The Long Road: Laying the Foundation for Trial during the Audit

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Imagine the Trial from the Day of Engagement

- It is not your typical Eggshell Audit
- How involved should the attorney be?
Audit Concerns

- What can you do before reaching out to the IRS?
- Should we be afraid of an IRS summons?
- Do you sign a bank secrecy jurisdiction waiver?
The 5th Amendment and when to Assert

- Is it still worth fighting a Title 31 summons?
- How far back does the required records exception extend?
- Can you assert the 5th Amendment assertion over any production?
Information Returns and the Continuation Penalty

- How far back can the IRS assert penalties for?
- Can you assert the 5th Amendment over providing Information Returns?
- Is there anyway to get to Appeals/Court when the IRS asserts these penalties?
To Speak or Not to Speak

- How to prepare the client for the interview?
- Do you allow your client to be interviewed?
- Do you record the interview?
Statute Extensions and Appeals

- When do you sign statute extensions?
- Is it worth going to appeals in an FBAR case?
- Strategically, what do you provide at IRS Appeals?
The Long Wait and the Eventual Referral to DOJ

- When do you contact DOJ?
- After the complaint is filed, do you answer or file a motion to dismiss?
- What legal issues can you raise and when do you raise them?
- Do you ask for a judge or a jury?
**Discovery Concerns in District Court**

- Who do you set for depositions?
- How active are you in discovery?
- How do you handle requests for documents that are held overseas?
- Are there special considerations that need to be considered when depositing the return preparer?
Evidentiary Issues

- Do you stipulate to certain facts?
- Are there issues to litigate concerning 902(11) and 902(12) Certifications?
- Can you subpoena witnesses/documents abroad?
- How will the government prove its case?
Let’s Settle

- When is best to try and settle a case?
- How do you handle expectations with the client?
- Is collection a concern?
- How about any affirmative defenses?
- What should you consider when mediating?
Jury Instructions

- What is willfulness?
- Who is obligated to file FBARs?
- Is there a legal fight more important during the trial?