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**Petition through Joinder**  
**2020 Exam Cycle Program Webinar on July 16, 2019**

Sherrill Trovato, MBA, MST, EA, USTCP  
Geri Bowman, CPA, EA, USTCP



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**Goal for today's webinar**

- Review:**
- Several types of jurisdiction**
  - The timely petition process**
  - Significance of Joinder of Issue**



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### Jurisdiction focus today

§6212 Deficiency case

§6015 Relief from Joint and Several Liability

§6320/§6330 Collection Due Process

§6404 Abatement of Interest



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### Jurisdiction – Deficiency §6212

A deficiency in income tax includes:

- tax on accumulated earnings,
- personal holding company taxes,
- self-employment tax, AND
- liability for withholding of tax on nonresident aliens and foreign corporations



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### Jurisdiction – Deficiency §6212

90/150 day petition period

During petition period no collection activity allowed

No petition filed, IRS issues notice and demand for payment



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### Required jurisdiction elements

**Notice of Deficiency** issued by the IRS to the taxpayer's last known address within the statute of limitations period,

--- AND ---

Taxpayer's **timely filed petition**



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### Notice of Deficiency

IRS must determine a deficiency exists

Must examine tax return in question

If one NOD is invalid, may issue new NOD as long as SOL is open



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### Deficiency

... amount by which the correct amount of tax determined by the IRS exceeds the total of the amount of tax shown by the TP on the return plus rebates

**Do NOT eliminate a deficiency before NOD is issued**

Can pay after NOD is issued to stop interest and/or penalties



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### Notice Requirements

IRS doesn't have to explain deficiency

No required format

Not all demands = NOD

Must identify it is NOD, indicate tax due, and must identify taxable period



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### Statute of Limitations – 3 years

**NOD must be mailed prior to SOL expiration for assessment**

Generally the **SOL** for an income tax return that is **timely, completely, and nonfraudulently** filed is **3 years** from the date the tax return is due or when it actually was filed (the date received by the IRS)



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### Statute of Limitations – 6 years

**The SOL extends to 6 years on any return where there is an understatement or omission of income exceeding 25%**

This amount is calculated as the amount of omitted income divided by the **original gross income reported on the return**



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**Exam Alert!**

Effective 7/31/15, the 6-year SOL includes when the failure to report the income is the result of an **overstatement of basis** in property that was sold

That law clarifies that overstating basis, **resulting in a reduced gain** upon the sale of the property, is the **same as omitting gross income** from a tax return



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**Statute of Limitations**

NO Statute of Limitations

**No return = no SOL running**

Fraudulent return = no SOL running even if later, correct income tax return is filed after due date of the return



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**§7502 Timely Mailed/Filed**

Under §7502 if **any return**, claim, statement, or other document required to be filed, or any payment required to be made, **is delivered by US mail** to the agency, officer, or office where such item is required to be filed or paid, **the date of the US postmark** stamped on the cover is **deemed to be the date** of delivery or the date of payment



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### §7502 Timely Mailed/Timely Filed

Also can use designated commercial or PDS to take advantage of timely mailed/timely filed rule

Must be approved PDS – IRS updates which services periodically – no annual list

Stamps.com or similar mark follows private postage meter rules (discussed soon)



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### §7502 Timely Mailed/Timely Filed

Using designated PDS or Certified, Return Receipt Requested services allows TP to defend IRS motion to dismiss for lack of jurisdiction

Date-marked receipts offer the appropriate proof of mailing. Remember, a petition filed after the 90th day is invalid ...

Different rule postmarks OUTSIDE US borders

Different rules for private postmark



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### MEMORY TOOL

IRC 7502 requirements met

P – Proper **postage**

A – Properly **addressed**

D – **deposited** on (or before) last date for filing

E – proper **envelope**

**PADE**



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## Notice Mailing Requirements

NOD valid when IRS sends to TP via certified (registered) mail

Mailing it to the TP's last known address 'sufficient'

**What if TP does not get the NOD?**

Physical receipt of NOD = actual notice



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## Last Known Address (LKA)

TC defined it to be the TP's '... last permanent address or legal residence known by the Commissioner ' unless TP provides clear, concise notification ...

Only 1 last known address at a time

IRS maintains 1040/709/706 separately so must advise for each



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## §6015

MFJ = each jointly/severally liable for the ENTIRE amount of tax due ... even if one spouse ... is unaware of what is or is not on the return ... the other spouse earned all of the money

For tax on the filed return and all later deficiencies ...



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## §6015 Relief

3 types of relief available:

- §6015(b) – innocent spouse\*
- §6015(c) – separation of liability\*
- §6015(f) – equitable relief

\*Must request no later than 2 years after IRS begins collection activity



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## Jurisdiction - §6015

Tax Court petition must be filed:

–w/in 90 days of IRS denying relief,

OR

–anytime after 6 months passes and IRS fails to act on request.



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## Jurisdiction - CDP

Challenge proposed collection activity in a hearing, either in CDP or CAP

Collection Due Process (CDP) = jurisdiction

Collection Appeal Rights (CAP) = no jurisdiction



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### Can raise this at CDP hearings

- Appropriateness of collection actions
- Other alternatives (IA or OIC)
- Appropriate spousal defenses
- Whether tax is due IF no NOD – de novo

Generally abuse of discretion standard



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### CDP §§6320 6330 Basics

- 30 days to request CDP hearing
- Timely appeal stops collection activity but SOL is suspended
- Appeals issues written determination letter:
  - AGREE • IRS and TP bound to agreement
  - DISAGREE • 30 days to go to Tax Court
- Equivalent hearing may be given • no judicial review • collection activity not suspended



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### Jurisdiction - §6404

Requires Notice of Final Determination

Petition must be filed within 180 days after the IRS rules on the abatement request OR if IRS fails to act (changed law for 2016!)

TP must meet net worth and size requirements and prove the IRS's failure to abate the interest was an abuse of discretion ... VERY DIFFICULT!!

Managerial or Ministerial



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## Tax Court Petition

We'll focus on the Deficiency procedures, but petition process the same for each type of jurisdiction



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## Tax Court Petition

NOD §6212	90 days	Tax Court Petition
§6015 Case (relief from joint & several liability)	90 days post denial or 6 months with no action by IRS	
CDP Hearing under §6320/6330	30 days	
§6404 abatement of interest	180 days post IRS denial or 180 days after no action by IRS	



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## Tax Court Petition

No requirements to use a certain form  
Under Rule 34 the petition must comply with the requirements related to pleadings

Small case form at [ustaxcourt.gov](http://ustaxcourt.gov)

This may change, but as for now, straight from [ustaxcourt.gov](http://ustaxcourt.gov): **Initial filings, such as the petition, may be filed only in paper form**



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### Tax Court Petition

A petition that does not satisfy the applicable requirements may be dismissed without giving TP chance to fix defect

The filing period is statutory and NO extensions of time can be granted

Untimely petition will be dismissed, and cannot be refiled



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### Counting The Number of Days (Rule 25)

Time for filing a TC petition is within 90 or 150 days after the authorized NOD is MAILED

The 90 days applies to most TPs, but it becomes 150 days when:

- TP is out of the country for the entire 24 hours of the day the NOD is mailed, OR
- notice is mailed to an address outside the country (even if the TP actually is in US)



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### Counting The Number of Days

NOD required by §6213(a) to indicate the last day for filing a TC petition

TP may rely upon the date shown on NOD if it is > than the 90-day filing period. If it is <90-day filing period, by statute TP still has 90 days to file petition



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## Last Day for Filing on the NOD

Department of the Treasury  
Internal Revenue Service  
Appeals Office  
300 North Los Angeles Street  
MS LA-8000 Room 3054  
LOS ANGELES, CA 90012

Date: DEC 1 8 2016



Letter Number: 801(cg)-c

Person to Contact:

Employee ID Number: 0235241  
Tel: (213) 372 - 4248  
Fax: (855) 245 - 8337

Refer Reply to:

AP:EX:LA:VLL

Form Number:

1120

Taxpayer Identification Number:

[Redacted]

Tax Type:  
Income Tax Liability  
Last Day to File a Petition with the  
United States Tax Court: MAR 1 3 2017



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## Counting The Number of Days

Know how to count the appropriate number of days.

Even 1 day late results in a dismissed petition and potential malpractice issues.

**More importantly – you'll likely be tested on this in November 2020**



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## Counting The Number of Days

Counting the 90-day period begins on the **day AFTER** the NOD is mailed ...



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**Counting The Number of Days (Rule 25)**

If the 90-day period ends on a Saturday, Sunday, or legal holiday recognized in DC (not state holidays!), the 90-day period ends on the next day that is not a Saturday, Sunday, or recognized holiday.

Move **FORWARD** on the calendar



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**Let me count the ways....**

Count actual days (from day AFTER NOD is mailed) to 90<sup>th</sup> day

--- OR ---

Count 13 weeks and subtract 1 day ( $13 \times 7 = 91$ , less 1 = 90)

Remember to watch for ending day on Sat/Sun or DC holiday ... goes to NEXT day



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**Typical Exam Question - Counting**

2016 P-9 (4 minutes) TP is physically present in the United States at all relevant times. On June 6, 2016, the IRS mailed to TP, to an address in the United States, a notice of deficiency (bearing the date of June 6, 2016) regarding TP's 2014 income tax liability. The notice of deficiency states that the last day on which a Tax Court petition may be filed is September 7, 2016. TP received the notice on June 8, 2016. What is the last day on which TP timely can file a petition with the Tax Court? The following 2016 calendar may be of use to you:



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### 2016 calendar is provided mailed 6/6

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### 9/5 is 90 days ... what next?

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**Look at the question again ...**

2016 P-9 (4 minutes) TP is physically present in the United States at all relevant times. On June 6, 2016, the IRS mailed to TP, to an address in the United States, a notice of deficiency (bearing the date of June 6, 2016) regarding TP's 2014 income tax liability. The notice of deficiency states that the **last day** on which a Tax Court petition **may be filed is September 7, 2016**. TP received the notice on June 8, 2016. What is the last day on which TP timely can file a petition with the Tax Court? The following 2016 calendar may be of use to you:




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Check the Question for last day = September 7!

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**Elements of Tax Court Petition**

**Generally tested – Know this!**

Memorize them

OR

Look up Rule 34????

Decide what works best for you ...




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## Petition

... must be “substantially in accordance with the Tax Court Rules:

- ✓ ID/VENUE – NEW RULE
- ✓ REFERENCE TO DETERMINATION
- ✓ ASSIGNMENT OF EACH ERROR ALLEGED
- ✓ CLEAR/CONCISE STATEMENT OF FACTS
- ✓ PRAYER FOR RELIEF
- ✓ SIGNATURE OF TP, OR TP’S COUNSEL
- ✓ ATTACH COPY OF NOD
- ✓ \$60 FILING FEE
- ✓ REQUEST FOR PLACE OF TRIAL
- ✓ STATEMENT OF TP IDENTIFICATION



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## Petition

- Must state a claim for which relief can be granted
- \$60 filing fee must accompany the petition, unless TP files affidavit shows inability to pay
- Court only accepts original petitions
- TP should file Request of Place of Trial, which indicates where the TP wants the case to be heard, or IRS does
- Clerk serves a copy of the petition + statement of TP ID on the IRS



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## Petition sample language

d. The Commissioner erred in determining that  
Petitioner is liable for the penalty under section  
6662(a) of the Internal Revenue Code with respect to  
the calendar years 2010 and 2011.

6. As the basis of its case, Petitioner relies on the  
following:

a. Petitioner accurately stated its gross receipts for  
the calendar years 2010 and 2011.

WHEREFORE, Petitioner prays that the Court provide the  
following relief:

1. Determine that there are no tax deficiencies for  
Petitioner’s calendar years 2010 and 2011; and



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## Statement of TP ID #

### TAXPAYER PRIVACY ISSUES

- Separate form
- Served to IRS w/petition
- No longer will be public info

Full residence no longer required - state only

No DOB – year only

No name minor child – initials only

No financial account – last 4 only



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## Rule 27/Privacy

The Court may order sealed any filing that contains any of this information without redaction

Protective orders can be issued (for good cause) requiring redaction of additional information



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## Rule 27/Privacy

If a person files their own information without redaction, they waive the rule's protection ...

**Responsibility to redact a filing rests with the party or nonparty who makes the filing ...**



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### Rule 27/Privacy

An inadvertent waiver may be protected by submitting a properly redacted substitute filing w/in 60 days

... after 60 days, leave is required



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### Petition Problems

No second chances ... if no claim for relief, petition is dismissed ...

If issue is missing from a petition TP may be barred ...

Can the petition be changed after it is filed?

Yes ... but, Court cannot permit an amendment that confers jurisdiction over a matter that otherwise would not exist



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### Know these terms and Use them!

**Admit** – is to concede/agree with assertion

**Deny** – is to disagree with assertion

**Silence on any matter** – is a deemed admission



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## Answer (Rule 36)

If the IRS is without knowledge or info to form a belief about the truthfulness of an allegation, the Answer must so state (treated as denial). IRS may deny or qualify only part of an allegation

Any issue not addressed in the Answer is deemed conceded

IRS has 60 days to Answer



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## Answer sample language

### ANSWER

RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1. Admits.
2. Admits.
3. Admits; except denies that the notice of deficiency attached to the petition served on respondent was marked as Exhibit A.
4. Admits that the determined deficiencies, additions to tax, and penalties are as stated.
5. Denies respondent erred as alleged.
6. a. through d. Denies.  
e. Denies for lack of sufficient knowledge or

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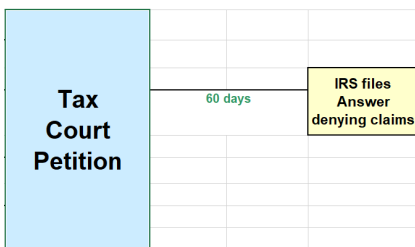
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## Petition to Answer



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### Reply (Rule 37)

May not be required

Yes, if the Answer raises new issues or increases the tax deficiency • Reply indicates which items asserted in the Answer are disputed • 45 days to respond or 30 days to move • must deny or admit each material allegation ...



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### Reply (Rule 37)

Effective 1/1/10: If a Reply is filed every affirmative allegation in the Answer must be expressly admitted or denied or it is deemed admitted

If a Reply is NOT filed, all affirmative allegations are deemed denied UNLESS IRS files motion w/in 45 days of expiration for Reply requesting they be deemed admitted

Any new material in the Reply is similarly deemed denied



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### Joinder of Issue (Rule 38)

A case is at issue when the Answer is filed, or when the Reply is filed, if one is required

We know what the case is about ...



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### Joinder of Issue (Rule 38)

The date is important date - formal discovery may not commence until 30 days after joinder of issue occurs



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### Answer to Joinder



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### Amended Pleadings (Rule 41)

As a matter of course, a party may amend a pleading once before a responsive pleading is served

Party cannot be allowed to amend a petition after expiration of the relevant filing time if the amendment grants jurisdiction over any matter that would not otherwise be conferred



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### Amended Pleadings (Rule 41)

When issues not raised in the pleadings are tried by express or implied consent of the parties, they are treated as if raised in the pleadings.



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### Quick Review

Let's use some prior Tax Court exam questions to review these concepts

Don't peek at the answers – see what you remember!

There is a separate jurisdiction webinar available in the student content area, so we won't review those questions now



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### 2012 P-4 (3 minutes)

Describe the methods by which a Tax Court petition may be timely filed.



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**2012 P-4 (3 minutes)**

SUGGESTED ANSWER: petition can be hand delivered to the court on or before the last day for filing, can be mailed via USPS or by an approved private delivery service if it meets tests of §7502 (timely mailed, timely filed rules). Petition cannot be filed electronically. Petitions mailed internationally must be received by the due date. Private postage meter or stamps.com or equivalent mark will be ignored if mail arrives outside the normal timeframe for delivery. (6/6)



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**2010 P-2 (1 minute)**

**If the IRS fails to mail a valid final notice of intent to levy and notice of the right to a hearing to the taxpayer because the notice was not sent to the last known address of the taxpayer, and eventually a notice of determination is issued and the taxpayer petitions the Tax Court, may the court, on its own motion, dismiss the case for lack of jurisdiction? State Yes or No.**



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**2010 P-2 (1 minute)**

SUGGESTED ANSWER: Yes (2/2)



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**2016 P-10 (6 minutes)**

**Describe the contents of the pleading that must be filed by or on behalf of an individual taxpayer to initiate a Tax Court proceeding in response to a statutory notice of income tax deficiency.**



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**2016 P-10 (6 minutes)**

SUGGESTED ANSWER:

- ID: name, mailing address, state of residence, TP's ID#, which may be redacted, and the IRS address where the tax return was filed
- Date of the NOD & IRS office address that sent the NOD
- Nature, Type, Year & amount of tax. Amount of tax TP believes is owed if different from IRS
- Clear, concise, lettered statements of errors alleged by IRS that TP contests
- Clear, concise, lettered statements as to the facts that TP supports TP's tax liability, but for TP's burden only
- Prayer for relief, Signature of TP (or TP's counsel), address and phone for TP (or TP's counsel representing & preparing petition) TP's ID, and counsel's bar #
- \$60 fee, request for place of trial, and statement of TP's ID. (12/12)



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**2014 P-5 (1 minute)**

**If a Tax Court petition is silent with respect to one or more issues raised in the deficiency notice, what is the effect?**



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**2014 P-5 (1 minute)**

SUGGESTED ANSWER: The issue is deemed conceded or admitted. (2/2)



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**2016 P-15 (2 minutes)**

Briefly describe the meaning under the Tax Court Rules of "joinder of issue" and explain its significance.



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**2016 P-15 (2 minutes)**

SUGGESTED ANSWER: "Joinder of issue" occurs after the answer and any necessary reply is given. Formal discovery commences 30 days after joinder of issue. (4/4)



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**Preliminary live webinar schedule**

Tuesday 8/27 – TBA (probably 2018 exam review)

Tuesday 10/1 – TBA

Tuesday 11/5 – TBA

Not required – no CE  
may be used as ‘instructor’s hours’  
Watch the Forum for details



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**You CAN do this!**

We’re here to help you!



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**Questions & Answers**

Type them into the pane to the right of  
your screen

Let’s take as many as we can



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