Rules of Engagement: Dealing With IRS Installment Plans

"Your goal is to pay in nearly all of the tax by year-end and no more."

IRS Representation Advisor

E. Martin Davidoff, CPA, Esq.

In practicing before the IRS concerning collection matters, penalty abatements and examinations, I have found certain rules of engagement helpful. For previous rules of engagement, see the August/September edition of this magazine.

7. Do not agree to terms your client cannot meet.

If you believe your client only can pay $500 per month, and the IRS insists that your client pay $1,000 per month, you should not agree to the higher amount. By doing so, you are setting up your client for failure. Rather, you should appeal the decision to a manager or other administrative level within the IRS.

Usually, the unpalatable terms of an installment agreement deal with the amount of monthly payments, but occasionally they might deal with the timing of payments. For example, I have had clients who have owed substantial amounts to the IRS who received bonuses at the end of each year. In one case, an attorney could repay the IRS $60,000 per year. But, a $5,000 per month payment plan would not work because the attorney received much of her income in December, January and February of each year through bonuses.

Thus, we negotiated with the IRS to have the payments due for each December, January and February at a rate of $20,000. Although the IRS had to manually monitor this particular installment agreement, they agreed to do so because they understood the logic of structuring the payments in this manner. Usually, you will not get a first-level employee to depart from the prescribed monthly installment formula that is normally used by the IRS. Higher-ups, however, often will exercise their judgment to bring about a resolution.

8. Current taxes get paid first.

While meeting with clients about IRS collection matters, they are likely to tell you their tales of woe about how they got into these predicaments. Hopefully, you will give them excellent advice on how to resolve their past issues. Maybe the issues can be resolved with installment agreements or offers in compromise. Perhaps, the clients will take out equity loans on their homes to pay off the IRS. Regardless of the resolution, they will not be successful in resolving their IRS disputes if they are not meeting their current tax obligations.

Quickly, the conversation needs to move to the current tax year because no long-term resolution will be possible if the client is not current. Is the client paying his or her personal estimated taxes? Is the withholding level correct? It is important that you as the advisor know where the taxpayer stands on the current year. Your goal is to pay in nearly all of the tax by year-end and no more. Why no more? Typically, the IRS will seize the excess and apply it "in the best interests of the government," which is usually not in your client's best interests.

If you are dealing with a client who is also an employer, make sure that all payroll tax filings have been completed and that the payroll taxes are being paid timely. I usually will have the client sign up with a major payroll tax service and opt into their tax-pay service. Such a service takes out the proper withholding tax with each payroll. I educate the client that the net payroll should not be paid unless you have the funds to be sure to pay-in the related payroll taxes.

Many IRS employees understand that current taxes should be the first concern. Yet, some IRS employees will pressure clients to pay delinquent taxes first because those are the cases on the IRS employees' desks. It often takes an aggressive representative to keep the proper focus.

Often, clients just refuse to stay current on their taxes, claiming they are unable to do so. They explain that they cannot afford to pay the mortgage, the auto payments, college, etc., and pay their taxes. In many instances, these are self-employed individuals. Your approach with such individuals has to be clear and firm. People often have to realize that they must change their lifestyles to live within their current budgets and that current taxes are non-discretionary parts of those budgets. So, if a client comes in today, I realize he or she might not be able to pay even the first half of the current year's taxes. But, from this day forward, the client must keep current. I encourage high-income individuals to pay their estimated taxes monthly or weekly through www.eftps.gov to avoid facing those huge quarterly estimated tax payments.

More rules of engagement to come next issue.

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