DUE DILIGENCE AND PREPARER PENALTIES FOLLOWING TCJA: EXPANDED AND POTENTIALLY EXPENSIVE

Audit & Appeal Practice Tips
PRACTICE TIP #1

#1 Always look at the preparer’s own income tax returns, if any (business and personal)

- Risk of income tax audit
- Service may use number of returns prepared to estimate income

- Interview Preparer Client Carefully and Obtain Records
  - Need to understand how the preparer client really operates
  - Are there prior preparer, tax and non tax issues
  - Tax, business and general education
  - Consider encouraging preparer to take additional education and participate in the annual filing season program or equivalent.
PRACTICE TIPS #2 & #3

#2 Many preparer audits start with little to no notice.
  • Try to manage the records demand time frame
  • Often the audit will occur during the height of tax season

#3 Confirm that the preparer actually prepared the returns at issue.
  • Were returns actually prepared by others using the preparer client’s PTIN?
#4 Be alert to other ramifications
  • Criminal
  • Injunction suits
  • Loss of PTIN, EFIN, etc.
  • Referral to OPR
  • Licensure and other issues
  • Personal taxes
  • State tax and non tax issues

#5 With injunctions sometimes preparer penalties can be negotiated.
  • Both amounts and years
#6 Be clear on tax year.

- e.g. Tax year 2019 returns are prepared in 2020

#7 Speed Counts

- The faster back-up provided to the auditor and to appeals the greater the chance of it being deemed obtained contemporaneous to return filing.
- When is the attorney able to represent receipt of back-up from the preparer at issue

#8 Don't let preparer client commit perjury.

- Don't turn civil cases criminal.