



The Nuts and Bolts of Handling a Pro Bono Tax Controversy Case

Presented by
The ABA Section of Taxation

Panelists

- Caroline Ciruolo - Rosenberg, Martin, Greenberg, LLP, Baltimore, Maryland
- Catherine Engell – DLA Piper, LLP, New York, New York
- James Leith - Local Taxpayer Advocate, Maryland

Introduction

- What is a tax controversy
 - Contact between the Taxpayer and the Government
 - Audits, Appeals, Litigation, Refund Claims, Investigations, Voluntary Disclosures, etc.
- What is the role of the attorney
 - Education
 - Current Compliance
 - Resolution of Outstanding Issues

Low Income Taxpayer Clinic

- What is an LITC?
- IRS Funding
- Income levels (250% of Poverty Guidelines)
- Services Provided

How to Contact an LITC to Volunteer

- IRS Publication 4134 – LITC List
- <http://www.irs.gov/advocate/article/0,,id=106991,00.html>
- ABA-LITC Match Program
 - www.abanet.org/tax/probono/

Types of Cases you will Encounter

- Examination
- Appeals
- Litigation
- Collection
- Audit Reconsideration
- Non-filers

Starting a Case

- Initial Client Contact
- Explain Current Compliance
- Review Client Records

Power of Attorney

- Form 2848 – Power of Attorney
- Form 8821- Tax Information Authorization
- Who can be on a Form 2848? The Form 8821?
- What is a CAF number?
- Joint v. Individual Forms
- Type of tax, Forms and Tax Periods
- How to file with the IRS
 - Mail
 - Facsimile
 - E-services
 - <http://www.irs.gov/taxpros/article/0,,id=109646,00.html>
 - Registration Process - <https://la1.www4.irs.gov/e-services/Registration/index.htm>

Contact with the IRS

- IRS employees (who are they and what do they do?)
 - Revenue Agents
 - IRS Attorneys
 - Revenue Officers
 - ACS Representatives
 - Taxpayer Advocates
 - Specialized Units

- Practitioner Priority Service (PPS)
 - Practitioner Priority Service (PPS) is a nationwide toll-free, account related service for all practitioners. PPS serves practitioners as the first point of contact for assistance regarding their clients' account related issues. There is no requirement for Practitioners to use this service exclusively.
 - 866-860-4259

Contact with the IRS (cont'd)

■ Practice tips

- Best practices when calling the IRS
- Best practices when writing the IRS
- What information should you obtain?

■ Account transcripts

- Account Transcripts
 - By Year and Type of Tax
- Return Transcripts
 - Past 3 Years
- Wage and Income Transcripts
 - Past 10 Years
- Modules

Examinations

- Initial Notice of Examination
 - Meeting with the IRS- Where? When?
 - Responding to Document Requests
- Statute of Limitations
 - 3-year rule
 - 6-year rule
 - Unlimited (fraud)

Examinations (cont'd)

- Revenue Agent Report
 - Meeting with Group Manager?
- Form 872-Waiver of limitations
 - Form 872
 - Form 872-A
 - Form 872-T
- Notice of Proposed Adjustments

Examination Appeals

- Protest to 30-day letter
 - Small Case
 - Large Case
- Mission of Appeals
- Statutory Notice of Deficiency

Litigation/Notice of Deficiency

■ Resources

<http://www.ustaxcourt.gov/>

http://www.ustaxcourt.gov/ustc_video_welcome.htm

■ Petition

■ Qualified Offer

– I.R.C. 7430

– Requirements:

■ Timely filing

■ Specified amount of Offer (without regard to interest)

■ Identified as Qualified Offer

■ Remains open until the earliest of the date the offer is rejected, the date the trial begins or the 90th day after the date the offer is made.

Litigation/Notice of Deficiency (cont'd)

- Answer and Reply
 - Watch for affirmative allegations
- Discovery
 - Informal
 - *Branerton*
- Appeals Conference
- Notice of Trial
- Pretrial Memos
- Stipulations of Facts
- Trial and Post Trial Briefs

Taxpayer Advocate

- Independent organization within the IRS
- Helps taxpayers resolve problems with the IRS
- Recommends changes that will prevent the problems in the future
- <http://www.irs.gov/advocate/index.html>
- Grounds for TPA Assistance
 - Economic harm
 - Immediate threat of adverse action
 - Threat of significant costs
 - Threat Irreparable injury or long-term harm
 - Delay of more than 30 days
 - No response or resolution on promised date
 - System failed to operate as intended or failed to resolve problem
 - Administration of tax law raises question of equity and fairness
 - Public policy warrants taxpayer assistance

Lifecycle of Federal Tax Collections

- Assessment and Statute of Limitations
- IRS Notices
 - CP Notices
- Offset Notices
 - Tax refunds, federal payments

Lifecycle of Federal Tax Collections

- Notice of Federal Tax Lien
 - Letter 3172 and Appeal Rights
 - Grounds for Release or Withdrawal – Pub. 1450
 - Impact of Fresh Start Program
 - Application for Withdrawal – Form 12277
 - Application for Discharge – Pub. 783
 - Application for Subordination – Pub. 784
 - Centralized Lien Unit - 800-913-6050
- Final Notice of Intent to Levy
 - Letter 1058
- Notice of Levy
 - Forms 668-A and 668-W

Collection Alternatives

- Extension to Pay-
<http://www.irs.gov/newsroom/article/0,,id=169438,00.html>
- Installment Agreement – IRM 5.14
- Partial Pay Installment Agreement – IRM 5.14.2
- Offer in Compromise – IRM 5.8.1, *et seq.*
– IRC 7122
- Currently Not Collectible – I.R.M. 5.16.1

Contact with the IRS

- Request a collection hold
- Account Transcripts
- Determine any deadlines
- Financial Information
 - Form 433-F
 - Form 433-A
 - Form 433-B

Form 433-A

■ Financial Standards (Rev'd March 1, 2010)

- <http://www.irs.gov/individuals/article/0,,id=96543,00.html>
- National Standards – Food, Clothing and Other Items
- National Standards – Out-of-Pocket Health Care
- Housing and Utilities Standards
- Transportation Standards

■ Reasonable Collection Potential

- <http://www.irs.gov/taxtopics/tc204.html>
- Amount of money IRS thinks it can collect from a taxpayer for tax debts

Form 433-A (cont'd)

- Asset/Equity and Income/Expense Tables
 - Issued as part of the Financial Standards
- Negotiation Tips
 - Provide detailed basis for offer in cover letter
 - Make clear all equitable bases for granting offer
 - Argue Special Circumstances
 - Point out consequences of bankruptcy if discharge would be granted

Offer in Compromise

- Form 656-Offer in Compromise
 - Contract between Taxpayer and IRS
 - Identify Type of Tax and Tax Years
 - Payment terms (Section IV) are only part of agreement
 - Taxpayer should understand other terms (Section V)
- Form 656-A-Income Verification
 - Low income Taxpayers (< 250% FPL) do not have to pay \$150
 - processing fee, the 20% lump sum fee, or periodic payments
- Form 656-B-Offer in Compromise Booklet

Offer in Compromise (cont'd)

■ Payment Terms

- Lump sum cash offer
 - **payment in 5 or fewer installments after acceptance of offer**
- Short-term periodic offer
 - **more than 5 payments with the final payment due no later than 24 months from submission date**
- Deferred periodic offer
 - **payments over the remaining life of the collection statute**

Offer in Compromise (cont'd)

■ Other significant terms

- Statute of limitations for assessment and collection is suspended while the offer is pending
- IRS will keep any refunds due to taxpayer for any tax periods through the calendar year in which IRS accepts offer
- Taxpayer must remain in compliance with all tax filing and payment requirements for 5 years or until offer is paid in full, whichever is later. If not, offer is defaulted and liability is reinstated

Collection Appeals

- Collection Appeal Program
 - Publication 1660 and Form 9423

- Collection Due Process Appeal
 - IRC 6320 and 6330
 - Publication 4165
 - Form 12153

- Equivalency Hearing

Challenging Liability?

■ Audit Reconsideration

- <http://www.irs.gov/pub/irs-pdf/p3598.pdf>
- Effectively a claim for abatement
- No statutory requirement
- Also consider doubt as to Liability OIC

■ Innocent Spouse Relief

- <http://www.irs.gov/pub/irs-pdf/p971.pdf>
- <http://www.irs.gov/pub/irs-pdf/f8857.pdf>
- Must raise 6015(b) or (c) relief requests within two years of collection action

Research Tools

- Internal Revenue Code (Title 26)
- Regulations
- IRS Website
- Internal Revenue Manual
- Case law
- Treatises and Handbooks
 - Effectively Representing Your Client Before the IRS
 - <http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5470721>

Panelists' BIOD

- JAMES LEITH has worked at IRS for 20 years. He has previously worked in Collection and the IRS Office of Legislative Affairs. In 2006, Jim was appointed the first Local Taxpayer Advocate for the District of Columbia, working District-resident cases and assisting the National Taxpayer Advocate on complex cases brought to her attention by practitioners, taxpayers, Member of Congress, and the IRS Commissioner. In September 2010, Jim was selected as the Local Taxpayer Advocate for Maryland. Jim resides in Baltimore with his wife and three young sons. Jim graduated from the University of Baltimore School of Law.

Panelists' BIOD

- CAROLINE CIRAOLLO is a partner with Rosenberg | Martin | Greenberg, LLP in Baltimore, Maryland. She represents individuals and businesses in federal and state tax controversies, civil tax litigation, and criminal tax investigations. She is a former Chair of the Maryland State Bar Association Taxation Section, a Vice-Chair of the Civil and Criminal Tax Penalties Committee of the ABA Tax Section and a fellow of the American College of Tax Counsel. In 2008, she was named Educator of the Year by Maryland Volunteer Lawyers Service for her work training attorneys to represent low income taxpayers, and in January, 2010, she received the ABA Tax Section's Janet R. Spragens Pro Bono Award.

Panelists' BIOD

- CATHERINE ENGELL is an associate with DLA Piper, LLP in New York, New York. She represents individuals and businesses in federal and state tax controversies, civil tax litigation, and criminal tax investigations. She is the former ABA, Taxation Section Pro Bono Staff Counsel and is currently serving as Vice Chair of the Pro Bono Committee of the ABA Tax Section. She currently serves on the New York County Lawyers Association (NYCLA) Pro Bono Committee and volunteers with the NYCLA Tax Court Calendar Call Program.