Preparer Penalties - Are You at Risk?

Presented by:
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... “I am always looking for points of leverage – and our tax return preparer initiative is just that. In essence, we shifted from a retail to a wholesale approach. We shifted resources from dealing with taxpayers one-by-one, to dealing with the intermediaries who deal with hundreds or thousands of taxpayers at a time. That’s what I mean by leverage.”
The Tax Preparer Risk

• The Taxpayer Accuracy Penalty

• §6662

  – 20% of the understatement

  • Negligence or disregard of rules or regulations

  • failure to keep adequate records

  • use ordinary and reasonable care in preparing a return
The Tax Preparer Risk

• The Taxpayer Accuracy Penalty
• §6662
  – Substantial understatement of income tax—generally an understatement that is more than 10% of the correct tax and greater than $5,000.
The Tax Preparer Risk

• The Taxpayer Accuracy Penalty
• §6662

– Substantial valuation misstatement—generally a valuation that is 150% or more of the determined value and causes a tax understatement of more than $5,000. (Penalty is 40% in the case of gross valuation misstatement.)
The Tax Preparer Risk

• The Taxpayer Accuracy Penalty
• §6662
  – Substantial estate or gift tax valuation understatement—valuation that is 65% or less of the determined value and causes a tax understatement of more than $5,000.
The Tax Preparer Risk

- The Taxpayer Accuracy Penalty
- §6662
  - Disallowance of claimed tax benefits due to a transaction lacking economic substance
The Tax Preparer Risk

• The Taxpayer Accuracy Penalty
• §6662
  – Undisclosed foreign financial asset understatement (penalty increased from 20% to 40%)
IRC §6694

• §6694(a)
  – Unreasonable Positions
  – Greater of $1,000 or 50% of income derived from preparing the return.
IRC §6694

• §6694(b)
  – Willful or reckless conduct
  – Greater of $5,000 or 50% of income derived from preparing the return
IRC § 6695

• The $50 level with $25,000 max per year
  – (a) – Failure to furnish copy to taxpayer
  – (b) – Failure to sign return
  – (c) – Failure to furnish identifying number
IRC §6695

- The $50 level with $25,000 max per year
  - (d) - Failure to retain copy or list
  - (e) - Failure to file correct information returns
IRC § 6695

• The $500 level with no maximum
  – (f) – Negotiation of check
  – (g) – Diligence for eligibility of EIC
• Treasury Reg §1.6695-2
• Promoting Abusive Tax Shelters
  – $1,000 each occurrence
  • Or 100% of income derived if less
IRC §6701

• Aiding and Abetting Understatement
  – $1,000 per taxpayer ($10,000 for corporations) per taxable period.
IRC §6713

• Disclosure or Use of Information
  – Any Tax Return Preparer
  – Any Tax Return
  – Civil Penalty —$250 for each disclosure or use up to $10,000 per year
IRC § 7206

• Fraud and False Statements
  – FELONY!
  – Not more then $100,000
    • $500,000 for corporation
  – Imprisonment of not more then 3 years (or both)
IRC § 7207

• Fraudulent Returns, Statements or Other Documents
  – Misdemeanor
  – Not more then $10,000
    • $50,000 if a corporation
  – Imprisonment of not more then 1 year (or both)
IRC §7216

- Criminal Penalty Provisions
- Disclosure or Use of Taxpayers Information
- Fine of not more $1,000
- Imprisonment of not more then 1 year or both
- Rev Proc 2013-14 (January 1, 2014)
IRC § 7407

• Judicial Actions
  – Specifically against Tax Preparers
  – Any Conduct subject to penalty under §6694 or §6695
  – In extreme cases could lose the ability to act as a Tax Preparer!
IRC § 7408

• Judicial Actions
  – Against any person
  – Conduct in violation of Circular 230
  – Any Conduct subject to penalty under §6700, §6701, §6707 and §6708
Self Rental Tax Traps - Are you in Danger? ....is your Client?

Wednesday, Room 1 @ 10:10
Thursday, Room 1 @ 9:05
For More Information

National Society of Accountants

More information is available including additional materials at:
Booth in Vendor Hall
Or Table in Lobby
800-966-6679
www.nsacct.org