Chapter 6: IRS Representation and Procedures

The IRS’s Information Returns Processing (IRP) System receives data submitted by employers and other third-party payers that report payments made to taxpayers during the year. Such data includes wages, pensions, interest, and dividends. This information is validated and stored in the Information Return Master File (IRMF). IRP also has two correlation projects that attempt to match the income reported by the third-party payers to the income reported by taxpayers on their individual income tax returns.

If no match is discovered, the potential nonfiler cases are referred to the IRS collection division for possible action. If the IRS determines that the taxpayer should have filed a return, the IRS follows a number of specific steps to get the taxpayer to file a return. If these steps go unheeded and no return is filed, the IRS may prepare a substitute for the unfiled return on the taxpayer’s behalf. This return will not be taxpayer-friendly. After the IRS prepares the substitute return, it issues Letter 1085, 30-Day Letter Proposed 6020(b) Assessment, to the taxpayer. The letter notifies the taxpayer of the unpaid taxes and that the IRS intends to levy to collect the amount owed.

If a match is discovered but indicates significant underreported income, an underreporter case is created and routed to the examination division for review. The IRS then issues Notice CP 2000, which provides a computation of the proposed adjustments to the tax return.

The IRS also selects a certain number of returns for examination each year. If taxpayers fail to respond to the audit notice, the IRS will propose changes to the return based on the taxpayer’s failure to provide supporting documents and information requested in the audit.

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3. Ibid.
4. IRC §6020(b).
8. See IRS Pub. 556, Examination of Returns, Appeal Rights, and Claims for Refund, for information about the return examination selection criteria.
When taxpayers ignore or do not receive the IRS’s correspondence, the IRS assesses the additional tax as well as penalties and interest. When a taxpayer finds out about an assessment (usually through the collection procedure), the taxpayer often approaches their tax professional with a sense of urgency.

**Example 1.** Jan Johnson contacts her tax preparer, Ethan, after she receives a letter from the IRS requesting a payment of $2,500 in additional taxes for the 2012 tax year. Ethan looks back through his file and finds no indication of what the additional tax is for. After obtaining a Form 2848, *Power of Attorney and Declaration of Representative*, from Jan, he contacts the IRS and discovers that an audit notice was sent to Jan at a previous address and that she did not respond to the request. The IRS disallowed all the expenses claimed on Jan’s Schedule C, *Profit or Loss From Business*, resulting in the additional $2,500 of tax.

**THE AUDIT RECONSIDERATION PROCESS**

As long as the tax remains unpaid, a taxpayer can participate in the audit reconsideration process to attempt to eliminate or reduce the amount assessed as the result of an audit. The IRS accepts an audit reconsideration request in the following circumstances.

- The taxpayer submits additional information that the IRS has not previously considered that might change the amount of tax owed or credit due.
- The taxpayer files a return after the IRS completed a substitute return for the taxpayer.
- The taxpayer believes the IRS made a computational or processing error in assessing their tax.
- The liability is unpaid or credits are denied.

**Example 2.** Use the same facts as Example 1. Jan indicates to Ethan that she has all the necessary documentation to support her Schedule C expenses. Ethan compiles the information and submits an audit reconsideration request along with the documentation that the IRS has not previously considered.

Following are some of the situations for which the IRS does **not accept** an audit reconsideration request.

- The taxpayer previously agreed to pay the tax by executing Form 906, *Closing Agreement on Final Determination Covering Specific Matters*; a compromise agreement; or an agreement with the Office of Appeals on Form 870-AD, *Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment*.
- The amount of tax owed is the result of a final partnership item adjustment made under the Tax Equity and Fiscal Responsibility Act (TEFRA).
- A final determination has been issued by the United States Tax Court or other court.

The following are the steps that need to be followed by tax professionals who have clients who have gone through an examination and want to address the unresolved issues through the audit reconsideration process.

1. Obtain a copy of the examination report to determine which items are incorrect.
2. Gather the documentation needed to support the correct position.
3. Verify the documentation is **new** information that has not been presented before and is for the correct tax year. If the tax professional is unsure whether the information was previously submitted, the information should be submitted to the IRS.
4. Prepare a letter requesting an audit reconsideration and attach photocopies of the new documentation. This letter should clearly state the areas for which the client is requesting reconsideration as well as the phone numbers at which the IRS can contact the tax professional if more information is needed. A copy of the examination report (Form 4549) should also be attached, if available.

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5. To enable the IRS to directly communicate with the tax professional, a Form 2848 should also be completed and included with the response.

6. The letter/documentation can either be mailed to the IRS address shown on the examination report or faxed to that office. If documents are faxed, each page should contain the taxpayer identification number (TIN) and tax year.

After the IRS evaluates the information sent as part of the audit reconsideration proposal, additional information may be requested. If the taxpayer receives a request for additional information, the information should be submitted as quickly as possible (generally within 30 days). If the taxpayer needs additional time to submit the requested information, the taxpayer or the tax professional should contact the IRS and request an extension of time.

The IRS has the discretion to delay collection activity during the time an audit reconsideration is under way. If additional information is requested and is not timely provided, the IRS will likely resume collection activity. For those taxpayers currently making payments under an installment agreement, the payments must continue to be made during the time the audit reconsideration is being reviewed. In certain circumstances, such as when a hardship exists, the taxpayer may contact the Taxpayer Advocate Service (1-877-777-4778 or TTY/TTD: 1-800-829-4059) for possible payment relief during the audit reconsideration process.

Once the IRS completes the review, it informs the taxpayer of one of the following results.

- All information submitted was accepted, and the tax previously assessed is eliminated.
- Part of the information submitted was accepted, and the tax assessment is recomputed accordingly.
- None of the information submitted was accepted, and the tax as previously assessed remains the same.

If the taxpayer agrees with the IRS determination, the remaining balance due (if any) should be paid in full, or payment arrangements should be made (such as an installment agreement). If the taxpayer does not agree with the determination, the taxpayer can do one of the following.

- Request an appeals conference
- Pay the amount due in full and file a formal claim
- Do nothing, in which case the IRS will send a bill for the amount due

Preparing a Request for Appeal

To request a conference with the Office of Appeals, the taxpayer must file a written protest indicating that they are requesting an appeals conference. Generally, this protest must be filed within 30 days of receiving the audit reconsideration determination from the IRS. The taxpayer may represent themselves or have professional representation. If the taxpayer wants the IRS to communicate and provide information to the authorized representative, a completed Form 2848 must be submitted on behalf of the taxpayer.

Small Case Request. A small case request can be filed instead of a written protest if the total of the taxes and penalties charged by the IRS is $25,000 or less for any one tax period. The following steps should be taken to file a small case request.

- Send a letter requesting consideration by the Office of Appeals.
- Indicate the disputed changes and the reason the proposed change is improper.

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