Statutory periods of limitation for collecting taxes

Present status: US there is a general 10 year period to collect taxes following assessment, subject to tolling for events that generally delay IRS ability to collect

Should be: problem is that IRS records are often erroneous when computing SOL on collection, leading to inconsistent application of rules and inadequate information given to taxpayers. This confusion is often the result of inadequate records or information pertaining to actions that taxpayers may take that can toll the SOL on collections. IRS should in fact clearly and consistently note SOL on collections on taxpayer transcripts.


Requirement of paying first before dispute resolution (“solve et repete”)

Present status: General opportunity for taxes in US subject to deficiency procedures, such as income, estate and gift taxes

Should be: There are many civil tax penalties in US that are subject to immediate assessment and collection without opportunity for court review. I will highlight how this is inconsistent with taxpayer rights, and how proposals to reform refund procedures, expand deficiency procedures or modify collection due process may ameliorate the concerns.


Availability of judicial review of agency collection actions

Present Status: From a US perspective , I will divide this into two categories

1) The ability to review affirmative agency collection/enforcement actions, and
2) The ability for a taxpayer to get court review for taxpayer’s request to an alternative to enforced collection, such as installment agreements (payment plans), compromises or temporary stay on collection due to hardship
a. With respect to review of affirmative agency enforcement, I will quickly discuss the chance to get judicial review of levy (including claims that the property does not belong to the taxpayer) and the perfecting of government’s security interest through the filing of a federal tax lien, and other affirmative collection actions, such as foreclosing on a lien and seeking a judgment.

b. With respect to ability to get court review of alternatives to enforced collection, I can quickly describe CDP and how in some circumstances taxpayers can get judicial review of agency denials of alternatives to enforced collection.

Should be: I will discuss how at times IRS policies or practices minimize theoretical protections, such as a failure to publicize alternatives to enforced collections or the decision to effectively cut out judicial review of decisions to take seize personal residences. I will discuss simple ways IRS can minimize these harms, including through highlighting all collection alternatives and when the government is required to get court approval and when at any time government seeks to seize a principal residence, taxpayers should have the opportunity to bring additional arguments against the seizure of the principal residence, such as showing cause as to why the residence should not be seized and demonstrating that the underlying tax liability has been satisfied, that the taxpayer has other assets from which the liability can be satisfied, or that the IRS did not follow applicable laws or procedures.


**Availability of damages for agency overreach**

Present status: I can discuss how the Internal Revenue Code allows for taxpayers to seek damages for agency misconduct pertaining to the failure to release a lien or in connection with a collection action if an IRS employee intentionally, recklessly or negligently disregards the statute or regulations.

Should be: The courts have very narrowly defined collection action for these purposes, effectively insulating agency misconduct in connection with administrative reviews of IRS collection action.

Under IRC § 7433(d)(3) and Treasury Regulation § 301.7433-1(g)(2), a taxpayer must bring a the suit within two years from the date on which the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action. Taxpayers must also file an administrative claim and generally wait at least six months before bringing suit. Time period to bring a lawsuit against the government may not adequately allow taxpayers the opportunity to resolve matters administratively. See National Taxpayer Advocate, Extend the Time Limit for Taxpayers to Sue for Damages for Improper Collection Action, 2021 Purple Book, available at https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_PurpleBook_03_ImproveAssmtCollect_24.pdf