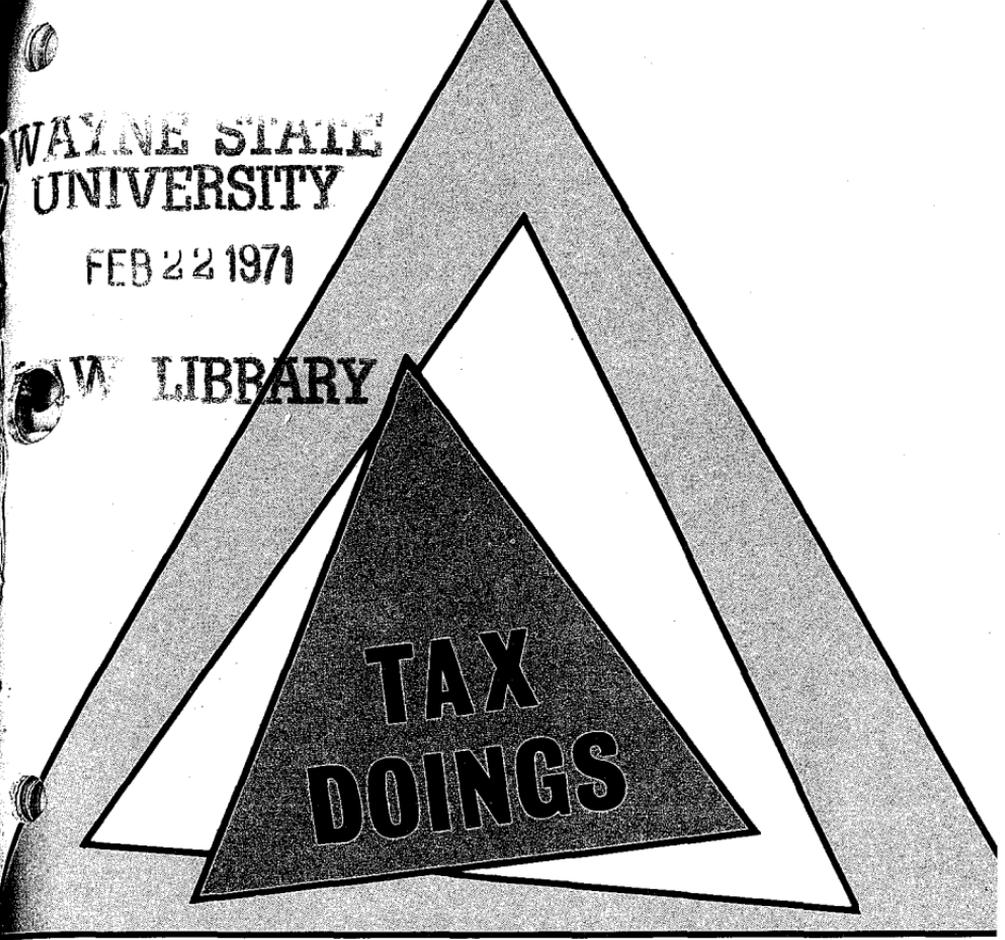


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**TAX  
DOINGS**

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DECEMBER, 1970 ISSUE

## TAX DOINGS

EDITOR ..... I. John Snider II

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## **STATEMENT OF THE EDITOR**

This first edition of the 1970-1971 "Tax Doings," contains the major portion of the minutes of the meeting of the Internal Revenue Service officials and the Bar Association Liaison Group. As noted in the text, some portions have been excised because of the length of the text and will be appearing in the next edition.

Most of the tax practitioners agree that the material which appears in these minutes is of real value in working with the Internal Revenue Service. In order for this relationship of the Internal Revenue Service officials and the Bar Association Liaison Group to be meaningful, the Bar must be willing to raise any problems with the officials. For this reason, should you have any problems in your practice which could possibly be brought to the attention of the Central Region officials for solution, you should feel free to pass these on either to the editor or a member of the Council of the Taxation Section. Even matters which might seem insignificant, but which are causing problems, should be passed on for discussion and resolution.

The Editor

## **MINUTES OF MEETING BAR ASSOCIATION LIAISON GROUP AND CENTRAL REGION INTERNAL REVENUE SERVICE OFFICIALS HELD NOVEMBER 18, 1970 AT CINCINNATI, OHIO**

### **I. INTRODUCTORY REMARKS**

Mr. Alan R. Vogeler, Chairman, Bar Association Liaison Group, welcomed the participants and announced that Robert E. Johnson of Indiana State Bar Association had been selected Chairman for the ensuing year. Mr. Vogeler indicated that the meeting should be conducted in an atmosphere of "all working together for the betterment of the Service." Mr. Charles G. Keebler, Regional Commissioner, expressed agreement with this concept and stated that he looked upon the meetings as a means of helping IRS improve and keeping each other informed of problems and shortcomings. He also stated that he

hoped the minutes of these meetings will be disseminated to all bar association members.

## II. ORGANIZATIONAL STRUCTURE OF THE INTERNAL REVENUE SERVICE

The Bar representatives solicited comments from IRS officials with respect to recommendations understood to have been made to the Commissioner that the number of IRS regions be reduced and that the Central Region might be affected. Mr. Keebler stated that a study had been made as to whether IRS is most effectively organized to administer our nation's tax system, but that he was not in a position to discuss any recommendations.

Bar representatives stated they were unanimously opposed to any proposal to reduce the number of regions and that the reaction of Bar Association groups should be invited if such organizational changes are contemplated.

III. Editor's Note: This material, because of length, will appear in the next issue.

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## V. INTERNAL REVENUE'S TREATMENT OF ISSUES WHERE THERE IS A CONFLICT BETWEEN TAX COURT AND CIRCUIT COURT OPINIONS

Mr. Clarence E. Price, Regional Counsel, in discussing this topic, illustrated the change in Tax Court policy with respect to Circuit Court reversals by referring to the cases of *Arthur L. Lawrence*, 27 TC 713; *Jack E. Golsen*, 54 TC—No. 10, and *Oddie Smith*, 55 TC—No. 26.

The Tax Court in *Lawrence* in discussing its role as a tribunal of National jurisdiction and obligation to uniformly apply its interpretation of Federal Taxing Statutes, emphasized past policy of not necessarily adopting the views of the Circuit Court of Appeals when considering an issue where it had previously been reversed by the Circuit. The Tax Court indicated that while it would reconsider its prior position in light of the Circuit Court's reversal it would not change its position, if believed correct, until a decision was entered by the United States Supreme Court.

In *Golsen*, the Tax Court stated it would no longer follow its "national law" view, but would accept the view of a Circuit Court of Appeals decision squarely in point where the appeal from its findings would be to that court.

In *Smith*, the Tax Court followed the views of the Fifth Circuit, the controlling circuit, even though the Tax Court expressed agreement with the contra views of the Seventh Circuit.

Mr. Price stated that they will not force taxpayers to litigate where the controlling Circuit has held adversely to the Government on an all fours issue. He stated that such circumstance would be treated as a "litigation hazard." He emphasized, however, that this probably would not directly effect Audit Division activity since they have the duty of administering the taxing statutes on a nationwide uniform basis.

In response to queries, it was indicated that the offices of ARC (Audit) and Regional Counsel will look into the possibility of "weeding out" this type issue before it reaches Regional Counsel jurisdiction.

Mr. Price referred to the Internal Revenue Service's position on this matter as published in the tax services. See Vol. 6 CCH par. 5876A.017. He stated that the Chief Counsel's Office had been considering this problem recently and is considering modifying the position as outlined by the Chief Counsel in 1957 and published in the above-referred-to CCH publication. Mr. Price stated that he was recently talking to Mr. Worthy, the Chief Counsel, and Mr. Worthy was desirous of having comments from practicing lawyers concerning how this matter could be further clarified by his office. Mr. Price stated that he would be happy to refer any of the comments of the individual attorneys present at the meeting to the attention of the Chief Counsel.

In connection with the effect of the circuit court opinions, the cases of *Scudder*, *Sharwell* and *Huelsman* were referred to. [*Scudder v. Commissioner*, 405 F. 2d 222 (C.A. 6, 1968), reversing 48 T.C. 36 (1967); *Sharwell v. Commissioner*, 419 F. 2d 1057 (C.A. 6, 1969), reversing a Memorandum Opinion of the Tax Court; *Huelsman v. Commissioner*, 416 F. 2d 477 (C.A. 6, 1969), remanding T.C. Memo. 1968-95.] It was stated that the Chief Counsel's Office is considering possibly having a position in the Sixth Circuit in the area covered by the above cases different from that taken in other circuits. Mr. Don Alexander and Mr. Les Ponder commented concerning legislation that is now in process affecting the issues covered in the above cases.

**VI. Editor's Note: This material, because of length, will appear in the next issue.**

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## VIII. AUTHORITY OF REVENUE AGENTS TO DECIDE ISSUES

The agent must follow the Internal Revenue Code and Regulations and the position of the Service as evidenced by published rules and decisions with which the Commissioner has acquiesced. Within this framework he is expected to equitably resolve issues to the best of his ability.

The fact that the majority of tax problems are resolved before they move beyond the administrative level of Internal Revenue is an indication of the general adequacy of appeal remedies available in most cases:

- of course, at each administrative level there are some limitations upon what may be resolved;
- the problem here is to move matters expeditiously to the appropriate level for disposition; because if any level exceeds its proper authority or area of jurisdiction, it may do serious disservice to the taxpayer or the IRS or both.

A revenue agent, for instance, is not empowered to dispose of questions of law which are not clearly answered in legal precedents as equally accessible to the taxpayer and his counsel as to the agent himself:

- some practitioners have noted, and correctly so, that a revenue agent takes the position of being a fact finder. This is not necessarily because the agent desires to avoid questions of law but because his discretionary power to deal with such questions is restricted to those specifics where legal precedent or Internal Revenue position is clearly established.
- beyond that point he may not venture without invoking a challenge either by the taxpayer; by succeeding review and appellate levels of IRS, or the courts themselves.
- what could be misconstrued as a tendency for the agent to find against the taxpayer and “send the case upstairs” is more likely to be a matter of the agent’s recognition of his obligation to move cases to a level authorized to dispose of them.

In the overwhelming majority of cases, the taxpayer and the Revenue Service arrive at a mutually acceptable tax liability, without resort to long, drawn-out appeals, and without resort to the courts:

- this is no accident;
- by conscious design the IRS seeks to dispose of tax controversies early, simply and, in any event, administratively rather than through litigation;

— indeed, the revenue agent himself is encouraged to dispose of cases during the examination. His performance is evaluated, in part, on his ability to convince the taxpayer of the validity of his findings. Thus, attempt is made to keep disputes from ever getting into the pipeline in the first place.

Our experience has shown that the vast majority of the tax controversies can be, and are, settled if the taxpayer and the Government are brought together early, given the opportunity to present their respective points of view, and discuss their differences in an atmosphere of mutual understanding and respect. This is what IRS attempts to do under present administrative appeals program.

Any appeals system must provide three things:

- (1) it must assure an equitable disposition of each case;
- (2) it must assure constant and uniform treatment of issues and persons; and
- (3) it must be accessible in the sense of being readily available and convenient to use.

**IX. Editor's Note:** This material, because of length, will appear in the next issue.

## **X. DATA PROCESSING**

### **A. Who to Talk to in Case of Error**

Many cities have Taxpayer Service Representatives (TSR's) in their local Internal Revenue Service Office—the Central Region has approximately 123 Representatives who are especially trained to explain the various filing and payment provisions of the Code, and to act as a resolution or referral point for any tax problem. TSR's may be reached by dialing the Internal Revenue Service listing of the local telephone directory. In larger cities, this listing is usually "Federal Tax Information and Assistance"—eventually, it is hoped to have this listing, or a similar one, standardized to all cities having Taxpayer Service Representatives.

A handout was distributed showing the cities in which TSR's are located. This handout is attached as Exhibit B.

### **B. Report on Carryover Items**

Minutes of the November 12, 1969 meeting at Cleveland were reviewed for matters that may have remained unresolved or warranting additional discussion. Two were identified.

#### **1. Failure of IRS Personnel to Observe Existence of Power of Attorney**

Powers of attorney are processed in accordance with existing in-

structions by Service Center personnel who have in some instances overlooked them, primarily because they are often "buried" with attachments to the return. To eliminate this problem, the power of attorney should be attached to front of return. Power of attorney forms are available as a convenience, but their use is not mandatory. Form 2828, Power of Attorney, Form 2828D, Authorization and Declaration, and instructions for their use were distributed. The Power of Attorney or Authorization can take other forms and there are no formal rules that govern their preparation. However, the instrument should clearly express the scope of the authority granted the third party and specify the tax matter and taxable years or periods to which it relates.

## **2. Receipt Stamping of Returns and Other Documents**

The receipt of returns and remittances, other than cash, may be acknowledged on duplicates of transmittal letters prepared by taxpayers or their representatives when such acknowledgements are requested. The *carbon copy* of a single return may be stamped "Received" to acknowledge that the original was filed. To avoid any misunderstanding, IRS employees will be so reminded.

## **C. Situations Which Can Cause IRS Processing Problems and Taxpayer Concerns**

### **1. Sending IRS One Remittance Covering More Than One Type Tax Liability**

Workflows for different classes of tax liabilities (i.e., income, excise, employment) take different directions and there is always the danger of error when payments are split and applied to different liabilities.

Result—erroneous bills due to error or delay in getting the remittance correctly credited.

How to alleviate—submit separate remittances for payment of each class of tax.

### **2. Failure to Enclose Remittance with Tax Return**

Some taxpayers forget to enclose remittance with their tax return and submit it several days later with the thought that IRS can readily associate the return and remittance.

The return and remittance cannot be readily associated. Normally the return will be processed in a without remittance condition and the remittance processed separately.

Result—a bill will be issued in one cycle (week) and credit will post in subsequent cycle.

How to alleviate—double check for assurance that remittances are enclosed with returns.

### 3. Failure to Identify Remittances

Some taxpayers send remittances without furnishing sufficient identification to permit prompt and proper crediting of their account.

Result—additional notices may be generated before identification and application of credit and a levy could be served before credit advice is generated on a delinquent account.

How to alleviate—include on or with all remittances the social security or employer identification number, the class of tax (i.e., income, excise, employment) and period covered by the payment.

### 4. Undelivered Refund Checks

a. Where taxpayers are entitled to a refund and their check is undelivered at the address of record, it is returned to IRS and the amount held pending receipt of a current address. Nationally approximately 250 thousand checks were returned undelivered in 1969.

b. Taxpayers sometimes advise they failed to receive their refund and IRS records show the refund was mailed and *NOT* returned as undelivered.

Result—taxpayer will be requested to complete a Statement of Non-Receipt which IRS will forward to Bureau of Disbursements for investigation. The investigation, which can be lengthy, is outside the control of IRS.

How to alleviate—a and b—keep IRS and Post Office informed of address changes.

### 5. Processing Errors

During IRS processing operations remittances sometimes become (1) detached from the return or the document identifying the purpose of the remittance, or (2) IRS employees fail to extract remittance from the envelope.

Result—erroneous bills may be generated until the remittance is properly credited, and taxpayers may be contacted for information necessary to trace the payment.

How to alleviate—taxpayers who receive a bill for tax which they have paid should be governed by the instructions appearing on the reverse of the bill, and if payment was made within last four weeks difference between payment and amount shown on bill should be submitted.

If payment was made more than four weeks ago, difference between payment and amount shown on bill should be submitted *AND in addition*, information should be furnished regarding payment as requested on the bill.

## 6. Taxpayers Filing Duplicate Returns

Taxpayers occasionally file more than one tax return for the same taxable period. Most situations are simply an erroneous handling of an otherwise bona fide situation. For example:

Taxpayers mistakenly file a separate return for each withholding statement (W-2) received; file duplicate returns to correct filing errors on the original return; or spouses file separately and subsequently file a joint return since it was determined to have been to their advantage.

Result—the computer will identify these duplicate filing conditions and generate an IRS examination to resolve the condition. Delays will be encountered in processing the second return since it will require association with the initial return for review and further processing purposes.

How to alleviate—taxpayers should be sure all W-2's have been received before preparation of their return(s). Married taxpayers should, before filing, compute their returns by both the joint method and the separate method to determine the best benefit to them.

Taxpayers should always file Form 1040X, (Amended U. S. Individual Income Tax Return) to amend previously submitted returns in lieu of filing a regular Form 1040 return marked "amended."

## D. Common Errors on Individual Income Tax Returns

Approximately 11% of the individual Income Tax Returns filed in the Central Region during the 1970 filing period contained errors which resulted in the returns being diverted from the regular work flow for perfection. This diversion not only delays the processing of the returns, but in most instances necessitates a contact with the taxpayer.

If preparers of returns are alert to the following common errors, processing delays and taxpayer contacts can be avoided.

(Number of error returns identified in the Central Region during 1970 filing period are shown in parentheses.)

### 1. Omitted, Incomplete or Erroneous SSN's (165,000)

Exact taxpayer identification is extremely important to assure the accuracy of the IRS Master File system. The system cannot be administered without social security numbers and problems arise when they are either not furnished or are written incorrectly.

Omissions and errors have been found to occur when transcribing information from a "work copy" return to the original return.

The 1970 return package mailed to taxpayers will have a gummed label (shows name, address, city, state, ZIP Code and SSN's) on the front sheet of each package. Placing of this label on the return

to be filed will assist greatly in processing endeavors. Incorrect information on the label should be corrected.

When change in name occurs (single to married status), Social Security should be advised. Form OAAAN-7003, Request for Change in Social Security Records, is available at local offices of Social Security. Failure to advise SSA of name change will delay the processing of the return and create problems particularly in identifying and applying ES credits paid under one name and claimed under another name on the return.

In summary, the Master File contains specific names and Social Security numbers that have been verified with Social Security records. Any changes between the names and SSN's without notification to SSA will create delays when returns are processed.

## **2. Missing Signature (55,000)**

Separate returns must be signed by the taxpayer and joint returns must be signed by both the husband and wife.

Refund returns without a signature will be returned to the taxpayer(s) for proper signature(s).

## **3. Missing Documents, Schedules or Statements (110,000)**

Those which most frequently cause processing delay and taxpayer contact are:

- a. Forms supporting items reported on the return:
  - W-2's—for earnings and tax withheld
  - 4136—for gas tax credit
  - 2439—for regulated investment credit
  - 2440—for sick pay exclusion
- b. Attachments used to list items of income or deduction.
- c. Documentary evidence required or helpful with decedent return.

(1) Form 1310, Statement of Claimant, must be attached to refund returns if no legal representative is to be appointed and if there is no survivor spouse.

(2) Decedent refund returns, filed by an administrator or executor or surviving spouse, do not necessitate Form 1310 but must, nevertheless, reflect the date of death. This date may be shown in the "Occupation Box" on page 1, Form 1040.

(3) If return is *other than a refund return*, no documentary evidence concerning the death need be furnished.

(4) Inserting the word "deceased" following taxpayer's name will assist in processing, i.e., John Doe (deceased) and Mary Doe, in the case of a joint return; or John Doe (deceased) in the case of a single or separate return.

(5) Name and address of legal representative should appear on the return, typed or printed. This may be shown in the address caption area or in the space at the bottom right of Page 1, Form 1040.

d. Schedules used to support details of income.

Schedule E—Pensions and annuities, rents and royalties, partnerships, estates or trusts.

Schedule D—Sales or Exchange of Property.

Schedule F—Schedule of farm income and expenses.

Schedule C—Profit (or loss) from business or profession.

4. **Math Errors (330,000) and Use of Wrong Tax Table, Line or Column (550,000)**

One of the principal benefits of computer processing of returns, to taxpayers and the Government alike, is verification of the taxpayer's arithmetic. IRS corrects errors that the taxpayer makes against himself as well as those he makes against the Government. In 1969, about 8% of individual income tax returns filed contained errors.

Nationally, tax increases from these errors totaled \$315.1 million and tax decreases totaled \$140.2 million resulting in a net tax increase of \$174.9 million. Common mistakes detected are errors in addition, subtraction, use of wrong tax tables, line or column, and errors in transcribing amounts from associated schedules to the basic return.

Care should be taken in comparing the work copy of the return with the return to be mailed to IRS because in several instances it was eventually discovered that the return retained by the taxpayer was correct, but that figures had been transposed when preparing the return mailed to IRS. Such occurrences create considerable confusion when a taxpayer receives a bill or refund greater or less than expected and is unable to reconcile the adjustment made against the figures appearing on his work copy.

A revised format of 1970 tax tables for persons with income under \$10,000 who do not itemize deductions, was distributed. It is hoped this will reduce errors in using the wrong tax table.

## E. New Developments

### 1. Integrated Data Retrieval System

One of the mainstays of IRS efforts to keep on top of correspondence and adjustments will be the IDRS. Under IDRS all major IRS offices will have immediate access to an extremely broad and current data base with which to answer taxpayer inquiries. Questions about taxpayer's record can normally be handled while he is on the phone or at the counter. Payments will be immediately posted to delinquent accounts. Collection personnel will have the means to

insure current accuracy of information before initiating enforcement action. Poorly or improperly identified remittances will be associated with the proper taxpayer accounts. This will prevent issuance of notices and demands to taxpayers who have already made payment. Many manual controls will be eliminated in favor of computer monitoring. Taxpayers granted a part payment agreement or military deferment will not be subject to unwarranted collection action. IRS district, regional, and national managers will have access to a data base which will provide answers to size, location, and age of unpaid delinquent taxes or returns, correspondence or adjustments in process and other workloads that may need action. Untold psychological benefits will flow to the Tax Administration Program by emphasizing taxpayer service.

## **2. New Employers' Quarterly Federal Tax Return**

A new Employers' Quarterly Tax Return, Form 941E, has been designed for employers who are not liable for FICA taxes. This new return will be used primarily by state and local government agencies and by entities exempt under Internal Revenue Code, Sec. 501(c)(3).

During October, the Service Center mailed approximately 12,000 notices to involved taxpayers of this region, advising them of 941E. These notices also advised taxpayers that the simplified 941E returns would be mailed in March of 1971, for use in reporting the first quarter of 1971 and each quarter thereafter.

## **3. Amended U. S. Corporation Income Tax Return**

For the convenience of taxpayers, Form 1120X has been designed for use by corporations to correct an income tax return that was previously filed on Form 1120, or later adjusted by an amended return, claim for refund, or an examination of the original return.

Although Form 1120X is not mandatory, IRS prefers that it be used rather than Form 1120 or Form 843 since it is designed to expedite processing. This form is not to be used in lieu of Form 1139 (Corporation Application for Tentative Refund from Carryback of Net Operating Loss and Unused Investment Credit) or Form 4466 (Corporation Application for Quick Refund of Overpayment of Estimated Tax.)

A copy of the Form 1120X was distributed to the group.

## **4. Activation of Three New Service Centers**

The construction of three new Service Centers by 1973 will result in ten IRS Centers operating in a seven region configuration. New centers at Fresno, California, and Memphis, Tennessee, should be available in 1972, and a new center in Suffolk County, Long Island, New York, should be ready in 1973.

Our Cincinnati, Cleveland, and Detroit Districts will continue to utilize the Covington Center; however, present plans are for the Indianapolis, Louisville, and Parkersburg Districts to eventually operate in conjunction with the new Memphis Center.

#### F. Extensions of Time for Filing

A subject of perennial interest to tax practitioners is the matter of extensions of time for filing individual income tax returns.

It is the policy of IRS to grant reasonable extensions on the basis of timely filed applications which establish that the extension is warranted. In carrying out this policy, field offices have been instructed to give consideration to circumstances in which the taxpayer's representative is unable, for reasons beyond his control, to complete the tax return for filing by the due date.

The overriding interest of IRS is to administer the extension provisions of the law as equitably and reasonably as possible. The number of complaints received is negligible when considered with the somewhat subjective nature of the extension determination made by IRS offices throughout the country involving shading of facts and circumstances.

This is the bright side of the picture. There is a darker side, however.

Instructions to field offices have provided sufficient flexibility to accommodate all reasonable and legitimate extension requests based on the tax practitioner's workload. There is reason to believe, however, that some practitioners may be taking undue advantage of the extension privilege, and of IRS policy related to the practitioner's workload. A few of the statistics may help make this point:

1. In 1969 the Service received nearly 800,000 extension applications—25% more than in 1968; and almost double the number received five years ago.
2. In one large city, two-thirds of the extension requests received were made by tax practitioners—about ½ of these came from 4% of the practitioners.

One should not conclude that tax practitioners generally are going too far and applying for extensions without good and sufficient reasons. The statistics indicate, however, that some practitioners may be playing a disproportionate role in the situation and IRS is looking into the propriety of their requests.

Practitioner cooperation is solicited in applying for extensions only when, for reasons beyond their control, they are unable to complete the tax return for filing by the due date.

**LOCATIONS SERVED BY TAXPAYER SERVICE REPRESENTATIVES**

**— Cincinnati District —**

*Full Time Service*

Cincinnati  
Columbus  
Dayton

*\*Less Than Full Time Service*

Chillicothe  
Hamilton  
Lancaster  
Marion  
Middletown  
Newark  
Springfield  
Troy  
Wilmington  
Zanesville

Benton Harbor  
Dearborn  
Detroit  
Flint  
Grand Rapids  
Highland Park

Lansing  
Marquette  
Mount Clemens  
Muskegon  
Pontiac  
Saginaw

**— Indianapolis District —**

*Full Time Service*

Evansville  
Fort Wayne  
Gary  
Hammond  
Indianapolis  
Lafayette  
Muncie  
New Albany  
South Bend  
Terre Haute

*\*Less Than Full Time Service*

Anderson  
Kokomo  
Marion

**— Cleveland District —**

*Full Time Service*

Akron  
Canton  
Cleveland  
Cleveland East  
Lima  
Lorain  
Mansfield  
Steubenville  
Toledo  
Warren  
Youngstown

*\*Less Than Full Time Service*

Defiance  
Dover  
East Liverpool  
Findlay  
Sandusky  
Tiffin  
Wooster

**— Louisville District —**

*Full Time Service (No Locations With Less Than Full Time Service)*

Covington  
Lexington  
Louisville  
Paducah

**— Parkersburg District —**

*Full Time Service*

Charleston  
Huntington  
Jackson  
Parkersburg  
Wheeling

*\*Less Than Full Time Service*

Clarksburg  
Fairmont  
Morgantown

**— Detroit District —**

*Full Time Service (No Locations With Less Than Full Time Service)*

Ann Arbor  
Battle Creek

Jackson  
Kalamazoo

\*Offices are usually served by representatives at least one day a week—the nearest full time service office advise of exact days for those offices providing less than full time service.