Appeals

Our Role in Resolving Penalty Issues
Appeals Mission

To resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.
Independence & Authorities

RRA ’98 – Statutory Requirements
  – An independent Appeals organization
  – Prohibition of ex parte communications

Code of Federal Regulations 601.106
  – Administrative Authorities
Accomplishing our Mission

Listening and considering both sides

Considering and evaluating all arguments and available information

Determining – independently – the best settlement by weighing the hazards of litigation
Appeals in FY 2010

Over 135,000 cases received
Over 133,000 cases resolved
Campus closures – 64,000 cases
Field closures – 69,000 cases
Collection cases – 190 days
Examination cases – 295 days
Preparer Penalty Cases

IRC 6694(a) and 6694(b)

Burden of proof is on the government for IRC 6694(b).

Succeeding statements apply to 6694(a)

For returns prepared after May 25, 2007 – increased penalty amounts for IRC 6694(a)
Preparer’s Burden on Position Taken

Realistic possibility of being sustained on its merits
Reasonable cause for position
Such position was maintained in good faith
Position was adequately disclosed
Preparer Penalty Case Study
Facts

Wage earner and wife
Married, two children with one in college
New return preparer – client contacted new preparer late in the filing season
Consulting business – holds 50 percent in LLC – remaining 50 percent held by brother
Facts

K-1 from LLC received on April 13 reflecting a $<185,000> distributable loss

Client provides cancelled checks from personal account to establish sufficient basis

After deducting loss, Form 1040 reports a refund of all federal tax withheld
The Examination

Form 1040 under examination 18 months later
Preparer is representing client
LLC was also examined
IRS proposes income on LLC was fictitious
LLC deductions – all personal expenses of taxpayer and brother
The Examination

Taxpayer was sold a tax scheme by someone unknown to the preparer.
Preparer concerned – claimed LLC loss with nothing more than the Sch K-1.
Preparer Penalty

Disallowance of loss – taxpayer facing a material deficiency, penalties and interest

Taxpayer might be subject to criminal investigation

Appears loss with the disallowed and IRC 6662 penalties will be proposed
Let’s Listen in on the Preparer Penalty Conference
How would you settle this penalty?

Sustain the 6694(a) Preparer Penalty in full?

Sustain in part considering any hazards of litigation?

Concede in full?
IRC 6038(b) Case Study
Facts

IRC 6038(b)(1) – Failure to File Form 5471

Penalty based on failure to disclose
- $10,000 per form per year
- Continuance penalty of $10,000 per month up to $50,000 (IRC 6038(b)(2))

Client now in third month since original notice
Appeals Role

Verify statute
Read protest
Review report from compliance
Review transcripts
Referral to Appeals Technical Guidance / International Specialists
Appeals International Programs

Ensures nationwide uniform and consistent settlement of issues

Enhances identification and timely resolution of international issues

Provides vehicle for coordination of technical issues
Weighing the Hazards of Litigation

Factual Hazards

Legal Hazards
Reasonable cause criteria used to abate IRS 6651(a)(1) may be used to abate IRC 6038

Requires taxpayer to affirmatively establish failure
  – Due to reasonable cause
  – Not willful neglect
Representing Your Client

Come prepared – be ready to resolve the case

Know all facts

Know about the preparation of the return

Know about the qualifications of the preparer
Representing Your Client

Know how preparer was chosen
Know what constitutes reasonable cause
(IRM 20.1.1.3.2)
Know the case law on reasonable cause
Make an offer to settle
Alternative Dispute Resolution

Fast Track Mediation (FTM)
Fast Track Settlement (FTS)
Post Appeals Mediation (PAM)
For more information...

Visit Appeals at www.irs.gov/appeals

Issue Index for Technical Guidance
International Programs