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TAX AUDIT & DEBT

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INTRODUCTION

The average taxpayer may not usually keep organized records after the tax return is filed.

INTRODUCTION

Such taxpayer is averse to the pain of “doing it over” with the possibility of cash penalty.

INTRODUCTION

The audit is considered as something that should go away with the expenditure of “minimum dollars”.

INTRODUCTION

and minimum taxpayer
mental involvement.

Big Mistake?

INTRODUCTION

The question is whether the taxpayer is willing to concede to the audit to the government position

INTRODUCTION

Without a taxpayer

“commitment to details,”
and maximum taxpayer
mental involvement, the
taxpayer is not as likely
to prevail.

INTRODUCTION

Without a “commitment to involvement,” the taxpayer will not get an idea of which aspects of the audit are provable.

INTRODUCTION

After some perception of which aspects of the audit are provable, a decision should be made on which issues to contest.

INTRODUCTION

Regardless,

Involvement and participation are mandatory.

AUDIT AUTHORITY

IRC §7602:

“Examination of Books
& Witnesses”

AUDIT AUTHORITY

IRC §7517:

“Taxpayer’s position on
Value” substantiation”

AUDIT TRIGGERS ?

Perhaps based upon
taxpayer numeric
values & industry norm.

AUDIT TRIGGERS ?

Perhaps based upon
Identity of a bad paid
tax preparer.

AUDIT TRIGGERS ?

Perhaps based upon
IRS data normative
template.

AUDIT TRIGGERS ?

Perhaps a DIF
(Discriminant Function)
statistical measure.

AUDIT TRIGGERS ?

Perhaps taxpayer has more income than reported on the return.

AUDIT TRIGGERS ?

Perhaps grew from un-agreed correspondence audit.

NORMAL PROCESS

Where Audit Fits In

(A) Year's Earning Activity

(B) Prepare & File Return

(C) Organize Papers

NORMAL PROCESS

Where Audit Fits In

(D) AUDIT NOTICE

(1) Identify years and
issues affected

NORMAL PROCESS

Where Audit Fits In

(2) Prepare to Respond

(3) Retrieve & Review
Tax Years in Audit

NORMAL PROCESS

Where Audit Fits In

(4) Retrieve & Review
Before/After Adjacent
Tax Years in Audit

(5) Draft Responses

NORMAL PROCESS

Where Audit Fits In

(6) Contact Auditor to transfer information & explore issues likely to be agreed upon.

NORMAL PROCESS

Where Audit Fits In

(7) Set likely unagreed items for next meeting.
(telephonic or in-person with tax representative.

NORMAL PROCESS

Where Audit Fits In

(8) If no agreement is reached, set a formal in-person audit meeting.

NORMAL PROCESS

Where Audit Fits In

(9) Prepare cases, a chronological narrative, and records to support taxpayer position.

NORMAL PROCESS

Where Audit Fits In

(10) Meet with auditor
(preferably without
taxpayer present if
taxpayer is represented)

NORMAL PROCESS

Where Audit Fits In

(11) Present briefed case interweaving facts, evidence, affidavits and records. Argue taxpayer position.

NORMAL PROCESS

Where Audit Fits In

(12) Reach agreement.
If not, request audit
manager to attend &
review facts.

NORMAL PROCESS

Where Audit Fits In

(13) Formally in writing
request the auditor's
work papers created in
supporting IRS position

NORMAL PROCESS

Where Audit Fits In

(14) Request face to face meeting if auditor's work papers are in error.

NORMAL PROCESS

Where Audit Fits In

(E) If issues remain unagreed, prepare to submit an appeals to IRS Appeals with an IRS risk of loss analysis.

NORMAL PROCESS

Where Audit Fits In

(F) If lost at appeals,
prepare a Tax Court
Petition outlining all
positions & approaches.

NORMAL PROCESS

Where Audit Fits In

(G) Prepare to engage
appeals again via
direction from Tax Court

NORMAL PROCESS

Where Audit Fits In

(H) Prepare for Tax
Court Trial (or other
action to get to another
court)

NORMAL PROCESS

Where Audit Fits In

(I) If negative outcome
ask for reconsideration
or rehearing of en banc
Tax Court (rare)

NORMAL PROCESS

Where Audit Fits In

(J) Circuit Level Appeals
Courts

(K) Supreme Court

NORMAL PROCESS

Where Audit Fits In

Important: slides A - K
Represent ELEVEN (11)
opportunities to get it
right.

NORMAL PROCESS

Where Audit Fits In

Every opportunity that the taxpayer misses, ignores or waives is a lost opportunity.

NORMAL PROCESS

Where Audit Fits In

Procedural opportunities lost can prevent taxpayer from proving substantive positions, and its more expensive.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(A) A good, complete, showing for IRS audit should have a number of characteristics:

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(1) wholistic organized
over-preparation and
readyness.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(Don't just sample or compute only one month of data when the IRS may likely require more.)

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(prepare and organize financial data in a way that minimizes the need for further IRS auditor computations)

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(2) IRS Auditor needs to have a fundamental understanding of details of the taxpayer's life circumstances.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(At minimum, occupation,
rate of pay, assets,
liabilities, & overall
business & household
economics & lifestyle)

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

These fundamental attributes of the taxpayer are an integral part of the position of the taxpayer.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

An amended return
should be considered to
take control of any
sensitive areas.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(a showing of higher precision in an amended return may persuade the IRS auditor of taxpayer's position)

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(B) The taxpayer must learn, research & be conversant with the direct issues in the audit.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

...taxpayer must also
anticipate secondary
issues that might arise.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(1) Documentation
should be organized,
complete, subtotaled &
totaled, especially if it is
key to taxpayer's position

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(2) Law and supporting
(and opposing) cases
should be organized and
ready to support the
taxpayer's position

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(3) An evaluation of related subject areas which might be sensitive or raise questions should be discovered.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(C) Opposing the IRS auditor verbally, without written readiness will not work. What is not written will have never existed.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(1) The IRS auditor has many audits to do, and assisting with time management may favor a better taxpayer result.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(2) Clear substantiation of position, & mastery of tax law outweighs verbal argument, & complaints about the audit.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(3) The stakes for being thorough are high. Non-deductible interest, penalties, & tax will result from losing the audit.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(D) Without compactness of taxpayer position, an IRS Auditor is more likely to start a “fishing” expedition.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(1) If a taxpayer tries to limit the time or scope of audit, the IRS auditor suspicions may increase.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(2) Presentation must be convincing & provide all arguments that indicate nothing more exists which is useful to see.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(3) Taxpayer electronic files should be provided without revealing historical creation versions.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(4) Taxpayers should consider that every year will be audited & arrange tax return records to be quickly retrievable.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(E) Every information request from the IRS auditor should result in production or a detailed explanation.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(1) Resistance to providing information must be clear, with narrowly drafted reasoning.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(2) Inconsistent responses to information requests will raise further IRS auditor suspicion.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(3) Unexplained failure to
provide substantiation
will raise further IRS
auditor suspicions

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(4) Spurious excuses and made up stories will raise further IRS auditor suspicions.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(5) The taxpayer's trying personally to limit the boundaries & duration of the IRS audit probably won't work.

REPRESENT SELF?

Can Pro Se Taxpayers Prevail, Will Quality Be Complete Enough?

(6) If IRS auditor remains unconvinced of taxpayer position, consider having an IRS group manager to attend the audit.

PROFESSIONAL

Professional Representation Advantages

(A) Representation by an attorney that did NOT prepare the tax return has a number of advantages.

PROFESSIONAL

Professional Representation Advantages

Even an attorney that prepares a return has no privilege as to the return and can be made to testify.

PROFESSIONAL

Professional Representation Advantages

Non-attorneys (CPA's & enrolled agents) not taking part in the return have a limited privilege.

PROFESSIONAL

Professional Representation Advantages

That limited privilege is derived from 26 U.S.C. 7525 and is limited only to civil matters involving the federal government.

PROFESSIONAL

Professional Representation Advantages

In an audit resulting in criminal controversy, even the 26 U.S.C. 7525 privilege will disappear for non-attorneys.

PROFESSIONAL

Professional Representation Advantages

(2) Anyone that prepared the return as a paid preparer is subject to separate PREPARER PENALTIES.

PROFESSIONAL

Professional Representation Advantages

Paid preparers use an “intake form” completed by taxpayer, which is often used against the taxpayer to avoid liability.

PROFESSIONAL

Professional Representation Advantages

Taxpayer will counter that taxpayer (a) didn't understand or (b) informed tax preparer verbally in great detail.

PROFESSIONAL

Professional Representation Advantages

(B) Generally, an IRS tax auditor would prefer to interact with a tax professional (hopefully even one not subject to a foul with the taxpayer

PROFESSIONAL

Professional Representation Advantages

(B) Generally, a taxpayer should prefer a non-conflicted tax representative that did not prepare the return

PROFESSIONAL

Professional Representation Advantages

(1) A representative that prepared the return would focus on blaming taxpayer to prevent preparer penalties

PROFESSIONAL

Professional Representation Advantages

(2) A representative that prepared the return can not primarily focus on advocating taxpayer's tax position.

PROFESSIONAL

Professional Representation Advantages

(C) An IRS tax auditor would prefer to interact with an independent tax professional even if there is no conflict to exploit.

PROFESSIONAL

Professional Representation Advantages

(1) A good professional taxpayer representative can restrict or eliminate the need for dangerous presence of the taxpayer.

PROFESSIONAL

Professional Representation Advantages

(2) Tax professional can more understandably shorten face-to-face time with the tax auditor less cut short exposure time.

PROFESSIONAL

Professional Representation Advantages

(3) Representatives can urge limit audit scope to initial scope & avoid negative inferences.

PROFESSIONAL

Professional Representation Advantages

(4) A tax professional that knows at least the same depth of tax law as the IRS auditor can do some negotiation to save time.

OTHER ASPECTS

Act Early To Address Tax Problems

(A) Tax path: books
preparation; return
preparation; filing; audit;
proposed assessment;
assessment; appeals;

OTHER ASPECTS

Act Early To Address Tax Problems

Path cont'd:
tax court; circuit court
appeals; and the U.S.
Supreme court.

OTHER ASPECTS

Act Early To Address Tax Problems

The Tax path is seen to provide about eleven chances for taxpayer to present a case and prevail on all issues.

OTHER ASPECTS

Act Early To Address Tax Problems

Early stage procedures:

- Less Cost
- Less restrictive issues that can be raised.
- End Controversy earlier.

OTHER ASPECTS

Act Early To Address Tax Problems

(B) After assessment, taxpayer has 10 days to pay, after which involuntary collection mechanisms can begin.

OTHER ASPECTS

Act Early To Address Tax Problems

(C) 4th opportunity for resolution is audit. Care, effort, is required. Semi - Judicial stages are next.

Conclusion

CHECK YOUR IRS TAX ACCOUNT

Attention should be given an IRS audit the same as an audit of a company.

Early action enables early resolution & better cost result.

Conclusion

CHECK YOUR IRS TAX ACCOUNT

What is the risk of weak effort for a tax audit?

It is the taxpayer's risk!

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