

Audit Reconsiderations *“Do It Again & You Just May Win”*

LG Brooks, EA, CTRS, NTPI Fellow

ASTPS Director of Education

Senior Tax Resolution Consultant L&W CPAs



American Society of Tax Problem Solvers

1

The AUR Process Defined

- Publication 3598, briefly defines “The Audit Reconsideration” (AUREcon) and:
 - Explains the process to request an AUREcon when the TP disagrees with an assessment made by the IRS, and/or;
 - When a SFR is prepared & assessed pursuant to IRC §6020(b)

American Society of Tax Problem Solvers

2

The AUR Process Defined

- The taxpayer should submit an AURcon to request that the IRS investigate the prior results of an audit, also;
- Generally, most AURcons are filed based upon additional tax assessments where the tax liability remains unpaid
- **Question:** When is it appropriate to file an AURcon when “no additional liability” exists?

“POLLING QUESTION # 01”

The AUR Process Defined

- Technically, the Audit Reconsideration process allows a taxpayer to “re-open” a previously closed examination to provide:
 - Previously omitted substantiation
 - Previously omitted documentation
 - And any previously unconsidered and/or unavailable “relevant evidence”

American Society of Tax Problem Solvers

5

Legal Authorization for AURcons

- Currently, there is no provision under the Code that “requires” the IRS to consider a taxpayer’s AURcons
- For example, per “Pub 3498”:
 - “you may ask us to reconsider your case”, and;
 - “Some reasons why we may reconsider your case”

American Society of Tax Problem Solvers

6

Legal Authorization for AUREcons

- However in consideration of the previous statement, **IRC §6404** delineates the criteria to oppose a tax liability:
 - “That is *excessive in amount*”
 - “Assessed subsequent to the *expiration of the statute of limitations*”, and/or;
 - “The tax deficiency/liability was *erroneously or illegally assessed*”

American Society of Tax Problem Solvers

7

Expectations of an AUREcon

- **Relevant** issues & related substantiation not previously reviewed is considered
- The **correct** tax liability is calculated
- The opportunity to present all **legal and substantive arguments** during the AUR
- And recognition that any pending or current **enforced collection action is prevented** or at most “temporarily suspended”

American Society of Tax Problem Solvers

8

Common Reasons for an AUR Recon

- The TP did not participate/appear for the initial audit
- The TP disagrees with the audit & prefers to avoid a formal appeal
- The TP was not notified of the original audit
- The TP has information that was not considered during the initial exam
- The TP wants to challenge the basis of an SFR
- The TP neglected to file an appeal within the normal 30-day period

American Society of Tax Problem Solvers

9

Conditions Adverse to AUR Requests

- The assessment in question was settled via an OIC
- The assessment was made pursuant to a final Court decision (issue was previously adjudicated)
- The taxpayer was granted a previous AUR
- The assessment was made pursuant to a formal “Closing Agreement” (Form 906 or Form 866)
- The assessment as was made pursuant to a final “TEFRA” administrative proceeding

American Society of Tax Problem Solvers

10

“POLLING QUESTION # 02”

Preparing the AUR Request

- Delineate the legal/substantive basis of the AUR
- Provide a copy of the original Audit Report
- If a copy is not immediately available request a copy from Exams or IRS Disclosure
 - Include the TP's name, address & TIN
 - Provide a statement for the basis of the AUR request
 - Reference all related IRS correspondence
 - List all relative tax years
 - Document the “primary” AUR issues
 - Include a detailed “Statement of Facts & Circumstances”

Preparing the AUR Request-Continued

- Include a detailed “Statement of Law”
- Include a detailed “Statement of Arguments”
- Include any relative “affidavits and/or exhibits”
- Include your conclusion or “closing statement”
- Authenticate the AUR by including the required “Declaration of Representative”

American Society of Tax Problem Solvers

13

Additional AUR Issues

- The AUR Process:
 - “Discretionary” administrative process
 - Limited regulatory guidance
- Enforced Collection Issues:
 - Enforced collection actions are “allowed” to proceed
 - Potential termination of enforced actions may be based upon the efficiency of your AUR and/or your formal “request”

American Society of Tax Problem Solvers

14

Additional AUR Issues

- Installment Agreements (IA) & AURs:
 - The TP must continue compliance with any IA
 - If an “economic hardship” exists consider filing Form 911
- Who Conducts the AUR:
 - A Tax Compliance Officer (TCO) or Revenue Agent (RA)
 - The case may possibly be assigned to the same examining agent (TCO or RA)

Additional AUR Issues

- Options in Response to the AUR Report:
 - If You Agree:
 - Full pay the liability
 - Establish an IA
 - Submit an OIC
 - Monitor the SOL and/or request CNC status
 - If You Disagree:
 - Request a formal Appeal
 - Pay the tax & file a claim for refund
 - Do nothing & prepare for contact from a Revenue Officer (RO), or
 - Again, monitor the SOL and/or request CNC status

AURecon-Tax Court Case Reviews

- Joseph Thomas Lander v. Commissioner, Docket #25751-15L (March 12, 2020)
- **Duy Duc Nguyen v. Commissioner**, T. C. Memo 2020-97 (June 30, 2020)
- 22
- **Do S. Wong v. Commissioner**, T. C. Memo 2020-32 (March 5, 2020)

American Society of Tax Problem Solvers

17

“POLLING QUESTION # 03”

American Society of Tax Problem Solvers

18

THANKS FOR JOINING US!

American Society of Tax Problem Solvers



LG Brooks, EA, CTRS

Senior Tax Resolution Consultant
Lawler and Witkowski CPA's

Phone: (716) 631-5111

Email: lg@landwcpas.com

**American Society of
Tax Problem Solvers**
A NON-PROFIT PROFESSIONAL ASSOCIATION 

 **Lawler
& Witkowski**
Certified Public Accountants, PC