

# **GARDEN STATE CLE LESSON PLAN**

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## **IRS COLLECTION PRACTICE**

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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