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Advocating for Your Client in Cases Involving Penalty Issues





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Annual Report to Congress

- IRC §7803(c)(2)(B)(ii)
 - At least 20 most serious problems (MSPs)
 - Recommendations to Congress (LRs)
 - 10 most litigated issues (MLIs)
- Due December 31
- MLI reporting period – June 1 – May 31





Pro Se Cases by Issue

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Most Litigated Issue	Litigated Cases Reviewed	Pro Se Litigation	% of Cases Involving Pro Se Taxpayers
Accuracy-Related Penalty	113	68	60%
Trade or Business Expenses	99	60	61%
Summons Enforcement	84	61	73%
Gross Income	80	53	66%
Collection Due Process	79	46	58%
Failure to File, Failure to Pay, and Estimated Tax Penalties	63	41	65%
Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax	44	18	41%
Charitable Deductions	28	14	50%
Frivolous Issues Penalty (and analogous appellate-level sanctions)	26	24	92%
Relief From Joint and Several Liability	24	11	46%
Total	640	396	62%





Outcomes for *Pro Se* and Represented Taxpayers

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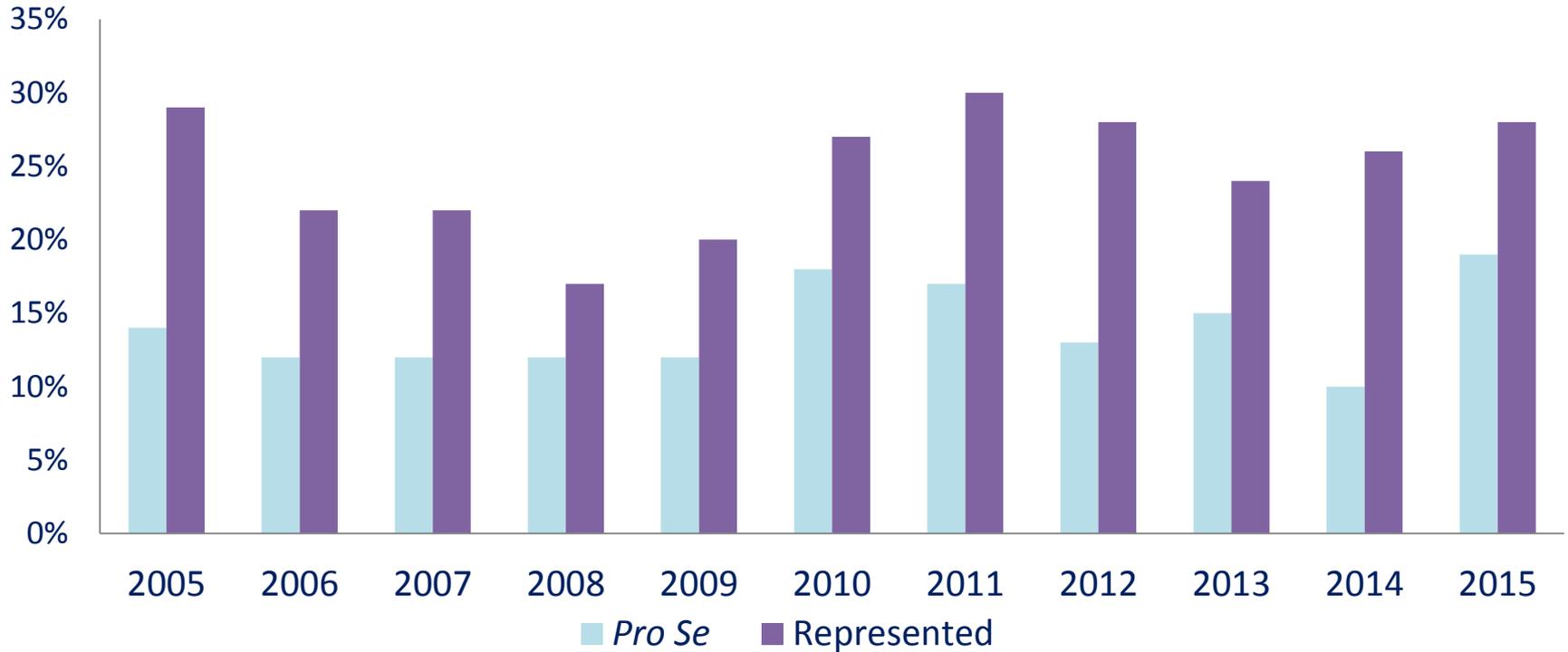
Most Litigated Issue	Pro Se Taxpayers			Represented Taxpayers		
	Total Cases	Taxpayer Prevailed in whole or in part	Percent	Total Cases	Taxpayer Prevailed in whole or in part	Percent
Accuracy-Related Penalty	68	14	21%	45	12	27%
Trade or Business Expenses	60	23	38%	39	19	49%
Summons Enforcement	61	1	2%	23	2	9%
Gross Income	53	7	13%	27	10	37%
Collection Due Process	46	5	11%	33	9	27%
Failure to File, Failure to Pay, and Estimated Tax Penalties	41	7	17%	22	4	18%
Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax	18	0	0%	26	4	15%
Charitable Contributions	14	5	36%	14	5	36%
Frivolous Issues Penalty (and analogous appellate-level sanctions)	24	7	29%	2	0	0%
Relief From Joint and Several Liability	11	5	45%	13	4	31%
Total	396	74	19%	244	69	28%



Most Litigated Issues Over the Years

Most Litigated Issue	Number of Cases (Rank)					
	2010	2011	2012	2013	2014	2015
Accuracy-Related Penalties (I.R.C. § 6662(b)(1) & (2))	125 (3)	55 (6)	117 (2)	178 (1)	153 (1)	113 (1)
Collection Due Process (I.R.C. § 6320 & 6330)	131 (2)	89 (3)	116 (3)	105 (5)	76 (5)	79 (5)
Trade or Business Expenses (I.R.C. § 162)	119 (4)	107 (2)	115 (4)	134 (2)	115 (2)	99 (2)
Gross Income (I.R.C. § 61)	103 (5)	62 (5)	92 (5)	117 (3)	89 (4)	80 (4)
Summons Enforcement (I.R.C. § 7604)	146 (1)	132 (1)	153 (1)	117 (4)	102 (3)	84 (3)
FTF, FTP, Estimated Tax Penalties (I.R.C. § 6651 (a)(1), (2) & 6654)	71 (6)	74 (4)	74 (6)	86 (6)	56 (6)	63 (6)
Liens Enforcement (I.R.C. § 6321 & 7403)	46 (8)	48 (7)	48 (7)	33 (9)	52 (7)	44 (7)
Charitable Contribution Deductions (I.R.C. §170)	N/A	27 (10)	N/A	40 (7)	30 (9)	28 (8)
Frivolous Issue Penalties (I.R.C. § 6673)	46 (7)	44 (9)	40 (8)	36 (8)	30 (8)	26 (9)
Family Status (I.R.C. § 2, 21, 24, 151 & 152)	45 (9)	N/A	N/A	N/A	N/A	N/A
Relief From Joint and Several Liability (I.R.C. § 6015)	36 (10)	44 (8)	40 (9)	31 (10)	N/A	24 (10)
Limits on Assessment (I.R.C. § 6501)	N/A	N/A	33 (10)	N/A	N/A	N/A
Passive Activity Losses and Credits (I.R.C. § 469)	N/A	N/A	N/A	N/A	28 (10)	N/A
Total Number of Cases	868	682	828	877	731	640

Pro Se vs. Represented Taxpayers



Cases in which taxpayers prevailed or there was a split decision.

Accuracy-Related Penalty

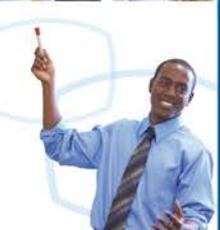
- Purpose of penalties
 - Penalty Handbook – IRM 20.1
 - Policy Statement 20-1: Encourage voluntary compliance
- IRC § 6662(a) – 20% penalty for an underpayment
- Definition of underpayment - IRC § 6664(a)
- *Rand* case and recent legislation





Accuracy-Related Penalty

- Listed in IRC § 6662(b) – 6662(b)(1) – (b)(8)
- IRC § 6662(b)(1) - Negligence or disregard of rules or regulations
- IRC § 6662(b)(2) – Any substantial understatement of income tax
- Penalties are not stackable – Treas. Reg. § 1.6662-2(c)





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Negligence Penalty – IRC § 6662(b)(1)

- IRC § 6662(b)(1) - Negligence or disregard of rules or regulations
 - IRC § 6662(c) - Definitions
- Examples
 - Treas. Reg. § 1.6662-3(b)(1) – failure to keep books/records or to substantiate
 - Strong indicators of negligence
 - Other factors





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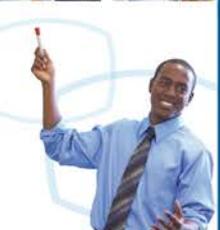
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Substantial Understatement Penalty – IRC § 6662(b)(2)

- IRC § 6662(b)(2) – Any substantial understatement of income tax
 - IRC § 6662(d)(2)(A) – Definition
- Test is mathematical
 - exceeds greater of \$5000 or 10 percent
- Examples
 - \$10,000 tax, \$6000 reported; \$10,000 tax, \$4000 reported





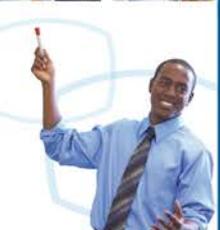
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Defenses to Accuracy-Related Penalty

- IRC § 6664(c)(1) - Reasonable cause and good faith
 - Facts and circumstances
 - TP effort to determine proper tax liability
- IRC § 6662(d)(2)(B) - Reasonable basis
 - Substantial authority





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Penalty Assessment and Litigation Process

- IRC § 6662 can be assessed through exam or Automated Underreporter (AUR)
- Administrative appeal process
- Litigation – Tax Court or refund forums
- Burden of proof – IRC § 7491(c)
 - Raise penalty issue in pleadings





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Accuracy-Related Penalty Statistics

- 113 cases (153 in 2014 Annual Report)
- IRS – 87 cases, TP – 20 cases, Split – 6 cases
- *Pro se* – 68 of 113 cases (60 percent)





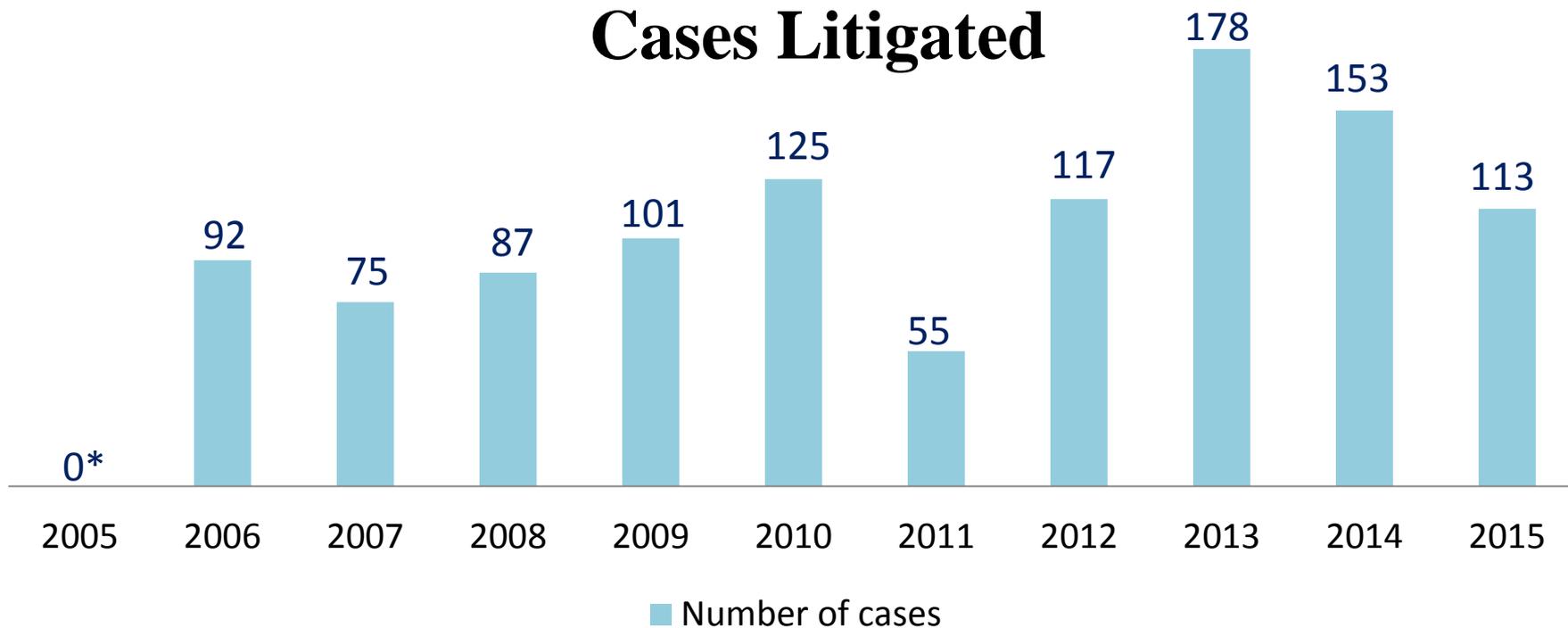
Accuracy-Related Penalty Cases

- *Sawyer v. Commissioner*, T.C. Memo. 2015-55
- *Dabney v. Commissioner*, T.C. Memo. 2014-108
- *Evans v. Commissioner*, T.C. Memo. 2014-237



Accuracy-Related Penalty

Cases Litigated



*Not a top issue litigated in courts in 2005



Failure to File, Pay, and Estimated Tax Penalties

- IRC § 6651(a)(1) – failure to file a tax return by the due date
- IRC § 6651(a)(2) – failure to pay an amount shown as tax on a return
- IRC § 6654 – failure to pay estimated tax installments
- IRC § 7491(c) – Burden of proof on IRS





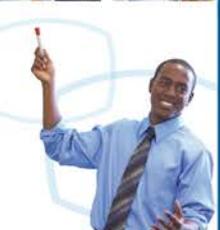
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Failure to File Penalty

- IRC § 6651(a)(1)
- Five percent of tax due
- Maximum 25 percent penalty (75 percent for fraudulent failure to file)





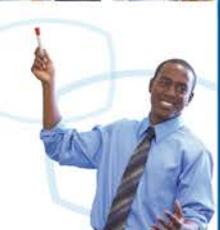
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Failure to Pay Penalty

- IRC § 6651(a)(2)
- Half percent of tax due
- Maximum 25 percent penalty
- If both FTF and FTP apply, FTF is reduced





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Estimated Tax Penalty

- IRC § 6654
- Required annual payment – 90% of current or 100% of previous year
- Penalty exceptions – IRC § 6654(e)





Failure to File, Pay, and Estimated Tax Penalty Statistics

- 63 cases (56 in 2014 Annual Report)
- 23 individual TP cases and 40 business TP cases
- *Pro se* – 41 of 63 cases (65 percent)



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Failure to File, Pay, and Estimated Tax Penalty Cases

- *Cavallaro v. Commissioner*, T.C. Memo. 2014-189
- *El v. Commissioner*, 144 T.C. 140 (2015)
- *Muncy v. Commissioner*, T.C. Memo. 2014-251





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Frivolous Issues Penalty

- IRC § 6673 – Tax Court penalty
- Maximum penalty - \$25,000





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Frivolous Issues Penalty Statistics

- 26 cases (30 in 2014 Annual Report)
- 22 IRC § 6673 cases - 21 Tax Court cases, one court of appeals case (four appellate level penalty cases)
- *Pro se* – 24 of 26 cases (93 percent)





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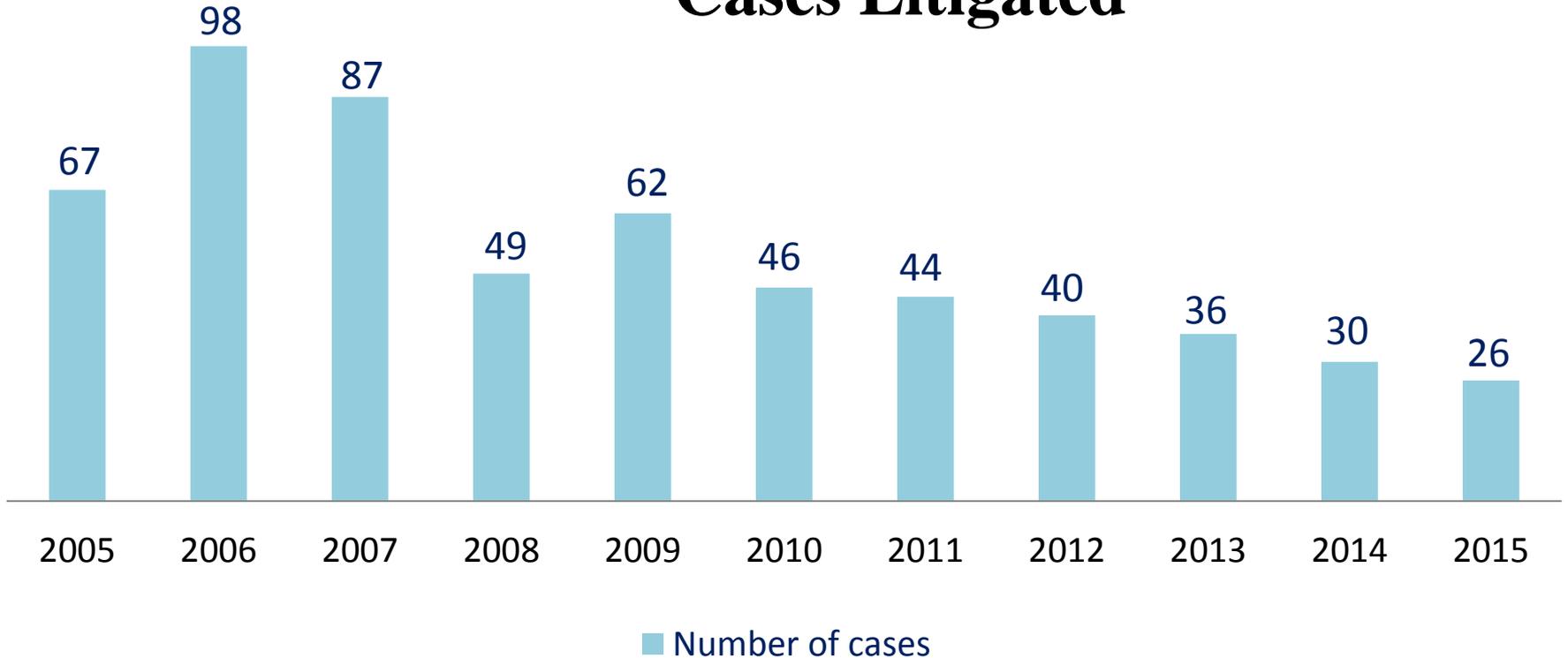
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Frivolous Issues Penalty Case Themes

- Taxes and procedures to collect taxes are unconstitutional
- The IRS lacks proper authority
- Taxpayers are not United States persons or United States income is not taxable



Frivolous Issues Penalty Cases Litigated





Contact TAS

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

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Contact TAS

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