



Garden State CLE
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GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

IRS COLLECTION PRACTICE

With

Ray Ash, Esq., CPA

And featuring

Robert Ramsey, Senior Instructor

Program description

Sometime the amount you owe the IRS can be subject to negotiation. You can help your client and maybe even yourself by viewing this 1 credit CLE. Who knows how much you can save?

I. Introduction

- Raymond Ash, Esq., CPA

II. Offer to Compromise

- Companies (on television) claiming that if you haven't paid IRS then contact them and they will settle with IRS on your behalf
- Settlements are unusual
- Companies are putting together an *offer to compromise* – “I Owe You (IRS)” – explains why didn't pay it – IRS can accept
- There are only 2 reasons for IRS to accept your offer:
 - 1) inability to pay – present monthly income statement (income and expenses), list assets, all assets and liabilities (balance sheet); or,
 - 2) doubt as to liability – proof on tax payer to prove that you don't owe the money – use caselaw to prove your position
- IRS is willing to treat back taxes differently from late fees and other penalties when settling
- When you pay the tax that is owed the interest and penalties stop – can indicate in each payment that payment should be applied to tax and not fees/penalties
- IRS is willing to forgo penalties – they want the interest
- Get client to pay as much of tax as possible
- Appellate Division is used for tax issues – more informal process – reason with IRS attorney
- Chapter 13 or 7 bankruptcy can assist in avoiding tax liabilities
 - When bankruptcy is filed, all proceedings are stopped
 - Likely that IRS is more willing to settle because otherwise not getting money until bankruptcy is resolved
 - Filed the return and IRS did nothing to collect taxes within a period of time, tax goes into Chapter 7 and is dischargeable [IRS may try to have you sign a waiver of the statute of limitations.]
 - Filed return and IRS does go after you, then you can put into Chapter 13 payment plan – illustrates “ability to pay”
- “Settlement companies” are negotiating with IRS and trying all different forms of possible settlement
- Must file returns before IRS will negotiate with you
- Payment programs – relatively short period of time (3 years outside limit, IRS prefers 1 year), going to pay interest, penalty stops once you make a deal and make first payment
- Person can all IRS to make a deal – don't need “settlement companies”
- First step – look at return that was filed – maybe file an amended return, possibly deductions that were missed (Form 1040X)
- No increased issue of an audit because you have a collection with IRS – completely separate areas of IRS
- Hypothetical: Year 1 won money in Vegas and didn't report, Year 2 lost a lot in Vegas – under reporting income equates to financial and criminal penalties
- Don't deal with same IRS personnel for each case

- As an attorney, you can call and get the ball rolling
 - Talk to the agent who made the assessment – name on the letter received from IRS – agent has ability to make deals
- “desk audit” – if a bank sends you a 1099 interest statement, but you didn’t put it on your tax return – this would be picked up in a desk audit – computer generated
- “field audit” - All income reported but there are questions – need proof about deductions that you have taken; IRS can come to your business, you can mail in documents
- Person who files return and doesn’t have money to pay the taxes due:
 - Contact person on notice to discuss settlement
 - 433A (individual), 433B(self employed) – ask IRS to review and see what client can realistically pay
 - Power of attorney to IRS so that attorney can call
- Practitioner license is required to practice in IRS related matters
- IRS is willing to deal; more willing to deal with self employed people than with individuals – interpretations of deductions
- Either you owe the money or don’t owe the money – you have the ability to pay or you don’t have the ability to pay
- With businesses there is more leeway because of the tax laws because certain things can be argued as deductions

III. Minimizing Audit Possibilities For Individuals

- Different things can trigger an audit
- Stay away from the home office – only get small percentage of deduction
- Vehicle expenses – be careful – straight mileage deduction is best because there is nothing to look at because you are using the IRS’ formula – keep a contemporaneous log of mileage (1000 miles per month is suggested)
- Percentage of business use of car – be cautious – be conservative
- Vehicle depreciation – if you start depreciating a new car, then you must begin depreciating; “luxury vehicle rules” can accelerate depreciation but not in the first year; anything over 6000 lbs can take almost 100% as depreciation (farm machines, pick up trucks – non-“luxury” vehicles)
- Certain levels of income
- Travel and entertainment – only 50% deduction – must evaluate relative to your income when reporting, also review in light of other expenses – look at type of company you are operating
- Capital gains income – not more likely to be audited than others but establishes that you have assets so can’t go back and say that you can’t pay your tax

IV. Alternate Minimum Tax

- “worse tax out there”
- Takes all write offs such that your income is completely eliminated
- Like a see-saw - income down such that no tax consequences then AMT comes back and says that you have to pay this AMT

- For middle class people – not intended for that but that is who it effects (\$50-\$200K per year income with a lot of write offs)
- Effects those who have employee business expenses – expenses lower income tax but then AMT comes in to increase money due the IRS
- Does not increase chance of audit
- Only subject to AMT when you have a great deal of deductions to write off against the income

V. Self Employment Tax

- 15% of your net – pay this from first \$1 that you make – based on net income
- Paying both halves – employee and employer
- Any income over \$400 is subject to tax
- Generated by Schedule C – this form be an area that could be an audit, i.e. knocking the income down too low, but not the self employment tax itself
- After \$106,000 net income - no more self employment tax

VI. Fraudulent return/unreported income cases

- Where is the line drawn to send to US Attorney's office
 - 25% guideline- if they know you have income of X and you only reported 75% of that number
 - Civil penalties – 15% is guideline
 - Otherwise – IRS looks at total picture – no hard and fast rules other than the 25 and 15% guidelines (above)

VII. What to do if your client is being audited?

- Review return
- Ask: is this all the income you have reported?? More important to report all income than to worry about deductions you took
- Criminal penalties come when you just didn't tell the IRS about money – failure to report; not when there are deductions
- Deductions are a difference of opinion
- Unreported income is really the most important issue – file 1040X to correct issue – would reduce likelihood of criminal liability
- Request abatement of penalties and some interest – with filing of 1040X – letter to audit agent
- Filing 1040X would make IRS “happier” – good strategy
- Report under-reported income
- Look hard at deductions – use fact finding sheet – get to know client; daily expenses; mileage log – maybe suggest deductions that have not been taken

VIII. Dealing with IRS Agents/Auditor

- They are professionals, not personal issue when doing audits
- Rated by files closed and taxes recovered
- Incentive to resolve case with the path of least resistance – works to agent's benefit toward positive outcome

- Desk audits – computer generated – agents/auditors would rather address these issues than those larger issues when someone has to go into the field and deal with large corporations and tax attorneys
- More money is generated by desk audits being resolved
- Reasonable compromise should enable you to close the case
- At appellate level, agents/auditors have full license to make resolutions – different from agent who you deal with initially

IX. How Can the IRS Get Your Money to Pay Taxes

- Not as tough as they used to be because their hands are tied by Congress
- Taxpayer Bill of Rights – can't do what they used to do; used to be empowered to be abusive
- Current situations
 - “threaten to levy” bank account – in the past they just took the money
 - When money is levied in bank, they have to wait 21 days to execute on the levy – gives taxpayer time to resolve issue – IRS will make a deal
 - More opportunity as a taxpayer to fix the problem v. past practice
- Garnishing wages
 - Show true ability to pay – IRS will verify
 - If IRS believes you cannot pay, IRS will remove the levy

X. Advice to Attorneys

- Go easy with IRS – don't go in with tough guy attitude – they are tough too
- Trying to talk to IRS to negotiate – need to pave the way for that discussion
- How close can you come to the middle – negotiations
- Very seldom will a case go to tax court because at some time you will find the right appeal agent who will say that this case does not merit all this attention – find someone who will agree with your position and resolve the case
- Let client's expectations be clear as to what will occur and results
- Ads for settlement agencies set expectations that are unreasonable
- Must be honest with your client – direct and up front with your client – look at return, see if there are deductions that need to be taken, then if you don't find them then you must tell client
- Must advise client that he/she must be completely forthcoming with information in order for attorney to advise you
- Make client expectations realistic – don't make client think you are going to work miracles – the results are usually somewhere in the middle