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**TaxForum** | 2018

Advocating for your  
Client in Cases Involving  
Charitable Contribution  
Deduction Issues



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# Learning Objectives

After completing this course, you will:

- Recognize the basic components of the National Taxpayer Advocate's Annual Report to Congress
- Understand the Most Litigated Issues (MLI) process
- Grasp basic charitable contribution deduction rules
- See these rules illustrated in some recent court cases



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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

Most Litigated Issue	Litigated Cases Reviewed	Pro Se Litigation	Percentage of Pro Se Cases
Accuracy-Related Penalty	138	84	61%
Trade or Business Expenses	99	62	63%
Summons Enforcement	89	64	72%
Collection Due Process	85	46	54%
Gross Income	85	57	67%
Failure to File, Failure to Pay, and Estimated Tax Penalties	60	39	65%
Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax	60	30	50%
Charitable Deductions	28	14	50%
Family Status Issues	24	19	79%
Relief from Joint and Several Liability	24	15	63%
<b>Total</b>	<b>692</b>	<b>430</b>	<b>62%</b>



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# Outcomes for *Pro Se* and Represented Taxpayers

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
<b>Accuracy-Related Penalty</b>	84	14	17%	54	13	24%
<b>Trade or Business Expenses</b>	62	19	31%	37	15	41%
<b>Summons Enforcement</b>	64	0	0%	25	6	24%
<b>Collection Due Process</b>	46	4	9%	39	3	8%
<b>Gross Income</b>	57	10	18%	28	8	29%
<b>Failure to File, Failure to Pay, and Estimated Tax Penalties</b>	39	6	15%	21	6	29%
<b>Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax</b>	30	0	0%	30	2	7%
<b>Charitable Deductions</b>	14	3	21%	14	5	36%
<b>Family Status Issues</b>	19	4	21%	5	1	20%
<b>Relief from Joint and Several Liability</b>	15	5	33%	9	3	33%
<b>Total</b>	<b>430</b>	<b>65</b>	<b>15%</b>	<b>262</b>	<b>62</b>	<b>24%</b>



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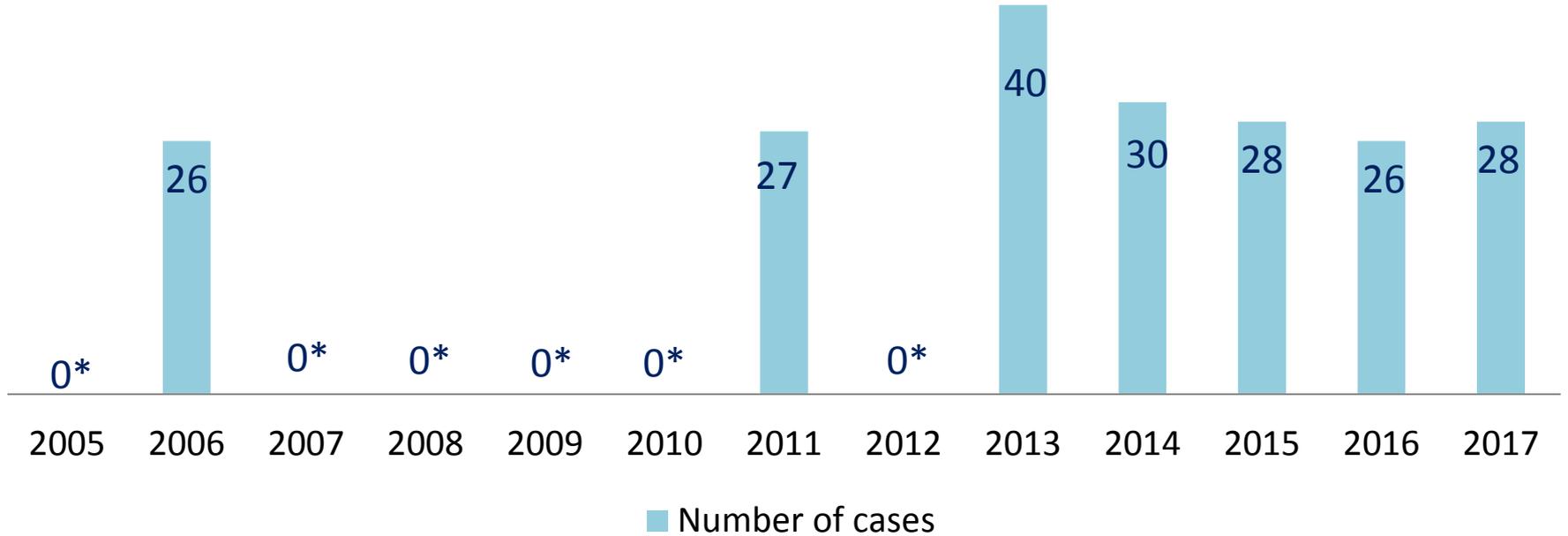
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# Most Litigated Issues Over the Years

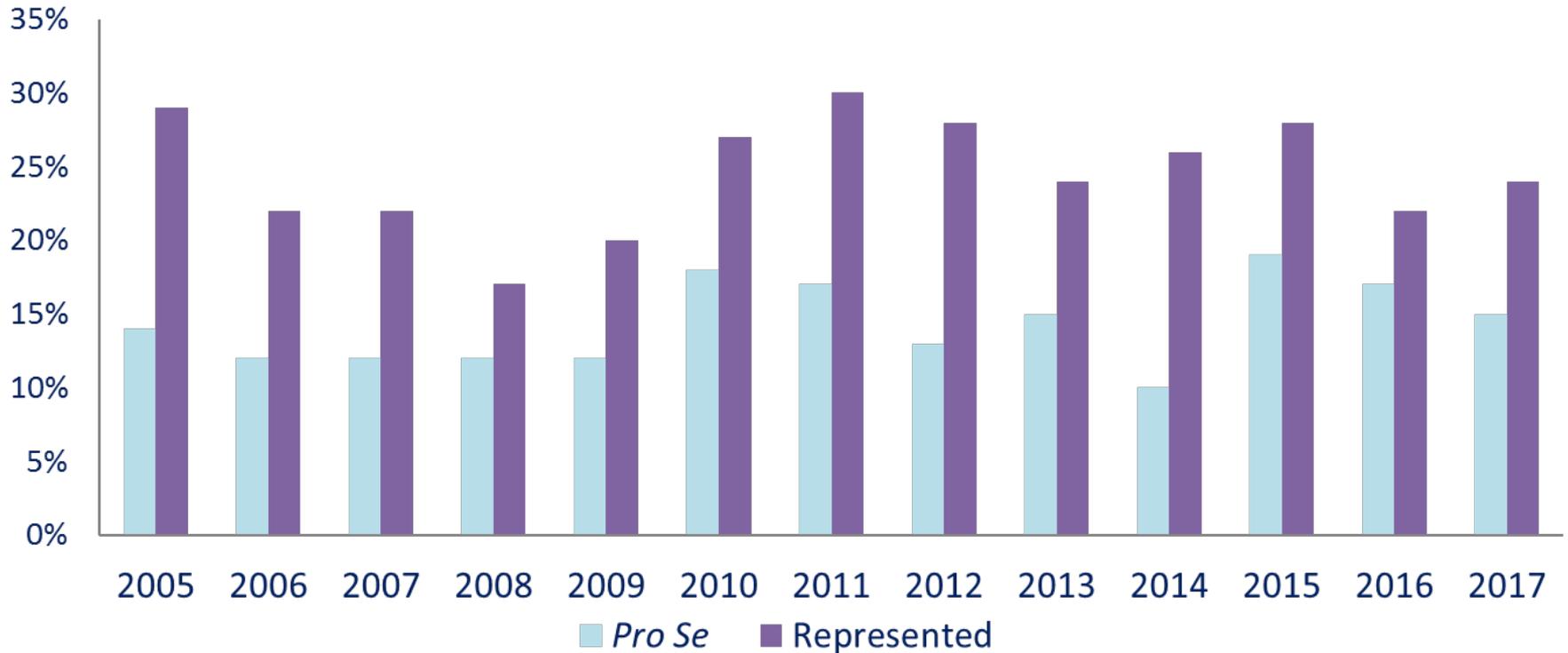
Most Litigated Issues	<u>2015</u>	<u>2016</u>	<u>2017</u>
Accuracy-Related Penalties (I.R.C. §§ 6662(b)(1) & (2))	113 (1)	122 (1)	138 (1)
Collection Due Process (I.R.C. §§ 6320 & 6330)	79 (5)	99 (2)	85 (4)
Trade or Business Expenses (I.R.C. § 162)	99 (2)	73 (5)	99 (2)
Gross Income (I.R.C. § 61)	80 (4)	81 (4)	85 (4)
Summons Enforcement (I.R.C. §§ 7602, 7604, & 7609)	84 (3)	87 (3)	89 (3)
Charitable Contribution Deductions (I.R.C. § 170)	28 (8)	26 (8)	28 (8)
Total Number of Ten Most Litigated Cases	640	609	692

# Charitable Contribution Deduction Cases Litigated



\*Not a top issue litigated in courts

# *Pro Se* vs. Represented Taxpayers



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



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# Charitable Contribution Deductions

- TP must itemize to claim deduction
- Must be contributions or gifts not payments for goods or services (*quid pro quo* test)
- Contribution to a qualified charitable organization (verify with Tax Exempt Organization Search, formerly EO Select Check)

<https://apps.irs.gov/app/eos/>



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# Charitable Contribution Deductions (Continued)

- Limited to 60 percent of AGI (formerly 50 percent) for cash or ordinary income property contributions made by individuals from 2018 through 2025
- Services provided by TP not deductible



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# Substantiation

- General rule for cash contributions
  - Receipts from charitable organizations showing the name of the organization, date, and amount contributed
  - Copies of cancelled checks or bank or credit card statements
  - Other reliable records with name of organization, date, and amount contributed



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## Substantiation (#2)

- Contemporaneous written acknowledgement
  - Required for cash and non-cash contributions valued at \$250 or more
  - Obtained from organizations on or before earlier of return filing date or return due date
  - Contents

*See IRS Publications 526 and 1771*



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## Substantiation (#3)

- General rule for noncash contributions
  - Receipt with name of organization, date and location of contribution, and description of property
  - TPs can generally deduct FMV of property at time of contribution
  - Qualified appraisal by qualified appraiser required for contributions above \$5,000
  - Fully completed qualified appraisal summary (Form 8283) attached to the tax return on which deduction claimed



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# Cases in 2017 Annual Report

- 28 cases identified (26 in 2016 Annual Report)
- IRS – 20 cases, TPs – 2 cases, Split – 6 cases
- *Pro se* – 14 cases (50 percent); IRS – 11 wins, TPs – 0 wins, Split – 3 cases



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# Case Themes

- Substantiation of the charitable contribution
- Valuation of the charitable contribution
- Requirements for a qualified conservation easement



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# Substantiation Cases

- *Garcia v. Commissioner*, T.C. Memo. 2016-21
- *15 West 17th Street LLC v. Commissioner*, 147 T.C. No. 19 (2016)



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# Valuation Cases

- *Estate of Evenchik v. Commissioner*, T.C. Memo. 2013-34
- *Cave Buttes, L.L.C. v. Commissioner*, 147 T.C. 338 (2016)



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# Conservation Easement Cases

- *Belk v. Commissioner*, 774 F.3d 221 (4th Cir. 2014), *aff'g* 140 T.C. 1 (2013)
- *McGrady v. Commissioner*, T.C. Memo. 2016-233



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# Resources

- IRS Pub. 526, *Charitable Contributions*
- IRS Pub. 1771, *Charitable Contributions: Substantiation and Disclosure Requirements*
- Annual Report Charitable Contribution MLI sections



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# Contact TAS

- [www.TaxpayerAdvocate.irs.gov](http://www.TaxpayerAdvocate.irs.gov)
- [www.youtube.com/tasnta](http://www.youtube.com/tasnta)
- [www.facebook.com/YourVoiceAtIRS](http://www.facebook.com/YourVoiceAtIRS)
- [twitter.com/YourVoiceatIRS](https://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

Subject Matter Expert

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