Rules of Taxpayer Representation

PART I - AUDITS

If you represent taxpayers before the IRS during audits, appeals, abatements or collections, there are certain "Rules" that should be followed. In order to represent your clients effectively it is critical that you are an expert in tax procedure. One procedural mistake could be detrimental to your client's case. This article is the first in a three part series. It focuses on the Audit.

1. ***Civil or Criminal Matter.*** During your initial conference with the taxpayer it is critical to determine whether there is potential criminal exposure. If you are not an attorney the client should be referred to a criminal tax attorney for appropriate representation. A major problem could arise if you are not an attorney and you continue to represent a taxpayer with criminal issues. Anything communications with you are not privileged. It is standard for the Criminal Investigation Division agent to interview any non-attorney who the taxpayer has met with.
2. ***The Taxpayer Interview.*** No matter what the revenue agent says to you, absent a summons, the IRS does not have a right to interview the taxpayer. Once a revenue agent demanded to interview the taxpayer and stated that he had a right to interview the taxpayer. This is simply incorrect as IRC §7521 governs taxpayer interviews. Often the client will want to meet with the agent to "explain" the situation, it is critical that the client does not speak with the agent. Your job as representative is to act as an intermediary between the auditor and client. I will often tell the auditor at our initial meeting that I will provide them with whatever documents are requested and they are entitled too, but they cannot speak to the taxpayer. The agent is trained to gather as much information during any taxpayer interview and this is where the agent determines if any "badges of fraud" are present.
3. ***Document Production.*** Never volunteer documents/ information unless it is part of a strategy. Answer the question asked, provide the document requested, and give nothing more. The agent issues Information Document Requests (IDRs) to obtain documents from the taxpayer. Often the agent issues IDRs that include questions for the client to answer. You should explain to the agent that this is an improper use of the IDR process. IDRs may be used to request documents, but not to compel testimony. You should then determine whether the question should be answered orally. You do not want to answer a question in writing because that answer could be used against your client at a later time during the Audit or in another proceeding.
4. ***To Extend or Not to Extend.*** When the statute of limitations on assessment approaches 6 months from expiration, the auditor will request taxpayer agreement that the statute to be extended. My general rule is not to extend the statute of limitations because in my opinion it simply gives the auditor more time to dig into the client's tax return. I first suggest to the agent that we continue the Audit, stating that there is plenty of time to finish the Audit without the necessity of extending the statute of limitations. Sometimes the agent will continue the Audit without extending the statute. Remember, the agent wants an agreed case. If the agent is adamant about the extension, I then ask if the agent will limit the extension to certain issues. If the agent denies this request, then you must make a decision about whether to sign the extension. The major disadvantage of extending the statute is it allows the auditor to expand into new issues that were not previously under examination. I have witnessed numerous audits where the prior representative extended the statute and the Audit expanded into other issues resulting in significant adjustments.
5. ***Confirm All Adjustments.*** At the end of the Audit, the auditor will issue a report with proposed adjustments that likely show increased tax, and possibly, penalties and interest. All adjustments should be confirmed with appropriate software. I have on numerous occasions saved clients money simply by running the adjustments through tax computation software. Often the IRS software misses foreign tax credits, loss carryovers, the AMT, passive activity calculations, and other items.

These are some general Rules I use during an Audit, however, you must adapt based on the auditor, your client, and other factors. Part II will focus on Rules related to Appeals.

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