioner*
(143 T.C. 1 (2014))





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- www.TaxpayerAdvocate.irs.gov
- www.youtube.com/tasnta
- www.facebook.com/YourVoiceAtIRS
- Call 877.777.4778
- twitter.com/YourVoiceatIRS
- File Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance order)





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