

IRS Practice & Procedure

Edward K. Zollars
Phoenix, Arizona

Edward K. Zollars

- Thomas, Zollars & Lynch, Ltd. (local firm)
- Incoming Member
AICPA Tax Division Tax Practice Improvement
Committee
- Remember, CPE instructors are not
“authoritative sources” but hopefully pointers
to such sources

Penalties

Module I

Accuracy Related Penalty

- §6662 20% penalty
 - Substantial understatements of income tax
 - Negligence or disregard of rules
- Only applies if return is filed
- Reasonable basis exception (including reliance on preparer)

Substantial Understatement

- Must exceed greater of
 - 10% of tax required to be shown or
 - \$5,000 (corporations \$10,000)
- Exception
 - Substantial authority
 - Adequately disclosed

Substantial Authority

- Reg. §1.6662-4(d)
- Objective standard (per IRS)
- Determine
 - Evaluation of authority
 - Authorities considered

Substantial Authority

- Letter rulings
- Consideration of jurisdiction (*Golsen* rule)
- Timing of determination
 - Last day of tax year
 - When return is filed

Adequate Disclosure

- Disclosure alone is not enough
 - Reasonable basis
 - Not a tax shelter
 - Not substantiated
 - Books and records

Adequate Disclosure

- Form 8275 or as noted in Revenue Procedure 2008-14 (or its successor)
- Must be made for each year item taken into account

Refund Claim Penalty

- §6676 new penalty
- Penalty 20% on amount exceeds amount allowed
- Reasonable basis or subject to accuracy related penalty
- Claims filed after May 25, 2007

Preparer Penalty (Old)

- §6694(a)
 - Undisclosed position for which no realistic possibility
 - Penalty \$250
 - Adequate disclosure of not frivolous position

Preparer Penalty (Old)

- §6694(b)
 - Willful, reckless or intentional understatement of liability
 - Penalty \$1,000
- Implication of penalty

Revised Penalty

- New §6694(a)
 - Substantial authority for non-shelter nondisclosed positions
 - Disclosed positions must have a reasonable basis
 - Reasonable belief exception for preparer

Revised Penalty

- Penalty greater of
 - \$1,000 or
 - 50% of income derived

Revised Penalty

- §6694(b)
 - Willful attempt to understate tax liability or
 - Reckless or intentional disregard of the rules or regulations

Revised Penalty

- Penalty greater of
 - \$5,000 or
 - 50% of the income
- Cover all returns (not just income tax returns)

Regulations

- Generally followed Notice 2008-13
- Switch to one preparer per position from one preparer per firm
- Outlines “fees” for non-equity holder employee preparer
- Safe harbor “significant” rules

Preparer Definition

- Signing
- Nonsigning (but has to be related to preparation)

Kyle, a local attorney, provides legal advice to Tax Conscious, Inc. regarding the tax consequences of a proposed transaction. Based upon this advice, the Tax Conscious completes the transaction. Once the transaction is completed, the Tax Conscious receives no further advice from Kyle with respect to the transaction. The advice wasn't given primarily to avoid classification as a non-signing preparer. Kyle isn't a non-signing preparer because he rendered no advice on events that had already occurred.

The facts are the same as in Example (a) except that after the transaction is completed, Kyle provides some additional advice to Tax Conscious by phone. Kyle spent a total of ½ hour on the phone. Kyle's total time spent on Tax Conscious' transaction was 11 hours. Since the time spent after the transaction occurred is less than 5% of the total time for the engagement ($30 \text{ min} / (60 \times 11 = 660 \text{ min}) = 4.5\%$), and Kyle is not a non-signing tax return preparer.

Substantial

- Prepare entire return
- Substantial part of return
 - Facts and circumstances
 - De minimus rule

Standard Testing Date

- Meet Standard on
 - Date return prepared *or*
 - Deemed to be prepared

Adequate Disclosure

- Signing
 - 8275 on return
 - Provide return with disclosure
 - Not subject to substantial understatement, must document informing client

Adequate Disclosure

- Nonsigning
 - 8275 on return
 - Signing preparer includes with return
 - Nonshelter advice - document advising taxpayer
 - Advise prepare - document advising preparer

Reasonable Cause

- Nature of error
- Frequency of errors
- Office procedures

Quality Control System

- Gathering client data
- Review of prior returns
- Review process

Flow Through Returns

- Preparer of flow through can be preparer for return of each equity holder

Returns

- Original, amended or adjusted returns
- Reporting a liability
- Can include information returns

Definition of Preparer

- Provide enough information, become preparer even if someone else fills in the form
- Educational status irrelevant
- List of exceptions

Understatement

- Required for penalty to apply
- Does not include additions to tax, penalties, etc.
- But not reduced by carrybacks

Date Return Signed

- Look at date on signature line
- If not dated, then date return is filed
- For nonsigning, date advice given

Penalty Liability

- One person in a firm primarily responsible for each position
- Signing preparer presumption if one is in the firm
- If no signing, person with primary supervisory position

Verification of Information

- Generally can accept client's word
- Can't ignore what we know
- Must inquire if documentation required (§274(d), etc.)

Fees

- Nonequity holder
 - Salary
 - Time spent on position
- Equity holder
 - Fee for firm
 - Time spent on position

Firm Liability

- If equity holder held liable
 - Management aware of conduct *or*
 - No review procedures *or*
 - Procedures were disregarded through willfulness, recklessness or gross indifference

Willfulness, Recklessness, Intentional Disregard

- IRC, Temporary or Final Regulations, Revenue Rulings or Notices
- Can take contrary position if
 - Reasonable basis *and*
 - Adequately disclosed

Example 3. Preparer U prepares a taxpayer's return and encounters certain expenses incurred in the purchase of a business. Final regulations provide that such expenses incurred in the purchase of a business must be capitalized. One U.S. Tax Court case has expressly invalidated that portion of the regulations. Under these facts, U will have a reasonable basis for the position as defined in Sec. 1.6694-2(c)(2) and will not be subject to the section 6694(b) penalty if the position is adequately disclosed...because the position represents a good faith challenge to the validity of the regulations.

Challenging Penalty

- Procedures outlined
- Practical issue
 - Preparers will fight it
 - IRS appetite for this fight

Other Penalties

- Copy of return to client
- Failure to sign return
- Failure to provide identification number of preparer
- Failure to maintain copy of return

Other Penalties

- Endorsing or negotiating refund check
- Earned Income Credit due diligence

Refund of Penalties

- Preparer and not firm files refund claim
- Form 6118 used to claim
- 3 years from date payment made

Employer Responsibility

- Maintain list of preparers
- Three year retention requirement

Copy of Return

- By time return presented for signature
- For efile can give paper copy on paper forms
- Preparer must retain copy of return

Comparison of Standards

- §6694 and Circular 230
- §6694 and AICPA SSTs
 - Current
 - New ones effective 1/1/10
- §6694 and FIN48

Failure to File Penalty

- §6651(a)(a)
 - 5% of tax paid on or before return's due date (reduced by late payment penalty)
 - Each month or part of month return is late
 - Maximum penalty 25%
- Reasonable cause waiver

Reportable Transaction

- §6662A Penalty
 - Understatement arising from listed or reportable transaction
 - Significant purpose federal tax avoidance or evasion

Reportable Transaction

- Identified under §6011 regulations as transaction of a type has potential for tax evasion or avoidance
- Listed transaction is a reportable transaction the same as, or similar to, specifically identified as tax avoidance transaction

Reportable Transaction

- 20% of any understatement
- 30% penalty if not adequately disclosed
- Reasonable cause exception
 - Substantial authority exists
 - Reasonable more likely than not belief
 - Facts adequately disclosed

Reportable Transaction

- Reliance on tax advisor
 - Belief based on existing facts & circumstances
 - Solely based on merits
 - Not consider audit lottery
 - Disqualified adviser
 - Disqualified opinion

Reportable Transactions

- Definition at Reg. §1.6011-4
 - Listed transactions
 - Confidential transactions
 - Contractual protections
 - Loss transactions

Failure to Report

- §6707A Penalty on Failure to Report
- Reportable transaction
 - \$10,000 natural person
 - \$50,000 otherwise

Failure to Report

- Listed transaction
 - \$100,000 natural person
 - \$200,000 otherwise
- Waiver
 - Reportable very difficult
 - Listed cannot be waived

Extended Returns

- Reg. §1.6081-4T issued November 7, 2005, replaced by final regulation
- Automatic 6 month extension with 4868
- IRS authority to terminate
- Expansion of Form 7004 to virtually all entities

Final Regulations

- One big change-5 month extension period for K-1 entities
- Partnerships, estates and trusts
- Essentially effective for 2008 returns

IRS Consolidated Penalty Handbook

- <http://www.irs.gov/irm/part20/index.html>
- Policy statement portion of IRM
- Consistency of application for penalties
- Rules for review
- Reasonable cause (including considering prior payment history)
- Common situations resulting in abatement

Taxpayer Rights

Module 3

FATP

- Privilege for FATP (§7525)
 - Attorneys
 - CPAs
 - Enrolled agents
 - Enrolled actuaries
- Common law limitations
- Is client's right, not practitioner

Basics of Privilege

- Communication
- Client or prospective client
- Obtaining legal representation
- Made in confidence
- Balance damage
- Does not include business advice

Exceptions

- Business advice
- Pre-existing business records
- Pre-existing documents
- Tax return preparation
- Criminal fraud exception

Exceptions

- Testamentary exception
- Billing, fee or malpractice dispute
- Waiver of privilege

Communications Covered

- Must relate to tax advice
- Without scope of authority to practice
- Noncriminal proceedings in federal court

Not Covered

- Criminal proceedings
- Private litigation
- Other agencies
- State and local issues (in absence of state law)
- Tax shelter promotion
- Mere identification of clients

Waiver

- Discussion with/disclosure to third parties
- Other owners, various agents don't count
- Involuntary disclosure issues
- Dual status documents
- Kovel issues
- Tax returns are not privileged

Dealing with Privilege

- Education staff
- Limit access/segregate privileged items
- Notice on covered items
- Billing/engagement letter
- Disclosure policies
- Attest issues

Engagement Letters

- Cost of defending
- Warn client of issues and rights, understanding
- Client advice of wanting assertion of privilege
- Client notification of request for information

Summons

- Notify client of request
- Consult with counsel
- Court order vs. summons
- Other privilege options

Self-Incrimination

- Fifth Amendment criminal protection
- Real risk of self-incrimination
- Summons issues
- Consider consequences of assertion and inadvertent waiver

Documents and Records

- Business records of sole proprietor
- Consider court review of documents if privilege in question
- Business records voluntarily produced, no privilege
- Records issue

Documents and Records

- Records required to be maintained not privileged (but not taxable income record requirements)
- Entities denied the privilege (is a 3rd party who has information)

Possession by Accountant

- Generally cannot assert privilege for records of accountant
- However, may be covered by *Kovel* style situation where assisting an attorney

Possession by Attorney

- Pre-existing documents may be privileged
- Could client have asserted 5th Amendment on the documents

Work Product Privilege

- Recent development: *Textron* (US District Court Rhode Island, 2007 TNT 169-1) a case the IRS hates
- Broader than attorney client privilege
- Material prepared in anticipation of litigation

Overridden if

- Substantial need for materials, unable to obtain by other means
- Tax Court rejects undue hardship test
- Opinion work product has higher standard
- IRS can assert as well

Burden of Proof

- Realistically doesn't often decide the case
- General rule, taxpayer bears burden
- Limited shifting option (§7491)
 - Credible evidence
 - Substantiation & recordkeeping
 - Cooperation with IRS
 - Nonindividual, net worth of less than \$7 million

Cooperation

- Accessing information
- Exhaust administrative remedies, including appeals
- Establish applicability of privilege
- Does not require consent to extension of privilege

Credible Evidence

- Before rebuttal, supports taxpayer's position
- Implausible assertions do not work

Other IRS Burdens

- Reconstruction of income [§7491(b)]
- Assertion of penalty [§7491(c)]
- Transferee liability [§6902(a)]
- Accumulated earnings tax [§534]
- Information return [§6201(d)]

Other IRS Burdens

- IRS raises new matter [Tax Court Rule 142(a)]
- IRS pleads affirmative defense [Tax Court Rule 39]

Clear & Convincing

- IRS allegation of fraud [§7454(a)]
- Foundation manager self-dealing [§7454(b)]
- Trustee of §501(c)(21) trust knowingly participated in self-dealing [§7454(a)]
- Organization manager knowingly agreed to make lobbying expenditure [§7454(a)]

Clear & Convincing

- Organization manager knowingly agreed to make political expenditure [§7454(a)]
- Payment is illegal bribe or kickback
[*Boucher v. Commissioner*, 77 TC 214, 218]

Representation in Audit

Module 4

Audit Selection Process

- Filed returns computer scored
- Other criteria
 - Random selection
 - Industry projects
 - Compliance initiatives

Audit Selection

- Survey process - “real person” makes go/no go decision
- Returns selected
 - Mail/correspondence exams
 - Field and office audits Pressure to reduce audit cycle
 - Support for positions (§6694)

Initial Contact Issue

- Some offices--IRS initiating client contact via phone
- Clients should be told to demand a letter and hang up
- Huge danger for fraud by individuals posing as IRS agents

Audit/Appeals Process

- Adversarial process
- Advocate for the client
- IRM outlines how agent should conduct audit
- Advocate, but watch for any sign of fraud issue

Manage the Client

- Get a POA immediately
- Engagement letter (example in Module 9)--
but remember EI 101-3 if an attest client
- Educate client on process
- Discuss fees, get a retainer
- Give estimate of timeline (estimate long...)

Audit Strategies

- Supposed to do more pre-audit planning
- Shorten cycle
 - Less willing to grant extensions
 - Document requests
- Less experienced agents the norm
- Special projects, integration of procedures

Audit Strategy

- Review return for problem areas
- Remember limits on what can be disclosed without client permission
- But remember cannot mislead agent
- Advise clients of advantages of disclosure

Audit Strategy

- Information Document Request (IDR) review
- Review information to be provided, considering privilege issues
- Market Segment Specialization Guide (MSSP)

Audit Types

- Office audits
 - Conducted at IRS office
 - IRM does allow for change of location in extenuating circumstances
- Field examination issues, including specialists

IRS Insists on Business Location

- Private work location for agent
- One person interacts with agent
- Office guidelines same as employee
- Employee instructions
- No joking-treat like TSA employee
- Controlling the inspection

IRS Business Tour

- IRS will likely insist
- Client does not have to talk to IRS unless summoned
- Decide whether client should talk to IRS

IRS Interview of Client

- Adaptable and flexible
- Follow through on leads and incomplete answers
- Short one topic questions
- Questions ask for narrative answers
- Avoid leading questions

IRS Interview of Client

- Inquire on how taxpayer knows various facts-push for factual backup for any conclusions
- Keep away from wandering response
- Keep control of the conversation
- Clearly understand all answers

IRS Interview of Client

- When complete terminate interview, but leave open possibility of future meetings
- Maintain control of interview
- If taxpayer requests representation, must terminate interview and give 10 days to obtain

Preparing Client

- Potential for fraud/criminal referral?
- Only answer question asked--don't offer information not asked
- Understand critical issues in the case
- Avoid irritating the Agent
- Review IRS instructions for conducting interview with client

Audit Management

- Consider alternatives (fast track mediation)
- Information management
- Higher level case goes, more expensive it is for the client
- Prioritize issue--can deal with Agent's official inability to negotiate

Audit Management

- Consider options if agent is unreasonable (group manager)
- Remember option to go to Appeals (as well as cost of doing so)
- Document each meeting in detail

Settlement Considerations

- Impact on future years returns
- State tax impacts
- Impact on AMT
- Accounting method change issues
- Impact on owners
- Balance vs. cost and risks of continuing to fight the issue

Client Issues

- Keep client informed on progress
- Discuss how tax will be paid
- Client should sign audit report, not the practitioner

End of Audit

- Letter to client on resolution
- Withdraw the POA
- Unresolved issues
 - 30 day letter (Appeals option)
 - 90 day letter (Tax Court option)
 - Pay tax & sue in District Court/Court of Claims

Representation in Appeals

Module 5

Jurisdiction

- Income taxes
- Estate and gift taxes
- Employment taxes
- Excise taxes
- Additions to tax
- Penalties

No Jurisdiction

- Alcohol
- Tobacco
- Firearms

Appeals Process

- Administrative resolution prior to litigation
- Collection dispute changes in IRS
Restructuring
- Appeals reorganized--then reorganized
again...

Appeals Advantages

- Cheaper than litigation
- Neutral & experienced IRS Officer
- Hazards of litigation will be considered
- 88% of cases are resolved at appeals

Appeals Advantages

- Additional time to settle case
- No need to decide which venue to try the case in until after appeals
- Gives ability to shift burden of proof in litigation

Appeals Advantages

- Appeals Officer more open about government's case
- Preserve possibility of obtaining litigation costs if taxpayer prevails later in court
- No money needs to be paid while appeal is pending

Appeals Disadvantages

- Can be long wait to get to appeals
- Officer can raise new issues
 - Substantial grounds
 - Material potential effect on taxpayer's liability
- Futile if issue targeted for litigation by IRS
- Remember is a negotiating process

Presubmission Conference

- Issues IRS proposes to submit for technical advice
- Parties to agree on
 - Scope of advice
 - Facts included
 - Collateral issues and other matters

Alternative Dispute Resolution Options

- Early referral procedure
- Mediation
- Arbitration
- Fast Track Mediation

Early Referral

- Taxpayer request for one or more issues to Appeals during audit
- IRS and taxpayer must agree to refer

Issue in Question

- Resolution expected to help move entire case forward quickly
- Issue must be fully developed
- Other issues not expected to be resolved before Appeals can resolve this issue

Not Available

- 30 day letter has been issued
- Issue designated for litigation
- Competent Authority has been requested
- Issue part of a “whipsaw” transaction

Early Referral

- Request
 - In writing to group manager
 - Taxpayer's identity, tax periods, issues for early referral and taxpayers' position on each issue

Mediation

- Nonbinding on both sides
- Works best in factual disputes
- Revenue Procedure 2002-44 governs

Arbitration

- Binding on both parties
- Both parties must agree to it
- Governed by Revenue Procedure 2006-44 and is now permanent

Arbitration

- Not available for (among others)
 - Legal issues
 - Issues in litigation or designated for litigation
 - Collection cases (except OIC & trust fund)
 - Frivolous issues

Fast Track Mediation

- Originally in Large & Mid-Sized Division
- Small Business/Self-Employed Division started its own program two years later
- Appeals officers serve as mediators while in compliance phase
 - Audits
 - OICs
 - Trust fund recovery

Fast Track Mediation

- Retain right to full appeals conference
- Goal shorter time frame (30-45 days vs. 300 days for appeal)

Requirements

- Issues fully developed
- Both IRS & taxpayer must agree to process
- Attendees at meetings must have decision making authority
- Results confidential and non-precedential

LMSB Program

- Fast Track Settlement (Rev Proc 2003-40)
- Option of mediation or arbitration on certain issues
- Goal is 90 days

SB/SE Program

- SB/SE Fast Track Settlement Program (Announcement 2006-61)
- Test program for 2 years, originally limited to three cities
- Test expanded to eight cities (not St. Louis) for period through September 5, 2008 (IRS News Release IR-2007-200, 12/14/07)

SB/SE Program

- At least one open year under examination
- Issues fully developed
- Stated position
- Limited number of unagreed issues
- Still under SB/SE jurisdiction

Not Available

- Collection appeals
- Offer in Compromise
- Trust Fund Recovery
- Frivolous Issues
- Issues designated for litigation
- Nationwide qualification

Mutually Accelerated Appeals Process

- \$10 Million or more
- Reviews large cases to see if adding resources helpful
- Taxpayer must also agree to commit resources

Prefiling Agreements...

- LMSB Only
- Examination of specific issues prior to filing a return
- Resolve issues up front

Compliance Assurance Program

- LMSB Coordinates
- Coordinated effort and exchange of data
- Return then accepted as filed

Industry Issue Resolution Program

- Industry input on hot issues
- Goal to produce Revenue Procedure
- Issues to be considered
- Submit proposed issues to IIR@irs.gov
- 8/31 deadline to be considered in fall review

Appeals Jurisdiction

- List of items subject to jurisdiction
- Nondocketed cases
 - 30 day letter starts process
 - Taxpayer files appeal
 - If miss 30 day period, but within 90 Appeals can take jurisdiction (but don't count on it)

Docketed Cases

- Driven by court calendar-priority cases
- Area Counsel sends case back
- Less than \$50,000 deficiency
- More than \$50,000 deficiency (appeals backlog creating dual run cases)
- Who has settlement authority

Other Jurisdictional Issues

- No jurisdiction for ruling or technical advice in certain areas
- Civil fraud penalty in years included in recommendation for criminal prosecution
- Criminal prosecution cases
- Refunds in excess of \$2 million

Other Jurisdictional Issues

- Whipsaw cases
- Bankruptcy coordination
- Constitutional, moral or religious grounds
- Litigation vehicle issues
- Will hear no immediate tax consequences cases
- Special rules for cases of widespread importance: ACIs and ISP

IRM Special Rules

- Research and Development Credits
- Valuation Issues
- Jeopardy & termination assessments, levies
- DOJ civil cases
- Refund suits
- Criminal cases

Filing the Protest

- Written protest
 - Field exam
 - Total tax and penalties $> \$10,000$
- Brief written statement
 - Field exam
 - Adjustment $> \$2,500$ but $\geq \$10,000$

Filing the Protest

- Oral request
 - Adjustment < \$2,500 *or*
 - Office or correspondence audits
- “Proposed” changes for cases < \$25,000

Filing the Protest

- Extension of time to file
 - 30 days with reasonable cause
 - Longer extension possible
 - Approaching statute issue
- Must be filed in duplicate with Area Appeals Office

Contents of Formal Protest

- Affirmative statement of appeal
- Name, address and daytime telephone number
- Identifying symbol and date
- Tax years or periods involved
- Adjustments and reasons

Contents of Formal Protest

- Statement of facts
- Supporting authority
- Signature and declaration
- IRS response

Practical Tips

- Persuasive
- Distinguish contrary cases (and find the contrary cases)
- Presentation of facts (remember can be used in court)
- Critical analysis of agent's report

Practical Tips

- List all arguments that favor taxpayer
- Logical development of protest
- Consider if burden shift requirements have been met and impact on hazards of litigation
- Consider use of sworn statements

Appeals Conference

- Can be multiple conferences
- Conference informal--it's a negotiation
- Preconference actions
- New evidence issues

Ex Parte Communications

- Contact precluded except for
 - Clarification
 - Compliance
 - Post-Appeal
 - Intra-Appeal Communications
 - Discussion with Chief Counsel

Ex Parte Communications

- Taxpayer opportunity to participate
- Broadly applied by Tax Court

Taxpayer Role

- Taxpayer attendance
 - Should be there?
 - Preparation
 - Advantages
 - Disadvantages

Negotiating a Settlement

- Order the issues based on importance
- Keep research up to date
- Confirm settlement authority with client
- Set realistic expectations for client

Negotiating a Settlement

- Alternative positions
- Verify facts
- Present all evidence
- Honest with Officer
- Research Officer
- Written offer to settle

Hazards of Litigation

- Appeals Officer must consider
- Factors considered
- Show all weaknesses in case and how government could lose the case

Settlement Offer

- Taxpayer expected to make first offer
- Qualified offer
 - Written
 - Specifies proposed liability
 - Time periods
- Good faith offer

Settlement Offer

- Document the process
- Negotiation process
- Keep client informed

Settlement Options

- Settlements
 - Mutual Concession
 - Split Issue Settlement (could never be the actual court result)
 - Nuisance Value Settlement
- Docketed case stipulations

Nondocketed Cases

- Form 870
- Form 870-AD
- Form 870 used if the agreement
 - Not entail concessions by both sides
 - Mutual concession cases with immaterial tax

Closing Agreements

- IRS doesn't like
- Completely resolve issue
- Allows use of §§1311-1314

Rules Governing Closing Agreement

- See IRM 8.13.1.1.1
- Good and Sufficient Reason
- Entire tax or limited issues
 - Form 866 (return as a whole)
 - Form 906 (specified issues)
- Multiple agreements can cover a single year

Parts of Closing Agreements

- Identify parties
- “Whereas” clauses
- Determination clauses
- Date of agreement
- Signature of parties

Post Appeal Options

- Stop at this point
- Tax Court filing
- United States District Court
- United States Court of Federal Claims

Tax Court

- Advantages
 - Tax need not be paid
 - Judges deal only with tax cases
 - Discovery & evidence rules more relaxed
 - Small case procedure available

Tax Court

- Disadvantages
 - 90 day period to file petition
 - Unlikely to use equitable power
 - Local customs or practices don't carry much weight
 - Interest runs on unpaid tax
 - IRS can raise new issues

U.S. District Court

- Advantages
 - Taxpayer can elect a jury trial
 - More likely to consider equities
 - Local standards have impact
 - Judges generally less tax oriented

U.S. District Court

- Disadvantages
 - Tax must be paid
 - Strict procedural and evidence rules
 - Judges don't have expertise in tax matters

Court of Federal Claims

- Advantages
 - Discovery less than District Court (though more than Tax Court)
 - Technically oriented, but less experienced in tax
 - Only way out of taxpayer's Circuit

Court of Federal Claims

- Disadvantage
 - Tax must be paid
 - No jury trial
 - Not as proficient in tax matters as Tax Court judges
 - Ride circuit, so local standards won't carry weight

Financial Information to IRS

Module 6

Overview

- Information
 - Updated every six months
 - Signed under penalties of perjury
- Forms
 - 433-A (Individuals)
 - 433-B (Businesses)
 - 433-F (Collection Information Statement)

Issues

- Roadmap for IRS to collect if deny relief
- Used to evaluate OIC
- Valuation issues
- Evaluation for allowed expenses

SSVS No. 1 Issue

70. *Illustration 21.* Do settlements or negotiations of value in offers-in-compromise or tax disputes fall under the Statement?

71. *Conclusion.* No, settlements or negotiations of value in offers-in-compromise or tax disputes are part of a tax process. However, if a member prepares a valuation in preparation for a settlement or negotiation of value, and the valuation involves the application of valuation approaches and methods and the use of professional judgment, the valuation would fall under the developmental aspects of the Statement. The settlement or negotiation process itself is not a valuation and would not fall under the Statement. In addition, the Statement's reporting exemption for certain controversy proceedings would apply as the valuation was performed specifically for the administrative matter (SSVS paragraph 50).

Income/Expense Issues

- Necessary Expenses
- National standards/local standards/
consideration of adjustments
- Lifestyle changes may be required
- Related party debts (not allowed)
- Court ordered expenses allowed

Income/Expense Issues

- Example disallowed expenses
 - Child's education
 - Pet expenses
 - Extravagant expenses
- Other expenses - health and welfare of family

IRS Standards Page

- <http://snipurl.com/irscollection>
- Has links to local standards
- Will work until IRS moves page (which they will likely do from time to time)

Current National Expenses

Expense	One Person	Two Persons	Three Persons	Four Persons
Food	\$277	\$528	\$626	\$752
Housekeeping supplies	\$28	\$60	\$61	\$74
Apparel & services	\$85	\$155	\$209	\$244
Personal care products & services	\$30	\$53	\$58	\$65
Miscellaneous	\$87	\$165	\$197	\$235
Total	\$507	\$961	\$1,151	\$1,370

More than four persons	Additional Persons Amount
For each additional person, add to four-person total allowance:	\$262

Transportation

- Public transit (national) \$163
- Auto Ownership (national) \$489 one, \$978 two
- Autos Operating (Midwest)
 - One car - \$183
 - Two cars - \$366

Housing & Utilities

- St. Louis County
 - \$1,113 (one person)
 - \$1,307 (2 persons)
 - \$1,377 (3 persons)
 - \$1,536 (4 persons)
 - \$1,561 (5 persons or more)

Health Care

- National Standards - in addition to insurance
 - Under 65 - \$57
 - Over 65 - \$144

Income/Expenses

- Conditional expenses
 - Five year test
 - Otherwise one year to modify
- Substantiation may be required

Practical Consideration

- Accuracy is important (criminal prosecution issues)
- Consider professional valuation of business (especially in light of SSVS No. 1)
- Document need for expenses
- Refrain from purchases during collection process
- IRS looking for trends in financial data - business needs multiple years of downturn
- Time is your enemy due to potential for change

Practical Consideration

- OIC demands source of funds not accessible to the IRS
- Accountants' fee
- Client cooperation
- Statute extension - OIC
 - 10 years from date of assessment to levy
 - Suspended during period of consideration plus 30 days

TIPRA 2005 Changes

- Required deposit
 - 20% of lump sum offer
 - Must begin making installment payments
 - Payments not refundable if offer rejected
- Makes offers tougher, since 3rd party source not assured IRS will accept

Trust Fund Recovery Penalty

Module 7

Trust Fund Recovery Penalty

- §6672 Penalty - “100% Penalty”
- Trust fund recovery penalty revisions
 - Plan for arrearages
 - Non-owner employees without authority
 - Unpaid volunteer members

Amount of Penalty

- Either
 - Tax required to be collected or
 - Tax actually collected
- Cannot be deducted by payor
- Not dischargeable in bankruptcy

Trust Fund Penalty

- Civil Penalty
- §7202 criminal penalty potential in addition
 - \$10,000 fine and/or five year imprisonment
- Willful failure to collect and pay over

Trust Fund Recovery Penalty

- Not apply to direct taxes
- Funds were never the employer's
- Employee not harmed by failure

IRS Application

- Facts & circumstances
- Individual's authority
- Power to make payment insufficient
- Practical authority to direct payment is adequate
- IRS casts a wide net

Requirements for Penalty

- Responsibility
- Willingness
- Must meet both requirements in a quarter

Responsibility

- Who has responsibility?
 - Who signs checks, etc.
 - Active involvement
 - Nonowner analysis
 - Nonprofit directors and board members

Internal Revenue Manual

- Indicators of responsibility (IRM 5.7.3.3.1.1)
 - Ability to exercise independent judgment
 - Ownership of stock and officer itself not adequate
 - Authority to sign checks

Internal Revenue Manual

- Indicators of responsibility (IRM 5.7.3.3.1.1)
- Ultimate authority cannot delegate away responsibility
- Volunteers (but won't count if no one would be responsible)

Willfulness

- Taxpayer must prove absence of willfulness
- Elements
 - No need for evil intent
 - Personal fault
 - Voluntary intent
 - Deliberate type of act

Willfulness

- Elements
 - Knowingly
 - Not an accident
 - Reckless disregard
- Failure to act can be willfulness
- Creditor coercion not sufficient

Computing Penalty

- Review Form 941
 - No deposits-social security taxes and FWT
 - If deposits made, need transcript

Specific Designation

- IRS will allocate to its advantage
 - Penalties and interest
 - Nontrust fund taxes
 - Fees and charges
 - Lastly, to trust fund taxes
- Voluntary payments can be designated

Changes to Settlement Authority

- Percentages of responsibility can be allocated
- Responsible parties can agree to an allocation

IRS Investigation

- Revenue Officer submit to Group Manager recommendation on Form 4183
- List of all considered persons
- IRS Letter 1153(DD) mailed to each person on whom penalty imposed
- Payment and suit for refund

Statute of Limitations

- Same as any other tax - three year statute from later of
 - Date return filed
 - Unextended due date of return
 - Deemed filing on April 15
- Unlimited statute cases

Defenses



Defenses



Defenses



Defenses



Defenses



Defenses



Representing Assessed Person

- Initial fact finding
- Follow-up issues
 - Out of business
 - Installment agreement?
 - Signature authority?
 - Consider stated/actual authority

Representing Assessed Person

- Follow-up issues
 - Who else might be responsible?
 - Verify calculation of liability
 - Collectibility issues

Representation in Collection Matters

Module 8

Assessment

- Authority with IRS Area and Service Center Directors (§6201; Reg. §301.6201-1)
- Ministerial act only
- Beginning of collection process

Notice & Demand

- Made within 60 days of assessment (§6303)
- Starts collection process
- Normally increasingly nasty notices, followed by collection action

Automated Collection Service (ACS)

- Computerized system that is normally the initial system in use
- Can accept OIC & installment agreements

Streamlined Installment Agreements

- Unpaid tax no more than \$25,000 (not including interest and penalties)
- 5 year payoff
- Online agreement system at www.irs.gov

Guaranteed Arrangement

- IRC §6159(c)
 - No agreement in prior five years
 - Liability no more than \$10,000
 - Cannot pay immediately
 - Will pay within 3 years, file all returns and keep current

OICs

- Generally more difficult process and being used less frequently (even before TIPRA changes)
- 50% returned unprocessed
- Is a specialized area of practice

Collection Issues

- IRS can use liens and levies to collect tax
- Collection Due Process appeals
- Private Debt Collection System

Managing the Client

- A new “expectation gap”
- Fundamental issues
 - Retainer
 - Engagement letter
 - Manage expectations

Managing the Client

- Client understanding of what they need to do
- Obtain financial information timely
- Arrangement for payment
- Negotiation process

Financial Data

- Drives the process
- Update every six months, so longer it takes the more work that must be done

Dealing with IRS

- Ask for IRS information on joint liability, innocent spouse, etc.
- IRS cannot ask taxpayer to waive a right to bring action without safeguards

IRS Collection Policy

- 1st Priority: Immediate full payment and compliance
- Expectation to pay in full
- Help taxpayers that are trying to comply

Dealing with IRS

- Don't expect sympathy from Revenue Officers
- Tax position itself generally no longer at issue
- Officer has broad discretion
- Credibility of both practitioner and client important
- Document conversations with IRS

Collection Process

- Assessment required and 30 day period before enforced collection activity
- Assessment issues on items shown on filed return (correction to math errors issues)

Jeopardy & Termination Assessments

- Allows IRS to act quickly where risk of unpaid tax
- Jeopardy vs. termination assessment
- Taxpayer conduct that triggers

Overview of Process

- Chief Counsel must approve
- IRS officials sign off (may or may not invalidate)
- Written basis must be provided
- Notice of deficiency

Taxpayer Rights

- 30 days to file an appeal
- Judicial review within 90 days of the earlier of
 - Date IRS notifies taxpayer of result of appeal *or*
 - 16th day after taxpayer files request for administrative review

Possessor of Cash

- IRS assumption that cash in excess of \$10,000 with denied ownership taxable to hypothetical individual at highest rate with jeopardy assessment
- Civil forfeiture can be used to seize property (18 USC §981)

Notice of Deficiency

- Issued before an assessment can be issued except...
 - Employment taxes
 - Jeopardy and termination assessments
 - Receivership and bankruptcy cases
 - Review of Tax Court decision without bond

Waiting Period

- 90 days after mailing of notice of deficiency (150 days if taxpayer outside U.S.)
- 90 days following final Tax Court decision

Mailing of Notice

- Certified or registered mail to “last known address” provided directly to IRS (Form 8822 is best way)
- Annually IRS must check against USPS address data
- Reasonable period of time for IRS to process change of address
- Single notice to both spouses

Wrong Address

- Taxpayer gets it anyway: it's valid
- Taxpayer doesn't get it: see if IRS acted reasonably

Statute of Limitations

- Assessment within 3 years after return is filed (§6501(a))
- Early filed return = filed on due date
- Extended statutes for periods IRS prohibited from assessing plus 60 days
- Passthrough issues (TEFRA vs. non-TEFRA)
- Extended statutes on assessment

Payment Issues

- Involuntary payments applied as IRS desires
- Voluntary payments can be designated by the taxpayer (Rev Proc 2002-26)
- Show priority on check itself along with transmittal

Federal Tax Lien

- IRS increasing use of liens and levies
- Automatic 60 days after tax assessed (§6321)
- Attaches to all property
- State laws don't affect

Lien Issues

- Joint tenancy and tenancy in common
- Tenancy by the entirety (2002 Craft case)
 - Notice 2003-60
 - Pre-Craft interests
 - Taxpayer's interest generally 50%
 - Sale - lien encumbers 1/2 of property

Lien Issues

- Community property
- Interests in business entities, not underlying assets
- Rights to trust interests
- Executory contracts
- Vested future interests
- Intangible assets are attached

Lien Issues

- Life insurance
 - Lien attaches to policies taxpayer owns
 - If taxpayer is also the insured, value of policy at death is subject to lien
- Retirement plans
- Alimony subject, child support is not
- Foreign property subject to lien

Perfection of Lien

- Notice of Federal Tax Lien gives additional protection to IRS interest
- IRS policies on filing liens

Statute on Lein

- General rule: 10 years from date of assessment §6502
- Can be extended for various reasons

Extension of Lien

- Written waiver from taxpayer
- Suit to reduce to judgement
- Assets in custody of court (plus 6 months)
- Outside United States (if > 6 months)
- Automatic bankruptcy stay (+ 6 months)

Extension of Lien

- IRS wrongfully seizes property of third party
- Bond for certificate of discharge
- Tax Court period (plus 60 days)
- Estate installment agreement period

Federal Tax Levy

- Order for third party to pay to the IRS
- Executed during 10 year collection period

Levy Prohibited

- Suit for refund
- Pending OIC
- Term of an installment agreement
- Investigation of property status
- Expense of levy $>$ FMV of property

Procedure for Levy

- Levy can't occur until 10 days after notice and demand
- Notice of Intent to Levy
- Notice of Levy

Notice of Intent to Levy

- 30 days before levy
- Delivery issues
- Can be sent with notice and demand
- Collection Due Process hearing option

Seizure of Property

- Criminal act to attempt to retake it
- IRS must protect property until it is sold
- Levy generally only on property already owned
- Continuing levy on periodic payments (subject to exemptions)

Exemptions §6334

- School books and wearing apparel necessary for family
- Fuel, provisions, furniture, personal effects (\$7,720)
- Books and tools of trade (\$3,860)
- Unemployment benefits
- Undelivered mail

Exemptions

- Certain retirement benefits
- Workers compensation payments
- Child support obligations
- Certain service related disability payments
- Certain public assistance

Exemptions

- Payments to participants under Job Training Partnership Act
- Certain cases: residence or business assets

Required Releases

- Liability paid
- Release would facilitate collection
- Installment agreement
- Undue hardship on the taxpayer
- Value levied in excess of liability

Collection Defense Options

- Innocent spouse relief
- Taxpayer Assistance Order
- Installment agreement
- Offer in Compromise
- Collection Due Process Hearing
- Collection Appeals Program

Spouse Relief

- Innocent spouse relief
- Election for separate liability
- Equitable tax relief
- Innocent spouse rules

§6015(b) Relief

- Joint return
- Erroneous item attributable to other spouse
- Spouse didn't know
- Inequitable to hold spouse liable
- Valid §6015(b) election made

Knowledge

- Actual knowledge disqualifies
- Constructive knowledge (“should have known”)
- Duty to inquire
- Ignorance of tax consequences doesn’t work
- Can be proportionate if partial knowledge (§6015(b)(2))

Constructive Knowledge

- Nature and amount
- Financial situation
- Educational background
- Business expertise
- Participation in activity

Constructive Knowledge

- Failure to make inquiry
- Departure from prior year's return
- Reasonable person test for omitted income
- Deduction test (knowledge vs. knowledge of being erroneous)

Inequity Test

- Disconnect between reported income and standard of living
- Benefit can be delayed
- Desertion or divorce considerations

Election of Relief

- Form 8857 - Request for Spouse Relief
- May elect under multiple sections on one form
- Between first date deficiency asserted and 2 years after IRS commences collection activity
- Closing agreement and OIC

Notice to Other Spouse

- IRS required to give notice to other spouse
- Right of nonrequesting spouse to appeal
(consider requesting information on location not be given)

Other Issues

- Collection activities generally must stop while request pending (not jeopardy)
- Credit or refund of tax
 - OK for innocent spouse or equitable relief
 - Not allowed for separate liability

Separate Liability

- Divorced and separated taxpayers only
- Deficiencies arising from the return
- Not for unpaid liability on the return

Requirements

- Must be
 - No longer married to *or*
 - Legally separated *or*
 - Not member of household for prior 12 months
- No fraudulent transfer between the spouses

Requirements

- No actual knowledge of item giving rise to the deficiency
- Spouse makes a timely exception

Actual Knowledge

- Actual and clear awareness of item, not tax consequences (*Chesire*, 115 TC 183)
- IRS burden of proving actual knowledge
- Knowledge shown, spouse has burden of proving duress to get relief

Fraudulent Transfer

- Designed to avoid payment of tax or tax itself
- One year presumption for transfers made

Allocable Liability

- Based on net items used in determining deficiency
- Spouse has burden
- Credit allocated to responsible spouse
- Penalties allocated to responsible spouse
- Other spouse still liable for 100%
- Allocation of child's tax liability

Income Allocation

- Wages - to spouse performing work
- Business income - to owner or 50/50 if jointly owned
- Investment income to owner spouse or spouses

Miscellaneous

- Excess items allocated to other spouse
- IRS right to reallocate if general rules inappropriate due to fraud
- Relief must be elected

Equitable Relief

- §6015(f) - IRS can grant relief
- Can apply to tax shown on return

IRS Guidance

- Revenue Procedure 2003-61 threshold
 - Joint return filed
 - No relief available under other provisions
 - No fraudulent transfer
 - No fraudulent intent
 - Tax liability attributable to other spouse
 - Spouse makes election

IRS Guidance

- Revenue Procedure 2003-61 granting of relief
 - Tax due unpaid when return was filed
 - No longer married, legally separated...
 - No reason to know tax would not be paid
 - Economic hardship if relief not granted

Other Factors

- Obligation of other spouse to pay
- Benefit from unpaid liability
- Good faith compliance in subsequent years
- Poor health
- Abuse

Taxpayer Assistance Orders

- Taxpayer Advocate Office
- Economic hardship (already created or potential to create)
 - Cease collection action
 - Release levied property
 - Take other actions

Significant Hardship

- Immediate threat of adverse action
- 30 day plus delay in resolving problems
- Significant costs in absence of relief
- Irreparable injury, harm or adverse impact
- Extraordinary emotional distress (IRM)

TAO Modification

- National Taxpayer Advocate
- IRS Commissioner
- IRS Deputy Commissioner

Installment Agreement

- Form 433D
- User fee schedule
 - \$105 when entered into, \$45 restructured or reinstated
 - Automatic withdrawal, fee is \$52 not \$105
 - Low incomes fee is \$43

§6159(c) Agreements

- IRS must enter agreement
 - Liability no more than \$10,000
 - Prior 5 years clean
 - Unable to pay tax when due
 - Full payment within 3 years
 - Taxpayer agrees to remain compliant

Streamlined Agreements

- \$25,000 or less
- Five year period
- More than minimum amount IRS computes
- Remain in compliance
- Payment must be within statute period

Other Cases

- IRS still has authority to enter into agreements
- Can be terminated
 - Inaccurate or incomplete information
 - Collection in jeopardy
 - Change in financial condition
 - Taxpayer violations

Installment Agreements

- IRS must give 30 days notice of intent to terminate agreement
- Statute suspended during period of consideration of installment agreement
- IRS request of extension of statute

Restriction on Levy

- Consideration of agreement and 30 days after rejection (or appeal period if rejection appealed)
- 30 days after termination (extended by appeal period if taxpayer appeals)

Installment Agreement

- Maximum term tied to expiration of statute
- IRS can enter into partial payment agreements by statute (§6159(a))

Offer In Compromise

- IRC Section 7122
- Contractual agreement with IRS

Objectives

- Cost effective collection of expected amount
- Best interests of both parties
- Give taxpayer fresh start
- Collect amounts not available by any other means

Special Rules

- Amount alone is not a rejection issue
- Will accept when amount reflects collection potential
- Bankruptcy
- Note major 2005 changes

Basic Conditions

- Stay current for five years
- IRS gets all refunds
- Abatement when paid and return for year OIC accepted filed
- Only administrative review of rejection

OIC Grounds

- Doubt as to liability
- Doubt as to collectibility
- Promotes effective tax administration

Doubt as to Liability

- Not available if final court decision has been issued
- Merits of case involved in this discussion
- Must offer some payment even if believe there is no liability
- Combined offer option

Doubt as to Collectibility

- Largest number of OICs
- Demonstrate
 - Unlikely tax can be collected in full and
 - Offer reflects amount the IRS could obtain via other means

Financial Data

- Problems if future income will be lower
- IRS consider other assets not technically available to them
- Standard is quick sale value and taxpayer's future income

Asset Computation

- Cash offer paid within 90 days of acceptance
- Net realizable equity in assets
- 48 months of available future income (or remainder of collection period if shorter)

Asset Computation

- Short Term Deferred Offer (paid within 2 years)
- Full realizable value of assets
- 60 months of net future income (or remainder of collection period if shorter)

Asset Computation

- Deferred Payment Offer (longer)
 - Full realizable value of assets
 - Net future income through remainder of the collection statute

Promotion of Effective Tax Administration

- Subjectively consider
 - Economic hardship
 - Public policy
 - Equity consideration

Economic Hardship

- Official factors to be considered
§301.7122-1(b)(3)(i) & §301.7122-1(c)(3)(i)
- IRS applies this option very rarely
Revenue Procedure 2003-71 indicates that's
how it will be
- Remember only in play if don't qualify for
one of the other two options

OIC Process

- Processing fee \$150 unless
 - Doubt as to liability offer or
 - Low income taxpayer
 - If offer accepted, generally applied against the offer
- IRS determines if processible

Processible Offer

- OIC submitted on Form 656
- Includes proper financial information form
- Taxpayer not in bankruptcy
- Filing and payment instructions
- Application fee paid
- All other instructions followed (Rev. Proc. 2003-71)

Offer in Compromise

- Doubt as to collectibility
 - Financial condition information
 - Why no amount beyond offer could be collected
- Acceptance when IRS employee approves offer and notifies the taxpayer

2005 TIPRA Changes

- Offers paid in five or fewer installments: must deposit 20% of the amount offered
- More than five payments--must send in first payment and keep making payments during pendency
- Issues this creates
- IRS has authority to waive payments

2005 TIPRA Changes

- Payments not refundable, applied to liability
- Taxpayers can specify application of payment
- User fee applied to liability

2005 TIPRA Changes

- OIC deemed accepted if not rejected in 24 months
- Does not include period in judicial proceeding
- Effective for submissions after July 16, 2006

Collateral Arrangements

- May require them, but not the rule
- Permits collection of more than the offer
- Typical agreements
 - Future income collateral agreement
 - Agreement to reduce basis
 - Agreement to waive losses
 - Co-obligor agreement

OIC Tips

- Driven by financial data
 - Detailed information
 - Six month trigger for new financials
 - Change in circumstances-updated financials
- Roadmap to the assets

OLC Tips

- Collection Due Process appeals on rejection
- Time increases the OLC amount
- IRS Counsel approval if tax due more than \$50,000

Disadvantages of OIC

- Compliance agreement
- Suspend period of limitations
- Give up right to contest upon acceptance
- IRS keeps all previous payments
- If default, IRS can immediately sue for balance

Disadvantages of OIC

- Suspension of statute of limitations on collection during period of consideration plus 30 days
- Decision point--is it better to let the statute run or can taxpayer get OIC?

Collection Due Process

- Available
 - Lien has been filed
 - Notice of levy
 - Installment agreement terminated
 - OIC denied
- Protest filed (Form 12153)

Collection Due Process

- Filed within 30 day period
- All issues open at hearing
 - OIC acceptance
 - Installment agreement acceptance

CDP Final Regulations

- Reason for disagreeing with liens or levies
- Face to face meeting not required
- Judicial review requires raising issue at Appeals
- Equivalent hearing (missed CDP)

CDP Notice

- IRS provides notice of taxpayers' right to appeal
- Notice information
 - Amount of tax
 - Right to hearing within 30 days
 - Administrative appeals
 - Statutory provisions used liens/levies

CDP Hearings

- Only right to single hearing
- Suspension of collection statute

Appeals Steps

- Applicable procedure requirements meant
- Applicable law fulfilled
- Taxpayers issues have merit
- Issues raised previously
- Balance collection and concerns

CDP

- Underlying liability challenge
- Taxpayer didn't receive a notice of deficiency
- Could not appeal previously
- Informal hearing

Procedural Issues

- Appeals location
- Audio recordings
- No right to subpoena witnesses
- Appeals Officer have no prior involvement, though taxpayer can waive

Equivalent Hearing

- Missed time for filing CDP request
- Requested in writing
- Collection action can continue
- Generally no judicial review

Practice Tips

- Be prepared on all issues--only one chance
- Documentation
- Follow-up letter
- Tax Court can only look at issues raised
- Treat as Appeals Conference

Judicial Review Rights

- Triggered upon issuance of Notice of Determination
- 30 days to request review
- Tax Court has exclusive jurisdiction
- No right of review from equivalent hearing
- Abuse of discretion standard

Employment Tax Levies

- Disqualified Tax Levy (DTL) Problem
- No requirement for CDP hearing
- DTL-requested CDP on employment tax arising in most recent two year period
- Post-levy CDP hearing is allowed
- Levies issued on or after September 23, 2007

Collection Appeals Program

- Broader program
- Cannot
 - Challenge underlying liability
 - Raise hardship issues
- Procedural issues are primary focus

CAP - Liens

- Before or after lien filed
- Used for
 - Refusal to withdraw notice
 - Refusal to discharge lien
 - Prevent attachment
- Nominees and third parties holding taxpayer property

CAP - Levy

- Before or after levy made
- Before or after a seizure (10 business day period for appeal)
- Nominees and third parties

CAP - Installment Agreements

- Denial
- Termination
- Default

CAP - Not Apply

- Pending cases before court
- Criminal investigations
- Moral, constitutional and religious grounds

CAP - Not Apply

- Certain taxes
 - Trust fund recovery penalties
 - Offers in compromise
 - Penalty appeals
 - Most jeopardy levies
 - Audit reconsideration
 - Claims

CAP-Time Requirements

- Collection managers - must discuss matter first with this person
- Taxpayer 2 business days to request CAP
- Hearing
 - Goal to hold within 2 days of request
 - Taxpayer delay request limited to five business days

CAP-Time Requirements

- Appeals Officer try to resolve within 5 days
- Binding on both parties in most cases
- No judicial review
- Special timing rules on installment arrangements (30/45 days)

CAP & CDP

- Taxpayer can use both
- CAP more expansive and faster

IRS Developments

Module 2

IRS Enforcement

- Commissioner Everson was enforcement based
- New Commissioner (Douglas Shulman) actions remain to be seen

Taxpayer Service Plans

- Taxpayer Assistance Blueprint
- Reduction of burden
- Responsible guidance

Enforcement

- Discourage noncompliance
- Ensure tax practitioners follow law
- Deter criminal activity
- Deter abuse in tax-exempt and government organization

Modernization

- Increase capacity
- Modernize IS systems
- Security and safety
- Modernize business processes

Tax Gap

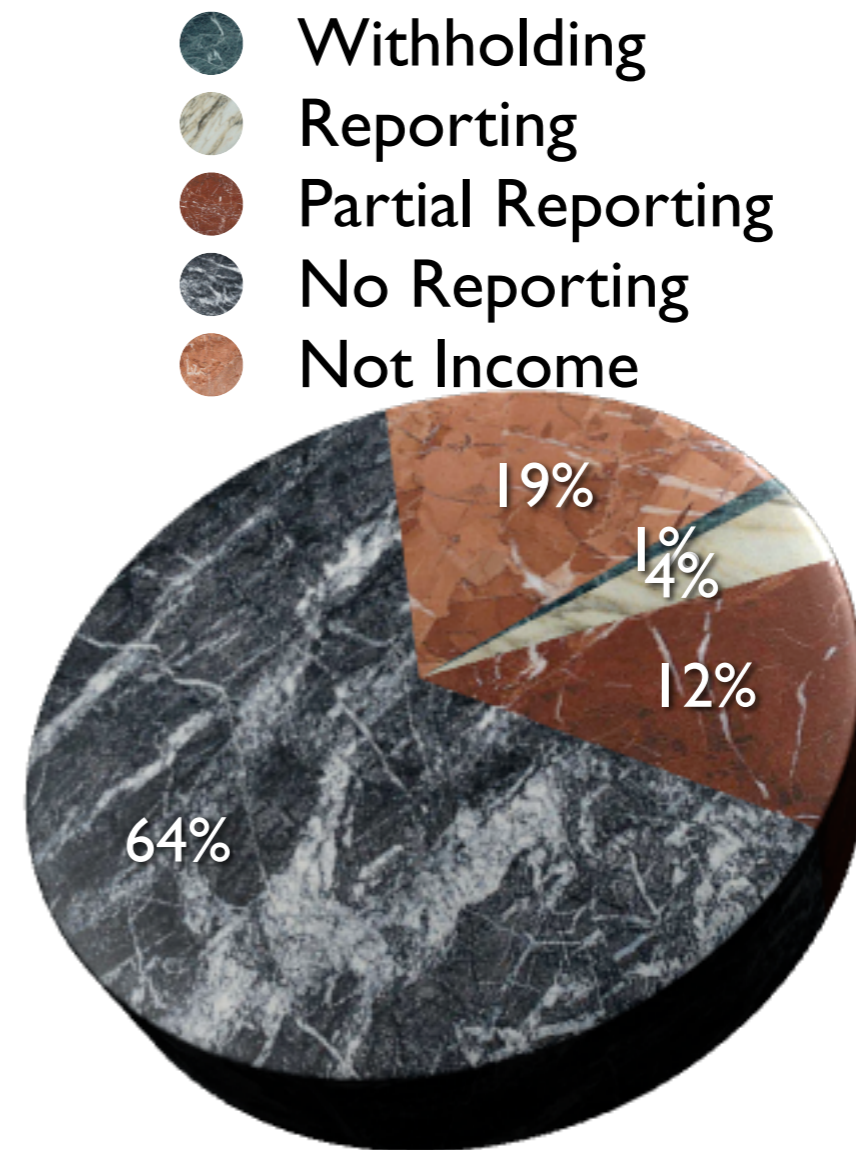
- NRP and the Tax Gap
- Areas of Noncompliance
 - Flow-through entities
 - Proprietorships
 - Overstated deductions

Underreporting

- Underreporting
 - Net business income
 - Wages, tips, interest, dividends
 - Overstated deductions
 - SE tax underreporting

Conclusions

- Makeup of Tax Gap
- Impact of Reporting Withholding



Progress on Plan

- Efile -
 - 27% in 2001, 48% in 2007
 - Mandatory in 2009 for most preparers
- Voluntary compliance of 86% by 2009--
been stuck at 83-84% since 1985

IRS Enforcement Policies

- Noncompliance focus (\$100K+ individuals and corporations)
- Global issues
- Criminal sanctions (especially corporation)
- Tax exempt abuses
- Practitioner enforcement
- Deter criminal activity

Modernization

- Customer Account Data Engine implementation (now handles I040EZ)
- Goal is to replace Master File System by 2012

Problems

- Funding for priorities
- Will impact ability to handle issues (see efile for individuals and attachments)

LMSB Initiatives

- Corporate officers
- Cost segregation in retail and restaurant industries
- Global settlement in tax shelter cases
- Focus on flow through entities (see 2008 Draft Form 1120)
- Utilize M-3

SB/SE Initiatives

- New audit selection program
- Nonfilers identification via 1099s
- Flow through/high net income individuals
- Audits of US taxpayers living abroad

SB/SE Initiatives

- S Corporation project
- Retool audit process
- Fix OIC program (again)

S Corporation Project

- National Research Program
- Explosive growth of S Corporations
- Last study in 1984
- Gauge issues with S corporations
- Complement to study of individual reporting compliance

Retool Audit Process

- Focus on cycle/noncompliant taxpayers
- Agents communications to taxpayers
- Agents meet with audit manager at beginning of exam
- Standardized templates
- Flexibility in exam scheduling

OICs

- 50% returned unprocessed
- Drop in OICs filed
- 44% of rejections IRS in the end failed to collect more than 50% of amount due
- 45% of business offers eventually end up currently not collectible

OICs

- Appeals
 - 58% of rejected offers were appealed
 - 33% of cases appealed resulted in acceptance
- Drop in accepted OICs
- 80% of taxpayers with accepted OICs remain in compliance

GAO Report on OICs

- Processing time down
- Repeat offers
 - 22 month processing time
 - 40% of caseload
- Delinquencies remained constant, but offers declined
- IRS fails to track rejected participants

Wage & Investment

- EIC audit cycle reduction
- Redesign notices (one more time...)
- E-services for taxpayers
- National Research Program on 941s

Tax Exempt Initiatives

- Enforcement focus on shelters
- Voluntary compliance in employee plan area
- Application process

Appeals Initiative

- Fast Track Settlements
- Migration back to geographic basis

Criminal Investigation

- Prosecution
- Investigative priorities
 - Legal source tax crimes
 - Illegal source tax and financial crimes
 - Terrorist financing and narcotic related crimes

Enforcement Initiatives

- Increased focus
- Enforcement gains
- Enforcement initiatives for 2008

Service Initiatives

- Efiling up
- Improvements in toll-free line responses
- Use of online sources by taxpayers up
- IRS taken simplification steps

Cutting Tax Gap

- Information reporting
 - Payments to corporations
 - Basis reporting on sale of securities
 - Expand broker/auctioneer information reporting
- Merchant payment card reporting
(became law in recent mortgage bill)

Cutting Tax Gap

- Information reporting
 - Certified TIN requirement
 - Government payments
 - Penalties for information returns
- Strengthen tax administration

Cutting Tax Gap

- Expand penalties
 - Preparer penalties (§6694)
 - Erroneous refund penalty (in place)
 - Failure comply with efile requirements

Understand Taxpayer Behavior

- Develop and use National Research Program
- Research impact of service on compliance
- Additional compliance studies (like S)
- Relationship between complexity, burden and compliance
- Update tax gap estimate

Information Technology

- Update Systems

Enforcement Steps

- List in Manual
- Note number of foreign looking initiatives

Taxpayer Service

- See manual list
- Spanish language services
- Online taxpayer interaction with more items

Simplify Tax Law

- Simplification legislation
- Taxpayer Burden Reduction projects
- Tax form and publications improvements

Stakeholders

- List of manual of steps
- Relates to “outsiders” such as us

Circular 230

Module I I

Overview

- Changes in Circular 230
- AJCA added provisions
- 2007 proposed signing authority changes
- 2006 proposed regulations went final

Power of the OPR

- Can revoke or suspend right to practice before the IRS - however, cannot revoke CPA certificate
- However, see Missouri Revised Statutes §326.310 2.(8)

326.310 2.(8)

2. The board may file a complaint with the administrative hearing commission as provided by chapter 621, RSMo, or may initiate settlement procedures as provided by section 621.045, RSMo, against any certified public accountant or permit holder required by this chapter or any person who fails to renew or surrenders the person's certificate, license or permit for any one or any combination of the following causes: ...

(8) *Revocation, suspension, restriction, modification, limitation, reprimand, warning, censure, probation or other final disciplinary action* against the holder of or applicant for a license or other right to practice any profession regulated by this chapter by another state, territory, *federal agency* or country, whether voluntarily agreed to by the certified public accountant or applicant, *including but not limited to* the denial of licensure, surrender of a license, allowing a license to expire or lapse, or discontinuing or *limiting the practice of accounting* while subject to an investigation or while actually under investigation by any licensing authority, branch of the armed forces of the United States of America, court, agency of the state or federal government, or employer;

Statutory Definition of Public Accounting

MRS §326.256 I(17):

(17) "Public accounting":

(a) Performing or offering to perform for an enterprise, client or potential client one or more services involving the use of accounting or auditing skills, or one or more management advisory or consulting services, or the *preparation of tax returns or the furnishing of advice on tax matters* by a person, firm, limited liability company or professional corporation using the title "C.P.A." or "P.A." in signs, advertising, directory listing, business cards, letterheads or other public representations;

Circular 230

- Practice before IRS (10.2)
- Basic Prohibitions (10.20)
- Knowledge of Omission (10.21)
- Exercise Due Diligence (10.22)

Circular 230

- Unreasonable delay (10.23)
- Using disbarred or suspended practitioners (10.24)
- Former government employees (10.25)
- Notary public (10.26)
- Fees (including new rules on contingent fees 10.27)

Circular 230

- Return of client records (10.28) - applies in addition to other rules
- Conflict of interest (10.29) - based on ABA Code of Conduct
- Solicitation and Advertising (10.30)
- Check Negotiation (10.31)

Circular 230

- Written Tax Advice
 - Covered Opinion (10.33)
 - Other Written Advice (10.37)

Covered Opinions

- What's in
 - Listed transactions
 - Principal purpose transactions
 - Certain significant purpose transactions

Significant Purpose Transactions

- Reliance opinion
- Marketed opinion
- Conditions of confidentiality
- Contractual protection

Disclaim Out?

- Problems with disclaimers
 - Only impact reliance opinions
 - Different disclaimer for marketed opinions
 - Will not work at all for listed transactions or principal purpose transactions

Significant Purpose

- Language virtually identical to §6662(d)(2)(C)(iii)
- Did you previously treat everything as a tax shelter?

§6662(d)(2)(C)(iii)

(iii) Tax shelter

For purposes of this subparagraph, the term "tax shelter" means--

- (I) a partnership or other entity,
- (II) any investment plan or arrangement, or
- (III) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.

Other Written Advice

- All writings count (including email, faxes, text messages, etc.)
- Consider all facts and reasonableness of representation
- Cannot use “audit lottery” evaluation

Circular 230

- Best practices (10.33) “Aspirational” standard
- Oversight practitioner (10.36)
- Return preparation standard (10.34)
 - Current written - realistic possibility/
frivolous
 - Proposed - MLTN/reasonable basis

Disciplinary Sections

- Technical incompetence
- Disreputable conduct (10.51)
- Refusal to comply with Circular 230
- Willful and knowing intention to defraud, mislead or threaten a claimant

Monetary Sanctions

- Firm level sanctions now authorized for any entity making use of Circular 230 practitioners

Disciplinary Actions

- Censure
- Suspension
- Disbarment
- Fines

Disciplinary Proceedings

- Practitioner informed before proceedings commence except in expedited cases
 - Loss of CPA license
 - Conviction on crimes
 - Violated OPR agreement
- Seek legal counsel

Director's Complaint

- Inform that a conference can be requested
- Action may occur after
 - Period for filing request for conference expires or
 - Immediately after the conference
- Conference held at date set by OPR

Suspension

- Can be issued immediately after conference or expiration of period to request conference
- Remains in force until suspension is lifted

Disbarment

- More serious procedure - meant to be permanent
- However, can request reinstatement after five years