Dealing with the IRS Regarding Collections, Penalty Abatements and Examinations

IRS Representation
E. Martin Davidoff, CPA, Esq.

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In practicing before the IRS regarding collection matters, penalty abatements and examinations, I have found certain rules of engagement helpful. This is the sixth and final in the series of articles in this magazine on such rules of engagement.

14. Be Realistic With Your Client.
Promise only what you know you can deliver, which will frequently result in your delivering more than anticipated.

Throughout our communications with our client, we promise only what we know we can accomplish. Our goal is to establish trust with our clients and referral sources, while establishing reasonable expectations in the minds of our clients. Since much of our success depends upon our advocacy skills in working with a variety of individual decision-makers at the IRS, we are often able to deliver more than our clients anticipate.

15. Confirm all Oral Agreements with the IRS field employees in writing and request that they sign off.
In collection matters, the IRS often wants information more quickly than you can provide it with reasonable accuracy. Accordingly, you often enter into a negotiation with the Revenue Officer (RO) and establish mutually-agreeable deadlines. For example, when will back tax returns be filed? When will the form 433-A be completed? How will interim payments, estimated taxes, and payroll tax deposits be handled? ROs are instructed to secure form 433-A information (client financial information) immediately. The assets/liabilities sections of the form 433-A are often straight-forward and can be completed in a relatively short timeframe. However, the budget section may take more time and finesse to present a complete and accurate picture of the taxpayer's finances and monthly budget. Accordingly, you may agree on varying timelines for portions of the form 433-A in order to satisfy the RO's need for securing at least some information quickly. In exchange for meeting the agreed-to timelines, you should negotiate with the RO to hold off in taking any collection actions and/or issuing notices that will accelerate the collection process.

To avoid any possible misunderstandings, you should set forth the understandings with the RO in writing. You could do a memorandum to your client's file. However, if you are dealing with a RO in the field, why not turn that memorandum into a letter and ask the RO to sign off on its contents? The worst that could happen is that the RO will not sign the letter. If the RO receives the letter and fails to object to its contents, I believe that such inaction would be considered a tacit agreement to the letter's terms. If I am dealing with a RO whom I trust, I often send the confirming letter and ask the RO to call me if any of the contents are inaccurate. If I do not trust the RO or have no long-term relationship with the RO, I will often insist that the RO sign off on the letter or issue their own letter of confirmation back to me. On occasion, I will go to the manager to secure a written confirmation from the RO.

In drafting the letter, I take great care to write the agreement precisely as discussed. I would not want to be accused of attempting to renegotiate the agreement by using wording more favorable to my client than our discussion had provided. Sometimes, in drafting the letter, I will think of something that had not been discussed that should be included in our agreement. In such circumstances, I make it very clear that we had not discussed that aspect and invite the RO to call me if he/she does not agree with my proposed resolution of the issue.

When dealing with IRS collections through the centralized telephone sites, securing written confirmation of oral agreements is nearly impossible. In such cases, I write detailed internal memoranda. If nothing else, each memorandum should clearly communicate to your client what has transpired. In lieu of a memorandum, I will often send a letter to my client summarizing the case's status. Both the memorandum and the client letter serve the purpose of documenting what has transpired and communicating the status of the matter to your client.

16. When you win, say "thank you" and "good-bye."
- The Appeals Officer agrees to waive your client's penalty;
- The Criminal Investigation Division decides not to prosecute your client;
- The IRS telephone assister agrees to accept a favorable installment agreement; or
- The IRS finally agrees to that Offer in Compromise.

All of the above are favorable outcomes for your client. Some practitioners might ask "what swayed you to see it our way?" or "how did you come up with that number?" When the IRS says "you win," you should simply say "thank you" and "good-bye." (Then, of course, do the memorandum to your file.) For example, I recently received a verbal approval of a highly favorable installment agreement. I then gave the IRS manager in this case, the only information he needed, "I would like the payments to come due on the 28th of each month, starting next month." That is all he needed to input the installment agreement and, at that point, I quickly ended the call.

17. Pull transcripts and summarize them.

To fully understand a client's options, it is helpful to prepare a federal tax summary. A sample of such a summary can be found below. To prepare such a summary, you must secure Account Transcripts from the IRS. For practitioners, this can be done through E-Services or by calling the tax practitioner hotline (1-866-860-4259). Preparing a federal tax summary using a spreadsheet program allows you to summarize dozens of pages from IRS Account Transcripts on one page so you can readily see the amounts of tax, interest, late filing penalties, late payment penalties, estimated tax penalties and offsetting payments and credits for multiple years.

18. Be fully prepared for all meetings…anticipate the unexpected.

I recently represented a client at a tax examination. In preparing for my meeting with the auditor, I came in prepared with multiple sets of files. We carefully segregated the information so that we could answer anticipated questions narrowly to prevent raising additional issues inadvertently. The bottom line is that we anticipated virtually all of the auditor's potential questions. Our thorough preparation enabled us to achieve a more favorable and faster result for our client and minimize her stress. Such preparation is helpful in the collection area too. Comprehensive form 433 packages enable us to secure better results. Anticipating weaknesses in our client's arguments for penalty abatement hearings enables us to more effectively address those weaknesses with the Appeals Officer.

19. Know the tools available to you and your clients' rights.

Some examples include:

- Your client has a right to appeal the rejection of his/her request for an installment agreement;
- You have the right to discuss your case with a manager, territory manager, or anyone else up the chain of command;
- You have the right to go to the Office of Appeals for Collection Due Process hearings, CAP Appeals, penalty abatement appeals, and to appeal examination findings;
- To assist you, you have programs available such as the Office of Taxpayer Advocate and Fast Track Mediation;
- You may designate payments as Trust Funds or Deposits in the Nature of a Cash Bond;
- You have the right to see, generally, what is in IRS files through the Freedom of Information Act. You also may see IRS records of third-party contacts.

Learn all you can about your clients' rights and what tools are available within the IRS so you can utilize them most effectively to benefit your clients.

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(IRS Representation Federal Tax Summary)

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JOHN DOE
YEARLY SUMMARY OF FORM 1040 TAX LIABILITY

YEAR	TAX	INTEREST	FEES & COLLECTION	PENALTIES LATE FILING	PENALTIES LATE PAYMENT	PENALTIES ESTIMATED TAX	TOTAL ASSESSMENTS	PAYMENTS & CREDITS	OVERPYMT CREDIT TRANS OUT	BALANCE DUE "1040"	DATE OF TRANSCRIPT
1991	54,056.00	102,817.39		13,514.00	13,514.00		183,901.39			183,901.39	07/23/2004
1992	105,339.00	176,033.26		26,335.00	26,334.75		334,042.01			334,042.01	07/23/2004
1993	57,286.00	68,332.01	52.00	14,321.50	14,315.49	2,400.25	156,707.25	(61,284.75)		95,422.50	09/13/2004
1994	126,939.00	130,383.40	70.00	31,734.75	31,734.75		320,861.90			320,861.90	09/13/2004
1995	131,126.00	111,359.90		32,781.50	32,781.50		308,048.90			308,048.90	09/13/2004
1996	198,387.00	137,665.23		49,596.75	49,596.75		435,245.73			435,245.73	09/13/2004
1997	71,195.00	39,070.53		17,798.75	17,798.75		145,863.03			145,863.03	09/13/2004
1998	94,743.00	41,047.19		23,685.75	23,685.75		183,161.69			183,161.69	09/13/2004
1999	107,016.00	34,493.18		26,754.00	26,754.00		195,017.18			195,017.18	09/13/2004
2000	141,777.00	29,659.32		35,444.25	31,186.10		238,066.67	(22.00)		238,044.67	09/13/2004
2001	86,825.00	13,372.66	20.00	21,706.25	13,023.75		134,947.66			134,947.66	07/23/2004
2002	93,454.00	7,108.98		23,363.50	8,410.86		132,337.34			132,337.34	07/23/2004
2003	63,276.00	0.54		0.00	0.00	1,444.16	64,720.70	(64,728.00)	7.30	0.00	07/23/2004
TOTALS	$1,331,419.00	$891,343.59	$142.00	$317,036.00	$289,136.45	$3,844.41	$2,832,921.45	($126,034.75)	$7.30	$2,706,894.00	