***Understanding Collection***
(edited transcript)

*[Applause]*

*Darren Guillot:* Good morning and good afternoon. My name is Darren Guillot. I'm the director of IRS Field Collection Operations. I lead the operation that is staffed by our nation's Internal Revenue officers. How many of you have worked with a Revenue officer before? Almost everybody, good and I guess that's why you're here. Today I wanna talk about some of some of the latest news in collection and I also hope to leave you with a better understanding of who we are and what we do.

Specifically today we're gonna talk about the FAST Act.

*Darren Guillot:* We're gonna talk about some options you have to resolving collection issues. We're gonna discuss what you can expect when you're working with a Revenue officer. We're also gonna talk about employment taxes and then, if we have some time we'll – and then I think we will have some time, I'll – take your questions.

So let me take a little bit deeper exploration of the topics we're gonna talk about today. With regard to the FAST Act, we're gonna talk about two aspects of it: Passports and private debt collection. With regard to options you have in collection, we're going to talk about Installment Agreements and offers in compromise but, in addition, I'm gonna explain the federal tax lien a little bit more and talk about options you have with regard to a federal tax lien and employment tax compliance, why is it so important? Why does the IRS continue to talk so much about employment taxes and employment tax compliance?

*Darren Guillot:* And then I'll talk about things that you should be expecting when you work with one of my employees, the Revenue officer, out in the field, what you should be able to expect and what you shouldn't see
so to keep things moving along; let's talk about the FAST Act and the passport legislation in particular. So fixing America's Surface Transportation Act with the FAST Act was passed and enacted into law in December of 2015. It's Section 32101 of that act. That act requires the denial and it authorizes either the revocation or the

limitation of passports of taxpayers that have been certified to the Department of State as having a seriously delinquent tax debt. So how do you define a seriously delinquent tax debt?

*Darren Guillot:* A seriously delinquent tax debt is one that is unpaid, it's legally enforceable – a legally enforceable federal tax liability – of an individual -- that's important – not a business – of an individual -- that is assessed, it's greater than $50000.00 and for which a notice of federal tax lien has been filed and your rights to a Collection Due Process hearing with the IRS Office of Appeals with regard to that lien has either been exhausted or expired or a Notice of Levy has been issued, a rather lengthy definition but I hope I do so clearly for you. A seriously delinquent tax debt does not include any liability that's being timely paid under the terms of an installment or an Offer in Compromise. It doesn't include those situations where collection's been suspended because the taxpayer has requested or has a pending collection due process hearing before the IRS Office Appeals.

*Darren Guillot:* It also doesn't include those liabilities where collection has been suspended because the taxpayer has either elected or requested innocent spouse relief and it won't involve taxpayers, individuals who are in a combat zone. In those situations the certification will be delayed while the individual is in a combat zone. There may be some additional exclusions over time and if and when that happens those will be added to the Internal Revenue Manual, which you can access to irs.gov and other sources. Now the IRS is working with the Department of State, which oversees the passport program and we're developing a secure data exchange so that we can make this certification, share this information with them. You just heard about information security in another presentation here at the Tax Forum today. The security of your information is probably one of our highest concerns at the Internal Revenue Service.

*Darren Guillot:* So as we work with the Department of State on how to securely transfer this data, we wanna make sure that it's air-tight. Let me talk about who does what so that we're specific about the IRS's role and the State Department's role in executing this law. The IRS will notify the Department of State of taxpayers with a seriously delinquent tax debt. The Department of State will generally not issue a new passport to a taxpayer or renew a passport after receiving that notification. The IRS is required to send a notice to the taxpayer at the same time we send the notice to the Department of State certifying that they have a seriously delinquent tax liability.

*Darren Guillot:* In addition the Department of State will issue a letter to the taxpayer letting them know that they've been certified and also avail them to an opportunity to resolve the tax liability for up to 90 days. If the taxpayer has a valid passport – I also wanna share this, if they already have a valid passport – the Department of State may revoke that passport or limit the taxpayer's travel or return to the United States after getting the certification. Now what recourse does the taxpayer have? You do have recourse in the law. The legislation allows the taxpayer to bring civil action against the United States in either the US Tax Court or district court if they believe the certification that we sent the State Department is erroneous or the IRS failed to reverse the certification when it's required to do so, so let me talk about the reversal first.

When are we required to reverse that certification?

*Darren Guillot:* When a taxpayer fully pays the amount of the tax they owe, when the taxpayer makes alternative payment arrangements with us through an Approved Installment Agreement or an Offer in Compromise. If the taxpayer requests a Collection Due Process hearing under Section 6330, that's the Due Process Hearing you get when we warn you of Intent to Levy, Final Notice, and your right to a hearing of if the taxpayer makes an Innocent Spouse Election or requests Innocent Spouse Relief. In those situations, we should be reversing that certification. Now what about any wrongdoing? Now what about an Erroneous Certification? If you believe the certification was erroneous, we will notify the State Department as soon as it's practical but one important aspect of Erroneous Certification, a question that comes up frequently I wanna be clear about.

*Darren Guillot:* If the IRS filed a tax return on your behalf, under Section 6020(b), the Substitute for Return Procedures, you didn't voluntarily file the return, we tried to get you to file the return so we filed it for you that is a valid, legally-enforceable tax liability for purposes of this certification to the Department of State up to and until the time that you file an Amended Tax Return and it's processed, so an added sense of urgency about filing all legally-required tax returns. The IRS is gonna notify the taxpayer by a letter at the time we notify the Department of State about this reversal. Now this process I just described is not in place yet. We're working with the State Department now and we're going to have this law implemented in executing this as soon as it's possibly feasible but right now we wanna make sure we've got the Secure Data Transfer and things like that.

*Darren Guillot:* Let's talk now about another aspect of the FAST Act, private debt collection. It's covered in Section 32-102. The law requires the IRS to use private collection agencies for the collection of accounts where the taxpayer owes money but we are no longer actively working the case so the case is going to the private collection agencies or the types of cases the IRS has not been working anyway. Immediately after the president had signed the FAST Act into law, the IRS began initial preparations for the Private Debt Program. For instance in February of 2016, we met with bidders.

We had a conference with them because we wanted to get an external perspective about how to implement this program and carry it out in a way that made sense and we didn't wanna just operate within our own bubble at the IRS, we wanted to hear from people in the collection, in the private-collection realm.

*Darren Guillot:* In September of 2016 the IRS awarded contracts to the following: CBE Group, ConServe, Performant and Pioneer. So I talked about inactive accounts. These are the ones that they'll work. Let me give you 3 examples of the cases that these 4 private collection agencies will work. Accounts that have been removed from active IRS inventory because of a lack of resources or we can't locate the taxpayer.

When more than a third of the collection attached to expiration date, which is generally 10 years, is already expired and the case has not been assigned to an IRS employee for collection and finally when 365 days – a year – has elapsed without the taxpayer or any third-party interaction with us to try and collect the debt.

*Darren Guillot:* The private collection agency is gonna work with the taxpayer or their representative, if they've hired one of you to represent them, to help 'em resolve the unpaid account and the IRS is going to share a sufficient amount of information through a secure data transfer so that they have enough information to help you resolve that account. Now private collection agencies can set up and monitor payment arrangements with the taxpayer where the tax can be paid, in-full, within five years, okay, or the expiration date of the collection statute, whichever is shorter. Arrangements that exceed that five-year mark up to seven years require IRS approval. Now if the statute is gonna expire in six-and-a-half years then you only have up to six-and-a-half years to work out that payment arrangement with them.

*Darren Guillot:* We refer to these arrangements not as Installment Agreements. We refer to these arrangements as PCA – private collection agency – payment arrangements and here's the good news:  There's no user fee. There's no cost at all to set up this payment arrangement with the private collection agencies. More good news:  They won't collect any financial information so my Revenue officers, most of you I've worked with, you're familiar with the financial, the investigative interviews, the Form 433~~0~~(a), information about your income, your amounts in your bank account, where your assets are, how much equity you have in your home, *et cetera*, those probative interviews. That will not happen with a private collection agency.

They will not collect any of that information. In addition the private collection agencies can't take any type of enforcement action. They can't issue a levy for instance and they can't follow Notice of Federal Tax Lien and they don't report you to a credit bureau.

*Darren Guillot:* The private – so it won't show up on your credit report that they send in. The private collection agencies also cannot make a determination to either accept or reject an Offer in Compromise or determine that you're currently not collectable for hardship. The follow types of accounts are not going to be assigned to these private collection agencies. It's a lengthy list so bear with me as I read through it. We will not send accounts to private collection agencies if you are deceased, if you are under the age of 18, if you're in a designated combat zone, if you're a victim of tax-related identity theft, if you're currently under examination or criminal investigation or you're involved in litigation or if you're subject to a levy.

We will also not send your account to them if you're subject to a pending or active Offer in Compromise or an Installment Agreement, if you're subject to a Right of Appeal with the IRS Office of Appeals, if you're classified as an innocent spouse or any taxpayers that in presidentially-declared disaster areas requesting relief from collection.

*Darren Guillot:* The IRS is not gonna assign any of our accounts that have been classified as currently not collectable to the private collection agencies because we don't consider this part of our potentially-collectible inventory. Taxpayers working with a collection agency, a private collection agency have all the same rights as working with the IRS. They have to. They will identify themselves as contractors of the IRS. They have to be courteous and respectful. Those employees of the private collection agencies must follow the provisions of the Fair Debt Collection Practices act and also Section 6340 of the Internal Revenue Code, the Fair Tax Collection Practices to the extent that those supersede the Fair Debt Collection Practices Act.

*Darren Guillot:* I wanna make this point clear, too. Generally speaking once we assigned your account to a private collection agency, you're gonna work with the private collection agency. If you contact the IRS and say, "We want our account worked by one of Darren's Revenue officers or by ACS," we're gonna redirect you back to the private collection agency, however one of the provisions of the Fair Debt collection Practices Act is that if you really don't wanna work with that private collection agency, you can write a letter to the private collection agency asking them to cease contact, in which they send that case back to the IRS. We're gonna do everything we can to avoid any confusion. What do I mean by confusion?

How do the scammers or people who pretend to be the IRS do their work? They use the phone; they use notices, don't they? They make those notices look an awful lot like some of our notices.

*Darren Guillot:* They're really good at what they do so the security of your information is really, really important to us so what did we do? We're gonna send a notice to the taxpayer to let them know we have given your account to a private collection agency. On top of that the private collection agency is also gonna send the taxpayer a notice: Hey we're one of these four private collection agencies and we now have your account. The letter is gonna have a Taxpayer Authentic Number on it. Why is there?

It's a ten-digit number. It's for the purposes of a really smart two-party verification process, almost something right out of a James Bond novel. So there's gonna be a ten-digit number and when you call the private collection agency, the private collection agency is gonna announce the first five numbers that you're looking at.

*Darren Guillot:* And then you, the taxpayer or their representative, you will give the subsequent five numbers to make sure you're really working with the authorized private collection agency on behalf of the IRS. The assigned private collection agency's name, phone number and address is also gonna be included on that notice. There will be no robocalls. You will only talk to a live assister when the real private collection agency contacts you. The private collection agencies are not gonna ever, ever request that payment be made or sent to them. They're not goanna ask you to pay with a prepaid debit card or an iTunes account. The IRS private collection agencies are gonna inform taxpayers of all of their electronic payment options and how to find them on irs.gov. If you insist on paying by-check, they're gonna direct you to make a payment to "US Treasury," not to the private collection agencies.

*Darren Guillot:* The IRS has a list of the four private collection agencies with their phone numbers on our website. I strongly urge you and urge all taxpayers that when you get this notice before you contact the private collection agency, go to our website – irs.gov – and look at the private collection agencies, the name and the phone number, does it match the notice you've received? Some have asked, "Well, Darren, you're the director of Field Collection, how do you feel about these private collection agencies?" I think it's good. The type of work they're doing are the cases I would not have been working. These are accounts that are inactive.

We know they're inactive; they're getting these accounts so my employees are collecting revenue. Employees across the IRS are bringing in the revenue that funds our country so these private collection agencies and the amounts they collect can only be in addition to that and that will help us narrow the tax gap.

*Darren Guillot:* Now let's talk about options that you have in paying your taxes. The first one's Installment Agreements and I specifically wanna talk about the Online Payment Agreement. Now I met some of you before this session started today and I don't know how I come across to you. This is how I am when I meet with taxpayers. I go out with my employees once-a-month, always try to be polite and courteous and I insist they're the same but I come under no illusion that anybody in America wakes up in the morning and wants to meet me, unannounced, at their front door, okay? How many of you knew that the IRS for several – for many, many – years has had an Online Payment Agreement tool?

Okay good. Almost three million people – roughly three million people annually, on average – work out Installment Agreements with the IRS.

*Darren Guillot:* And almost 90 percent of them – 90 percent or more – qualify to use this Online Payment Agreement application that we have. It's basically the streamline criteria. There is usually no lien file. There's not a Financial Statement required. We don't talk to anyone from the IRS in the privacy of your office, representing your client or a taxpayer in their kitchen or living room, they can go into the system and give themselves an Installment Agreement and resolve their case without ever having to meet with me or talk to anyone on the phone from the IRS and yet only a small fraction of taxpayers in America – a small fraction of that 3 million – actually use this tool so we really wanna get the word out there. It's no secret about our resource constraints at the IRS with the diminished number of employees we have.

*Darren Guillot:* For every taxpayer who uses this Online Payment Agreement and resolves their problem, that frees me and my limited resources up to instead of working that case with a cooperative taxpayer, instead divert our attention to taxpayers who are more in need of field contact from a Revenue officer. Something else that's good about it: Lower user fees and it's lower still if you use the Direct Debit Installment Agreement. What are the criteria? I'll just go over the basics and it's not all-inclusive but generally almost any individual tax liability can be included. You just need the Online Payment Agreement.

It also allows for a very narrow but limited number of businesses to use the Online Payment Agreement. You as the power of attorney have access; you can use this tool to give your client an Online Payment Agreement. The balance has to be less than or equal to $50000.00. If the balance is between $25000.00 and $1.00 and $50000.00, you're required to use the Direct Debit Payment Option, which is a good thing, helps you avoid missed payments and it's got a lower fee.

*Darren Guillot:* All required tax returns have to be filed and the minimum payment has to be such that you will pay within 72 months or 6 years so let me clarify the criteria when I say almost any individual with a liability. A simple way to look at it this: Any liability with a controlling number, account number, is a Social Security Number or an Individual Tax ID number, or ITIN and it includes Trust Fund Recovery Penalties, not trust-fund taxes. If an individual has been assessed the Trust Fund Recovery Penalty and they're within the dollar range I just discussed they can set up an installment for themselves using the Online Payment Agreement. Something that's important to make sure people understand who are less sophisticated about taxes and especially looking at the bill, when I say the assessed amount ($50000.00 or less), how do you find that out?

*Darren Guillot:* Well, if you look at the IRS notice it's gonna tell you what the Assessed Aggregate Amount is. It's gonna the assessed tax, the assessed penalties and the assessed interest at the time the original assessment happened and, as we all know, the bill gets bigger because of accrued penalty and interest so I'm not talking about those amounts, not the total liability, it's only the assessed amount of the liability and how do you find that number? Well, I've just mentioned the notice but you can also go to irs.gov/payments and there's a topic there called "View Your Balance Online." If you use the "View Your Balance Online" from irs.gov/payments, you can find the breakdown of what you know and how much is assessed. Some caveat or one caveat about the Minimum Monthly Payment, I said is gotta pay within 72 months.

Well, what happens if the Collection Statute Expiration Date expires in 3 years? Well, you've gotta pay it within 36 months. The system knows that.

*Darren Guillot:* The system will know the liability and what the statute is and it'll guide you in making sure that you qualify and can pay timely. A few other points before I move on. Taxpayers can set up an Online Payment Agreement for themselves if they file electronically before you even get a bill. As soon as you get that conformation that your return's been accepted, if you e-file, electronically file, you can go into the Online Payment Agreement Application tool and give yourself an Installment Agreement. If you're one of those taxpayers and there are still some who file a paper tax return, my suggestion would be wait a couple of weeks so that the return actually is processed and is on the system so that the Online Payment Agreement tool can find it.

The second thing:  All right you have a client that owes $55000.00. Darn, they can't use the Online Payment Agreement. Yes. Yes, they can. Simply make the payment with the return of $7000.00.

Now they owe 448000.00 and you qualify to use the online Payment Agreement tool.

*Darren Guillot:* My point is you can pay the liability down to get the assessment out within $50000.00 so that you can use the tool and finally if the case is assigned to a Revenue officer, you can't use the tool. I wanna explain to you why. It's to protect you and protect your client. My employees' first job is to educate but they're also enforcers. We don't wanna take enforcement action if you have an Installment Agreement so this tool allows you to set up an Installment Agreement without involving us so if the case is assigned to me and I don't know that you've established an Installment Agreement, I may well take enforcement action I otherwise would never take. So for those purposes if the code on your case is Field Revenue Officer the Online Payment tool is not gonna let you in to set up that agreement but never fear, I promise you my employees could still give you those Installment Agreements.

*Darren Guillot:* So how does it work? You need a login and a password so if you already have an Online Payment Agreement, pin or you've gotta get a transcript pin or you've got an identity-protection pin, you already have access. You can just go in and use it. If you do not already have a pin it's pretty simple. You go into the Secure Access Portal, for the electronic authentication – e-authentication – process and you provide your name, a valid email account, Social Security Number or ITIN, your date of birth, your filing status and the address on the most recently-filed tax return. In addition if you're gonna set up a Direct Debit Payment Agreement, you also will need to put the payment amount, the payment due date and then from the bottom of one of your checks, the bank routing number and the bank account number so those are things that you'll need to do to set it up and once you get that user ID, go ahead and set an Installment Agreement.

*Darren Guillot:* Some of the terms to describe the ways you can pay using the Online Payment Agreement, if you can pay within 120 days or less, set up an Online Payment Agreement. There's no fee, none. If you need more than 120 days and you set up a monthly payment, this is what it costs. If you use direct debit: $31.00 only with online so online, using direct debit, $31.00. If it's online but it's not direct debit, it's $149.00, okay? The monthly payment amount that's shown the system will generate for you shows the lowest possible amount that you can pay and pay within the remaining life of the statute, okay?

Not everybody's comfortable using an online-payment application or online, period, so if you still want an Installment Agreement and you wanna do it the old-fashioned way, you can still use Form 9465 or visit one of our offices or give us a call and we'll set up an Installment Agreement for you.

*Darren Guillot:* If you're a low-income taxpayer, the cost is $43.00. That's the cost of a user fee for low-income taxpayer for an Installment Agreement. If you're working with my Revenue officer and you set up a Monthly Payment Agreement by check, the cost of the Installment Agreement is $225.00 so I save that for last to really draw a contrast. Why wouldn't anybody use this Online Payment Agreement and set up a Direct Debit Installment Agreement? It limits defaults, it costs $31.00 compared to $225.00, quite a big difference, especially for people who are struggling to pay their bills.

You'd have to assume that's probably happening or they wouldn't owe the IRS money.

Now let's talk about Offers in Compromise. I've heard it said by some that we have a new program.

*Darren Guillot:* In temporary legislation at least dating back to March, 1831, we've been compromising taxes and a permanent statute I believe was enacted in 1864 so it's been around for a long time. I think it's been around for long time but, for some, that may seem recent. What is an Offer in Compromise though? An Offer in Compromise is an agreement between you and the government that settles a legally-perfected debt owed the United States for a lesser amount that's in the best interest of you the taxpayer and the government. We accept offers at our discretion. To be considered you generally have to be offering the Internal Revenue Service what we consider your true ability to pay, Realizable Collection Potential.

*Darren Guillot:* And there's a book that has instructions on how to complete an Offer in Compromise and apply for an Offer in Compromise. It's Form 656(b). You can find it at irs.gov, simply type "OIC" or "Offer in Compromise" in the search engine. For some taxpayers and even practitioners, it's a mystery to really know who's a good candidate for an offer. I’ve seen the promotions for how you can settle with the IRS. Let me give you some really good advice.

We’ve given you a really great tool. For those of you in some of the focus groups you had a chance to play with it this week. It’s called the OIC Pre-Qualifier Tool. It’s rally simple. Anybody can use it. I play with it from time-to-time. It doesn’t ask for any identifiable information from you. It’s not gonna ask for your name and your Social Security Number.

It needs to know a zip code and some basic information because it already has incorporated into it the allowable living expenses and things like that so you don’t have to go to a second or third source to try to do the math to figure out who’s a good offer candidate.

*Darren Guillot:* It gives you a really good idea in minutes whether or not you’re a potential candidate for an Offer in Compromise versus spending a lot of time and effort and paying feeds and you weren’t a candidate to begin with or if you never submitted an offer and you might’ve been a great candidate for one, you just didn’t know. Heck some of you may have kids who wanna grow up one day to be you and represent taxpayers. They can play enrolled agent or CPA and learn and become an expert on Offer in Compromise by simply using the OIC Pre-Qualifier tool. Some rules about offers: You have to have filed all tax returns that are legally required to be filed to be a candidate for an offer. You have to have received a bill for at least one period that’s included in your offer.

You have to be in compliance, ongoing compliance so if you’re required to make estimated tax payments. You have to be current with those.

*Darren Guillot:* If you’re a business with employees you have to be current with all your federal tax deposits for that quarter. When will we return an offer? Well, if you’re not in compliance with the items I just talked about, if you’ve got returns that haven’t been filed and you’re not current on deposits you’re required to make, we may return your offer or if you haven’t received at least one tax bill, we may return your offer. While your offer is pending, penalties and interests continue to accrue and you’re also required to be staying current while we’re looking at your offer, current with all your other tax obligations. If we accept your offer you must remain compliant for a period of five years after we accept your offer.

What if you're a business? In addition to what I just spoke about, if you're a business and you owe payroll taxes, trust-fund taxes, you are not eligible to submit an Offer in Compromise, okay?

*Darren Guillot:* Unless the trust-fund portion of the tax is paid in-full or the Trust Fund Recovery Penalty determinations have been made on potentially-responsible persons – principles – of that business. Now if you are the victim of a payroll-service provider fraud or failure, what I just described does not apply to you, okay? If your bankruptcy or your business is in bankruptcy you're not eligible to apply for an offer if you're going to resolve your tax issues through the bankruptcy you have to do that within the context of the bankruptcy proceedings. Generally, we're gonna determine whether you can pay in-full before we consider you for a candidate for an Offer in Compromise. It's this simple, if you can pay, in-full, now, in a few days or through an Installment Agreement, you're not a candidate for an Offer in Compromise, unless you have extenuating or special circumstances.

*Darren Guillot:* If you have a legitimate doubt that you even owe the money, you should be filing a Doubt as to Liability Offer on Form 656-L. It's important for you to know that if your offer is accepted the IRS will keep any refund that's coming your way, including interest, extending through the calendar year that the IRS accepts your offer. Something else that's important, an offer cannot be accepted for processing if we referred your case through the Department of Justice, okay? If we referred – if your case has been referred – to the Department of Justice, that if they wanna consider a settlement it's called an Offer in Settlement and has to be done with the Department of Justice. Now we generally will not file a Notice of a Federal Tax Lien after you submit an Offer in Compromise. It's possible but generally we'll wait until a decision's been made on your offer before we determine whether or not to file a Notice of Federal Tax Lien.

*Darren Guillot:* If you currently have an Installment Agreement you can stop making payments on that Installment Agreement while your offer is pending so long as you do not accrue any new tax liabilities while your offer is pending. If your offer's not accepted, we'll simply revert back to the status quo, before the offer, and you'll go back into your Installment Agreement. How much does an Offer in Compromise cost? The user fee is $186.00, okay? If you're a low-income taxpayer you do not have to pay this fee.

A low-income tax payer means you're within 250 percent of the Federal Poverty Level, okay? You must select a payment option and include the payment with your offer however if you meet the low-income guidelines I just discussed, you're not required to make any payments with the offer. The amount of that initial payment I'm talking about and any subsequent payment's gonna depend on the type of offer you choose to submit and there are two types.

*Darren Guillot:* The first is a lump-sum cash offer. This option requires a 20 percent of the total offer amount to be paid with the offer and you pay it. You pay the full offer amount within 5 months. Why would you do this? Because the IRS only looks at a period of 12 months of reasonable collection potential in determining how much the offer amount should be. Some choose the Periodic Payment Offer.

This option requires the first payment be paid with the offer and the remaining balance within 6 months up to 24 months so you're gonna pay monthly payments for a period of 6 to 24 months and the first payment has to be made up-front with the offer and you have to continue making those monthly payments while we're considering your offer. In this type of offer we look at a 2-year period, 24 months of your ability to pay to determine what your reasonable collection potential is, thus an acceptable offer amount.

*Darren Guillot:* You may not offer an amount within the expected or current tax refund. You also can't make the offer with money you've already paid to us or any funds that are attached by a collection action such as a levy nor can you make the offer with any anticipated benefits from a capital or net operating loss. Some changes recently in the Offer in Compromise program:  In May of 2016, we adopted a policy of returning offer applications without any consideration where all legally-required tax returns have not been filed and recently, just four months ago, that down payment, the Tax Increase Prevention and Reconciliation or TIP Repayment, okay, we were advised by counsel that we must not return an offer applicant's TIP Repayment when it can be applied to a tax liability. That went into effect on March the 27th, 2017, just 4 months ago.

*Darren Guillot:* Why did we do that? Resources because we've got a lot fewer people but we've got just as many offers coming in and we need to use our resources to work with taxpayers who are in compliance, who are making their tax deposits, who are following their tax returns, who are not the type of taxpayers who are gonna be subject to us returning their offer after spending a lotta time working with ‘em, instead we’re gonna devote the attention of the resources we have on the taxpayers that are incompliance and are probably good candidates for an Offer in Compromise.

I wanna move on now to the Notice of Federal Tax Lien. I’m sure everyone’s familiar with it. I’m gonna tell you a little bit more about it, in general. A tax lien is the government’s legal claim against your property when you neglect of fail to pay a tax debt, okay? It protects the government’s interest and all your property, including real estate and personal property and your financial assets.

When does a lien arise?

*Darren Guillot:* When we assess your liability, put a balance on the books, we’ve made Notice in Demand for payment and you neglect or refuse to pay, this is called the Silent Lien. It exists by operation of law, okay? However after this we’ll continue to try to collect the amount you owe, there’ll be more notices and, at some point, there may be a filed notice, physical Notice of Federal Tax Lien that’s filed. It’s a public document. It’s intended to alert creditors that the government has a legal right to your property. It shows up on a credit report. The notice is filed in the Recording Office in the jurisdiction where you live or you have assets, okay? It establishes the priority of the government among other creditors and once it’s filed it can’t be released until you pay, in-full, generally speaking or no longer enforceable, the statute expires, and we’re required to release that lien within 30 days after you pay, in-full, and some people don’t want the Notice of Federal Tax Lien Filed so what are options that you have?

*Darren Guillot:* There are three I’m gonna talk about, one is Discharge of Property. If you’re selling property but the proceeds of the sale won’t be enough to fully pay the tax liability but you wanna convey that property to the purchaser free and clear of our lien, you’re gonna want a discharge of that particular piece of property from the effects of the lien. The lien won’t go away, you’ll still owe the taxes but you will demonstrate to the IRS, through an investigative process, that we don’t really have an interest in that property and you need to sell it to help you in your efforts to pay the IRS back.

In those situations we will frequently grant a discharge of that property from the federal tax lien. You can find more information at Publication 783 or go to search engine and type in the word "Discharge of Lien." The second one I'm gonna talk about is a Subordination of Lien.

*Darren Guillot:* If you're refinancing an existing loan to borrow additional money but you can't borrow enough to pay the IRS, in-full, that potential creditor is not gonna wanna have the IRS in a priority position over them. They will want and you will want the IRS to voluntarily subordinate our interests, our priority to them. Well, why would we do that? We would do that because it facilitates collection of the tax is the simplest way to put it. You can find out more about subordination of federal tax liens in Publication 784 or simply go to the search engine and look up "Subordination of the Federal Tax Lien." And the last one is a withdrawal.

We don't hear much about that but if you go to our website, irs.gov and look up Form 12277, Form 12277 or type in the word "Withdrawal of Lien," you'll find out more about it. Under certain conditions we will withdraw the Notice of Lien from the public record, okay?

*Darren Guillot:* The physical lien is withdrawn. By doing so the IRS is advising other creditors that we are relinquishing our priority position of the Notice of Federal Tax Lien. It's not a release. You still owe the money so why would we do this? These are done at the discretion of the Internal Revenue Service. Some of the factors we consider in exercising this:  The Dissertation of Lien was filed in error, you entered into a payment agreement that did not address the Notice of Federal Tax Lien when you entered into it, okay, or withdrawing the tax lien will facilitate collection of the debt or is otherwise in the best interest of the government. You could also be eligible to have the lien withdrawn if you owe less than $25000.00 and you're in agreement to pay the debt in less than 5 years and this is important.

You have to ask for the withdrawal. It's not gonna automatically happen so that Form 12277 is how you request the Notice of Withdrawal of Federal Tax Lien.

*Darren Guillot:* If you go to our website there are even videos that talk you through how to and when you might wanna consider a withdrawal of the tax lien.

Now I wanna talk about something that is the majority of the work I do as the Director of Field Collection, addressing employment-tax noncompliance. It's over 60 percent of my work. Why does the IRS talk so much about it or put so much priority on it? You know the Internal Revenue Service collects 93 percent of all the revenue that funds our republic and 70 percent of that is collected at the source, in trust, by employers on behalf of the United States. It's a *[laughs]* big deal. If all these taxes fund democracy, fund our republic, 70 percent of it is being held by employers from their employees' wages.

*Darren Guillot:* And right now $68 billion is on our books due and owing to the IRS from these taxes. This is super-important to us. We've had to make any number of compromises with our resource constraints but one area where the Internal Revenue Service is not gonna make compromises is on how seriously we treat employment-tax noncompliance. What does it look like in real life? I can tell you because I go out once-a-month and work with my employees and meet with these businesses.

They tend to be undercapitalized and they've seen the payroll taxes as a ready source of cash to meet operating expenses or something and by the time I get out there and meet with them and talk to them, they're deeply in debt, we get financial statements, they make promises to pay, they default Installment Agreements. We frequently take enforcement action. Then they seek representation at some point. We start over again. Sometimes they file bankruptcy, this process takes a while.

*Darren Guillot:* The Trust Fund Recovery Penalty interview by itself takes 2.5-3 hours on the Form 4180 and a year to 2 years later, sometimes the problem's still not resolved and that's not the best way people would wanna interact with us. More and more especially over the past 2 years, I have been giving extra training to my employees and working closely with the Department of Justice and Criminal Investigation to seek more criminal referrals. Over the past 2 years consecutively Revenue officers have seen increases in referrals that have been accepted at Criminal Investigation with a very high conviction rate. In addition I've been working with Department of Justice to accept suits for injunctive relief where taxpayers they just won't cooperate and continue to pyramid. I brought 'em to District Court and the judge issues an Injunctive Order and they must become compliant and stay compliant or they face significant sanctions, up to and including incarceration and then there's Disqualified Employment Tax Levy.

*Darren Guillot:* Now typically before I issue a levy on a bank account or anything else, I'm gonna give you a final notice and your right to a hearing and you get to Appeals first and I have to wait but if you've had a Collection Due Process hearing in the last two years at my discretion in Field Collection, I can levy first and you can get that appellate hearing afterwards. So I just this year rolled out additional training for my Revenue officers to whenever it's appropriate pursue that Disqualified Employment Tax Levy. That is not how we wanna engage with most businesses. The business of America is business. Most Americans work for a small business. The employees that work for them, they're innocent.

If the business fails, who's hurt? They lose their jobs. I care about that. My employees care about that. What if I had a time machine and I could proactively have a conversation with these employers and reach a point where they understand before they even know the liability?

*Darren Guillot:* I'm out there talking to them with no enforcement authority because there's no assessed liability but I've got some pretty good information they're already falling behind. How many of 'em, knowing what the future looks like, would still continue to pyramid the Payroll Tax Liability? I think very few and we tested that theory. For the past two years we've been following the behavior of taxpayers where we worked four times as many Federal Tax Deposit Alerts, the original proactive tool (it's been around since 1972) and we improved the algorithm and the predictive analytics and we experienced a 12-percent increase in compliant behavior in filing and depositing by employers after having face-to-face interaction with one of my Revenue officers so you'll be seeing more of those.

So what do Revenue officers do and what should you expect in this age of impersonation scams? First a Revenue officer is a civil enforcement officer. By civil I mean what triggers the account that we investigate isn't criminal in its nature.

*Darren Guillot:* And we explore the causes of the noncompliance and we try to get them back into compliance but we also beyond that educational role have quite a bit of investigative training and enforcement authority but enforcement is never, ever the first resort. No one that works for me should ever enjoy it or look forward to it. Enforcement is always a last resort but when it’s appropriate my Revenue officers will take enforcement authority. They work the largest-dollar cases, the most complex inventory, some involve potential fraud. They’re trained to deal with that. Also those Early Interaction Alerts that I talked about and where the statute may expire. Revenue officers carry two forms of identification, they look like this.

*Darren Guillot:* They have an HSPD-12 -- Homeland Security Presidential Directive 12, HSPD-12 -- smart card. Almost all federal employees have one of these. It’s got biometric data on the back and also these pocket credentials that are much *[laughs]* larger. You have a right to see both of those. If my employee refuses to show you their credentials, they’re probably not my employee. You can ask to speak with their supervisor or one of their peers at the office to verify they are who they say they are.

If they refuse to give you that phone number, they’re probably not my employee. If my employee – if a Revenue officer – tells you, “Pay or you’re going to jail, pay me with your iTunes card,” *et cetera*, I guarantee you, you better not be dealing with *[laughs]* one of my employees.

So we’re there to help, we really, really are. In working with taxpayers face-to-face with the IRS I know makes some taxpayers anxious but it’s our job to set people at-ease and explain to them how they got in the situation and help them navigate out of it so that they never have it again.

*Darren Guillot:* And we do this only with your help in the practitioner community so I wanna say thank you and thank you for coming to this session today and now I’ll stick around for some questions.

## *Glossary*

**Automated collection system (ACS) -** is a computerized inventory system the IRS uses to maintain balance due accounts and return delinquency investigations

**Collection due process (CDP)** - allows taxpayers an opportunity for an independent review by Appeals, to ensure that a proposed levy or notice of lien filing is warranted.

**FAST Act -** The Fixing America's Surface Transportation Act is a multi-year highway and transportation spending bill and was signed into law 12/04/15. The Act includes a number of tax related provisions.

**Offer in Compromise (OIC) -** is an agreement between a taxpayer and the Internal Revenue Service that settles a taxpayer's tax liabilities for less than the full amount owed.

**Trust Fund Recovery Penalty -** The Trust Fund Recovery Penalty facilitates the collection of taxes and enhances voluntary compliance. It serves as an alternative means of collecting unpaid trust fund taxes when taxes are not fully collectible from the company/business that failed to pay the withheld taxes.

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