

Current Federal Tax Developments

Week of July 26, 2021

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ACCOUNTING
CONTINUING EDUCATION

CURRENT FEDERAL TAX DEVELOPMENTS
WEEK OF JULY 26, 2021
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Current Federal Tax Developments

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SECTION: 162

TAXPAYER FAILS IN ATTEMPT TO USE THE COHAN RULE TO OBTAIN A DEDUCTION

Citation: Fagenboym v. Commissioner, TC Summ. Op. 2021-19, 7/19/21

In the case of *Fagenboym v. Commissioner*¹ we see a taxpayer unsuccessfully attempt to make use of the most-cited case in federal income tax cases—the case of *Cohan v. Commissioner*, 39 F.2d 540 (2d Cir. 1930).

For those who aren't familiar with the *Cohan* case, the case involved vaudeville producer and entertainer George M. Cohan and produced what is often referred to as the *Cohan* doctrine or rule. The opinion summarizes this rule as follows:

Under the *Cohan* rule, when a taxpayer establishes that he or she has incurred a deductible expense, but is unable to substantiate the exact amount, the Court is permitted to estimate the deductible amount. *Id.* at 543-544. But we can do so only to estimate the amount of the deductible expense when the taxpayer provides evidence sufficient to establish a rational basis upon which the estimate can be made. See *Vanicek v. Commissioner*, 85 T.C. 731, 743 (1985). In estimating the amount allowable the Court bears heavily upon the taxpayer who failed to maintain required records and to substantiate expenses as the Code requires. See *Cohan v. Commissioner*, 39 F.2d at 544; *Keenan v. Commissioner*, T.C. Memo. 2006-45, *aff'd*, 233 F. App'x 719 (9th Cir. 2007).²

Essentially, a taxpayer looks to use the *Cohan* rule when the taxpayer has deficient or non-existent records to support a deduction, a problem which George M. Cohan successfully was able to overcome in his 1930 case.

However, this also means the taxpayer is generally working from a position of weakness. Two major hurdles face a taxpayer looking to use this rule which the Court pointed out.

- The taxpayer has to show a rational basis upon which the Court can make an estimate and
- The Court “bears heavily” against the taxpayer based on his/her amount of culpability that led to the lack of records.

¹ *Fagenboym v. Commissioner*, TC Summ. Op. 2021-19, July 19, 2021, <https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/couple-swerved-too-far-from-substantiation-rules%2c-tax-court-says/76wnf> (retrieved July 19, 2021)

² *Fagenboym v. Commissioner*, TC Summ. Op. 2021-19, July 19, 2021

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In reality, the second factor has an impact on the first—the more responsible the taxpayer was for the lack of records, the less likely it generally is that the Court will find that the taxpayer had provided a rational basis upon which to estimate the expenses in question.

In this case Mr. Fagenboym was a shareholder in an S corporation (Alcor Electric) that could not document certain amounts paid for purchases from one of the corporation's suppliers. The taxpayer offered the following information upon which he asked the Court to grant an allowance for purchases related to the supplier.

Mr. Fagenboym submitted four pages of handwritten calculations that attempt to reconstruct Alcor Electric's purchases and other expenses related to four alleged business contracts. Mr. Fagenboym testified that he created the handwritten document because he was unable to produce original records of the amounts paid to one of Alcor Electric's electrical suppliers, Alameda Electrical Distributors (AED), on the four business contracts. In support of his calculations Mr. Fagenboym testified that he was able to estimate the amount paid to AED by Alcor Electric during the year in issue by taking the total amount paid to the S corporation on each of the four contracts and subtracting a 12% profit margin to produce an estimated total for the hard costs of each project. Mr. Fagenboym then subtracted all known labor and materials costs from the resulting total hard costs to produce the estimated total paid to AED on each contract. During the trial Mr. Fagenboym did not produce contemporaneous records or any other business records pertaining to Alcor Electric's operations. He testified that he had previously provided substantiating documents to respondent for all hard costs on the four contracts except for the amounts paid to AED.³

However, the Tax Court found that this fell short of what was necessary to provide the Court with a rational basis upon which to calculate a deduction:

Although Mr. Fagenboym's testimony about industry operations was generally reliable, the amounts included in the handwritten calculations proffered are not backed by any underlying bank statements, receipts, or other documentation. Mr. Fagenboym testified that the 12% profit margin on which his calculations hinge was a rough estimate based on similar contracts in the industry. He stated that the 12% figure was "potential profit" but noted that Alcor Electric's actual profit was "much less than that".

Although we have no doubt that Mr. Fagenboym produced his calculations in good faith, the reconstruction of expenses on the basis of an individual's estimate of industry standard profit margins does not take the place of substantiation or provide a rational basis upon which an estimate can be made under the Cohan rule. The record includes no reliable evidence establishing error in respondent's determinations in the notice disallowing petitioners' claimed loss deductions related to

³ *Fagenboym v. Commissioner*, TC Summ. Op. 2021-19, July 19, 2021

certain expenses reported by Alcor Electric during the year in issue. On the record before us, we conclude that petitioners have failed to carry their burden of establishing that Alcor Electric paid or incurred the expenses underlying the deductions that respondent disallowed for its 2015 tax year. We therefore sustain respondent's determination in the notice of deficiency disallowing a portion of petitioners' claimed Schedule E loss deductions for the year in issue.⁴

What makes this case somewhat unusual is that while the judge found the taxpayer's testimony credible and even appears to have some sympathy for the taxpayer, he still found the methodology too flawed to be used to estimate the deduction in question.

SECTION: 1366

IRS PROPOSES NEW FORM 7203 FOR S CORPORATION SHAREHOLDERS TO REPORT BASIS COMPUTATIONS WITH FORM 1040

Citation: Proposed Collection; Comment Request for Form 7203, Federal Register, Vol. 86, No. 135, 7/19/21

The IRS published a notice in the *Federal Register* on July 19, 2021 asking for comments on a new Form 7203, *S Corporation Shareholder Stock and Debt Basis Limitations* and related instructions.⁵

The notice describes the proposed form in an abstract section as follows:

Internal Revenue Code (IRC) Section 1366 determines the shareholder's tax liability from an S corporation. IRC Section 1367 details the adjustments to basis including the increase and decrease in basis, income items included in basis, the basis of indebtedness, and the basis of inherited stock. Shareholders will use Form 7203 to calculate their stock and debt basis, ensuring the losses and deductions are accurately claimed.⁶

The form and instructions have not been made available for download at this time. Rather, interested parties are directed to request the form and instructions from an IRS contact listed in the notice.

⁴ *Fagenboym v. Commissioner*, TC Summ. Op. 2021-19, July 19, 2021

⁵ Department of Treasury, Internal Revenue Service, Proposed Collection; Comment Request for Form 7203, *Federal Register*, Vol. 86, No. 135, July 19, 2021, p. 38204, <https://www.govinfo.gov/content/pkg/FR-2021-07-19/pdf/2021-15257.pdf> (retrieved July 19, 2021)

⁶ Department of Treasury, Internal Revenue Service, Proposed Collection; Comment Request for Form 7203, *Federal Register*, Vol. 86, No. 135, July 19, 2021

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In 2020 and earlier years, the instructions to Schedule E⁷ directed taxpayers to worksheets found in the shareholder's instructions to Schedule K-1, Form 1120S.⁸ As well, the taxpayer was to attach a computation of basis in the following situations:

If you report a loss, receive a distribution, dispose of stock, or receive a loan repayment from an S corporation, you must check the box in column (e) on line 28 and attach the required basis computation.⁹

The proposed form would replace the Schedule K-1 instruction worksheets and attached plain paper basis computations with new Form 7203 that would be required to be filed with the return whenever the taxpayer previously was required to attach basis computations.

The draft form reviewed to prepare this article has three sections, corresponding to the three sections found in the K-1 instruction worksheets:

- Shareholder stock basis computation;
- Shareholder debt basis computation (with separate sections for the amount of debt and the adjustments to debt basis); and
- Shareholder allowable loss and deduction items—a worksheet with five columns, with lines for specific items of loss or deduction:
 - Current year deduction and losses
 - Carryover amounts from the previous year;
 - Allowable loss from stock basis;
 - Allowable loss from debt basis; and
 - Carryover amounts.

Written comments on the form should be received by the IRS on or before September 17, 2021, to be assured of consideration.¹⁰

⁷ 2020 Instructions for Schedule E, p. E-8, <https://www.irs.gov/pub/irs-pdf/i1040se.pdf> (retrieved July 19, 2021)

⁸ 2020 Shareholder's Instructions for Schedule K-1 (Form 1120S), Worksheet for Figuring a Shareholder's Stock and Debt Basis (Parts I-III), pp. 5-8, <https://www.irs.gov/pub/irs-pdf/i1120ssk.pdf> (retrieved July 19, 2021)

⁹ 2020 Instructions for Schedule E, p. E-11

¹⁰ Department of Treasury, Internal Revenue Service, Proposed Collection; Comment Request for Form 7203, *Federal Register*, Vol. 86, No. 135, July 19, 2021

SECTION: 2002

IRS ALLOWED TO CONSIDER POTENTIAL RECOVERY AGAINST EXECUTOR FOR DISTRIBUTIONS IN OFFER IN COMPROMISE CALCULATION OF REASONABLE COLLECTION POTENTIAL

Citation: Estate of Kwang Lee v. Commissioner, TC Memo 2021-92, 7/21/21

When dealing with a decedent's estate, an executor of the estate may face personal liability for taxes found to be due from the estate if the executor made a distribution that rendered the estate insolvent, assuming the executor had knowledge or notice of that liability or potential liability.¹¹

Treasury Reg. §20.2002-1 provides (in part):

..[I]f the executor pays a debt due by the decedent's estate or distributes any portion of the estate before all the estate tax is paid, he is personally liable, to the extent of the payment or distribution, for so much of the estate tax as remains due and unpaid.¹²

The regulation continues to extend that potential liability to other parties, including heirs receiving the property.

In addition, section 6324(a)(2) provides that if the estate tax is not paid when due, then the spouse, transferee, trustee (except the trustee of an employee's trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under section 2034 through 2042, is personally liable for the tax to the extent of the value, at the time of the decedent's death, of such property. See also the following related sections of the Internal Revenue Code: Section 2204, discharge of executor from personal liability; section 2205, reimbursement out of estate; sections 2206 and 2207, liability of life insurance beneficiaries and recipients of property over which decedent had power of appointment; sections 6321 through 6325, concerning liens for taxes; and section 6901(a)(1), concerning the liabilities of transferees and fiduciaries.¹³

¹¹ 31 USC 3713, Treasury Reg. §20.2002-1

¹² Treasury Reg. §20-2002-1

¹³ Treasury Reg. §20-2002-1

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In the *Estate of Kwang Lee v. Commissioner*¹⁴ the application of this provision when the estate seeks an offer in compromise is considered. The key issue to be decided was whether the IRS is allowed to include the potential amounts the IRS could receive from the executor and heirs under the recovery provisions in the calculation of the reasonable collection potential.

At the time the estate sought an offer in compromise, the total assets of the estate amounted to \$183,000 in a checking account. The estate offered that entire amount to settle the outstanding balance remaining on the \$536,151 amount previously determined by the Tax Court¹⁵ to be the amount due following an IRS examination of the estate tax return.

The estate argued that the provisions for recovery would not apply in this case. The Court described the test for when the executor would be personally liable as follows:

An executor is personally liable for the unpaid claims of the United States to the extent the executor makes a distribution of assets from the estate when either the estate was insolvent at the time of the distribution or the distribution rendered the estate insolvent and the executor had knowledge or notice of the Government's claim. 31 U.S.C. sec. 3713(b); *Leigh v. Commissioner*, 72 T.C. 1105, 1109 (1979); sec. 20.2002-1, Estate Tax Regs.¹⁶

The executor (Mr. Friese, a licensed attorney and municipal court judge) made distributions of \$1,045,000 from July 2003 to February 2007, which left the estate with the \$138,000 in the checking account. A key issue was that \$640,000 was distributed on February 28, 2007.¹⁷

That \$640,000 distribution was the key one, since before that distribution the estate had more than enough available to pay the estate tax ultimately determined to be due, but after the distribution the estate was well short of being able to pay that amount. But did the executor have actual knowledge or notice of this claim at that time?

To answer that question, we have to look at the IRS's examination and later Tax Court case. The Court described that as follows:

The IRS selected the estate's return for examination and determined a \$1,020,129 deficiency in estate tax, plus a \$255,032 section 6651(a)(1) addition to tax for untimely filing and a \$204,026 section 6662(a) accuracy-related penalty. The IRS mailed a notice of deficiency to Mr. Frese, as executor of the estate, on April 26, 2006. Mr. Frese timely filed a petition for redetermination of the deficiency with this Court. *Estate of Lee v. Commissioner*, T.C. docket No. 14511-06 (filed July 27, 2006). The Court entered a decision on March 24, 2010 (2010

¹⁴ *Estate of Kwang Lee v. Commissioner*, TC Memo 2021-92, July 20, 2021, <https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/reasonable-collection-potential-must-account-for-executor%2c-beneficiaries/76wsw> (retrieved July 21, 2021)

¹⁵ *Estate of Lee v. Commissioner*, T.C. Memo. 2009-84

¹⁶ *Estate of Kwang Lee v. Commissioner*, TC Memo 2021-92

¹⁷ *Estate of Kwang Lee v. Commissioner*, TC Memo 2021-92

decision), finding a \$536,151 deficiency in estate tax due from the estate with no addition to tax or penalty. Id. Respondent assessed the unpaid tax against the estate on July 19, 2010.¹⁸

The key dates would be:

- IRS issues a notice of deficiency that totaled \$1,479,187 in taxes, interest and penalties on April 26, 2006 which the taxpayer disputed and took to the U.S. Tax Court;
- March 24, 2010 when the U.S. Tax Court entered its decision for \$536,151 in the case; and
- July 19, 2010 when the IRS assessed the unpaid tax against the estate.¹⁹

Obviously at July 19, 2010 the executor was aware of the liability due to the U.S. government—but was the executor on notice prior to that date? More particularly, was the executor on notice before February 28, 2007 when the distribution that would eventually render the estate unable to pay the liability was made.

The IRS argued that the executor had notice when the notice of deficiency was sent on April 26, 2006, even though that amount was significantly more than was finally determined to be due. And the Tax Court decision agrees with this view:

Respondent’s notice of deficiency, issued to Mr. Frese before he made the February 2007 distribution, was sufficient to create a claim under the FPS. See *Viles v. Commissioner*, 233 F.2d at 379-380; *Irving Trust Co. v. Commissioner*, 36 B.T.A. at 148; *Estate of Frost v. Commissioner*, 1993 WL 75053, at *15. Furthermore, the record establishes that Mr. Frese had actual knowledge of the unpaid claim at the time of the February 2007 distribution. Respondent mailed the notice of deficiency to Mr. Frese in April 2006, and Mr. Frese was a named party in the petition filed with this Court disputing that deficiency claim in July 2006. *Estate of Lee v. Commissioner*, T.C. docket No. 14511-06.²⁰

The executor argues that he made the distribution in February of 2007 on the advice of the estate’s tax adviser who presumably informed him that the estate would prevail before the Tax Court. Based on that or a similar assurance, he argued he decided he could proceed with the \$640,000 distribution. The executor cited the case of *Little v. Commissioner*, 113 TC 474 (1999) where the Tax Court had “found that an executor did not have the requisite knowledge for purposes of the FPS because the executor, who did not have a college degree, was unaware of any potential or pending Government claims against the estate and reasonably relied in good faith upon multiple erroneous reassurances from counsel that the estate had no Federal tax liabilities.”²¹

¹⁸ *Estate of Kwang Lee v. Commissioner*, TC Memo 2021-92

¹⁹ *Estate of Kwang Lee v. Commissioner*, TC Memo 2021-92

²⁰ *Estate of Kwang Lee v. Commissioner*, TC Memo 2021-92

²¹ *Estate of Kwang Lee v. Commissioner*, TC Memo 2021-92

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But the Tax Court found that this case was clearly distinguishable from the facts in *Little*. First, the Court found the executor had not presented evidence to show reliance on advice from the tax adviser on making the distribution.

The estate offered no evidence to show that Mr. Frese relied upon the advice of the estate's tax adviser as it pertained to his decision to make distributions from the estate, including the February 2007 distribution.²²

In a footnote the Court points out that while the estate had prevailed on the "reliance on advice of a tax professional" to escape penalties in the earlier Tax Court decision, that does not mean the executor is deemed to have reasonably relied on such advice in deciding to move forward with actual distributions:

The estate points out that we found the estate not liable for an addition to tax for untimely filing in *Estate of Lee v. Commissioner*, T.C. Memo. 2009-84, because Mr. Frese reasonably relied upon the estate's attorney in filing the estate's tax return. That case neither concerned nor considered advice given by the estate's attorney (or any other adviser) as it related to Mr. Frese's distributions of estate assets.²³

The Court also noted that the executor was a licensed attorney in possession of a notice of deficiency, not an unsophisticated executor without any knowledge of the estate's potential liabilities:

...[U]nlike the unsophisticated executor in *Little* who had no actual or constructive knowledge of the estate's tax liabilities at the time of the distributions, Mr. Frese, a licensed attorney and judge, made the February 2007 distribution with direct knowledge that respondent had determined an estate tax deficiency against the estate (respondent mailed him the notice of deficiency in April 2006) and that an action concerning that deficiency claim was pending before this Court.²⁴

Based on the facts in this case, the Court went on to state:

Under these circumstances, Mr. Frese made the February 2007 distribution at his own peril, and any advice he may have received in this regard cannot absolve him from liability. See *King v. United States*, 379 U.S. 329, 339-340 (1964); *New v. Commissioner*, 48 T.C. at 676-677; *Irving Trust Co. v. Commissioner*, 36 B.T.A. at 148. Thus, Mr. Frese may be held personally liable under the FPS for the estate's unpaid estate tax that remains due following the February 2007 distribution.²⁵

²² *Estate of Kwang Lee v. Commissioner*, TC Memo 2021-92

²³ *Estate of Kwang Lee v. Commissioner*, TC Memo 2021-92

²⁴ *Estate of Kwang Lee v. Commissioner*, TC Memo 2021-92

²⁵ *Estate of Kwang Lee v. Commissioner*, TC Memo 2021-92

Thus, the Court found that it was proper for the IRS to consider the potential collections from the executor and other parties in evaluating reasonable collection potential for offer in compromise purposes.

SECTION: 6051

IRS OPENS UP WEBSITE TO ALLOW FOR ELECTRONIC SIGNING AND SUBMISSION OF POWERS OF ATTORNEY

Citation: “Use Tax Pro Account,” IRS website, 7/18/21

The IRS has opened up a website by which Circular 230 practitioners (CPAs, EAs and attorneys) can submit a Power of Attorney request.²⁶ The page contains information on using the service as well as the link to access the system. The IRS has also published an addition to the Internal Revenue Manual at 21.2.1.63²⁷ that describes the program and noted it would become available on July 18, 2021. The program is described as follows:

Tax Pro Account is an online system, available to the public on July 18, 2021, that allows individual tax professionals to securely request third party authorizations for an individual taxpayer as power of attorney (POA) or tax information authorization (TIA), in lieu of filing a paper Form 2848, *Power of Attorney and Declaration of Representative*, or Form 8821, *Tax Information Authorization*.²⁸

However, the IRM notes that “[t]he Tax Pro Account application does not have the [specific capabilities] that the forms allow, as detailed below.”²⁹ That is, only a very limited set of authorizations can be handled via this system. In fact, advisers will note that the system, at least at the beginning, is very limited in the situations in which it can be used, and it will require the adviser’s client to access the system as well as this system has both the professional and the client electronically sign the form.

To use the system the tax professional must verify their identity and pass an authorization process using the IRS Secure Access eAuthentication.³⁰ The professional must already have a Centralized Authorization File (CAF) number, be in good standing and not have been suspended or disbarred from practice before the IRS.³¹

²⁶ “Use Tax Pro Account,” IRS website, <https://www.irs.gov/tax-professionals/use-tax-pro-account> (retrieved July 18, 2021)

²⁷ IRM Procedural Update, “Tax Pro Account - New Online System Interface,” July 6, 2021, <https://www.irs.gov/pub/foia/ig/wi/wi-21-0721-0914.pdf> (retrieved July 18, 2021)

²⁸ IRM 21.2.1.63.1

²⁹ IRM 21.2.1.63.1

³⁰ IRM 21.2.1.63.2

³¹ IRM 21.2.1.63.4

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The system's hours are provided as follows:

The system will be available Monday 6:00 a.m. to Saturday 9:00 p.m. Eastern Time, and Sunday 10:00 a.m. to midnight Eastern Time.³²

There are restrictions on the years available under this program:

Authorizations for POA and TIA may be requested from tax year 2000 through the current year, plus three additional years. For 2021 authorizations may be requested for 2000-2024. If the tax professional requires authorization for tax year 1999 and prior, they must submit their request to the CAF unit on a Form 2848 or Form 8821.³³

Filing a Form 2848 or Form 8821 will replace any existing authorization of the same type for the same year(s) on the taxpayer's account.³⁴ The IRS gives the following example of this replacement:

EXAMPLE (IRM 21.2.1.63.7)

Enrolled agent Grayson Smith has authority on taxpayer Mary Johnson's account for tax years 2000 – 2018. A new request for authority is made for 2017 – 2024 by Michael Williams on Mary Johnson's account. Once the request is processed, Grayson Smith will only have authority for 2000 – 2016, as Michael William's request via Tax Pro Account will invalidate Grayson's authorization on 2017 and 2018. In order to preserve Grayson Smith's authority on 2017 – 2018, Mary Johnson will have to file a Form 2848 or Form 8821, check the box to maintain a prior authorization and include a copy of Grayson Smith's authorization.

The professional will need to have the following information in order to complete an online request for authorization:

- Their CAF number.
- The name and address, as currently on file with their CAF number per IRS records. Address must be located in one of the 50 US States or the District of Columbia.
- The taxpayer's Taxpayer Identification Number (TIN).
- The taxpayer's name and address, as currently on file per the IRS records. Address must be (in) the 50 US States and District of Columbia.
- The Tax Matters and Tax Years for which they are requesting authority.³⁵

The following items are not supported for representation requests submitted under this system and will require filing a paper form instead:

- Specific Use Not Recorded on CAF (line 4 of Form 2848 and Form 8821)

³² IRM 21.2.1.63.3

³³ IRM 21.2.1.63.6

³⁴ IRM 21.2.1.63.7

³⁵ IRM 21.2.1.63.8

- Additional Acts Authorized (line 5a on Form 2848)
- Specific Acts Not Authorized (line 5b on Form 2848)
- Retention/Revocation of Prior Power(s) of Attorney (line 6 on Form 2848), Retention/Revocation of Prior Tax Information Authorizations (line 5 on Form 8821)³⁶

In Step 1 the IRS will have the tax professional enter their own information which the agency will verify. If the information does not match IRS records, the professional will need to correct the information to proceed.³⁷

In Step 2 the professional will enter the taxpayer's information. To prevent the abuse of the system to be used by parties looking to obtain information that could be used for frauds against taxpayers, the system will not inform the tax professional if the information does not match the IRS records. However, only if the information does match the information for the taxpayer will the request be forwarded to the taxpayer's own online account for their approval. The taxpayer will need to have or setup an online account with the IRS to use this system, going through a similar verification and authentication process as the tax professional went through to establish an account.³⁸

In Step 3, the tax professional will enter the tax periods and tax matters to be covered by the authorization. The tax matters supported by the online system currently are:

- Form 1040 Income Tax
- Split Spousal Assessment or Form 8857 Innocent Spouse Relief
- Shared Responsibility Payment
- Shared Responsibility Payment – Split Spousal Assessment
- Civil Penalty (limited to periods of March, June, September, and December)³⁹

Again, if the adviser wishes to obtain authorization for tax matters not listed, the tax adviser will need to file a paper authorization form.⁴⁰

In Step 4 the tax professional will be able to review, edit and submit the request.⁴¹ In Step 5, the professional will receive a confirmation of submission if the request is successfully submitted. Until the taxpayer takes action on the request, the tax professional can cancel the request, but once the taxpayer approves or rejects the request the professional will no longer be able to cancel the request.⁴²

³⁶ IRM 21.2.1.63.9

³⁷ IRM 21.2.1.63.11

³⁸ IRM 21.2.1.63.12

³⁹ IRM 21.2.1.63.13, 14

⁴⁰ IRM 21.2.1.63.14

⁴¹ IRM 21.2.1.63.15

⁴² IRM 21.2.1.63.16

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The tax professional is advised at this point to contact the taxpayer to advise them they need to log into their IRS online account and act on the request.⁴³ If the taxpayer approves the request, the authorization will show in the tax professional's authorization list as approved, while if the taxpayer rejects the request it will be removed from the authorization list and the professional will not be able to review the status.⁴⁴

However, the IRM notes that an approved request may not be immediately added to the tax professional's approved list:

If the taxpayer approves the request and it goes into a "processing" status, meaning it will attempt to be processed in the next 48 hours, it will be removed from the tax professional's list. The item will be removed from their list because the tax professional can no longer cancel it and it is not written to CAF. If this authorization is later processed to the CAF database, it will show in the tax professional's Authorizations table as Approved. The tax professional should contact the taxpayer regarding any questions or concerns as they apply to the status of a request that they can't view.⁴⁵

A withdrawal of representation cannot be processed on this system:

Tax Pro Account does not allow for withdraw or revoke, at this time. Cancel is not the same as withdraw. Cancel is the functionality used for the tax professional to delete or remove a request they have initiated for the taxpayer to sign. Once signed and processed, the request must follow the same revoke or withdraw guidelines as a paper Form 2848 or Form 8821. The person wanting to revoke or withdraw must print a copy of the authorization and submit it following the Form 2848 or Form 8821 instructions for revoke or withdraw.⁴⁶

Special limits apply to multiple requests by a professional on the same day:

Tax Pro Account has the ability for the tax professional to cancel any requests that they don't want the taxpayer to approve. However, if the taxpayer approves a request today and is then presented with another request, for the same tax professional, with at least one of the same tax periods and tax matters that they have already approved today, the request will fail to write to CAF. The new request for the same tax professional will be able to be signed and processed on a future date.⁴⁷

If multiple representatives are to be appointed via this system, the following special rules apply:

- Each third-party must complete their own authorization request and submit it to the taxpayer's IRS online account, following the guidance above.

⁴³ IRM 21.2.1.63.16

⁴⁴ IRM 21.2.1.63.17, 18

⁴⁵ IRM 21.2.1.63.19

⁴⁶ IRM 21.2.1.63.21

⁴⁷ IRM 21.2.1.63.22

- The taxpayer must sign all of the online authorization requests on the same day
- Only two third parties can receive copies of IRS notices and communications for each authorization type. If the taxpayer attempts to approve more than two to receive notices, any request, after the second one, will fail to write to the CAF.⁴⁸

⁴⁸ IRM 21.2.1.63.23



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July 26, 2021

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This Week's Topics

Taxpayer fails in attempt to use *Cohan* rule to obtain deductions

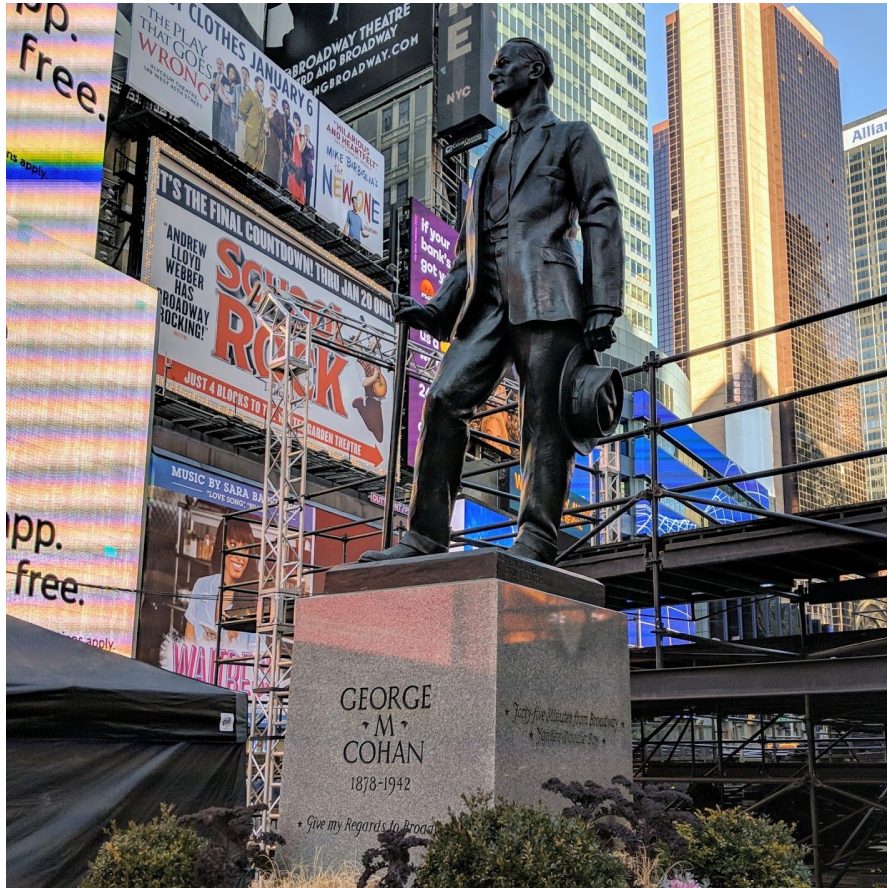
IRS proposes Form 7203 to use by shareholders to report basis in S corporation

IRS can consider potential recovery against executor as part of offer in compromise

IRS opens up site for full electronic submission and signing of Forms 2848 and 8821



Taxpayer Fails on Attempt to Use *Cohan* Rule



- *Fagenboym v. Commissioner*, TC Summ. Op. 2021-19, 7/19/21
 - Taxpayer attempts to use *Cohan v. Commissioner*, 39 F.2d 540 (2d Cir. 1930)
 - Did not have records to back up purchases from vendor
 - Had calculations, but no support to back up
 - Court found no reasonable basis upon which to estimate deduction

IRS Proposes Form 7203 for Shareholder to Report Basis in S Shares and Debt



Photo by [Markus Winkler](#) on [Unsplash](#)

- Proposed Collection; Comment Request for Form 7203, *Federal Register*, Vol. 86, No. 135, 7/19/21
 - Form 7203 and instructions are being proposed and IRS is looking for comments
 - Would be required on Form 1040 if
 - S corporation reports any loss
 - S corporation makes a distribution

IRS Proposes Form 7203 for Shareholder to Report Basis in S Shares and Debt



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- Proposed Collection; Comment Request for Form 7203, *Federal Register*, Vol. 86, No. 135, 7/19/21
 - Currently required to attach plain paper computation
 - Worksheets found in 2020 K-1 instructions serve as basis for proposed Form 7203

WORKSHEET FOR FIGURING A SHAREHOLDER'S STOCK AND DEBT BASIS

Part I—Shareholder Stock Basis

1.	Stock basis at the beginning of the corporation's tax year		1.	_____
2.	Basis from any capital contributions made or additional stock acquired during the tax year		2.	_____
3a.	Ordinary business income (enter losses in Part III)	3a.	_____	
b.	Net rental real estate income (enter losses in Part III)	3b.	_____	
c.	Other net rental income (enter losses in Part III)	3c.	_____	
d.	Interest income	3d.	_____	
e.	Ordinary dividends	3e.	_____	
f.	Royalties	3f.	_____	
g.	Net capital gains (enter losses in Part III)	3g.	_____	
h.	Net section 1231 gain (enter losses in Part III)	3h.	_____	
i.	Other income (enter losses in Part III)	3i.	_____	
j.	Excess depletion adjustment	3j.	_____	
k.	Tax-exempt income	3k.	_____	
l.	Recapture of business credits	3l.	_____	
m.	Other items that increase stock basis	3m.	_____	
4.	Add lines 3a through 3m		4.	_____
5.	Stock basis before distributions. Add lines 1, 2, and 4		5.	_____
6.	Distributions (excluding dividend distributions)		6.	_____
	Note. If line 6 is larger than line 5, subtract line 5 from line 6 and report the result as a capital gain on Form 8949 and Schedule D. See instructions.			
7.	Stock basis after distributions. Subtract line 6 from line 5. If the result is zero or less, enter -0-, skip lines 8 through 14, and enter -0- on line 15		7.	_____



8a. Nondeductible expenses	8a.	_____	
b. Depletion for oil and gas	8b.	_____	
c. Business credits (sections 50(c)(1) and (5))	8c.	_____	
9. Add lines 8a through 8c			9. _____
10. Stock basis before loss and deduction items. Subtract line 9 from line 7. If the result is zero or less, enter -0-, skip lines 11 through 14, and enter -0- on line 15			10. _____
11. Allowable loss and deduction items. Enter the amount from Part III, line 13, column (c)			11. _____
12. Debt basis restoration (see net increase in instructions for Part II, line 8)			12. _____
13. Other items that decrease stock basis			13. _____
14. Add lines 11, 12, and 13			14. _____
15. Stock basis at the end of the corporation's tax year. Subtract line 14 from line 10. If the result is zero or less, enter -0-			15. _____

Part II—Shareholder Debt Basis

Section A—Amount of Debt (If more than three debts, see instructions.)

Description	Debt 1	Debt 2	Debt 3	Total
	<input type="checkbox"/> Formal note <input type="checkbox"/> Open account debt	<input type="checkbox"/> Formal note <input type="checkbox"/> Open account debt	<input type="checkbox"/> Formal note <input type="checkbox"/> Open account debt	
1. Loan balance at the beginning of the corporation's tax year				
2. Additional loans (see instructions)				
3. Loan balance before repayment. Combine lines 1 and 2				
4. Principal portion of debt repayment (this line doesn't include interest)	()	()	()	()
5. Loan balance at the end of the corporation's tax year. Combine lines 3 and 4				



Section B—Adjustments to Debt Basis				
6. Debt basis at the beginning of the corporation's tax year				
7. Enter the amount, if any, from line 2				
8. Debt basis restoration (see instructions)				
9. Debt basis before repayment. Combine lines 6, 7, and 8				
10. Divide line 9 by line 3				
11. Nontaxable debt repayment. Multiply line 10 by line 4				
12. Debt basis before nondeductible expenses and losses. Subtract line 11 from line 9				
13. Nondeductible expenses and oil and gas depletion deductions in excess of stock basis				
14. Debt basis before losses and deductions. Subtract line 13 from line 12. If the result is zero or less, enter -0-				
15. Allowable losses in excess of stock basis. Enter the amount from Part III, line 13, column (d)				
16. Debt basis at the end of the corporation's tax year. Subtract line 15 from line 14. If the result is zero or less, enter -0-				



Section C—Gain on Loan Repayment				
17. Repayment. Enter the amount from line 4				
18. Nontaxable repayments. Enter the amount from line 11				
19. Reportable gain. Subtract line 18 from line 17				



Part III—Shareholder Allowable Loss and Deduction Items

Description	(a) Current year losses and deductions	(b) Carryover amounts (column (e)) from the previous year	(c) Allowable loss from stock basis	(d) Allowable loss from debt basis	(e) Carryover amounts
1. Ordinary business loss					
2. Net rental real estate loss					
3. Other net rental loss					
4. Net capital loss					
5. Net section 1231 loss					
6. Other loss					
7. Section 179 deductions					
8. Charitable contributions					
9. Investment interest expense					
10. Section 59(e)(2) expenditures					
11. Other deductions					
12. Foreign taxes paid or accrued					
13. Total loss. Combine lines 1 through 12 for each column. Enter the total loss in column (c) on line 11 of Part I and enter the total loss in column (d) on line 15 of Part II					

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 - IRS asking that comments be received by the IRS on or before September 17, 2021

IRS Can Consider Potential Recovery Against Executor in Offer in Compromise



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- *Estate of Kwang Lee v. Commissioner*, TC Memo 2021-92, 7/21/21
 - Estate attempting to obtain OIC on estate tax liability
 - Distributions were made after notice of deficiency but before final Tax Court opinion
 - Tax Court found distribution made when executor had notice of potential tax due - made at own risk
 - Part of reasonable collection potential

IRS Opens Site for Electronic Signing and Submission of POAs and Information Authorizations



Photo by [Ashkan Forouzani](#) on [Unsplash](#)

- “Use Tax Pro Account,” IRS website, 7/18/21
 - IRS opens up promised site to allow submission and signing
 - Unlike earlier, promises much faster processing
 - However, limited to 1040s and a few other items
 - Also requires client to set up IRS account and sign electronically

Upcoming Arizona Society of CPAs CPE Courses - In Person (Phoenix) and Webcast



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August 19

Income Taxation of Trusts and Estates

August 20

Assisting the Survivors - the CPA's Role in the Decedent's Estate

August 21

Partnership and LLC Taxation - Advanced Issues



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