

Charles
Rettig

Everything Is Fine ... Until It Isn't

How to make your practice less taxing this busy season.

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by Charles Rettig

Your tax practice can be an enjoyable and rewarding experience even with struggling deadlines and sometimes recalcitrant clients. Tax accountants provide their clients with an objective, knowledgeable review of financial information that is ultimately presented to the government in the form of a tax or information return. If your client provides timely, complete responses to your requests for information, the process should be fairly smooth and straightforward. Unfortunately, there is a reason why many people become clients and it is not because they routinely coordinate all relevant information necessary to the preparation of a return nor do they provide such information regularly in a timely manner.

The 2009-2013 Internal Revenue Service (IRS) Strategic Plan includes an objective of ensuring that "all tax practitioners, tax preparers and other third-parties in the tax system adhere to professional standards and follow the law." Possibly more than in any other profession, tax practitioners are required to participate in extensive, ongoing training and education to keep pace with highly complex, ever-changing statutory and case authorities. Cases issued in the morning might impact positions in returns filed later that afternoon. The IRS has recently been issuing various internal memoranda focusing its filed operations on the possible imposition of practitioner penalties during the course of examining a tax return. Since a purpose in proposing and assessing return preparer penalties is to encourage accountability, affect behavior and increase voluntary compliance, examiners are now generally required to comment on preparer penalties as a material part of the examination process.

In a tax practice, problems tend to arise at the most inopportune moments, such as at the height of tax season or during an examination of a tax return. Consider the following questions and tips to avoid typical issues:

- Has there been inappropriate reliance on:
 - i. Information provided by the taxpayer,
 - ii. Unreasonable factual assumptions (did you act in good faith?) or
 - iii. Positions in returns prepared by others?
- Has there been an inability to control client expectations? Often the client is overly aggressive and unwilling to consider an objective view of the facts in a manner that could compromise the professional relationship between the client and the accountant. There must be an objective analysis of relevant facts leading to any position set forth in a return or provided to the

government during an examination.

- Does the client understand the nature and scope of your inquiry? Remote relationships with clients are difficult at best. A client's interpretation of your question may well differ from yours. Phone or electron communication precludes the knowledge gained by looking someone in the eyes when asking direct, important questions.
- Preparation is a key to success. Learn to expect the unexpected. Are you prepared to handle the issues presented? Lack of diligence in representation, before and during the examination of a return, will adversely affect the outcome of any examination. Failure to inquire about additional facts, to discover contrary legal authorities, to review large, unusual or questionable items in the return, to review prior year returns and potentially applicable IRS Audit Technique Guidelines or to identify sensitive issues or "patterns" over multiple years can be the difference between a reasonable resolution and someone going to Club Fed (i.e., prison).
- During every examination, attempt to cooperate with the examiner in a timely manner. An audit need not be adversarial and the practitioner must maintain appearance of reasonableness throughout the entire process. The examination should not be prolonged simply because the taxpayer is unable to satisfy any resulting deficiency. Practitioners can be subjected to discipline for unreasonably delaying the examination process.
- Is an interview of the taxpayer or return preparer necessary and unavoidable? Government interviews of the taxpayer or return preparer can create awkward moments during an examination, especially if there has been a lack of preparation. If necessary, interviews should be limited in scope and duration.
- There are many potential conflicts of interest that can arise during return preparation or the examination process. The practitioner is often unaware a spouse may be considering a divorce or a business relationship may be falling apart. Conflicts can often be avoided by receipt of a timely, knowing and intelligent waiver. However, if things get tough, someone is likely to contest the "knowing" and "intelligent" waiver. Was counsel involved in the waiver process? Did one party feel economically compelled to sign the waiver?
- Were you competent to prepare the return or handle the representation? Being an effective practitioner does not mean you can be all things to all people. Know your limitations and consult your colleagues when you are unsure of any issue. In a profession, professionals help other professionals. Respect those who reach out for assistance and pity those who are embarrassed to do so.
- Have potentially questionable issues been properly disclosed in a return? [Form 8275](#) (PDF) and [Revenue Ruling 2010-15](#) (PDF) represent an opportunity to explain, in single syllable words, why the potentially questionable position is not questionable. Disclosures must be adequate and easily understood by anyone reviewing the return. They should not be subject to being interpreted as misleading or incomplete.
- Privileges are only important when needed the most. Practitioners should have a general awareness of all potentially applicable privileges. When in doubt, ask a colleague for advice.
- Terminating your relationship with a difficult or non-responsive client can be a rewarding experience. Since 98 percent of the problems in practice come from two percent of the clients, the ability to identify the "two-percenters" is critical to a successful, enjoyable practice. When terminating a client relationship, consider returning all client records and remember to notify

the government that any outstanding authorizations to receive client information or represent the client have been terminated. Arguing over the return of client records to receive payment for delinquent fees might be rewarded with an unwarranted claim for malpractice. Your other clients deserve your attention and a redirection of your efforts to such clients will be more rewarding over time. Cut your losses and move on ... or consider referring the difficult client to your business competitors.

- Inadequate internal office supervision. Enough said.
- Return preparers who “knowingly or recklessly” make “unauthorized disclosures or use” of “information furnished in connection with the preparation of an income tax return” are subject to criminal sanctions (i.e., imprisonment!). “Preparers” include those engaged in preparing or assisting in preparing tax returns, as well as those who provide auxiliary services such as developing software to prepare or e-file a return. “Tax Return Information” includes everything received to prepare the return plus computations, worksheets and printouts created by the preparer. If uncertain, review [Revenue Procedure 2008-35](#) and Treas. Reg. § 301.7216-1, *et. seq.* for further information and *pro forma* taxpayer consent forms. Code § [7216](#) was implemented for a purpose. Don’t let that purpose be you.

Conclusion

A busy tax practice can be surrounded by minefields. Use your best efforts to “be all you can be.” A tax return is not an offer to negotiate with the government. Document your advice in writing, limit the nature and scope of services to be provided in your engagement letter, establish a system of checklists (and follow the system) and use your best judgment. Finally and perhaps most importantly, your client is not your friend ... if you feel the need for friends, get a dog! In a tax practice, everything is fine ... until it isn’t!

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Chuck Rettig of Hochman Salkin Rettig Toscher & Perez, PC, specializes in tax controversies as well as tax, business, charitable and estate planning, and family wealth transfers. Rettig will be speaking at the [AICPA National Tax Conference](#), November 6-8, 2011, in Washington, DC.