

25th Annual High Technology Tax Institute

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Impact of Economic Recession on Audits and Tax Compliance

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Global Factors Influencing Corporate Taxpayers and IRS Teams

- Dramatic increase in operating losses
- Downsizing of administrative workforce
- Budget constraints affecting travel and other needed resources
- Risk/Benefit analysis for taxpayers and IRS
- Increased Congressional concerns in tax administration
- Personal concerns about career and balancing work/life issues

Management of IRS Audits

- Challenges Facing IRS Teams
- Challenges Facing Corporate Tax
- Coordination of Audit by Taxpayer and the IRS
- Discussion of Tools for Resolution
- Effective Use of Counsel
- Tools to Improve Resolution of Audit
- Rules of Engagement
- Joint Committee Refund Cases
- Dealing with Special Situations

Challenges Facing IRS Teams

- New issues require increased technical and coordination skills
- New personnel need technical training in IRS polices and procedures
- Dramatic increase in Joint Committee Refund Claims
- Increased need for outside consultants
- Currency as a continuing metric of success

Challenges Facing Corporate Tax

- Realization of no replacement of “lost resources”
- Decrease in support by company personnel
- Increase in FIN 48 reporting responsibilities
- Lack of understanding of LMSB needs:
 - Documentation
 - Process
 - Audit team roles and responsibilities

Coordination of Audit by Taxpayer

- Inform IRS of disclosures, claims and issues
- Orientation of IRS team members to company and its administrative processes
- Prepare book-to-tax reconciliation
- Prepare documentation usually requested
- Designate company representatives for escalation
- Provide proper space, equipment and logistics
- Share schedule of major events for tax group
- Need to work on communication, trust and openness
- Role of a company process person

Coordination of Audit by IRS

- Schedule opening conference and share detailed agenda for comments
- Develop written audit plan and share with taxpayer
- Describe audit issues of material importance
- Describe roles and responsibilities of audit team members
- Audit schedule developed and shared for planning
- Agree on process for dealing with IDRs
 - Draft IDRs for review and comment
 - Agree on response times: standard and unusual
 - Agree to focus IDRs towards meaningful information that results in resolution potential
 - Discussion of tools for resolution
- Role of team manager

Coordination of Audit

- LIFE audit?
- PFA advisable?
- APA process?
- Materiality Agreement
- MOU for resolution purposes?
- Define process for status and accountability meetings
 - Who is responsible?
 - What is the timing?
 - What facts are needed?
 - What are the legal issues?
 - What is the resolution potential?

Effective Use of Counsel

- Discussion of role of field counsel
- Need for technical field legal advice
- Consideration of TAM or TEAM referral to National Office
- Planning for necessary legal advice as part of audit process
- Assistance in risk assessment
- Role of PFA process
- Role in closing agreements
- Designation of case litigation
- Handling litigating potential

Tools to Improve Audit Resolution

- Delegation Order 4-24 Team manager settlement authority to prior issues settled in Appeals
- DO 4-25 Team manager settlement of coordination issues in Appeals
- Fast-Track Settlement at Appeals
- Acceleration Issue Resolution process
- Appeals process and tools

Rules of Engagement

- Consider planning escalation triggers at start of audit
- Keep audit team informed
- Involves territory managers and executives in audit process
- Understand IRS roles and responsibilities
- Involve higher level executives/managers at *both* the taxpayer and IRS
- Elevation is step-by-step
- Used in unusual circumstances: initiated by specific triggers
- Ensures consistency and right answer for case
- No retribution

Joint Committee Refund Cases

- LMSB and Joint Committee review of \$2 Million refunds
- Step-by-step review process
- Review package prepared by LMSB staff
- Questions can be raised by LMSB and JC staffs
- Expedite treatment in hardship situations
- May need advisor help to facilitate process

Dealing with Special Situations

- Summons authority for books and witnesses
- Interviews of executives
- Executive compensation issues
- Disclosure issues of unusual matters
- Wealthy individuals handled by LMSB (Global High Wealth Industry)
- Status of CAP

PROCESS	AUTHORITY	DESCRIPTION
PRE-EXAMINATION		
Private Letter Ruling	Rev. Proc. 2009-1	Written statement issued to a specific taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts
Pre-Filing Agreement	Rev. Proc. 2009-14	Pre-filing resolution of tax controversies and production of closing agreements for (1) specific factual situations where there exists established legal principles, (2) issues involving methodologies, (3) issues under the jurisdiction of other IRS divisions (e.g., international issues); can cover a 4-year period beyond the current tax year; can include the execution of a Closing Agreement with the IRS
Advanced Pricing Agreement	Rev. Proc. 2008-31	Permits the IRS and taxpayer to agree on a transfer-pricing methodology prior to filing the tax return
Compliance Assurance Program (CAP)	Announcement 2005-87	Program through which the IRS and the taxpayer agree to contemporaneously exchange information regarding completed transactions to reduce taxpayer burden, eliminate uncertainty in tax treatment prior to the filing of a return, and eliminate or reduce the need for post-filing examinations; requires taxpayer to enter into a Memorandum of Understanding with the IRS; parties may use the fast track program to resolve issues
Industry Issue Resolution	Rev. Proc. 2003-36	IRS resolution of frequently disputed or burdensome tax issues that affect a significant number of business taxpayers through the issuance of guidance; guidance may be in the form of a regulation, revenue procedure, revenue ruling or notice
Automatic Consent for Change in Accounting Method	Rev. Proc. 2008-52	Provides the procedures by which a taxpayer may obtain automatic consent for a change or method for accounting
EXAMINATION		
Audit Planning Process	IRM 4.46.3	Participate in the IRS's examination planning through informal meetings with the IRS during the initial planning phase to discuss commitments and to establish a cooperative working relationship with mutual goals including the efficient and timely completion of the examination
IDR Management Process	IRM 4.46.4.4	Discuss IDRs with the examination team to ensure coordination and completeness of requests and responses, establish realistic deadlines, and maintain rapport with the examination team
Opening Conference	IRM 4.46.3.3.3	The opening conference is the first formal meeting with the IRS and should be used to confirm commitments made during preliminary meetings and to discuss the examination process
Delegation Order 4-24 (Formerly DO 236)	IRM 4.46.5.5.3	Provides case managers settlement authority on recurring issues for a taxpayer, provided that issues were settled in Appeals for the same taxpayer or another taxpayer directly involved in the same transaction in a prior or later period

PROCESS	AUTHORITY	DESCRIPTION
EXAMINATION (CONTINUED)		
Delegation Order 4-25 (Formerly DO 247)	IRM 1.2.43.6	Provides case managers settlement authority in accordance with Appeals Settlement Guidelines, provided there is review and concurrence by the Appeals Issue Coordinator
Limited Issue Focused Examination (LIFE)	IR-2002-133 IRM 4.51.3	Process through which the IRS and the taxpayer agree to materiality limitations below which the IRS will not raise issues and the taxpayer will not assert claims, thereby limiting the scope of the IRS's examination; requires taxpayer to enter into a Memorandum of Understanding with the IRS
Accelerated Issue Resolution (AIR)	Rev. Proc. 94-67	Advances the resolution of the same or similar issues arising in a tax period under examination to subsequent tax periods
Early Referral to Appeals	Rev. Proc. 99-28	Process to refer contested issues to Appeals prior to the completion of the examination
Fast-Track Mediation	Rev. Proc. 2003-41	An Appeals Official acts as a neutral participant in the resolution process and may recommend a resolution but does not have settlement authority
Fast-Track Settlement	Rev. Proc. 2003-40	Non-binding negotiation process between the taxpayer and revenue agents or Team Managers with the assistance of an Appeals Official acting as a neutral third party; may be used in conjunction with the CAP to resolve issues
Closing Agreement	IRC § 7121 IRM 8.13	A written agreement entered into by the taxpayer and the IRS that is final and conclusive with respect to an internal revenue tax for any issue and/or period covered by the agreement
APPEALS		
Traditional Appeals Process	IRM 8.1.3	Formal IRS process to fairly and impartially resolve tax controversies without litigation
Post-Appeals Mediation	Rev. Proc. 2002-44	Non-binding process that utilizes a mediator (an Appeals employee and, potentially, a non-Appeals co-mediator) to assist Appeals and the taxpayer in reaching a negotiated settlement
Post-Appeals Arbitration	Rev. Proc. 2006-44	IRS and taxpayer jointly agree to binding arbitration on unresolved factual issues
Closing Agreement	IRC § 7121 IRM 8.13	Written agreement entered into by the taxpayer and the IRS that is final and conclusive with respect to an internal revenue tax for any issue and/or period covered by the agreement
LITIGATION		
Pre-Trial Closing Agreement	IRM 8.4.1.3	Appeals and Chief Counsel maintain settlement authority over docketed cases

Thank you!