Regulations Governing Practice before the IRS a.k.a. “What to do Before and After the IRS comes Knocking”

9th Annual Heartland Regional Council of the IMA Educational Conference
Missouri State University
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Topics

• IRS Goals
• Professional Standards
• Hello, IRS Calling
• Disclosure Rules
• Preparer Penalties
• Dealing with IRS
IRS Strategic Plan

• Deter Non-Compliance – Focus Corporations & High-Income Individual Taxpayers
• Ensure Adherence to Professional Standards & Follow Law
• Deter Tax and Financial Criminal Activity
• Deter Abuse & Misuse of Tax-Exempt Entities
Preparer Review

• Issue
  – Preparers overstating qualifications
  – Theft of tax payments or refunds
  – Impersonation of IRS employees or misuse of IRS seal or logo

• 2008 Test
  – 65% substantial errors by unenrolled/unlicensed
  – Balance had misstatements and omissions considered willful or reckless conduct
  – Failure to sign or furnish id numbers
  – Zero accuracy on business returns
Professional Standards

• Circular 230
  – Rules mandatory
  – Updated April 2008

• AICPA Statements on Standards for Tax Services
  – IRS views as supplemental to Cir 230
  – Apply to all practitioners not just CPAs
  – Viewed as rules of conduct by some states

• IRS rules and regulations

• State rules and regulations
  – Registration in some states
Who may practice?

- **Attorney**
  - Needs to file declaration are qualified and authorized
  - Don’t need to register for advice but offering same considered practice before IRS
- **CPA**
  - Same rules as attorney
- **Enrolled Agent**
- **Enrolled Actuary**
  - Limited to actions related to title 26 US Code
    - 401, 403, 404, 412, 413, 414, 419A, 420
Others

• Enrolled retirement plan agent
• Government officers and employees
• State officers and employees
• Others
  – Anyone who wants to prepare a return
  – Can not represent for issues other than on preparation of return – need to ask someone authorized for same
Duties

• Information
  – Must respond if requested by IRS unless considered privileged information
  – If do not have must id who does
  – Can not interfere with request

• Knowledge of Client omission – must advise client of same – can not alert IRS

• Diligence as to accuracy

• Prompt disposition of pending matters

• Can not accept assistance from disbarred or suspended person or former IRS employee if employee violated law
General Rules

• Notaries- can not notarize documents related to IRS issues if are preparer, representative, or counsel

• Fees-may not charge unconscionable fee
  – Can be contingent if related to exam or challenge to original return or amended return if within 120 days of notice from IRS

• Return records but may retain copy

• Conflicting interests – can not represent if conflict- includes divorced spouses
Who is Preparer

- Can be subject to penalty even if prepared by another
- Can be considered preparer if give advice relative to completion of return
- Business preparer considered personal preparer if data forms substantial part of return
- Computer preparation services
- GP can be considered preparer of LP return
- First preparer can be considered preparer of second preparers return if second relied on data from first preparer’s work
Other Circular 230 issues

• Solicitation
  – Can not be false, fraudulent, or misleading
  – Can not be direct or uninvited if in violation of laws

• Checks
  – If prepare - no negotiation
AICPA SSTS

• SSTS No. 1 – Return Positions
  – Realistic possibility that position can be sustained
  – Need to advise client of penalties
  – Advice to client does not have to be written

• SSTS No. 2 – Answers to Questions
  – Sign return only if satisfied
  – Disclose even if adverse to client
  – All questions on returns should be answered
  – Should provide explanations with return
  – Not necessary if reasonable grounds for omission
  – Watch incomplete returns due to omissions
AICPA SSTS

• SSTS No. 3 – Procedural Aspects
  – Obligation to examine or verify documentation
  – If does not seem right-ask again
  – Required by Reg. 1.6694-1(e) to avoid penalties
  – Consider info from other returns but do not violate confidentiality

• SSTS No. 4- Use of Estimates
  – Ok to use if satisfied that amounts reasonable
AICPA SSTS

• SSTS No. 5 – Departure from Prior Position
  – Treatment must be consistent to position from prior IRS proceedings or court decisions related to taxpayer
  – Ok to change if law change, new court cases, better documentation to support position
• SSTS No. 6 – Knowledge of Error-Return Preparation
  – If observe error on return or failure to file, recommend to client steps to correct
  – If fraud or criminal misconduct, recommend attorney
  – Document in writing to client to avoid disputes
AICPA SSTS

• SSTS No. 7 – Knowledge of Error-Admin Proceedings
  – Applies to errors on return under audit or appeal
  – Advise client of actions to correct
  – Request consent to disclose to IRS
  – If refuses consider withdrawal – get legal advise

• SSTS No. 8 – Form and Content of Advise to Clients
  – Use good judgment
  – Do in writing if important, unusual or complicated
  – No obligation to notify of new developments unless involved in assisting client relative to advice
  – Good practice to advise clients
Always practice safe tax!
Quality Control

- Use practice aids and checklists
- Keep documentation
  - Taxpayers can and do claim preparer made up data – if have source document or notes can refute
  - Keep copies of input data
  - If told orally, put electronic preparer note-amount per client phone call
  - Efile cabinets great for repository
Review

- Verify input accuracy
- Check for Omissions and Inconsistencies
- Compare with prior year for omitted items
- Review for appearance – spelling errors, lower and upper case combos etc
- Use diagnostic tools
- Tax planning part of review
Security

• Tax preparers are financial institutions per FTC
• Need security plan in place and must provide notices to clients – can do as part of engagement letter or as stuffer with returns
• Types of threats
  – Virus
  – Spam
  – Carelessness-includes web browsing
  – Phishing - #1 tax scam
• Protect with encryption, backups, password activated screensavers
We May Want You
We May Not
And
We Are Here to Help You
Levels of Contact

- AUR
- Audits
  - Correspondence
  - Office
  - Field
- Appeals
- Enforcement
- Criminal
Automated Under Reporter Program

• Computer matching
• Notices
  – CP 2501 – initial contact – query only
  – CP 2000 – proposed changes
  – Statutory Notice of Deficiency
  – CP 2057 – Soft Notice
    • Instructed to file amended return & correct documents
    • Reviewed next year and if continue – top of heap
How to Handle AUR

• Get Power of Attorney Form 2848

• If agree
  – Sign consent – both signatures required
  – Pay balance or file Form 9465 Installment Agreement

• If disagree
  – Provide explanation
  – Attach supporting documents
  – Return AUR notice with the documents and/or supporting documents
Helpful AUR hints

• Have 120 days to respond – can ask for extension
• Do not file amended return and send in
  – 8 to 10 weeks delay, up to one year if large refund
• If amend – note CP2000 or AUR
  Reconsideration on top of return
  – Send letter with AUR Notice Response highlighting same
• Have patience- clients delay, computers harass
Helpful Hints

• Put response in same sequence as IRS notice
• Include own proposal summary showing your proposed result in same format as IRS
• If item should be split between multiple taxpayers- id who gets rest and include in note
• Watch ID theft
• Abusive items- Credits – child, earned income, first time homebuyer
• Staff guide – Pub 17 – be persistent
Other Tips

• Campus Audits
  – Six to eight weeks – one to two issues

• Field Exams
  – Long audits – usually highly skilled auditors
  – Can address any issue – good reason to do in your office

• Do not use Form 870 – use Form 870-AD which closes year from further exam
Audit Reconsideration

• Wrong address IRM 4.13.1.3 et al
• No notice of assessment prior to receipt of bill
• Have not had opportunity to tell story
• Prevents meeting necessary living expenses – IRS Policy Statement P-5-71 & IRC 7811(a)
• Currently not collectible IRM 5.16.1.1
• Bankruptcy with taxes three years old and assessed for 240 days – liens are not waived
Good Practices

• Be nice
• You may be training the auditor
• Conduct audit in your office if possible
• Think before talking – loose lips sink ships
• Quote the manual
• If necessary ask their help
Bad Practices

• Don’t extend statute of limitations
• Don’t lie or let client lie
• Never let client talk to IRS
• Do not do audit at clients business or home
• Don’t bluff
Collection Process

• Assessment made in accordance with IRC 6201
• Notice and demand for payment
  – Have multiple opportunities to respond
  – Final letter is most important since gives right to request Collection Due process Hearing
• ACS
  – Phone banks to try to collect or get bank info
  – Don’t give info unless levy served on wages

• 10 year Statute of Limitations from date assessed per IRC 6502(a)
Levys

• Prerequisites
  – Notice and Demand
  – Notice of Intention to Levy
  – Notice of Right to due process hearing

• Steps
  – Notice given in person, left at home or business, or sent to last known address by certified or registered mail
  – 30 days before levy
  – Show wrong address, levy released, new notice issued
  – Copy mailed regular mail to representative
  – No action may levy
  – If believe wrong – File 12153 Request for Collection Due Process Hearing
  – Don’t agree - One chance – US Tax Court
Levys

• Can levy social security payments or wages
• Can attach bank accounts and funds owed by third parties
• Can not levy
  – Clothing and school books, personal effects
  – Books and tools of business
  – Unemployment benefits, workmen’s compensation, child support
  – Disability payments or principal residences
Installment Agreements and Levys

• No levy for 30 days after agreement rejected
• During appeal of an agreement
• While in effect
• For 30 days after default and an additional 30 days for appeal
• Watch agreements on amounts over $25,000 or multiple agreements
Installment Agreement

• Best is to pay in full
• If can’t pay request it (allowed per IRC 6159(a))
  – may have to provide financial info - $105 fee
• IRS must agree under IRC 6159(c)
  – Less than $10,000 liability
  – All returns filed
  – All taxes other than this paid
  – No other agreement in place
• Tax must be paid in three years
Negotiated Agreements

• Amount to pay determined based on national and local standards for typical families
• National standards used for food, housekeeping supplies, clothing, personal care and miscellaneous – does not matter what taxpayer actually spends
• Local standards used for housing and transportation
• File financial statements Form 433-A for individuals and Form 433-B for businesses
• Can negotiate amount but IRS does not consider other debts when setting amount to pay
Negotiated Agreement Tips

- Use liquidation value for assets on the 433 forms not what paid
- If push on residence use 60% of value since that is what will get at fire sale
- Be careful in providing information – it’s better to not give the 433 than give a partial one
- Never give customer lists – can be used to attach receivables plus damage business
Examination Closure

• Initial Deficiency Proposal – 30 day letter
  – Gives right to request appeal hearing
  – Can get extension – 30 days does not mean a deadline
  – Complete Form 12203 if adjustment < $25,000
  – Written Request if > $25,000

• Statutory Notice of Deficiency - 90 day letter
  – Gives 90 days or 150 if out of country to petition US Tax Court
  – Deadline is mandatory per IRC 6213
  – Can be rescinded
    • Wrong amount
    • Wrong taxpayer
    • Wrong period
    • Establish actual amount due is less than amount on SNOD
Collection Notices

• CP 14 – first notice before notice of lien can be filed or levy action can be taken
  – 10 days to pay or statutory lien arises
• CP 501 – reminder of unpaid tax
  – Not required and collection can be accelerated
• CP 503 – Urgent – Payment required
• CP 504 Notice of Intent to Levy
The IRS Took my Money

• 10 days before funds actually gone – are just frozen
• If attachment is from Substitute for Return, can file actual return and may get back
• If for failure to pay – can still get payment plan
• Normal refund – 3 years from filing due date
  – Can get refund in special situations beyond that time but is hard
Examination Appeal Rights

• If no agreement at closing conference - IRS notifies of right to appeal
• No response in 30 days - Statutory Notice of Deficiency – 90 days to file Tax Court Petition
• Claims Court and District Court do not hear cases until tax paid and refund claim denied
• Can appeal within IRS or to Tax Court
• Further appeal to US Court of Appeals or Supreme Court
Response to Proposed Deficiency

• Agree
  – Sign and return exam report or waiver
  – Keep copy
  – Pay amount due with interest from due date of return until paid

• Disagree
  – Can request discussion with manager
  – Go to Appeals Officer
  – Can pay tax, file claim for refund, and go to District Court
Representative Role

• Be able to discuss options with taxpayer
• Help determine cost vs. benefit of appeal
• Client needs to know if legal and accounting fees justified given amount of tax, interest and penalties being assessed
• Review records to determine if best support for position
• Determine if formal written protest necessary
Preparing Effective Protest

• Small Case Request
  – Amount owed is less than $25,000
  – Send letter requesting Appeals consideration
  – Indicate changes do not agree with and why

• Formal Written Request
  – Required if tax greater than $25,000
  – Employee plan and exempt organization
  – Partnership or S Corporation
  – Only form of appeals request recommended
Format

• Name, address, social security number and daytime phone number
• Statement of appeal
• Reference IRS letter date and symbols from letter – best to also include copy of the letter
• Period (s) involved and tax form
• Itemized Schedule of tax changes
• Statement of facts
• Statement of Law or Authority
• Perjury statement
• Signatures – both husband and wife, corporate officer, or power of attorney
Perjury Statement

• “Under penalties of perjury, I declare that I have examined the statement of facts presented in the protest and in any accompanying schedules and, to the best of my knowledge and belief, it is true, correct, and complete”

• If POA- State you have prepared protest and accompanying documents, and whether you know personally that the statement of fact(s) contained in the protest and accompanying documents are correct.
Helpful hints

• Always follow same format in appeals letter as IRS
• Always use name as listed per letter and both social security numbers
• IRS does not keep the letters they sent, thus you should reference the codes or include copy of letter with protest
• Avoid signing perjury statement as taxpayers lie
• Look at auditor handbooks
• Ask for disclosure officer if auditor will not release work papers
Tax Court

• For Appeals review must file petition to US Tax Court

• If not settled by appeals – goes to trial to be heard by one judge and no jury

• Jurisdiction only if petition filed timely
  – One day late – lose jurisdiction and can’t be heard
  – Use alternative route
Other Appeals Options

• Pay tax and file claim
  – If claim denied, can appeal decision—Appeals handles
  – If not resolved can sue in US District Court or Court of Federal Claims – expensive

• Offer in Compromise based on doubt as to liability
  – File Form 656-L – no filing fee
  – Stops statute of limitations on assessment and collection
  – No second chance if use this route
Winning with IRS

• Use Common Sense
  – Law and facts not on taxpayer side
• Communicate
  – Anticipate issues and try to resolve early
• Prepare
• Present properly
• Be persistent
I Got It and Want to Use it!
IRC 7216 - Feel Lucky

- “knowingly or recklessly”
- “unauthorized disclosures or use”
- “information furnished in connection with the preparation of an income tax return”
- = IMPRISONMENT
IRC 7216 - Disclosures

• Tax return information – computations, worksheets, printouts + everything receive to prepare return
• Preparer – anyone assisting in or engaged in preparing returns including volunteers for VITA or TCE
• Rev. Proc. 2008-35
  – Consent Forms
Disclosure types

• Disclosures requiring consent

• Permissible disclosures that do not require consent
  – IRS, courts, state tax authorities, other tax preparers assisting in return
Mandatory Language

- “not required to sign, if sign, federal law may not protect information from further disclosure”
- “if sign, can set time for duration of consent and if not stated is valid for maximum of one year.
Rev Proc 2008-35

• Multiple consents to disclose and use permitted on one form
• Mandatory language and warnings
• Electronic consent forms and electronic signatures allowed
• Special Requirement for Disclosure of Social Security Numbers outside US
Disclosure Do’s and Don’ts

• Get before prepare return
• Single consent cannot authorize use and disclosure—need separate document
• Can not consult or provide tax planning without written consent
• Can make client lists of returns prepared or processed for use to offer additional preparation services
• Must get consent to use preparation services outside US
• Use 8 ½ x 11 inch paper and 12 point type font
Penalties

• Civil – IRC 6713(a) – unauthorized use or disclosure
  – $250 per disclosure or use, not to exceed $10,000/year

• Criminal – knowingly or recklessly make unauthorized use or disclosure
  – $1,000 fine or imprisonment of no more than one year or both for each violation
IRC 6694 – Preparer Penalties

• Standards of Conduct for Unreasonable Positions
  – General – Undisclosed nonabusive position
    • Penalty
  – Substantial Authority – Undisclosed
    • Greater than 50% likelihood of being upheld
  – Reasonable Basis - Disclosed
    • Significantly higher than not frivolous or not patently improper
  – More likely than not – Tax Shelters
IRC 6694 Suggestions

- Always think “Substantial Authority”
- Disclose-Form 8275
- Tax advice will cause 6694 to apply
- Document advice in writing
- Use Engagement Letter
- Use best judgment
- Remember your dog is a friend, your client is not!
IRC 6694 Penalties

• Greater of $1,000 return penalty or 50% of income from return—undisclosed or frivolous position – known or should have known - IRC 6694(a)
  – Avoid if position sustainable – verify per Reg. 1.6694-1(e)(1)
  – Relied on someone else – K-1 from another preparer
  – Disclose position or issues

• Greater of $5,000 penalty or 50% -understated liability if attempt to understate liability or disregard rules and regulations – IRC 6694(b)
  – No reasonable cause/good faith defense
  – IRS must prove case

• Potential for multiple penalties from pass through entities
  – Reg 301.7701-15(b) deminimus rule – item not substantial if <$2,000 or <$100,000 and also <20% of AGI
IRC 6695 Penalties

- $50 per failure up to $25,000 per year
  - Failure to give taxpayer copy of return - 6695(a)
  - Failure to sign return – 6695(b)
  - Failure to furnish preparer ID number – 6695(c)
  - Failure to maintain copies of returns prepared or client listing – 6695(d)
  - Failure to maintain info on persons employed – 6695(e)
  - Endorsing or negotiation tax refund check – 6695(f) - $500 per check
  - Earned income credit – 6695(g) - $100 per failure
Other Penalties

- Abusive tax shelter-IRC 6700- $1,000 per activity or 100% Gross Income if less
- Aiding and abetting understatement – IRC 6701 $1,000/taxpayer or $10,000/corporation
- Failure to file or filing false or incomplete information, failure to include info about it on return – IRC 6707 - $50,000 or $200,000 if listed (50% gross income (75% if intentional)
Other Penalties (2)

- Failure to provide list of advisees of reportable transactions – IRC 6708 - $10,000 per day after 20 days delay
- Improper disclosure of info – IRC 6713 – civil $250/ up to $10,000 per year – IRC 7216 – misdemeanor - $1,000, one year or both
- Willful delivery or disclosure of fraudulent documentation – IRC 7207- Up to $10,000 or $50,000 if corporation and/or one year
- Interference with administration of code- IRC 7212 – up to $5,000 fine and/or three years
Other Advice

• Your best friend can be IRS Stakeholder Relations Representative
  – Call IRS office to get on their list
  – Free information/updates

• Nationwide Tax Forums
• National Phone Forums
• TaxTalkToday.tv
Advice of the Day

Sun Tzu, Art of War

“If you know others and know yourself, you will not be imperiled in a hundred battles; if you do not know others, but know yourself, you will win one and lose one; if you do not know others and do not know yourself, you will be imperiled in every single battle.”