

Rules of Engagement in Dealing With the IRS Part II

In practicing before the IRS regarding collection matters, penalty abatements, and examinations, I have found certain rules of engagement helpful. For the first four rules of engagement, see the June/July edition of this magazine.

Assert yourself as appropriate — postscript

Although this was discussed last month, I had an excellent example today of how important it is to assert yourself on behalf of your clients. Several weeks ago, the CFO of a company contacted me. His company owed more than \$200,000 in payroll taxes. This is a company that has \$6 million in annual sales and is likely to be paying the payroll taxes in full. The IRS revenue officer, Ms. Thomson, had been eager to interview the company's president, Mr. Mays, regarding the possible assessment of the trust fund recovery penalty (IRC §6672). During the preliminary call with the CFO, it was agreed that I would represent Mr. Mays.

Ms. Thomson had set a deadline of May 24 to have this interview, and Mr. Mays called me on May 21 to engage me. At this point, Ms. Thomson knew that Mr. Mays was in the process of securing representation but insisted that the appointment be kept. It took until May 25 for me to receive the engagement letter, including a guarantor signature, the retainer and powers of attorney. The CFO called Ms. Thomson to tell her that the attorney would be engaged on May 25. She said that the interview must take place between 9 a.m. and 1 p.m. on May 25, and this would be the taxpayer's final chance. The implication was clear that she would be taking some sort of enforcement action, but against whom? The company was making regular payments, and Mr. Mays had not yet been assessed. This was nothing but a scare tactic, a threat.

On the morning of May 25, we faxed our power of attorney to Ms. Thomson and left a message on her office phone. It wasn't until the afternoon that we learned we were supposed to call her cell phone. By close of business on May 25, we had not heard from her.

What now? (Even if we had reached her, we were merely going to request more time.) As of close of business, we had not received a return call. In my mind, Ms. Thomson was a possible loose cannon, one who did not take seriously one's right to representation.

So, on May 26, my paralegal, Sarah, called the area director to get the name of Ms. Thomson's manager. She explained the circumstances and secured the name of the manager. She then left a message with the manager stating that a threat had been made and that we could not contact the revenue officer. By the end of the day, we had heard back from the area director's staff, the territory manager and Ms. Thomson. The managers who called us were sympathetic and made it clear that we did the right thing. I believe that we will get the additional time we require to determine what questions Ms. Thomson will be posing to my client (probably those on form 4180) and what my client's answers to those questions will be.



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IRS REPRESENTATION ADVISOR

E. Martin Davidoff, CPA, Esq.

The next day, Ms. Thomson insisted on assessing the Trust Fund Recovery Penalty without an interview. I spoke with the territory manager, who agreed that the interview will be conducted on or before June 18. In the meantime, no assessment would be made against Mr. Mays. I attribute the reasonable extension of time to my office's proactive approach in contacting the higher-ups at the IRS.

5. Never lie. Period.

This seems simple. You should never make representations to the IRS that are misleading or untrue. Better to refuse to answer a question than to lie. In the long run, the IRS learns which practitioners are reliable and which are not. Once you fall in the latter category, your cases will become uphill battles.

At the beginning of most tax examinations, the auditor will ask if there is any income that was not reported on the tax return. If the answer is yes, I have limited choices. I can provide the information or I can say, "that is for you to determine"—thus evading the answer but making no misrepresentation.

6. Do not accept unreasonable timelines.

If the IRS asks for a form 433-A in 14 days, do not agree to do so if you know you need 30 days. If the IRS asks your client to pay \$1,500 by next Friday, do not agree to do so if you believe the client is unable to do so. Explain to the IRS your justification for the extension of time or change of payment amount and that you are interested in working together to find a successful resolution for all. You have options in nearly all circumstances. You can speak to a manager or bring the case to Appeals.

More rules of engagement to come next issue. **G**

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