

# Defending Taxpayers in Economic Hardship

**2023 Training Event 11 | Lawrence Lawler, CPA, EA**

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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## Less than 12 spots left for our Last Tax Resolution Accelerator of 2023!

**Cohort 007 launches November 30th!**

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The Accelerator Course is a unique opportunity for business owners looking to expand their firms by adding tax resolution services, as well as individuals seeking to enhance their marketability in the ever-evolving tax industry. As a participant, you'll not only acquire valuable skills but also form lasting connections with fellow professionals in the field.

This course focuses on:

- Setting up your tax resolution firm.
- Starting a case: Investigation & Compliance.
- Case analysis: Crafting a resolution plan.
- Implementing your strategy.
- Managing your tax resolution case.
- Sales & Marketing for your firm.

With limited spots available for this in-demand course, interested tax pros are encouraged to register as soon as possible to secure their place in the upcoming Houston/Virtual ASTPS Accelerator Program!

Don't miss this unparalleled opportunity to elevate your practice and empower yourself with the tools and knowledge necessary to excel in IRS representation. Mark your calendar for Nov 30th, and join the ASTPS for an unforgettable learning experience at the Accelerator!

Register now and learn more at  
**[ASTPS.org/Accelerator](https://ASTPS.org/Accelerator)**

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# Defending Taxpayers in Economic Hardship

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## Economic Hardship

**Undue EH §6161(b)(1)**

**Financial EH §403(b)(7)(A)(i)(V)**

**Severe EH §409(a)(2)(B)(ii)(I)**

**Business EH §412(c)**

**Economic Hardship §6343(a)(1)(D)**

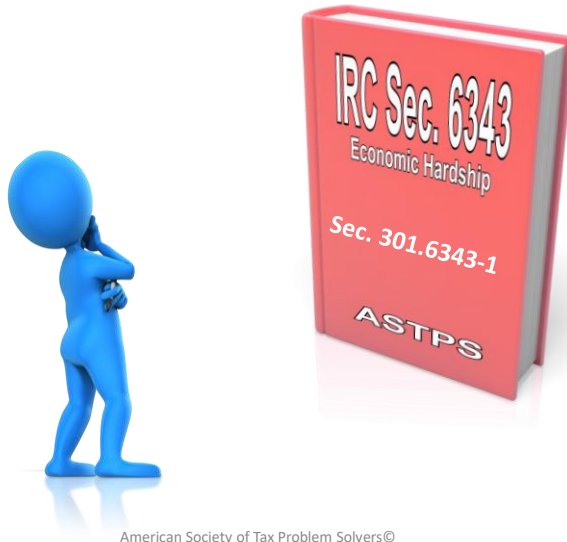
**Significant Hardship §6330(c)(3)(C)**



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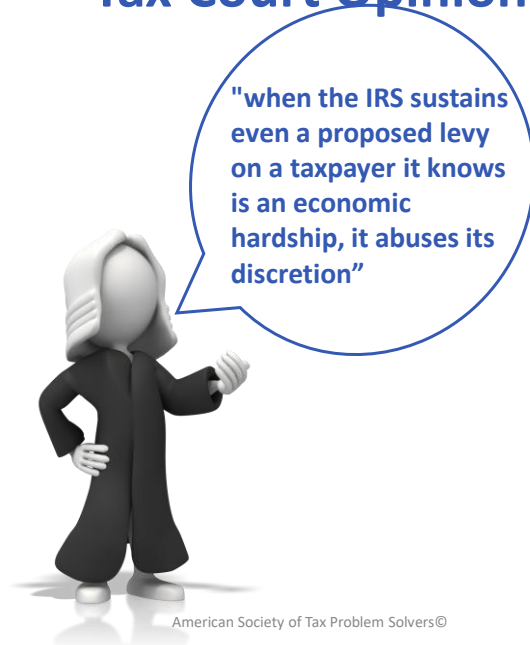
## Reference Sources



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## Tax Court Opinion



*Polling Question*

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## Hardship References

**Undue Hardship §6161 (b) (1)**

**Financial Hardship §403 (b) (7) (A) (i)(V)**

**Severe Financial Hardship\* §409 A (a) (2) (B) (ii) (1)**

**Business Hardship §412 (c)**

**Economic Hardship §6343 (a) (1) (D)**

**Significant Hardship §6330 (c) (3) (C)**

**\* Unforeseeable Emergency, i.e. Accident, Illness, Casualty**

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## Levy & Economic Hardship



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## Conditions Requiring Levy Release

Satisfied or  
Unenforceable  
Facilitate Collection  
Installment Agreement  
**Economic Hardship**

Request in writing or by telephone  
To Territorial Director where filed

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## General Rule

Regs. §301.6343-1(b)(4)(i)

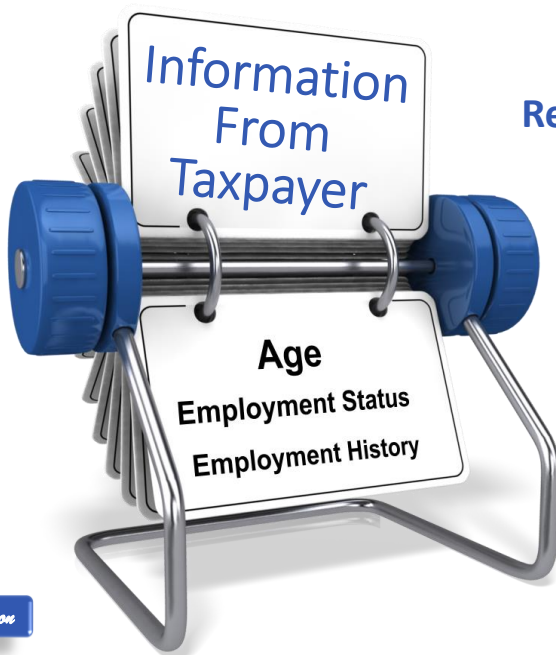
**The levy is creating an economic hardship**

- **Taxpayer is unable to pay reasonable basic living expenses**
  - **Director determines reasonable amount**
  - **Unique circumstances of taxpayer**
  - **Affluent or luxurious standard of living**

**Practitioner Action:  
File Form 1127**

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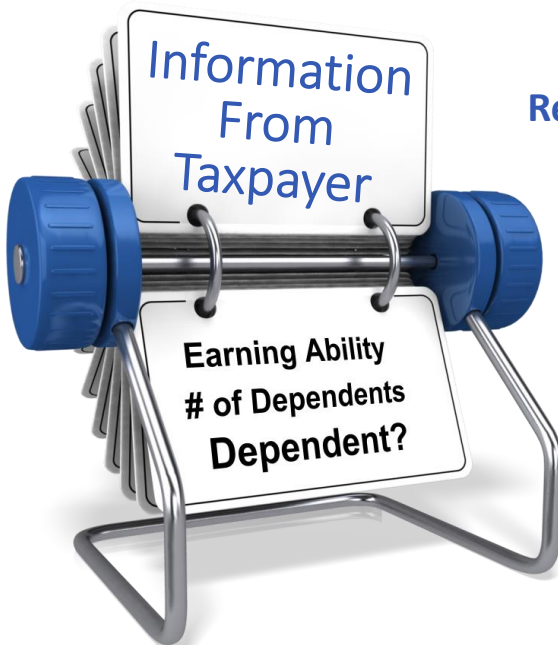


**Reg. §301.6343-1(b)(4)(ii)(A)**

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**Reg. §301.6343-1(b)(4)(ii)(A)**

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## Reasonably Necessary Expenses



**Reg. §301.6343-1(b)(4)(ii)(B)**

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## Reasonably Necessary Expenses

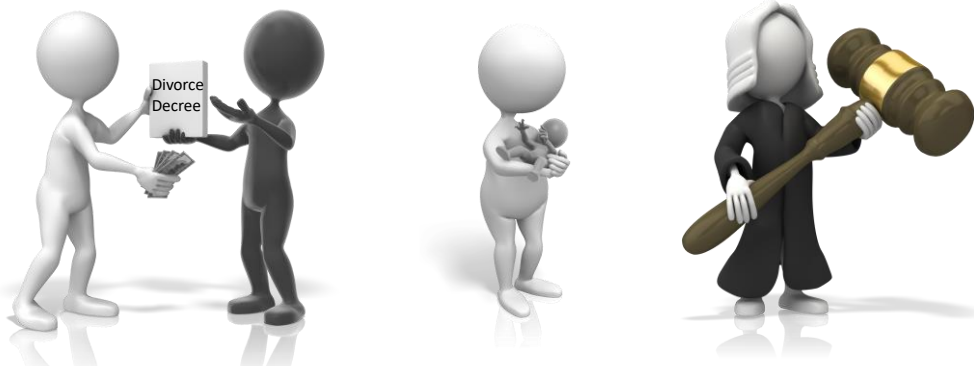


**Reg. §301.6343-1(b)(4)(ii)(B)**

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## Reasonably Necessary Expenses



**Reg. §301.6343-1(b)(4)(ii)(B)**

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## Other Considerations

**Regs. §301.6343-1(b)(4)(ii)...**



- ❖ (C) The cost of living in taxpayers' area;
- ❖ (D) Property exempt from levy;
- ❖ (E) Extraordinary circumstances; and
- ❖ (F) Other factors that the taxpayer claims bear on economic hardship.

Form 433-F or 433-A or 433-B depending in the taxpayer will generally be required. Prepare proactively to be prepared.

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# Good Faith Requirement

Reg. §301.6343-1(b)(4)(iii)



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## CNC & Economic Hardship



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## CNC & Economic Hardship

**RO or ACS can determine CNC**

- (a) Inability to locate the taxpayer or assets;**
- (b) Partial or complete expiration of the CSED;**
- (c) Death of an individual with no collection potential from the estate;**
- (d) Business entity that is inactive and defunct with no assets, or liquidated in bankruptcy; or**
- (e) Collection would create a hardship**
  - i. Leaving the taxpayer unable to meet living expenses.**

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## CNC & Economic Hardship

**Practice Tip:**

**Some representatives report that the IRS does not release a wage levy immediately upon receipt of proof that the tax is not collectible. They claim the IRS leaves the levy in place on at least one period's wages before releasing the levy.**

**IRC Sec. 6343(a)(1)(D) requires the IRS to immediately release a wage levy upon agreement with the taxpayer that the tax is currently not collectible.**

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# Non-Filer & Economic Hardship

★ **Vinatieri v. Comr., 133 T.C. 392 (2009)**

**IRS Appeals abused discretion in upholding levy after determining that taxpayer would suffer economic hardship merely because taxpayer had unfiled tax returns**

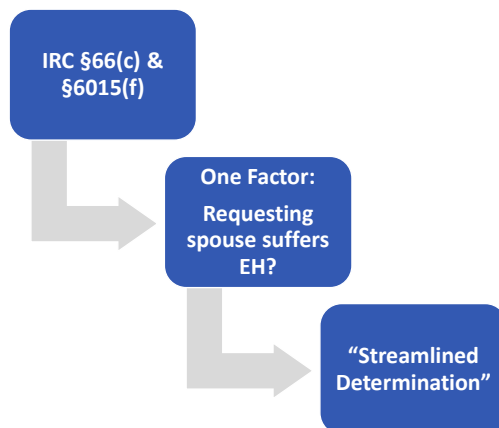


**CC-2011-005 (11/22/10)**

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# Equitable Relief & Economic Hardship



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# ETA OIC & Economic Hardship



## IRM 5.8.11.2.1

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# ETA OIC & Economic Hardship



### • Incapable of earning a living because of:

- Long-term illness, medical condition, or disability, and
- Reasonably foreseeable that the taxpayer's financial resources will be exhausted providing for condition;



- Has assets, but liquidation would render t/p unable to meet basic living expenses; and



- Has assets, but unable to borrow against equity, and seizure or sale would have sufficient adverse consequences such that enforced collection is unlikely.

## IRM 5.8.11.2.1

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## IA & Economic Hardship

NTA has criticized IRS\* approach based on liability.

NTA advised that IRS should create an algorithm to identify if a taxpayer is at risk of economic hardship throughout the collection process – similar to the algorithm that TAS uses.

\*2020 Annual Report to Congress

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## PPIA & Economic Hardship



EH caused by payment of tax through:

- Sale of property
- Borrow on Equity
  - Payment exceeds disposable income
- Use of liquid asset

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IRC Sec. 6159(a)

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## Mediation/Arbitration & Economic Hardship



- ❖ OIC and TFRP cases
- ❖ Mediation on legal & factual issues
- ❖ Arbitration on factual issues only
- ❖ EH is exception when taxpayer has ability to pay

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## Delinquent Return/Refund Hold & EH



### Conditions for EH release or partial release – proof required

- ❖ Foreclosure or eviction notice,
- ❖ Unable to meet basic living expenses, or
- ❖ Health care prepayment required

IRM 25.12.1.1

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## Payment Extension & EH

- Reasonable period up to six months
- Form 1127
  - Application for Extension of Time for Payment of Tax Due to Undue Hardship
- Income, gift, and Excise Taxes
- More than an inconvenience
  - Substantial financial loss
    - Ex. Sale of asset at sacrifice price to pay by due date

[IRC Sec. 6161\(a\)\(1\)](#)

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## Taxpayer Advocate and Economic Hardship



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## When To Use the Taxpayer Advocate Service?

If you have tried to resolve a tax problem with the IRS and are still experiencing delays **or are facing economic harm**, you may request the assistance of the Taxpayer Advocate Service. Service is available to businesses as well as individuals.

**In situations where IRS actions prevent you from providing for necessities such as housing, transportation, or food; or if you own a business and are unable to meet basic expenses such as payroll, you may request the assistance of the Taxpayer Advocate Service.**

Delay of more than 30 days to resolve a tax-related problem, or are not receiving a response by the date promised, you may also request assistance from TAS.

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## Last Ditch Effort to Resolve Unending Tax Problem

2010 form 1040 filed, MFJ, 4/15/11		
Total tax per 2010 return		\$136,000
Withholding on wages plus payment with return		84,915
Balance due upon filing		\$51,085
Add: P&I 4/15/12-12/21/21		27,910
Total due as of 12/31/2021		\$78,995
Paid by Installment Agreement 5/2012 - 12/2014	\$7,226	
Paid on pending OIC 12/2014 - 8/2015	2,250	
Paid by refund holdbacks & misc payments	12,307	
Paid by Social Security Levy 11/2018 - 12/2021	7,025	
Total payments 4/2012 - 12/2021		28,808
Remaining balance		\$50,187
Total liability was result of (H) business		
Return was MFJ		
Installment Agreement established		
IA paid until (H) into complete care facility - early onset dementia 29 payments		
(H) no income, (W) low income, no payments for 2 years - IA defaults		
(H) passes 2019		
IRS levies (W) Social Security (her only income) \$305/month		
After tolling events SOL runs out 3/07/22		
SOUNDS GREAT! COUPLE OF PAYMENTS AND DONE! RIGHT?		

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# Last Ditch Effort to Resolve Unending Tax Problem

Description	Annual	Monthly	Family size: 1	
<b>Social Security (Last 12 Months)</b>	\$ 42,000	\$ 3,500	Local: Erie Co. NYS	
<b>Living Expenses</b>			Liability	\$ 50,187
Food, etc (Nat'l Std.)	\$ 8,676	\$ 723	SOL	Till Full-Pd.
Housing			Levy*	\$ 305
Mortgage	14,400	\$ 1,200	* recently increased	
Utilities	6,000	\$ 500		
Property Tax	7,800	\$ 650		
Total housing	\$ 28,200	\$ 2,350	\$ 1,387	standard
Transportation				
Ownership	5,100	425	\$ 533	standard
Operating Exp.	2,400	200	\$ 274	standard
Total transportation	\$ 7,500	\$ 625		
Health Care				
Insurance	9,500	792		
Out-of-Pocket	960	80	\$ 68	standard
Total health care	\$ 10,460	\$ 872		Actual
Taxes				
FIT	3,500	292		Actual
FICA & Medicare	3,213	268		Actual
SWT	1,400	117		Actual
Total taxes	\$ 8,113	\$ 676		
Total living expenses	\$ 62,949	\$ 5,246		
Excess Income	\$ (20,949)	\$ (1,746)		

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# Sample EH Analysis

Description	Annual	Monthly			
<b>Earnings (Most recent 12 Months)</b>	\$ 200,000	\$ 16,667	Family size: 4		
<b>Living Expenses</b>			Local: Erie Co. NYS		
Food, etc (Nat'l Std.)	\$ 20,880	\$ 1,740	Vehicles: 2@\$500 ea.		
Housing			liability	300000	
Mortgage	24,000	\$ 2,000	SOL	3 years	
Utilities	6,000	\$ 500	levy	8333	
Property Tax	7,800	\$ 650			
Total housing	\$ 37,800	\$ 3,150	1914	standard	
Transportation					
Ownership	12,000	1,000	1066	standard	
Operating Exp.	8,000	667	548	standard	
Total transportation	\$ 20,000	\$ 1,667			
Health Care					
Insurance	16,000	1,333			
Out-of-Pocket	4,000	333			
Total health care	\$ 20,000	\$ 1,667		Actual	
Taxes					
FWT	36,000	3,000		Actual	
FICA	12,400	1,033		Actual	
Medicare	4,900	408		Actual	
SWT	8,000	667		Actual	
Total taxes	\$ 61,300	\$ 5,108			
Total living expenses	\$ 159,980	\$ 13,332			
Excess Income	\$ 40,020	\$ 3,335			
Initial levy		\$ 8,333			
Revised levy		\$ 3,335			

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HOME  
EQUITY  
\$300,000  
INCOME  
COMPONENT  
\$3335 x 36 =  
\$120,060  
NOT OIC  
CANDIDATE

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## Miscellaneous Notes

- ❖ Many 401(k) plans provide for hardship withdrawals
  - The 10% penalty generally still applies
- ❖ Funds May Be removed from an IRA to be replaced in 60 days
  - Hardship Exception §402 (c) (3) (B)
- Federally Declared Disaster
  - §274 if records are destroyed

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## Final Take-Away

**The taxpayer Bill of Rights calls for the right to a fair and just tax system that considers all the facts and circumstances that might affect a taxpayer's underlying liability.**

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