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Welcome to the 2017 IRS Representation Conference!

- Stuff in the bags
- Materials Link
- CPE Credits
- Food
- Drinks & More Food
- Cocktail Reception
- Ground Rules with Government Speakers
- Certificates – You MUST be here at the end of the day
- Giveaway – Make sure you visit the exhibitors

In-person Attendees

- Please turn off your cell phones
- If you have not already checked-in at the registration desk and specified the credits you need, please take this moment to do so.
- Please take and complete the evaluation form
- If you need to leave early— you must check out at the registration area so that your earned CPE credits can be adjusted.
- If you have any questions, stop by the registration desk.
- The men's and ladies' restrooms are located near the check-in area.
- We handed out an agenda so everyone knows today's schedule
- Kindly return your name badge clips at the end of the conference for recycling.

Webcast Attendees

- If you have technical issues: call **877-297-2901**
- Those on the webcast, make sure to pay attention to screen and click when prompted so that you get credit for being on the webinar
- Following today's conference you will receive an email with a link to take the course evaluation. Please be sure to complete this as it is invaluable in planning future CPE events.
- There will be two brief coffee breaks and lunch. PLEASE make sure you are back when we reconvene for CPE purposes!

CPE

- The conference offers 8 CPE and CE Credits.
- CPE certificates will be handed to those of you in the room once the conference ends. For webcast attendees you should receive them after you receive the link.
- IRS CE credits will submitted to the IRS

Today's Agenda

Time	Topic
7:30 – 8:30	Breakfast
8:30 – 8:45	Introduction & Housekeeping Items
8:45 – 10:10	IRS Initiatives: The Future State
10:10 – 10:30	Break
10:30 – 12:00	Gift Tax Returns & IRS Examination Part 2
12:00 – 12:45	Lunch & Presentation by Canopy
12:45 – 1:45	Ethical Dilemmas in Representation: Do I Need to Tell the IRS
1:45 – 2:45	The IDR: Preparing and Handling an IRS Exam Request
2:45 – 3:05	Break
3:05 – 4:10	Non-Traditional Advocacy in Representation
4:10 – 5:00	Waking Up the Dead: Reopening the Assessments You Thought Were Closed
5:05	Frank Agostino's Ipad-Pro Giveaway
5:10 – 6:30	Cocktail Reception

Next Year – Friday November 30th at Mohegan Sun!

- Register Today for: **\$169!**
- The Form is in your bag, emailed to you, or online!
- Good until Monday:
 email the form to:
egreen@gs-lawfirm.com
 fax it to (203) 286-1311
 Drop it off on your way out the door with Christine





SB|SE

Mary Beth Murphy
Commissioner,
Small Business Self Employed

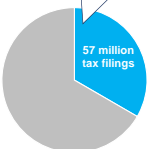


The IRS Appreciates Its Tax Partners


YOU are the **IRS tax partners** in the tax community who

- Keep your clients **informed** and **compliant** by attending events like this one
- Share knowledge** through your networks of tax professionals – which is vital to the **goals** and **mission** of the IRS

The SB/SE workforce serves 1/3 of taxpayers







57 million tax filings



Security Summit

Additional Safeguards for 2018 filing season

 <p>Identity theft protections for Forms 1120 & 1041</p>	 <p>Continual education and outreach to tax professionals</p>	 <p>Campaign to warn tax preparers about phishing scams</p>
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Changes in Tax Laws

PATH Act

- Changes are part of tax law
 - EITC or ACTC returns held until February 15

ITIN

- Renewal changes still in effect
 - ITINs not used in three years expire on December 31, 2017
 - ITINs issued prior to 2013 renewed on a rolling basis

Tax Reform Legislation

- Policy changes reside with the Administration and Congress
- IRS Focus: Tax Administration
 - Laws written so they're easy to understand and comply with
 - Reform could bring simplification of tax code



Private Debt Collection

Enacted in December 2015

1. Allows **contractors** to collect unpaid taxes (taxpayers are notified by IRS first)
2. Mandates that **private debt collectors** work responsibly & respect taxpayer rights
3. IRS continues to educate taxpayers and practitioners to **be on the lookout for scammers**
4. The majority of those with unpaid taxes will **continue to work directly with the IRS**
5. Private debt collectors **can discuss payment options** - including setting up payment agreements - but cannot take enforcement actions such as liens or levies
6. **Payments** must be made **electronically** or by check **to the IRS**
7. The IRS will continually work with private debt collectors to ensure the **safety and security of taxpayers**, and to ensure taxpayers are **treated with fairness and respect**



Innovative and Secure Tools and Support

Our goals remain the same

1. **Enable** voluntary compliance by empowering taxpayers and representatives
2. **Find** new ways to change non-compliant taxpayer behavior
3. **Work** with external stakeholders to gain **insights** and understand risks
4. Continue to develop a **skilled** and **flexible workforce**
5. **Detect** tax noncompliance and emerging issues using the latest technologies
6. Find new ways to make the IRS more **efficient** and **effective**



Taxpayer Digital Communications

This online suite of secure, web-based communication tools includes **secure messaging**, **video meetings**, and **text chat** as an alternative to paper correspondence / phone interactions

- **Message box** within a secure portal (like your bank or credit card)
- **Invite only** pilot program for taxpayers and representatives / POAs
- Based out of **Philadelphia** Correspondence Exam Operation
 - Schedule A – Itemized Deductions and Education Credit deductions
- **13,350** FY17 taxpayer invitations, with more than **900** taxpayers successfully signed up

NEXT STEPS

- **Increase** invitation volume and add additional audit issues
- **Integration** with notice and case management systems (funding and prioritization dependent)



Collection

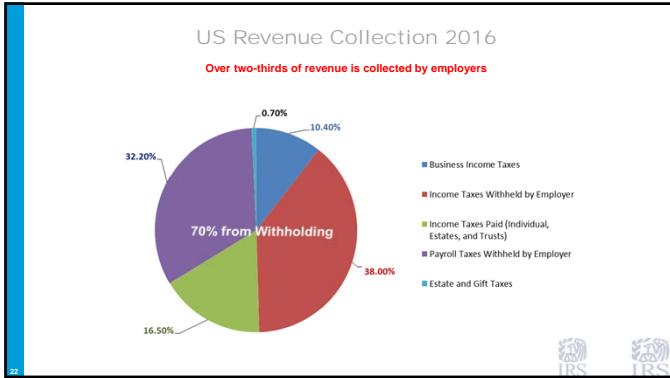
Darren John Guillot,
Director, Field Collection Operations

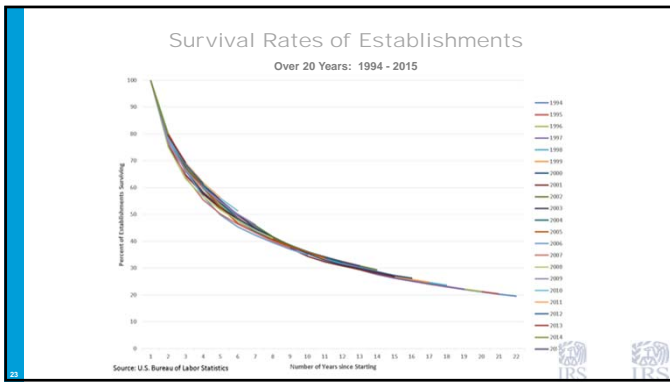


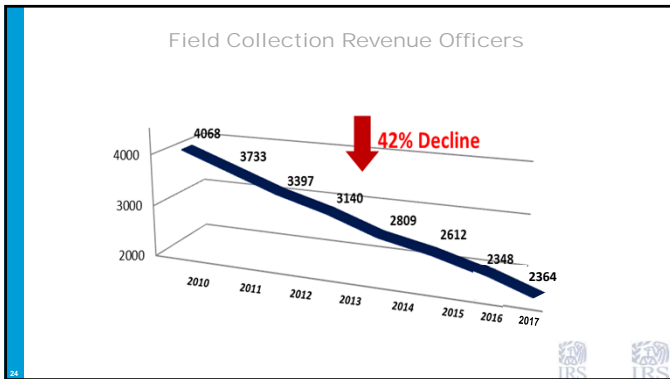
\$68 Billion

As of March 2017









Employer Compliance

1. Future State – Early Interaction
 - Doubled FTD Alerts (12% improved compliance)
2. Appropriate enforcement
 - Levy, DETL, Seizure
3. Collaborative Initiatives with DOJ
 - Suits for Injunctive Relief (up 12% in 2017)
 - Criminal Referrals (up 5.3% in 2017)
4. Potential Pyramiders (down 2% in 2017)
5. Increased "advanced" training for ROs
 - Employment tax, fraud, and civil suits



Cumulative Field Time %

Fiscal Year




CEASO

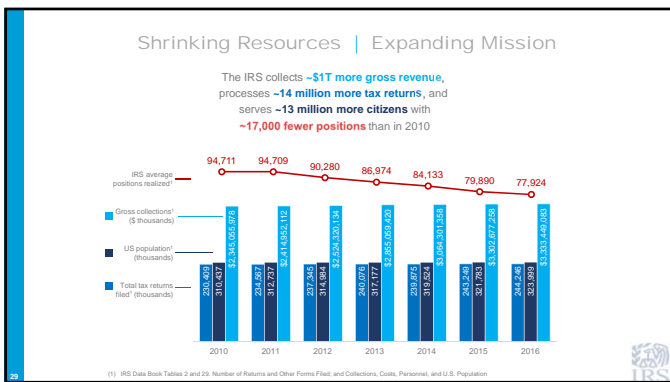
Civil Enforcement Advice And Support Operations



Online Services

Paul Mamo,
Director, Online Services







Digital Building Blocks

In FY2017, taxpayers began using four key building blocks that enable the IRS **Future State** Vision across the **pre-**, **at-**, and **post-**filing lifecycle

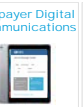
Authentication | Authorization | Access




IRS.gov




Online Account



Taxpayer Digital Communications



Tax Pro Account



3rd Party Services


IRS FUTURE STATE VISION

Seamless Interactions

Empowered Taxpayers

Proactive Outreach

Timely Resolution



IRS Secure Access

HIGHLIGHTS

- Launched** Secure Access with additional authentication and security controls, June 2016
- Integrated** multiple applications behind Secure Access, including:
 - Online Account
 - Get Transcript
 - IP PIN
 - Taxpayer Digital Communications
- Ongoing application and monitoring enhancements improve security and the overall user experience

NEXT STEPS

- Integrate** additional applications
- Increase** user coverage, security, and improve usability
- Improve** reporting and analytics

IRS Online Account

HIGHLIGHTS

- Launched** Minimum Viable Product (MVP), Fall 2016
 - "Find out how much you owe"
 - Link to payment options
- In the past 11 months, with limited marketing:
 - Over **2.3M** visits
 - More than **201,000** payments submitted, worth over **\$520 million** from Online Account via Direct Pay
 - Over **44,000** payment plans established
- Agile methodology, with 9-week program increments and releases
- Additional features launched Mar-Jun 2017, including **viewing recent payments** and a **link to "Get Transcript"**

NEXT STEPS

- Taxpayer Protection Program (TPP) identity verification tool
- Integrated installment agreements

*From November 16, 2016 - Oct 21, 2017

IRS.gov

HIGHLIGHTS

- Completed** dozens of content upgrade projects, 2015-present
- Enhanced** search, Fall 2016
- Built** a powerful publishing platform – Drupal 8 – launched August 2017
- Refreshed** site includes
 - Mobile-ready design
 - Taxpayer-focused navigation
 - Findable, usable, understandable key content

NEXT STEPS

- Integrated** tools (e.g., account)
- Site **redesign**
- Continuous **improvement** of 150,000+ content items


Tax Pros

HIGHLIGHTS

1. **Developed** prototypes for key tax pro account features to showcase and seek feedback at Nationwide Tax Forums, Summer 2017
2. User experience **testing** explores opportunities and challenges


NEXT STEPS

1. Tax professional account
2. **Initiate** and **manage** power of attorney online
3. **View** and **manage** client tax records




ILLUSTRATIVE

MULTI-YEAR EFFORT



Major IT Risks

1. **Unmet Demand**
Legislative mandates requiring significant IT development – without funding – have significantly hampered the IRS' ability to invest in IT operations, as well as deliver on the **Future State**
2. **Aging IT Infrastructure**
Growing inventory of aged infrastructure is increasing inefficiencies, security vulnerabilities, and operational risks
3. **Cybersecurity**
Continued investment in technology, tools, and processes is needed to bolster IT capabilities and capacity in order to defend against expanding cyber threats
4. **People**
Hiring freeze has had a significant impact on our ability to maintain and build next generation of IT professionals.





Break

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**Gift Tax Returns & IRS Examination:
Challenges and Pitfalls for Practitioners**

Presented by:
SETH G. COHEN, ESQ.
Zhong Lun Law Firm

LAWRENCE A. SANNICANDRO, ESQ.
McCarter & English LLP

ANTHONY F. VITIELLO, ESQ.
Connell Foley LLP

www.connellfoley.com

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Agenda – Gift Tax Returns

- Importance of Proper Gift Tax Return Preparation
- The “Art” versus “Science” of Preparing a Gift Tax Return
- Importance of Adequate Disclosure
- Adequate Disclosure Regulations
- Amending Gift Tax Returns-Rev. Proc. 2000-34
- The Anatomy of a Gift Tax Return
- The New “DSUE” – Schedule C
- Gift Splitting
- Reporting the Basis of Gifts
- Allocation of GST Exemption
- Notice 2017-15
- Keep Gift Tax Returns
- Reviewing Some Samples

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Agenda – Audits of Gift Tax Returns

- Filing Requirements & Statutes of Limitations
- The Selection Process
- Defending the Gift Tax Audit
 - Representing the Donor
 - Representing the Fiduciary
 - Prompt Assessment Requests
 - Fiduciary Liability
 - Strategies to Protect the Fiduciary
 - Transferee Liability
- Concluding the Audit
 - Issuance of the 30-Day Letter
 - Issuance of the 90-Day Letter
- Gifts and Bequests From Non-U.S. Donors and Decedents
 - Resolving the Decedent’s Non-Compliance

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Exhibits

- A. IRC § 6501
- B. Treas. Reg. § 301.6501(c)-1
- C. Treas. Reg. § 20.2001-1
- D. IRC § 2632
- E. Sample "Schedule A" Descriptions for Various Complex Gifts
- F. Actual Schedule A From IRS Form 709
- G. Rev. Proc. 2000-34
- H. Sample Letter to Accountant Describing Gifts/Transfers in Planning Process
- I. Notice 2017-15

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- **Importance of Proper Gift Tax Return Preparation**
 - What you present will be used against you in a gift tax audit.
 - Assume there will be an audit or litigation with the IRS on every reported gift that has an element of a discount.
 - The statute of limitations on revaluing gifts is your best friend.
 - Gift tax return audits are rare, but when they happen, they are tough, expensive to defend and if not defended properly, can lead to significant amounts of unnecessary gift tax payments, penalties and interest.
- **The "Art" versus "Science" of Preparing a Gift Tax Return**

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- **Importance of Adequate Disclosure**
 - Taxpayer Relief Act of 1997 – IRC § 2001(f), § 2504(c), 6501(c)(9)
 - Effective for gifts made after 8/5/97
 - Prior Law (Pre-8/6/97 gifts)
 - Current Law

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• Adequate Disclosure Regulations

- On 12/3/99, final regulations regarding adequate disclosure were issued. These regulations apply to gifts made after 1996 for which a return is filed after 12/3/99.
- General Rule: A gift is only considered adequately disclosed if it is reported in a manner adequate to apprise the IRS of the nature of the gift and the basis for the value so reported.

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• Adequate Disclosure Regulations... Continued

- Safe Harbor § 301.6501(c) – 1(f)(2): Transfers reported as a gift will be considered adequately disclosed if the return provides the following 5 required elements.
 - A description of the property and any consideration received by the transferor;
 - The identity of, and relationship between, the transferor and the transferee;
 - If the property is transferred to a trust, the trust's TIN and either a brief description of the terms of the trust or a copy of the trust;


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• Adequate Disclosure Regulations... Continued


- Either an appraisal (in the form described in § 301.6501(c) – 1(f)(3)), or a detailed description of how value was obtained (financial data/property information, etc.);
- A statement describing any position taken that is contrary to any proposed/temporary or final regulations or revenue rulings. § 301.6501(c) – 1(f)(1)(v). This seems onerous and not sure it is needed.

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- **Non-Gift Transfers § 301.6501(c) – 1(f)(4)**
 - A non-gift transfer will be considered adequately disclosed even if it is not reported on a gift tax return if the transfer is properly reported by all parties for income tax purposes.

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- **Incomplete Gifts**
 - If incomplete gifts are reported as complete, those incomplete gifts will be treated as completed gifts after the statute of limitations runs. § 301.6501(c)-1(f)(5). There are questionable benefits for this rule.

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- **Amending Gift Tax Returns-Rev. Proc. 2000-34**

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- **Gift Splitting**

A married individual may elect to split gifts with that person's spouse for gift tax and GST tax purposes.


- Benefit: Allowing the use of the consenting spouse's annual exclusions and applicable exclusion.
- Gift Splitting Does Not Cause Estate Tax Inclusion for Consenting Spouse.
- Grantor Trust Status as to Consenting Spouse.
- Consenting Spouse is Jointly and Severably Liable for Gift Tax Due. IRC § 2513(d) and Transferee Liability IRC § 6324 (a)(2).
- Election applies to all gifts in tax year.
- Do not gift split in a year where the clients establish a split interest trust (GRAT, QPRT) that uses a portion of the client's applicable exclusion.
- Gift Splitting on Trusts Where the Consenting Spouse is a Beneficiary With Other Persons.

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- **Reporting the Basis of Gifts**


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- **Allocation of GST Exemption**


- Automatic Allocation Rules - § 2632(c)

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- **Formula Clause**

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- **Notice 2017-15**

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- **Keep Gift Tax Returns**

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- Reviewing Some Samples

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Reporting GST at Close of ETIP

THIS RETURN IS BEING FILED ONLY FOR THE PURPOSE OF ALLOCATING GST EXEMPTION AT THE CLOSE OF AN ETIP. SEE THE ATTACHED NOTICE OF ALLOCATION.

Form of Notice of Allocation
 Attached to and made part of
 20__ United States Gift (and Generation-Skipping Transfer)
 Tax Return (Form 709)
 [TAXPAYER SSN: XXX-XX-XXXX]
 NOTICE OF ALLOCATION

[NAME OF TRUST]
 [_____] Trustee
 [EIN: XX-XXXXXX]
 [ADDRESS OF TRUST]
 DESCRIPTION OF TRUST ASSET:
 [DESCRIBE ASSET CONTRIBUTED TO TRUST]
 VALUE FOR PURPOSES OF ALLOCATION: \$_____*

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Reporting GST at Close of ETIP... Continued

AMOUNT OF GST EXEMPTION ALLOCATED:

- THE TAXPAYER ALLOCATES TO THE TRUST LISTED ABOVE THE SMALLEST AMOUNT OF THE TAXPAYER'S GST EXEMPTION NECESSARY TO PRODUCE AN INCLUSION RATIO (AS DEFINED IN INTERNAL REVENUE CODE § 2642(A)) FOR THE TRUST THAT IS THE CLOSEST TO OR, IF POSSIBLE, EQUAL TO ZERO. THIS IS A FORMULA ELECTION WHICH WILL CHANGE IF VALUES ARE CHANGED ON AUDIT.
- BASED ON THE VALUES AS RETURNED, AS TO THE TRUST DESCRIBED ABOVE, THIS FORMULA ALLOCATION WILL RESULT IN \$_____ OF GST EXEMPTION ALLOCATED AND AN INCLUSION RATIO OF 0.000.
- *THIS GIFT DOES NOT APPEAR ON SCHEDULE A BECAUSE IT WAS MADE TO THIS TRUST IN 20__ AND REPORTED ON THE TAXPAYER'S 20__ GIFT TAX RETURN. PURSUANT TO § 2642(F)(2)(B), THE VALUE FOR PURPOSES OF ALLOCATION IS THE VALUE ON THE DATE OF THE CLOSE OF THE ESTATE TAX INCLUSION PERIOD, WHICH, IN THIS CASE, IS _____, 20___. A COPY OF AN INDEPENDENT APPRAISAL OF THE ASSET IN THIS TRUST IS ANNEXED HERETO AS "EXHIBIT A."

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Gift of LLC Interest to GRAT

- DONOR CONTRIBUTED A THIRTY-THREE (33%) PERCENT INTEREST IN THE [NAME OF LLC] TO THE [NAME OF GRAT] DATED _____, 20___. EIN: _____, C/O _____, TRUSTEE, [ADDRESS OF TRUSTEE], (A COPY OF SAID TRUST IS ANNEXED HERETO AS "EXHIBIT A").
- THE UNDISCOUNTED VALUE OF ONE HUNDRED (100%) PERCENT OF THE LLC INTEREST IS \$13,316,576. THE VALUE OF THE GIFT WAS OBTAINED BY A PROFESSIONAL VALUATION (A COPY OF SAID VALUATION IS ANNEXED HERETO AS EXHIBIT B) THAT VALUES A THIRTY-THREE (33%) PERCENT INTEREST IN THE LLC AT \$3,200,000.
- SAID PROFESSIONAL VALUATION ALONG WITH THIS FORM 709 AND THE OTHER ATTACHMENTS HERETO ARE INTENDED TO MEET THE REQUIREMENTS OF AND COMPLY WITH THE PROVISIONS OF REGULATION SECTION 301.6501(c)-1(f).

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Gift of LLC Interest to GRAT... Continued

- THE GRANTOR RETAINED THE RIGHT TO RECEIVE AN ANNUITY OF 11.6% OF THE FAIR MARKET VALUE OF THE TRUST VALUED AS OF ITS INCEPTION. THE DONOR'S DATE OF BIRTH IS _____. THE TRUST'S DURATION IS _____ TWELVE (12) YEARS. THE VALUATION RATE UNDER SECTION 7520 OF THE CODE FOR _____, 20___, THE MONTH OF THE TRANSFER, WAS 5.6%. THE VALUE OF THE RETAINED ANNUITY INTEREST IS \$3,181,481; THEREFORE, THE VALUE OF THE REMAINDER INTEREST IS \$18,519.

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Sale of LLC to Single Member LLC Owned By Trust

- SALE OF A FORTY-NINE (49%) PERCENT INTEREST IN THE [NAME OF LLC I] TO THE [NAME OF LLC II], EIN _____, C/O _____, MANAGER, [ADDRESS OF MANAGER]. THE [NAME OF LLC II] IS WHOLLY OWNED BY THE _____ FAMILY TRUST DATED _____, 20___, EIN _____, C/O _____, TRUSTEE, [ADDRESS OF TRUSTEE].
- A PROFESSIONAL VALUATION (A COPY OF SAID VALUATION IS ANNEXED HERETO AS EXHIBIT A) VALUES A ONE (1%) PERCENT INTEREST IN THE [NAME OF LLC I] AT \$132,000. THE VALUE OF THE TRANSFER WAS BASED ON A SALE VALUE OF \$132,000 FOR A ONE (1%) PERCENT INTEREST IN THE LLC. AS SUCH, THE VALUE OF THE INTEREST CONVEYED IS \$6,468,000. SINCE SUCH INTEREST WAS SOLD FOR THE APPRAISED FAIR MARKET VALUE, THERE IS NO GIFT AND THUS A ZERO (0) GIFT HAS BEEN REPORTED HEREIN.
- SAID PROFESSIONAL VALUATION ALONG WITH THIS FORM 709 AND THE OTHER ATTACHMENTS HERETO ARE INTENDED TO MEET THE REQUIREMENTS OF AND COMPLY WITH THE PROVISIONS OF REGULATION SECTION 301.6501(c)-1(f).

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Reporting Sale for Fair Market Value to a Trust of Discounted Interests to Begin Running of Statute of Limitations

- On the Form 709, the recipient trust should be listed as the donee of a gift of zero dollars on the date of the sale. In the description for the gift, which should be contained in schedule A, Part 1 of the 709, the following example language can be used:
- SALE ON [DATE] OF A FORTY-NINE AND EIGHTY-FIVE HUNDREDTHS (49.85%) PERCENT INTEREST IN [NAME OF LLC] TO THE _____ TRUST, _____, EIN: _____, _____ TRUSTEE, [ADDRESS OF TRUSTEE], (A COPY OF THE 1989 TRUST IS ATTACHED HERETO AS EXHIBIT A).

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Reporting Sale for Fair Market Value to a Trust of Discounted Interests to Begin Running of Statute of Limitations... Continued

- A PROFESSIONAL VALUATION VALUES A FORTY-NINE AND EIGHTY-FIVE HUNDREDTHS (49.85%) PERCENT INTEREST IN [NAME OF LLC] AT \$30,782,000 (A COPY OF SAID VALUATION IS ATTACHED HERETO AS EXHIBIT B). AS SUCH, THE VALUE OF THE INTEREST CONVEYED IS \$30,782,000. SINCE SUCH INTEREST WAS SOLD FOR THE APPRAISED FAIR MARKET VALUE, THERE IS NO GIFT AND THUS A ZERO (0) GIFT HAS BEEN REPORTED HEREIN.
- SAID PROFESSIONAL VALUATION ALONG WITH THIS IRS FORM 709 AND THE OTHER ATTACHMENTS HERETO ARE INTENDED TO MEET THE REQUIREMENTS OF AND COMPLY WITH THE PROVISIONS OF REGULATION SECTION 301.6501(C)-1(F).

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Cash Gift to a Section 529 Plan Making Use of Future Annual Exclusion Gifts

- CASH GIFT OF \$65,000 TO A SECTION 529 PLAN ACCOUNT FOR THE BENEFIT OF [NAME OF 529 ACCOUNT BENEFICIARY]. SAID GIFT SHALL BE TREATED AS BEING MADE RATABLY OVER A FIVE YEAR PERIOD. AS SUCH, \$13,000 SHALL BE TREATED AS GIFTED THIS TAXABLE YEAR.

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Filing Requirements

- Who is required to file
 - Individuals who, subject to certain exceptions, makes a transfer by gift which
 - Does not qualify for the marital deduction;
 - Does not qualify for the charitable deduction;
 - Is greater than the I.R.C. § 2503(b) annual exclusion amount of \$10,000 as adjusted for inflation; or
 - Is not a qualifying medical or educational expense.
- When due
 - In General
 - Gift tax returns generally must be filed on or before April 15th of the close of the taxable year. I.R.C. § 6075(b).
 - Extensions Allowed
 - I.R.C. § 6081(a) authorizes the Service to extend the filing of a gift tax return by up to six months
 - Any extension of time granted to a taxpayer for filing his or her Federal income tax return is deemed to be also an extension of time to file a gift tax return under I.R.C. § 6019.

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Statutes of Limitation

- Statute of limitations
 - Normally, three years. IRC § 6501(a)
 - Exception for a gift tax return omitting from return an amount that exceeds 25% of the total gifts stated in the return
 - Exceptions for a false or fraudulent return
 - Prompt assessment requests
 - Reduces the three-year period to eighteen months
- Starting the running of the statute of limitations
 - Zero dollar gift tax returns
 - Importance of adequate disclosure

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Minimizing the Risk of Audit

- Audit defense starts when the return is filed
 - Use reputable appraisal firms
 - Assume all relevant evidence will be reviewed by the auditor and a judge
 - Know what the IRS knows
 - Prior years' gift tax return transcripts
 - Order prior years' gift tax returns (Form 4506)
 - FOIA requests, as appropriate
 - Publicly available databases

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Minimizing the Risk of Audit

- Perfect the return, by including:
 - Statements explaining valuation discounts
 - When valuing a business, financials for the prior five years
 - For gifted life insurance, Form 712, *Life Insurance Statement*
 - For gifts to trusts, a copy of the trust instrument
 - Copies of appraisals
 - Necessary statements for elections
- Anticipate common audit issues

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Minimizing the Risk of Audit

- Anticipate common audit issues
 - Adjusted taxable gifts
 - Real estate
 - Stocks and bonds
 - Accrued interest and dividends
 - Closely held businesses
 - Sales prices pursuant to a buy-sell agreement
 - Reliability of the appraisal
 - Valuation discounts – reasonable and appropriate
 - Bargain sales
 - Family limited partnerships
 - Below market loans

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Defending the Gift Tax Audit

- Different strategies
 - Representing the donor
 - Representing the fiduciary
 - Prompt assessment requests
 - Fiduciary liability
 - Strategies to protect the fiduciary
 - Form 56
 - Form 4810
 - Form 5498

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The Gift Tax Audit

- Manage client expectations
 - Define the scope of the representation
 - Protect the client and yourself
- Know what the government knows
 - Gift tax return transcripts
 - FOIA requests
 - Third-party contact sheets
- Identify the issues to be examined
 - Fully research and document
 - Do not volunteer issues
- Make a conscious choice as to how to approach the audit
 - Passive
 - Aggressive
 - Assert all applicable privileges
 - Striking the proper balance

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The Gift Tax Audit

- Establish credibility early
 - Credibility is determined in large part when the return is filed
- Initial audit interviews
 - Should the taxpayer attend?
- Anticipate what will be requested in the IDR
 - Turning over documents builds good faith
 - Do not turn over irrelevant or privileged documents
 - Be mindful of all privileges
 - Attorney-Client
 - Work product
 - IRC 7525
- Handling third party contacts
 - IRC § 7502(c)
- Prepare as if your materials will be reviewed by a court
- Settlement attempts
- Special issues when representing the fiduciary
 - Protect fiduciary clients by filing Forms 56, 4810, and 5495
 - Prompt assessment requests

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The King's Debtors Dying, The King Shall First Be Paid

- A personal representative of an estate without enough property to pay all claims of the estate must pay the federal tax claim before other claims.
 - 31 U.S.C. § 3713
- Personal representative becomes personally liable for unpaid federal estate tax of the estate and/or unpaid federal income tax of the decedent.
 - 31 U.S.C. § 3713(a), (b)

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Pay the King First or Be Held Liable

- If the personal representative pays other creditors before paying the government, the fiduciary may be held personally liable to the extent of the payments that he turned over to creditors other than the government.
 - 31 U.S.C. §3713(b)
 - *United States v. Coppola*, 85 F.3d 1015, 1020 (2d Cir. 1996)
 - IRS issues a Notice of Liability and sues the fiduciary in the appropriate federal district court
- **Statute of Limitations:**
 - 1 year after the liability arises or the expiration of the period of collection (10 years)
 - Can arise many years after the personal representative is discharged

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Strategies to Protect a Fiduciary From Liability

- File the following forms with the Service:
 - (1) Form 56, *Notice Concerning Fiduciary Relationship*
 - File this form twice, once when the fiduciary is appointed and once when the fiduciary is discharged.
 - (2) Form 4810, *Request for Prompt Assessment Under Internal Revenue Code Section 6501(d)*
 - Applies to income and gift tax returns.
 - Shortens SOL from 3 years to 18 months.
 - (3) Form 5495, *Request for Discharge From Personal Responsibility Under Internal Revenue Code Section 2204 or 6905*
 - IRS has 9 months to respond or else fiduciary is discharged of personal liability.
- Create reserves for taxes before making final distributions.
- Require distributees to sign agreements before making final distributions (without reserves) which
 - Agree to indemnify the personal representative from personal liability arising from the distribution; and or
 - Execute refunding bonds and releases requiring distributees to agree to refund such amounts as are required to satisfy the estate's debts, including tax debts.

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Concluding the Gift Tax Audit

- When the auditor has reached a decision he or she will discuss his or her findings with the taxpayer
 - If the taxpayer agrees to the changes and resulting computations, the taxpayer can sign a Form 890 & 3615-A.
 - Changes will be reflected on Form 3233
 - If the taxpayer does not agree:
 - 30-Day letter
 - 90-Day letter

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**Exercising Rights
 Under the 30-Day Letter**

- Appeals
 - Appeals has the authority to settle based upon hazards of litigation; examining agents do not.
- Appeals Conference Hearings
 - In preparing for an Appeals conference, prepare as though the estate were going to trial:
 - Fully research applicable law and present it to the Appeals officer.
 - Bring all supporting documentation that the estate would seek to have considered as exhibits in court.
 - Obtain declarations from relevant third parties.

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**Exercising Rights
 Under the 30-Day Letter**

- Fast Track Settlement (no dollar limit)
 - Initiate by filing Form 14017, Application for Fast Track Settlement, a summary of issues, and the taxpayer’s written position
 - Does not apply if issues will take longer than 60 days to resolve
- Post-Appeals Mediation (no dollar limit)
 - Post-Appeals Mediation (no dollar limit)
 - Send the appeals officer a request for post-appeals mediation and a written statement detailing the taxpayer’s position on the disputed issues

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**Exercising Rights
 Under the 90-Day Letter**

- If a case is unagreed within 210 days of the SOL expiration date or if the case fails to settle with Appeals, the Service will issue a notice of deficiency (*i.e.*, the 90-day letter)
- In response to the notice of deficiency:
 - Can petition the United States Tax Court without prepaying the deficiency
 - Can prepay the tax, file an administrative claim or refund, and file a complaint in the United States Court of Federal Claims or the appropriate Federal district court
 - Bring in an experienced tax litigator early, either during the audit, the Appeals conference, or before beginning litigation

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**Gifts and Bequests From
 Non-U.S. Donors and Decedents**

- Increased scrutiny of transactions between U.S. taxpayers and non-U.S. donors and decedents
- Common information forms required (but not always filed):
 - Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*
 - Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner (Under Section 6048(b))*
- Unforgiving penalties can quickly accumulate

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Form 3520, Foreign Trusts & Gifts

- Grantors or beneficiaries with reportable transactions with foreign persons, trusts or estates must file Form 3520, *Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*. See I.R.C. §§ 679(c), 6048.
 - Many reportable transactions; examples include: formation of a foreign trust; transfer of property to a foreign trust; the receipt of any distribution by a U.S. beneficiary; aggregate gifts or bequests from foreign person or estate greater than \$100,000; loans to a foreign trust.
- When to file?
 - Due with tax return for the U.S. grantor or beneficiary (separately filed)
- Penalties (I.R.C. §§ 6662(j), 6677)
 - **35%** of the gross value of the distribution received from or transferred to a foreign trust; 5% per month for the amount of certain foreign gifts, up to 25%
 - Reasonable cause defense available; reviewable in CDP proceedings

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Form 3520-A, Foreign Trusts – U.S. Owner

- A foreign trust with a U.S. owner must file Form 3520-A, *Annual Information of Foreign Trusts With a U.S. Owner*. See I.R.C. §§ 679(c), 6048.
- U.S. owner responsible for compliance
- When to file?
 - 15th day of the 3rd month after the end of the trust's tax year
- Penalties (I.R.C. §§ 6662(j), 6677)
 - **\$10,000 per reportable transaction plus a \$10,000 continuation penalty**
 - Reasonable cause defense available; must show current compliance
 - Able to be reviewed in collection proceeding

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Hypothetical

- Clients are Davida (56 years old) and Theo (60 years old) Fenway, who are married with two children, a son Dustin and daughter Marianna. Five years ago, Davida sold her successful public relations firm for \$8,000,000. A year later, Theo's grandfather Yawkey, who founded a successful chowder and food distribution business which was purchased by a public company in a tax free stock for stock acquisition, passed away and left Theo publically traded shares worth \$10,000,000. After Yawkey's death, Davida and Theo consulted an estate planner and implemented a gifting program which resulted in each of them using approximately \$3,500,000 of their respective gift and generation skipping transfer tax lifetime exemptions.
- Three years ago, Theo, Dustin and Marianna began an on-line sports information business, Beantown Services, LLC, using a highly effective communication process which Theo believes will grow at a rapid rate and become extremely attractive to a public company within a five year period. Theo, Dustin and Marianna each own 1/3 of Beantown. Davida and Theo consulted with their planner to discuss the transfer of Theo's interest in Beantown before an anticipated increase in value. Because of their ages, they would like to avoid exhausting their remaining gift tax exemptions and also to receive some value for the transferred interest but exclude appreciation from their estates.
- After discussion, it has been decided that an appropriate vehicle would be to implement an installment sale of Theo's interest in Beantown to a "defective" grantor trust (often referred to as an IDGT).

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Questions?

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- Lawrence A. Sannicandro, Esq., *McCarter & English, LLP*
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Lunch



Ethical Dilemmas In
Representation –
Do I Need to Tell the IRS?

Moderator
Frank Agostino

Frank Agostino, Esq.

- Frank Agostino is the president of Agostino & Associates, P.C., where he concentrates his practice in civil and criminal tax matters before the IRS and state tax authorities.



Panelists

Barbara T. Kaplan, Esq.
Noelle Geiger, Esq.
Richard J. Sapinski, Esq.
Maria Papageorgiou

Barbara T. Kaplan, Esq.

- Barbara T. Kaplan is Co-Chair of the Global Tax Practice at Greenberg Traurig, LLP. She has been named one of the top 50 women lawyers in New York City by Super Lawyers magazine, and focuses her tax litigation practice on domestic and foreign corporations, partnerships, and individuals in federal, state, and local tax examinations, controversies and litigation, including administrative and grand jury criminal tax investigations.



Noelle Geiger, Esq.

- Noelle Geiger, JD, is Director of Tax Controversy and a Tax Principal at Grassi & Co. She has approximately 20 years of experience handling tax dispute resolution matters. She represents individuals, corporations, partnerships and estates before the Internal Revenue Service (IRS) and state taxing authorities at the pre-audit, audit and appeal stages
- Noelle is the chairperson of the Nassau County Bar Association Tax Committee, and also serves on the State and Local Tax Committee for the New York City Bar Association. She was previously the chairperson for the Nassau Chapter of the New York State Society of Certified Public Accountants (NYSSCPA) Attorney and Accountant Joint Committee. She also was on the Executive Board for the NYSSCPA, Nassau Chapter and served as the Editor of the NYSSCPA Nassau Chapter's newsletter.



Richard J. Sapinski, Esq.

- Vice-Chair of the Tax Litigation Practice Group at Sills, Cummis, &Gross, PC. His practice involves white collar criminal defense on both federal and state levels and civil and criminal tax litigation, as well as international tax planning and compliance issues.
- From 1977 to 1984: Office of the District Counsel, Internal Revenue Service, Newark, New Jersey as a trial attorney
- From 1985 to 1987: Special Trial Attorney for the Office of the Regional Counsel Internal Revenue Service, Philadelphia, Pennsylvania
 - responsible for litigating in the United States Tax Court on behalf of the Commissioner of Internal Revenue in large and sensitive cases and for assisting IRS international examiners in developing international tax issues for litigation.

Sills Cummis & Gross P.C.

Maria Papageorgiou



- 2002 - Present: Special Agent with the Internal Revenue Service-Criminal Investigation Division in New Haven, Connecticut.
- In 2006 She became the BSA coordinator for the Judicial District of Connecticut. She has developed and conducted investigations relative to bank secrecy, tax related matters, money laundering, and asset forfeiture.
- In 2006, 2007, 2010, 2012, and 2013, received awards from the United States Attorney's Office in conjunction with cases worked with the FBI, ICE, USPIA, SIGTARP and DCIS.
- In 2013 received the Chief's award for IRS-CID for her work on the BSA Program which she formed the BSA Task force which partners with local law enforcement in an effort to develop cases.
- Recently named the BSA Field Office Coordinator for the BSA program in the six New England states.

Code Of Ethics

- A code of ethics may outline:
 - the mission and values of the organization
 - how professionals are supposed to approach problems
 - the ethical principles based on the organization's core values, and
 - the standards to which professionals will be held

Responsibilities Of Tax Professionals

- Depending on their licensing, Tax Professionals must adhere to the letter and the spirit of the:
 - Internal Revenue Code (26 U.S.C.)
 - Tax Court Rules of Practice and Procedure
 - ABA Model Rules of Professional Conduct
 - Treasury Regulations (26 C.F.R.)
 - Circular 230 (31 C.F.R. Part 10)
 - ABA Model Rules of Professional Conduct
 - NAEA Code of Ethics & Rules of Professional Conduct
 - AICPA Statements on Standards for Tax Services ("SSTS")

Circular 230

- Rules governing "practice before the IRS"
- Apply to:
 - Attorneys
 - Certified Public Accountants
 - Enrolled Agents
 - Enrolled Actuaries
 - Appraisers
 - Enrolled Retirement Plan Agents

Circular 230

- Circular 230 applies only where the practitioner is "practicing before the IRS."
- "All matters connected with a presentation to the IRS (or any of its representatives) relating to a taxpayer's rights, privileges, or liabilities under law or regulations administered by the IRS."
- The IRS does not have the statutory authority to regulate tax return preparers, as they do not engage in "the practice of representing of persons before the Department of Treasury" for purposes of 31 U.S.C § 330. *Loving v. United States*, 742 F.3d 1013 (D.C.Cir 2014).

Duty of Candor v. Duty to Protect Privileges – Hypo 1

- You have been retained by a new client to file an Offer in Compromise (OIC). While preparing the Form 433-A you notice a potential under reporting of income. After bringing your concern to the client, the client insists the information provided is accurate, and you file the OIC. After you filed the OIC but before the IRS accepted it, you discover that the client did provide you with inaccurate information which you used on the Form 433-A. The client admits that the information provided was inaccurate. Subsequently, the IRS requests documents to verify the client's financial statements.

Issues

- Is the client's false statement to the preparer of the Form 433-A privileged?
- What obligation, if any, does the client have to correct the false statement?
- What obligation, if any, does the tax professional, have to correct the false statement?
- Can the taxpayer refuse the IRS information and document requests?
- Can the tax professional continue to represent the taxpayer if the taxpayer does not want to correct the false statement?
- Who, if anyone, would the Criminal Investigation Division prosecute and for what?

Is the taxpayer's false statement to his professional a confidential communication?

- 26 U.S. Code § 7525 - Confidentiality privileges relating to taxpayer communications
 - (a) Uniform application to taxpayer communications with federally authorized practitioners
 - (1) General rule

With respect to tax advice, the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.

Crime Fraud Exception

- IRM 9.5.1.34.1(1)
 - In general, the attorney-client privilege protects the confidentiality of communications between a client and his or her attorney, so long as the communications are related to the purpose of seeking legal advice and the client does not waive the privilege. When it applies, the privilege covers corporate as well as individual clients.
- IRM 9.5.1.34.1(5)
 - The attorney-client privilege does not apply if the client sought the attorney's advice for the purpose of engaging in, assisting, or furthering the commission of a future crime or fraud, even if the attorney was unaware of this improper purpose. The burden of proof for this "crime-fraud exception" to the attorney-client privilege is on the party seeking to invoke the exception.

What obligation, if any, does the client have to correct the false statement?

- In *Badaracco Sr. v. Commissioner*, 464 U.S. 386 (1984), the U.S. Supreme Court said that a taxpayer is under no legal obligation or duty to file an amended return even after an error or omission is discovered.

What obligation, if any, does the tax professional, have to correct the false statement?

Circular 230, §10.21 - Knowledge of Client's Omission

- A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

Duty of Candor - Attorneys

- ABA Model Rule 3.3
 - (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal **or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer,**

Duty of Candor - Attorneys

- ABA Model Rule 3.3
 - (3) offer evidence that the lawyer knows to be false. **If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.** A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
 - (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

Duty of Candor - Attorneys

- ABA Model Rule 3.3
 - (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
 - (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Is the IRS a Tribunal?

- ABA Model Rule 1.0(m)
 - "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

Is the IRS a Tribunal?

- ABA Opinion 314
 - The IRS is neither a true tribunal nor a quasi-judicial institution because of its lack of impartiality.

Duty of Candor

Circular 230 - § 10.51 Incompetence and **disreputable conduct**.

(a) Incompetence and disreputable conduct. Incompetence and disreputable conduct for which a practitioner may be sanctioned under §10.50 includes, but is not limited to:

- (4) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, and any other document or statement, written or oral, are included in the term "information."

Can the taxpayer refuse the IRS information and document requests?

Compliance with Lawful Requests

- Circular 230 - §10.20 Information to be furnished.

(a) To the Internal Revenue Service.

(3) When a proper and lawful request is made by a duly authorized officer or employee of the Internal Revenue Service, concerning an inquiry into an alleged violation of the regulations in this part, a practitioner must provide any information the practitioner has concerning the alleged violation and testify regarding this information in any proceeding instituted under this part, **unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.**

Compliance with Lawful Requests

- Circular 230§10.20 Information to be furnished.

–(b) A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, to obtain any record or information unless **the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.**

Crime-Fraud Exception

- IRM 9.5.1.34.1(1): In general, the attorney-client privilege protects the confidentiality of communications between a client and his or her attorney, so long as the communications are related to the purpose of seeking legal advice and the client does not waive the privilege. When it applies, the privilege covers corporate as well as individual clients.
- IRM 9.5.1.34.1(5) : The attorney-client privilege does not apply if the client sought the attorney's advice for the purpose of engaging in, assisting, or furthering the commission of a future crime or fraud, even if the attorney was unaware of this improper purpose. The burden of proof for this 'crime-fraud exception' to the attorney-client privilege is on the party seeking to invoke the exception.

Does the crime fraud exception apply?

Can the tax professional continue to represent the taxpayer if the taxpayer does not want to correct the false statement?

Conflicts Of Interest

- Circular No. 230 § 10.29
 - A tax practitioner is not permitted to represent a client before the IRS if the representation creates a conflict of interest.
- A conflict of interest exists if:
 - (2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.

Taking A Position Adverse To Preparer's Interest

- Circular 230 - § 10.51 Incompetence and disreputable conduct.
 - (a) Incompetence and disreputable conduct. Incompetence and disreputable conduct for which a practitioner may be sanctioned under §10.50 includes, but is not limited to
 - (4) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, and any other document or statement, written or oral, are included in the term "information."

Conflicts Between Preparer, Client, and IRS

- Under Circular 230§ - 10.20 the tax preparer must cooperate with the IRS.
- The tax preparer has a duty to protect client confidences under I.R.C. §7525.
- AICPA Statements on Standards for Tax Services ("SSTS") No. 6
 - If a member is representing a taxpayer in an administrative proceeding with respect to a return that contains an error of which the member is aware, the member should request the taxpayer's agreement to disclose the error to the taxing authority. Lacking such agreement, the member should consider whether to withdraw from representing the taxpayer in the administrative proceeding and whether to continue a professional or employment relationship with the taxpayer.

Who, if anyone, would the Criminal Investigation Division prosecute and for what?

Potential Criminal Liability

- IRC § 7201 - Tax evasion

– Any person who **willfully attempts in any manner to evade or defeat** any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Potential Criminal Liability

- 18 U.S. Code § 4 - Misprision of felony

– Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

Potential Criminal Liability

- 18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States

– If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

– If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Potential Criminal Liability

- IRC § 7206(2) - Aiding or Assisting
 - Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document.

Hypothetical # 2 Post-OIC Filing Discovery

- You prepared and submitted an Offer in Compromise (OIC) for your client.
- The OIC has been accepted by the IRS.
- As a thank for your efforts, the client offers to allow you to stay at his beachfront rental property for free on your next vacation. This is the first time you heard about the beachfront property and it was not included in the OIC.
- The client inherited the property after the OIC was filed but before the OIC was accepted by the IRS.
- The client didn't tell you about the property because it "slipped his mind."

Issues

- What obligations, if any, does the a tax professional have to advise his client to notify the IRS of the newly discovered asset?
- What obligations, if any, does the a tax professional have to advise the IRS of the IRS of the newly discovered asset?

**Is the Failure to Disclose Material?
IRM 5.8.9: Actions on Post OIC**

- IRM 5.8.9.1
 - Once an Offer in Compromise (offer) is accepted, it may be necessary to consider a request to rescind or terminate an offer or revise an existing offer. This section provides guidance for these situations.
- IRM 5.8.9.2.3: Rescission of Accepted Offers
 - After acceptance of the offer, Treas. Reg. section § 301.7122-1(e)(5) provides that neither the taxpayer nor the IRS is permitted to reopen the case, except in limited situations:
 - False information or documents are supplied in conjunction with the offer;
 - The assets of the taxpayer or the ability to pay are concealed;

IRM 5.8.9: Actions on Post OIC

- IRM 5.8.9.2.2 : Concealment of Assets or Ability to Pay
 - Under section 160 of the Restatement 2d of Contracts, concealment is an affirmative act intended or known to be likely to keep the IRS from learning of a fact that it would otherwise have learned. Concealment is the equivalent of a misrepresentation. Concealment, however, is not the equivalent of non-disclosure. The significance is that Treas. Reg. section 301.7211-1(e)(5)(ii) provides that an accepted offer may be reopened where there has been concealment of the ability to pay or the assets of the taxpayer. If you have a case that requires a distinction between concealment and non-disclosure, contact Area Counsel.

Privilege

- Is the client's post OIC acceptances statement to the preparer of the Form 433-A privileged?

Client's Duty to Correct

- What obligation, if any, does the client have to correct the false statement?

Circular 230

- Circular 230 - §10.21 Knowledge of Client's Omission:
 - A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

Potential Criminal Liability

- IRC § 7201 - Tax evasion
 - Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.
- IRC § 7206(2) - Aiding or Assisting
 - Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document;

Questions?

INFORMATION DOCUMENT REQUESTS

2017 NEW ENGLAND IRS REPRESENTATION CONFERENCE
NOVEMBER 17, 2017

Robert E. McKenzie, Saul Ewing Arnstein & Lehr LLP, Chicago, IL
Walter Pagano, EisnerAmper LLP, New York, NY
Jeffrey Sklarz, Green & Sklarz, LLC, New Haven, CT
*Materials prepared by Megan L. Brackney, Kostelanetz & Fink, LLP, New York, NY

Selected Provisions of Internal Revenue Manual (IRM)

- 4.10.2.10: Requesting Information: Overview
- 4.10.2.10.1: Determining the Type of Books and Records Available
- 4.10.2.10.2: Requesting Information or Documents from the Taxpayer
- 4.10.2.10.3: Authority to Request Books, Records, and Accountant's Workpapers
- 4.46.4.5: Information Document Request Process
- 4.46.4.5.1: General IDR Procedures
- 4.46.4.5.2: IDR Enforcement Process
- 4.23.4.5.3: Mandatory Requirements for Information Document Requests (IDRs)

Types of Income Tax Examinations

- Correspondence examinations
 - Generally conducted by Campus operations
 - Conducted by mail and fax
 - Tax Examiners and Tax Compliance Officers
- Office examination
 - Generally individual returns
 - Limited number of issues
 - Conducted in IRS offices
 - Tax Compliance Officers

Types of Income Tax Examinations

Field examinations

- Conducted at place of business, home, representatives office, where books and records are kept
- All business returns, some individual returns
- Includes Large Business and International
- All types and sizes of issue
- Revenue Agents

Information Document Requests

- Written request for Information and Documents from the IRS to the taxpayer in the audit.
- IRS has expansive power to collect information and from taxpayers.
- The IDR is not self-enforcing.
- IRS can use summons authority to obtain the information and documents if the taxpayer does not comply with the IDR.
- Summons authority very broad under IRC 7602.

Limits to Summons Authority

- "Powell" Factors (from *United States v. Powell*, 379 US 48 (1964):
- (1) the investigation is conducted for a legitimate purpose;
- (2) the information sought is relevant;
- (3) the IRS does not already have the information; and
- (4) the procedural aspects of the summons have been satisfied

Relevancy

- Very broad view of relevancy.
- IRC 7602(a) authorizes the IRS to collect information for the purposes of: "ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability.
- A summons may be issued for years barred by the statute of limitations, so long as the information sought may be relevant to later years under examination, or may be relevant to a waiver or extension of the statute of limitations.

Procedural Compliance

- Federal courts give the IRS the benefit of the doubt in summons procedural errors.
- Courts look to all the relevant facts and circumstances concerning the summons, particularly the good faith of the IRS and whether the taxpayer had been harmed by the procedural or other error.
- Basically, if the IRS attempted to follow the summons procedural requirements, and no harm has come to the taxpayer, then the summons is generally enforced.

Formal Document Requests (FDR's)

- During an exam, if foreign-based documentation requested by an IDR is not sufficiently provided, the IRS can issue an FDR.
- If FDR is not substantially complied with and the taxpayer did not have reasonable cause for failure to comply, the foreign-based documentation requested is not admissible in court.

What is an Eggshell Audit?

- An eggshell audit is a civil IRS audit in which the taxpayer and his representatives are aware of the presence of indications of fraud that are unknown to the civil auditor but that, if discovered, could result in a criminal referral.
- The main objective of such audits are to avoid a referral to the Criminal Investigation Division (CID) of the IRS.

RELEVANT CIRCULAR 230 PROVISIONS

10.20 Information to Be Furnished

• (a)(1) A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.

10.20 Information to Be Furnished

• (a)(2) The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.

10.20 Information to Be Furnished

• (b) *Interference with a proper and lawful request for records or information.* A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

Privileges?

- Attorney-Client
- Federally authorized tax practitioner (I.R.C. § 7525)
- Kovel
- Work Product
- Fifth Amendment

FIFTH AMENDMENT ISSUES

- Whether and when to assert the 5th Amendment:
 - As noted, asserting the 5th Amendment in response to an IDR or summons greatly increases the chance of a criminal referral; yet this may be the best way to proceed.
 - With respect to an interview, the representative should inform the agent in advance that the taxpayer will assert the privilege. The agent may insist on the taxpayer appearing to do so.
 - Decide beforehand on a blanket assertion of the privilege; it is extremely damaging for a taxpayer to answer some questions and then refuse to answer a crucial question in the middle of an interview.

FIFTH AMENDMENT ISSUES (cont'd)

- The Act of Production Privilege:
 - The contents of pre-existing documents are not privileged.
 - But, "The act of producing evidence in response to a subpoena [to a taxpayer] . . . has communicative aspects of its own, wholly aside from the contents of the papers produced. Compliance with the subpoena tacitly concedes the existence of the papers demanded and their possession or control by the taxpayer. It would also indicate the taxpayer's belief that the papers are those described in the subpoena." *Fisher v. United States*, 425 U.S. 391, 410 (1976); see also *United States v. Doe*, 465 U.S. 605, 612-13 (1984).

Circular 230: § 10.22 Diligence as to Accuracy

- (a) *In general.* A practitioner must exercise due diligence
 - (1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;
 - (2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and
 - (3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

Circular 230: § 10.23 Prompt Disposition of Pending Matters

- A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

Circular 230: 31 C.F.R. § 10.33 Best Practices

- Clearly communicate with clients and IRS
- Establish relevant facts, evaluate reasonableness of assumptions or representations, apply relevant legal authorities in arriving at a conclusion supported by the law and the facts
- Act fairly and with integrity in dealings with the IRS

OTHER CONSIDERATIONS

Respond in Writing and Keep a Copy!

- Always make sure that responses to an IDR are in writing – you don't want the revenue agent summarizing your response in his or her own words.
- Keep a copy of everything you produce.
- If the Revenue Agent examines files in your office or at the client's premises, keep notes as to what he or she reviews or copies.
- Keep notes of conversations with the Revenue Agent.

Avoiding Creating New Problems

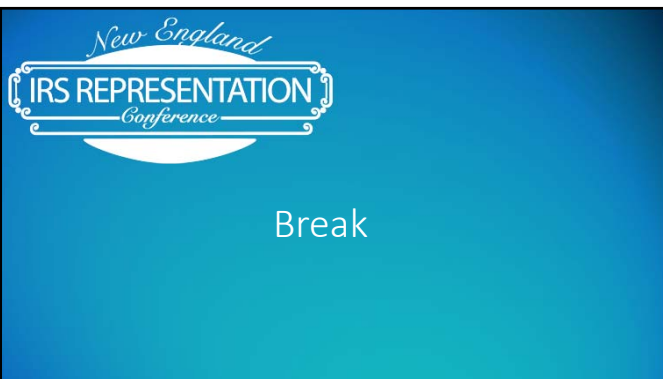
- IRC § 7212 – a felony to corruptly obstruct or impede an IRS agent or administration of Title 26:
 - Historically was limited to force and threats against IRS agents, but now encompasses charges that an individual has made an audit more difficult, including providing false information, destroying evidence, or attempting to influence a witness to give false testimony.
- Both taxpayer and representative must be careful to avoid any appearance of violating this statute.

Avoiding Creating New Problems (cont'd)

- 18 U.S.C. § 1001 – a felony to falsify or conceal a material fact; to make a materially false statement or representation; or knowingly to make or use a false writing or document.
- Be aware that taxpayers are often tempted to alter documents. Advise that this can only make matters worse.

FOIA/Privacy Act Requests


- The taxpayer can request the information in the IRS's audit files under 5 U.S.C. section 552 (the Freedom of Information Act ("FOIA")), and 5 U.S.C. section 552a(b) (the Privacy Act).
- Under FOIA, a taxpayer may request disclosure of a wide variety of the Service's records, such as factual information collected and prepared by the Service, legal analysis and decisions of the Service, and procedural rules of the Service.
- The [Privacy Act](#), on the other hand, focuses on records which federal agencies maintain on individuals and is designed to safeguard individuals against the invasion of their personal privacy in two principal ways: (1) by providing individuals with access to federal records maintained on them, and the right to correct those records if appropriate, and (2) by preventing their misuse and unauthorized access. 5 U.S.C. § 552a.



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ADVOCATE
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**Non-Traditional Tax
Advocacy**



TIGTA
Treasury Inspector General
for Tax Administration
Promoting integrity in the administration of Internal Revenue laws

AGOSTINO & ASSOCIATES
COUNSELLORS AT LAW


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**HOW CAN I
HELP YOU?**

Moderator

Frank Agostino

- Frank Agostino is the president of Agostino & Associates, P.C., where he concentrates his practice in civil and criminal tax matters before the IRS and state tax authorities.
- He regularly represents businesses and individuals on a wide range of tax and valuation matters before the United States Supreme Court, the United States Courts of Appeals, the United States Tax Court, the United States District Courts, and the United States Court of Federal Claims.
- Prior to entering private practice, Mr. Agostino was an attorney with the IRS District Counsel Offices in Springfield, Illinois and Newark, New Jersey, as well as a Special Assistant United State Attorney concentrating in criminal tax prosecution.
- He is a frequent author and lecturer on tax controversy and litigation matters, the recipient of the ABA's 2012 Janet Spragens Pro Bono Award, and the recipient of the 2015 Pro Bono Award from the NJSBA.



When and how to request assistance from Taxpayer Advocate Service (TAS) and Private Debt Collection



Horizontal lines for notes

Darol Tucker, Local Taxpayer Advocate – Brooklyn, NY

- Darol Tucker is the Local Taxpayer Advocate in Brooklyn, New York. He assumed this position with the Taxpayer Advocate Service (TAS) in February 2015. He previously served as a Supervisory Revenue Officer in Albany, NY from 2012 until the beginning of 2015.
• He started his career with the IRS in October 2005, in Syracuse, NY as a Revenue Officer. From there, he served as a Recruiting Agent with the IRS Recruitment Office from November 2010 until August 2012, where he was responsible for all of the IRS recruiting efforts for both North and South Carolina.
• Prior to joining the IRS, Darol served and retired from the US Army after 26 years of service from February 1978 to February 2004, where he served in various leadership positions.
• Darol graduated from Columbia College (Missouri) where he majored in Business Administration.



Horizontal lines for notes


Taxpayer Advocate Service Overview on IRS Initiative



Horizontal lines for notes


PDC - What is it?

- §
-
-
-




Background - PDC Terminology


-
-
-



Inactive Tax Receivable :




Tax Receivable:




"Potentially collectible inventory" (PCI) :

-
-
-




Exclusions from PCA Assignment:

-
-
-




**Exclusions from Assignment to PCAs
(Cont'd):**

-
-




2016 Annual Report to Congress:

-
-




Background - MSP #12:

-




Background – MSP #12 Cont'd:

-
-




National Taxpayer Advocate's additional concerns:

-
-




National Taxpayer Advocate's additional concerns – Cont'd:

-
-




What to Expect:

-
-
-




What to Expect - cont'd:

-
-
-




What to Expect - cont'd:

-
-




What to Expect - cont'd (2):

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-
-



Electronic Data Exchange Files

-
-
-




Preventing Further Contact with PCA

Excerpt, Fair Debt Collection Practices Act 15 USC § 1692c(c)

(c) Ceasing communication
After notification in writing to cease further communication, the debt collector shall not communicate further, except--

- (1) to advise that further efforts are being terminated;
- (2) to notify that the debt collector may invoke specified remedies which are ordinarily invoked by such debt collector; or
- (3) where applicable, to notify the consumer that the debt collector intends to invoke a specified remedy.



CONTACT INFORMATION

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(718) 834-2210
darol.tucker@irs.gov



Want to Know More?

- _____
- _____
- _____
- _____


TAXPAYER
ADVOCATE
SERVICE
YOUR VOICE AT THE IRS


Treasury Inspector General
 For Tax Administration
 Office of Investigations
 (TIGTA- OI)

William Kalb – Special Agent in Charge
 North East Field Division


Contacting TIGTA

- Complaints can be submitted by mail:
 TIGTA
 PO Box 589
 Ben Franklin Station
 Washington, DC 20044
- By Phone:
 (800) 366-4484
- By Fax:
 (202) 927-7018
- Online: www.TIGTA.gov
- Or, by contacting your local TIGTA office




When and how to involve elected officials (i.e., how and when constituent services offices can help)

Kathy Bass
 Office of Senator Murphy



When Should a Taxpayer
Request a Congressional
Inquiry?

What documents and/or other
information will your
office request from the taxpayer
or the tax
professional?

How does your office address
your constituent's
problem?
Letter/Telephone Call

When, if ever, do you reach out to TAS or an IRS Funded Low Income Tax Clinic?

What do you expect from the IRS and how quickly do you expect a response?

What procedure, if any, do you have for following up and closing the constituent's case?

Can you share some examples of Taxpayer Issues Resolved via Congressional Inquiry
 Expediting refunds in cases of exigent need
 IRS delays causing hardship, including tax return processing problems
 Payment schedules and penalty abatement (liens, levies, and wage garnishment) & identity theft cases,



How to Promote Your Firm and Your Clients Without Taxing Yourself




Ronald R. Magas, MA
 President, Magas Media Consultants, LLC

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 rmagas@charternet.com www.magasmedia.com

MAKE THE CONNECTION

PUBLIC RELATIONS

Our expert media relations consultants can help you build, maintain, and protect your brand, project a positive public image and differentiate you from the competition. We have long-term relationships with tax, finance and business reporters and can increase your media recognition, the amount of consumers reached, and establish your firm as the primary source regarding advice, services, and products.

We place our clients in local, national, and online worldwide noteworthy publications, including: The New York Times, The Wall Street Journal, USA Today, Forbes, Fortune, and BusinessWeek. We also feature them in trade journals and on radio and television stations including CNN, ABC, CBS, FOX, NBC, AP, Bloomberg Radio, and NPR.



MagasMedia Consultants, LLC



Ronald R. Magas
 President & CEO of Magas Media Consultants LLC

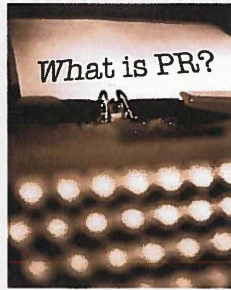
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Website: http://www.magasmedia.com/




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What is PR?

- ✓ Public Relations (PR) means promoting your business to the public and/or the press in the way you want, by managing your business' image and the information you give out about it. The goal is to build a relationship.
- ✓ Includes reputation management - how to build, maintain and deal positively with a crisis and handle any negative PR or coverage.




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Why is PR Important for Tax Attorneys/CPAs?

- ✓ Unlike paid-for advertisements, your audience receives the message you send out about your business through a third unbiased party - such as a magazine you've sent a press release to an article that includes a quote from you where you share your expertise. This favorable press coverage in print, on TV, radio, and online:
 - ✓ Builds more credibility and name recognition for your brand through PR.
 - ✓ Promotes your brand without directly telling the public how great you are.
 - ✓ Creates awareness of your firm and clients, industry issues, and garners support among your target audiences.
 - ✓ Manages and protects your reputation and your clients' reputations.
 - ✓ Positions you and your firm as experts.



Dr. Green's interview on WHYY News 8 on "Midstate Tax Preparers are Making"

 Magas Media Consultants, LLC

What are the Different Types of PR?

- ✓ Press Releases
- ✓ Publicity Stunts
- ✓ Word of Mouth
- ✓ Charity Work
- ✓ Social Media
- ✓ Sponsorship
- ✓ Networking and Being Seen to Be Seen
- ✓ Winning Awards
- ✓ Crisis Management
- ✓ Public Speaking
- ✓ Newsjacking
- ✓ 'Expert Opinions' in Publications
- ✓ Features in Publications
- ✓ Financial Services Media Relations



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Media Outlets Tax Attorneys/CPAs Should Be Featured In

✓ For tax attorneys and CPAs, there are several relevant news/niche outlets you may want to get connected with:

- ✓ Forbes
- ✓ Accounting Today
- ✓ Tax.org
- ✓ The Wall Street Journal
- ✓ NYTimes
- ✓ Bloomberg
- ✓ CNBC
- ✓ Kiplinger's Personal Finance Magazine
- ✓ Washington Post, etc.

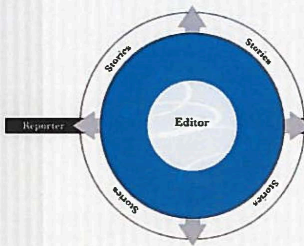
✓ Being published or interviewed is what gives you credibility. Media attention makes you an "expert" – the more name recognition, the more your brand builds.

- ✓ The more you are heard, the more customers and the public get to know you and your values, which, ideally, brings in more revenue.



Magas Media Consultants, LLC

How the Media Relations Process Works: The Magas Media Circle



Credibility and Repetition Can Equal New Business

- ✓ Increase credibility by creating newsworthy stories.
- ✓ Build press relations with media outlets (print, TV, radio, online).
- ✓ Promote name/brand recognition through repetition.
- ✓ Communicate information regarding services and/or needs of clients.

Magas Media Consultants, LLC

Sample Case Study

Do You Owe the IRS Big Time? That's No Reason to Tax Yourself and Lose Sleep says Green & Sklarz, LLC



Green & Sklarz LLC is a boutique law firm that focuses on representing businesses and individuals with complex financial problems involving tax, bankruptcy, and commercial litigation issues. The firm's attorneys have established a reputation for excellent and efficient representation of clients who have encountered difficult circumstances. As crisis managers they assist clients with identifying and attempting to achieve core goals in order to protect businesses, employees, and families. The firm draws on a cross-disciplinary approach to ensure their clients' needs are addressed in order to reach the best possible solution to problems. Attorney Eric Green is the creator of the CCH Certificate Program on IRS Representation and is a featured speaker at tax organizations around the country. He came to MMC looking to further his firm's media recognition, to reach consumers, and to build confidence in the uniqueness of their brand and comprehensive services.

Magas Media Consultants, LLC

Sample Case Study

“Tacklin’ the Firm’s Challenges with Strategies”



CHALLENGES

- ✓ Establish the firm as primary source for information regarding tax, bankruptcy, and commercial litigation issues.
- ✓ Differentiate the firm from similar tax firms and emphasize “crisis management” services.
- ✓ Change public perception of tax preparation and advice.
- ✓ Broaden awareness of the tax industry.
- ✓ Infiltrate local and national top-tier print and trade publications to increase media impressions and awareness.
- ✓ Increase quantity and quality of media coverage including unique corporate messaging in media placements and highlights of the practices unique distinctive mission statements.

STRATEGIES

- Identify the leading consumer tax issues to prepare timely press releases and pitches for personal finance media.
- ✓ Develop a series of easy to understand tips for the media on how taxpayers can reach the best possible solution to tax problems.
- ✓ Develop media relationships with insurance, finance and business reporters for regular association commentary to be included in relevant stories and pieces.
- ✓ Prepare advance position statements, Q&A's and articles on dominant issues inquiries.

Magas Media Consultants, LLC

Sample Case Study

“Takin’ Care of Tax Business”

Results through working with Magas Media Consultants:

- Featured in local print and trade publications, including the CCH Journal of Tax Practice & Procedure and CSPCA, a publication of the Connecticut Society of Certified Public Accountants.
- Appeared in national print and trade publications, including FoxBusiness.com, The Wall Street Journal.com, MoneyRates.com, CreditCard.com, and USA Today.
- Published several bylined article topics several times a year in trades and business publications, including “What Accountants Need to Know” for SumNews Magazine, the magazine of the Massachusetts Society of Certified Public Accountants, Inc.
- Achieved coverage in local print publications including The CT Post, The Bulletin, The NewsTimes, The New Haven Register, The Hartford Courant, The New Britain Herald, The Stamford Advocate, The Yale Daily News, The CT Law Tribune, and The Bristol Press.
- Achieved coverage in well-known national print publications including The Associated Press, The New York Times, US News, and The Washington Post.
- Appeared on local TV networks including Eyewitness News, FOX CT, NBC Connecticut, and News 8 WTNH and national TV networks including CBS News, ABC News and FOX News.
- Achieved viral coverage throughout the country in various media outlets including The Huffington Post, BET, News Everyday, The Examiner, The Inquisitr, MSN, and Bing News.
- Google results for coverage of the Green & Sklarz case of overturning murder case for Bobby Johnson, a man wrongly imprisoned for 9 years, hit 470,000 results as of 9.15.15.
- Listed on firm’s website at <http://gs-lawfirm.com/news/>

Magas Media Consultants, LLC



How to Become a Good, Credible Source



The end goal is to become an “expert” in your field in the eyes of the media:

- ✓ Start small with responses to reporters. Share your credentials, be polite, and build a connection.
- ✓ Offer to supply more information on similar subjects if the need should arise.
- ✓ Have an opinion and something thoughtful to say on topics relevant to your field.
- ✓ Be true to the reporter’s needs. Don’t treat opportunities to contribute as a way to self-promote. You’re looking to make a connection and get your name out there – that’s plenty of self-promotion in itself.

UNDER THE CEO
Young Entrepreneurs: 27 Things You Must Do to Get Known

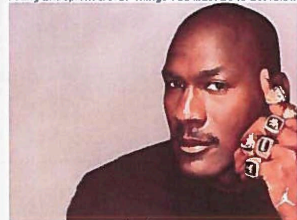


Photo: ©i. Don't expect it to be reality in the beginning, regardless of your size. You as a bold, hyper-ambitious or "hustler" and the right people who share your vision are the best investment.

It has a 500,000+ impressions. All it gets me, connections for you. You can make it. It's not the media that's the problem. It's you. It's your own pride. The problem of becoming an expert and being a "go to" source for the media is not the media. It's you. It's your own pride. The problem of becoming an expert and being a "go to" source for the media is not the media. It's you. It's your own pride.

Magas Media Consultants, LLC

How to Pitch a Story to the Media to Gain Favorable Press Coverage

- ✓ Know what the reporter covers, what their interests are, and how they like to be contacted.
- ✓ Create a pitch that is intriguing, timely, and presents you and your client in the most positive light possible.
- ✓ Keep it short and simple – imagine writing your pitch on the back of a business card – if it won't fit, it's too long. Think the 5 W's: who, what, where, when, and why.
- ✓ Make your subject line intriguing. Otherwise, it won't be opened.
- ✓ Try to time it right with a current event or human-interest story.
- ✓ Personalize it for the reporter's audience.
- ✓ Wait for them to bite – don't give out too much info at once. Stick to your one topic and give them more info if they reach out.



<https://enventypartners.com/blog/an-interview-with-a-journalist-what-is-the-perfect-pitch>

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How to Use Social Media to Promote Your Firm and the Interests of Your Clients



- ✓ Be accessible. Allow users to pick whichever platform makes them the most comfortable. Include a number to call or an email to reach out to that's easily found on every account.
- ✓ Be a quick responder. Have someone dedicated to managing inquiries on social media at all times. Though you oftentimes can't help/give out info without a constituent's personal info, be sure to let them know where they can get more specialized help for their needs. General questions can be answered straight on the platform for the current taxpayer, and for future taxpayers to find.
- ✓ Send out useful information. Provide helpful tips and relevant links/location tags to corresponding IRS website pages or services, such as Taxpayer Assistance Centers, Taxpayer Advocate Service, Low Income Taxpayer Clinics, and Taxpayer Advocacy Panel. Give each location its own post with a small descriptor and a location.
- ✓ Send out news blasts on hot topics and short bytes of information related to current events.
- ✓ Publicize cases of tax issues and controversies.
- ✓ Create a positive presence online for clients in tax controversies. Paint them in a positive light and defend their reputation.

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Traditional vs. Social Media

SIMILARITIES

- ✓ Keep in mind client confidentiality and privacy.
- ✓ Protect clients from self-incrimination. Keep a tight leash on what your client publicly says, and especially what they say on social media.
- ✓ Be wary of "Gag orders" when making media blitzes on your case. Avoid going so far as to create a danger of prejudicing the outcome of the litigation. Pre-trial publicity can give the public a serious sway towards one side that gives lawyers trouble in making a fair case.

DIFFERENCES

- ✓ **Traditional:** Someone else tells your story. You can't control the narrative with press coverage. Despite what you say, a reporter may find a completely different - and possibly negative way — to frame the story. Statements can be taken out of context, so be careful that everything you say or send in is thoughtful and triple checked.
- ✓ **Social Media:** You're looking to present yourself and your client favorably, by sharing positive information and relevant news. Despite your efforts, anyone can lodge a complaint against your firm or client which could go viral.

Magas Media Consultants, LLC

How to Respond to a Crisis

- ✓ A crisis can be a defining moment for an organization's reputation and often strikes when a company is least prepared. No organization is risk free. A well-earned reputation can be lost overnight if a crisis is badly handled. Therefore, it is essential that your firm plans and prepares thoroughly for crises.

- ✓ Here is a brief, immediate-response plan that MMC has developed to help our clients through these crisis situations.

http://www.magasmedia.com/assets/Crisis_Management.pdf

PS- If you think "No comment" is acceptable, you need to read this!



Magas Media Consultants, LLC

Tax Cases That Interest The Press

- ✓ The press loves scandal on either side of a case, whether it be the "corrupt" IRS or the "corrupt" tax evader.

- ✓ High profile cases especially attract media attention – the further you have to fall, the more likely they'll have interest in toppling you.

- ✓ Common story topics:

- ✓ Failing to file tax returns.
- ✓ Use of stolen identities.
- ✓ Tax evasion.
- ✓ Failing to report foreign/offshore accounts.

- ✓ Several infamous tax cheaters:

- ✓ Willie Nelson
- ✓ Wesley Snipes
- ✓ Martha Stewart
- ✓ Ty Warner



Magas Media Consultants, LLC

How Would You Represent A Whistleblower?

- ✓ Keep clients safe. Let them know what they're doing is honorable, but there is backlash in the form of harassment, termination, or a change in job.

- ✓ Prepare them for the worst, and make sure about all that they are safe.

- ✓ Research their rights within their company's policy to see where they can best be protected. Make sure they have sufficient evidence before coming forth with their argument.

- ✓ Tell them to keep this to themselves, and confide in very few, if any people, that they are the whistleblower.



Magas Media Consultants, LLC

How to Prepare for Your Print, Radio, TV, or Online Interviews

- ✓ There are three key components that go into preparing for any successful interview. Contact us for handouts on how to prepare yourself and your message prior to the interview and how to conduct yourself during the interview, and how to conclude and follow-up to the interview.
- ✓ Interview preparation training helps spokespersons decrease the odds of being misquoted, misheard or misunderstood by a reporter, and increases the likelihood of being quoted positively in print, radio, TV and online media. It also teaches fundamental stylistic techniques important to in-person delivery such as energy, eye contact, and body language.



Magas Media Consultants, LLC

8 PR Goals for Your Firm for 2018

- ✓ Perfect Your Elevator Speech
- ✓ Reach Out to Local Tax/Financial Media (or hire a PR firm to do it for you)
- ✓ Choose and Use Your Platforms on Social Media
- ✓ Use Free Directory Listings
- ✓ Keep Your Website Updated with Tax Related Info, Links, & Trends
- ✓ Become an Expert and Blog
- ✓ Get Involved in Your Community
- ✓ Brand Your Business Consistently

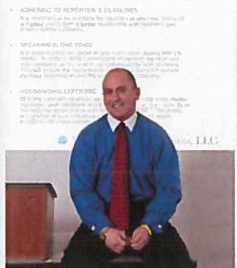


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For Further Information



Contact MMC's President, Ron Magas, at 203-445-8981 or rmagas@charter.net for more information about TV, Radio, Print media interviews and social media promotion. © MMC 2017.




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Questions?



**Waking Up the Dead:
Reopening That Assessment
You Thought Was Closed**

2017 New England IRS Representation Conference

Eric L. Green, Green & Sklarz LLC, New Haven, CT
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Agenda

- Collection Due Process
- Amended Returns
- Audit reconsideration
- Doubt-as-to-Liability Offers
- Refund Litigation



Collection Due Process

- 1998 IRS Restructuring and Reform Act
- Rights arise under IRC § 6320 (NFTL) and § 6330 (Final Notice of Threat to Levy)
- Use Form 12153
- Entitled to one hearing with a Collection Appeals Officer (“Settlement Officer”)



Collection Due Process

- 30-Days from date of final notice
- One-Year for Equivalent Hearing
- Collection ceases
- Tax Compliance required for the hearing
- Must request a collection alternative (Check box for “Other” and provide reason)



Challenging the Underlying Liability at CDP

- May challenge if did not receive the Statutory Notice of Deficiency (90-Day letter)
- Cannot have had another opportunity to have challenged the liability
- Sent to last address but taxpayer had moved – could challenge
- Didn't issue because client signed a 4549 consenting to the exam changes – could NOT challenge
- Innocent Spouse



Audit Reconsideration

- Process that IRS uses to reevaluate the results of a prior audit or SFR
- The IRS has the authority to abate the unpaid portion of any assessment
- Make the request using Form 12661



Audit Reconsideration

Reasons for requesting:

- Taxpayer did not appear for the audit
- Taxpayer moved and did not receive correspondence
- Taxpayer has new documentation
- Taxpayer disagrees with an SFR created by the IRS



Audit Reconsideration

- Can be made anytime the assessment has been made and remains open for collection
- If it has been paid the TP must file a refund claim
- Must submit information not previously considered
- Must use this if seeking a refund (DATL cannot be used to obtain money back)
- Will need to get a hold on collections



Doubt-as-to-Liability Offer (DATL)

- Offer based on the fact the taxpayer does not believe they owe the taxes the IRS has assessed
- Form 656-L
- No financial information needed regarding collection



Doubt-as-to-Liability Offer (DATL)

- Documentation is required to support the taxpayer's claim they do not owe the money
- It is an Offer, so compliance is required to file it and then must be maintained
- Must Offer some amount of money, so no refunds through DATL



Reconstructing records

- Methods - Income
- Methods – expenses
- Presenting the records



Amended Tax Returns

- Not expressly authorized by the statute but generally recognized by the IRS
- To correct plain errors or mistakes on the tax return
- IRS has sole jurisdiction to determine to accept or reject an amended return
- Taxpayer is required to provide supporting documentation for items claimed on an amended return



Amended Tax Returns

- Must be filed within three years of filing date of original return, or
- Two years within date the tax was paid
- Refunds can only be claimed for three years



Refund Claim – Refund Litigation

- Required to pay the tax (separable assessment?)
- File the claim for the refund
- Wait for the claim to be denied or 6 months, whichever occurs first
- File suit in Federal District Court or the Federal Court of Claims
- If it's a separable assessment, government will counter claim for the balance



Questions?



AGOSTINO & ASSOCIATES



Frank's Ipad Pro Giveaway
(Don't forget the W-9)

J&J
Financial Associates LLC

CISEA Connecticut Society of Enrolled Agents

Cocktail Reception