

TAX CONTROVERSY: ADMINISTRATIVE OVERVIEW AND TIPS

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PRE-EXAMINATION

PROACTIVE PREPAREDNESS: *TAKING ACTION BEFORE THE IRS EXAMINATION*

- Awareness – Does your firm know why and when to involve tax?
- Fights – The benefit of tax litigator review
- Documentation – Streamlining disputes when they arise
- Limits of informal tax advice
- Limits of non-tax advice – “I’m not a tax lawyer but...”

UNLOCKING THE BENEFITS OF FORMAL TAX ADVICE

- Why formal tax advice?
 - Understand tax impact of a financial transaction
 - Prepare legal research and analysis for potential disputes
 - Penalty protection by obtaining tax advice prior to taking a position
- When to get formal tax advice
 - Current legal support is unclear (e.g. digital assets)
 - IRS litigating position contrary to taxpayer position but no definitive decision
- Levels of Confidence in Tax Advice
 - IRS Circular 230/Legal Precedent on formal advice requirements.

UNLOCKING THE BENEFITS OF FORMAL TAX ADVICE

- Levels of Confidence in Tax Advice (likelihood of confirming position)
 - Will – at least 85%.
 - Should – at least 70%. If qualifications included then 60%.
 - More likely than not – more than 50%.
 - Substantial Authority – at least 40%.
 - Realistic Possibility of success on merits – at least 33.3%.
 - Reasonable basis – at least 20%.
 - Not frivolous – at least 10%.
 - Frivolous – less than 10%.

LEVERAGING PLRS FOR STRATEGIC TAX SOLUTIONS

- **Revenue Procedure 2024-1.** The procedures and user fees for a PLR are published annually in the first revenue procedure of each calendar year.
- Written Statement of IRS interpreting and applying tax laws to a presented set of facts.
 - Generally issued by IRS Chief Counsel.
 - May not be relied on as precedent by other taxpayers.
 - Should be formalized in a closing letter for maximum protection.

LEVERAGING PLRS FOR STRATEGIC TAX SOLUTIONS

- When is a PLR appropriate:
 - Prospective transaction where tax treatment is uncertain.
 - No “comfort letters” or letters on excluded subjects.
- Written Statement of IRS interpreting and applying tax laws to a presented set of facts.
 - Generally issued by IRS Chief Counsel.
 - May not be relied on as precedent by other taxpayers.
- Modified or revoked if later determined the ruling was incorrect or inconsistent with the current position of the IRS.
 - Should be formalized in a closing letter for maximum protection.

TRANSPARENT RESOLUTION: VOLUNTARY DISCLOSURE

- Voluntary Disclosure Benefits
 - Non-prosecution recommendation
 - Standard lookback period
 - Set penalties
- Voluntary Disclosure Requirements
 - Provide truthful information
 - Provide timely information (i.e. prior to IRS discovery)
 - Provide complete information
 - Contact nearest IRS Criminal Investigation Office

TRANSPARENT RESOLUTION: VOLUNTARY DISCLOSURE

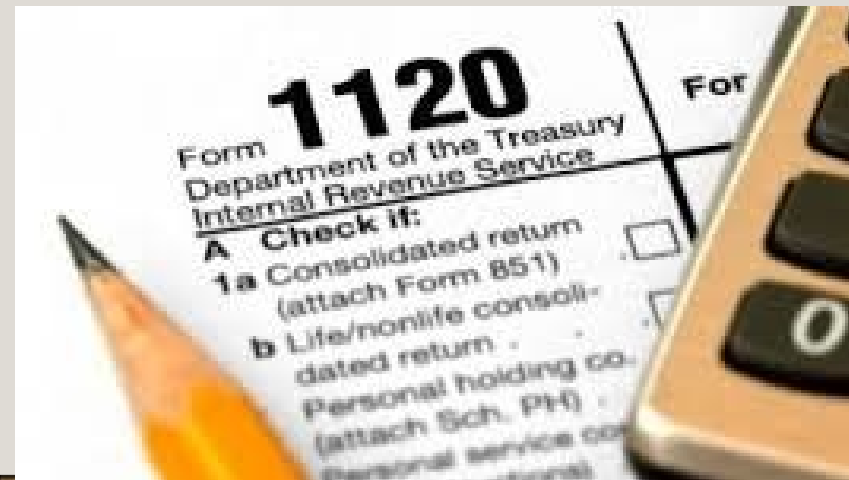
- Voluntary Disclosure must be made before:
 - IRS initiates or provides notice of a civil examination or criminal investigation.
 - IRS receives information from a third party alerting the IRS to noncompliance.
 - IRS initiates civil or criminal examinations directly related to the specific liability or acquires information directly related to the specific liability from criminal enforcement action.
- Voluntary Disclosure Special Programs
 - Offshore Bank Accounts
 - Streamlined Procedures
 - Improper ERC tax credit claims
 - Digital Assets/Cryptocurrency?

IRS EXAMINATION



HOW ARE RETURNS SELECTED?

- 1) Potential participants in abusive tax avoidance transactions
- 2) Computer Scoring/Artificial Intelligence
- 3) Large Corporations
- 4) Information Matching
- 5) Related Examinations
- 6) IRS Specific Projects/Focus



SELECTED HOT AREAS OF IRS COMPLIANCE FOCUS

- High Net Worth Individuals
- New Large Partnership Initiative
- Virtual Currency Compliance Campaign
- Increased FBAR scrutiny
- Labor Subcontracting Arrangements – Construction Industry
- Employee Retention Credits
- Transfer Pricing
- Abusive Tax Shelters
- Monetized Installment Sales
- Maltese Pension Plans
- Charitable Remainder Annuity Trusts

PREPARATION FOR INITIAL CONFERENCE

Publicly Available Audit Technique Guides:

Topics include:

- 1) Conservation Easements
- 2) Construction Industry
- 3) Lawsuits, Awards and Settlements
- 4) Oil and Gas Industry
- 5) Veterinary Medicine

INITIAL CONFERENCE

1. Roles, expectations and responsibilities for exam team and taxpayer
2. Point of Contact declarations
3. Agreement on handling of audit (timing of responses, form of responses)
4. Taxpayer site visit
5. Office audit arrangements



TAXPAYER INTERVIEWS

- Is Taxpayer's Presence Required?
- When can a practitioner handle all communications?
- Can the IRS by-pass a representative?
- If client submits to an interview – remember rights:
 - Suspension of Interview
 - Privileges



INFORMATION DOCUMENT REQUESTS

- IRM states that IDR's should be used to request information
- IDR's are supposed to be "specific, clear and concise"
- Formal IDR's – Handle with care



STATUTE OF LIMITATIONS

- To extend or not?



SUMMONS

- 1) “To examine any books, papers, records or other data which may be relevant or material to such inquiry;
- 2) “To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and
- 3) “To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.”

POWELL ELEMENTS

- All that the Government must show is that the summons
 1. is issued for a legitimate purpose;
 2. seeks information that may be relevant to that purpose;
 3. seeks information that is not already within the IRS's possession; and
 4. satisfies all administrative steps required by the Internal Revenue Code.

FAILURE TO OBEY SUMMONS

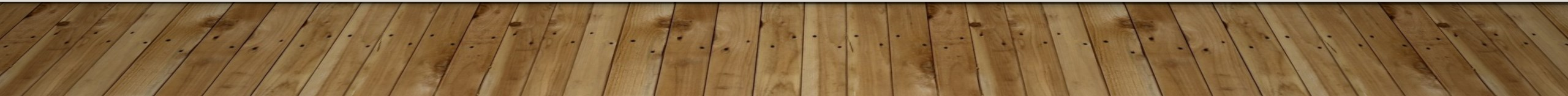
- 1) Court can hold person in contempt (IRC Section 7604)
- 2) Failure to obey a summons is also a crime (IRC Section 7210)

CONCLUSION OF AUDIT

What Happens Next:

- 1) Notice of Proposed Adjustments – 30 Day Letter
- 2) Notice of Deficiency – 90 Day Letter
- 3) Agreement/Waiver

POST EXAMINATION STAGE



ALMOST POST EXAM: ELEVATE THROUGH EXAM FUNCTION

- The importance of soft skills!
- Other members of exam team as allies?
- “I want to speak with your manager.”

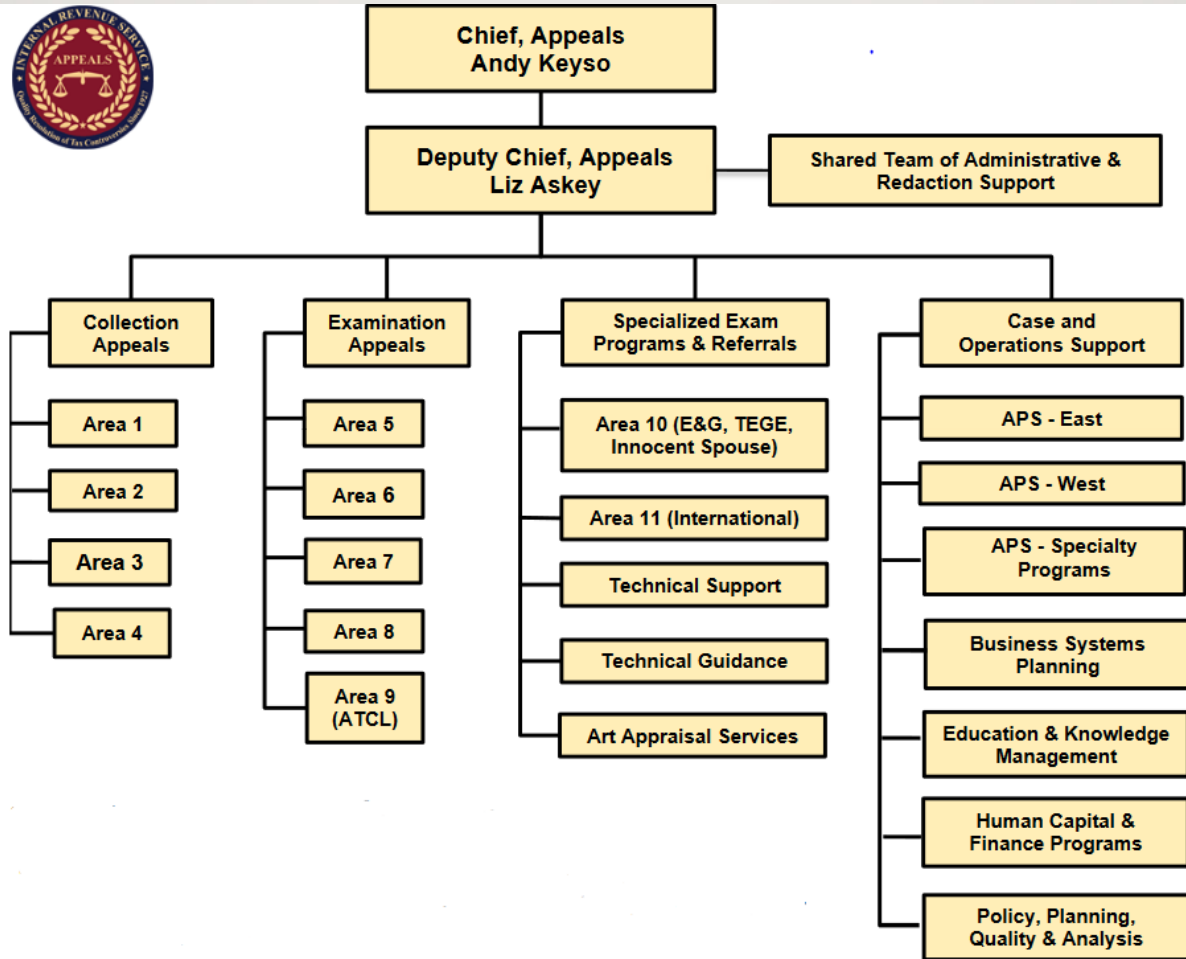
POST EXAM: AUDIT RECONSIDERATION

- Good reference point: IRS Publication 3598
- When to request?
 - Did not appear for audit
 - Did not receive IRS correspondence
 - New information
 - Disagree with audit assessment
- When can you request it?
 - Prepayment
- Where do you send it?
 - Check Pub. 3598

POST EXAM: OFFERS IN COMPROMISE AND PAYMENT PLANS

- Types of Offers in Compromise
 - Doubt as to Liability
 - Doubt as to Collectability
- IRS Installment Agreements
 - Guaranteed
 - Streamlined

POST EXAM: IRS APPEALS



POST EXAM: IRS APPEALS

- The IRS Independent Office of Appeals is separate and independent from the IRS Examination and Collection functions that make tax assessments and initiate collection actions. Appeals' mission is to resolve tax controversies:
 - Without litigation
 - On a basis which is fair and impartial to both the Government and taxpayers, and
 - In a manner that will enhance voluntary compliance and taxpayer confidence in the integrity and efficiency of the IRS
- Independence and impartiality are Appeals' most important core values.

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POST EXAM: IRS APPEALS

- Appeals employs policies and procedures that are consistent with its mission and designed to ensure its independence.
- Appeals' role is to settle disputes in a fair and impartial manner that favors neither the government nor the taxpayer.
- Appeals attempts to resolve cases after IRS compliance functions (Accounts Management, Collection, and Examination) have made a determination with which the taxpayer disagrees.
- Appeals' goal is to ensure that the IRS compliance functions are the finders of fact and Appeals does not take investigative actions.

POST EXAM: IRS APPEALS

- Exam handles a wide variety of cases, including IRS examinations:
 - Non-docketed
 - Docketed
- Exam also handles
 - Collection cases (Collection Due Process, Collection Appeals Program, Rejected Offers in Compromise)
 - Innocent spouse
 - Trust Fund Recovery Penalty
 - Penalty Abatement Appeals
 - And more....

POST EXAM: IRS APPEALS

- How to get to Appeals?
 - 30-day letter
 - Can be extended by agreement
 - Docketed Cases
 - Written Protest
 - Formulaic requirements, including IRS-mandated declarations about the author's personal knowledge regarding the information in the protest.
 - Possibility of IRS Exam Rebuttal

POST EXAM: IRS APPEALS

- Trap for the unwary:
 - Sufficient time on the Assessment Statute
 - Appeals normally needs a year on the assessment statute
- Other ADR techniques

CLE INFORMATION

Please self-report your CLE credit using CLE #

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