

Ethics Part 4 – Practical Application of Ethics in Your Tax Practice – the Non-Filer

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Agenda and Objectives

- Understanding our obligations of due diligence as it relates to non-filers
- Become aware of IRS stance on Non-Filer under IRM Chapter 12 Section 4.12.1
- Become aware of the limitation of Social Security Credits
- Understand IRS stance on Artificial intelligence – memorandum
- Tips on managing disputes with a taxing authority
- An IRS reality check



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Ethics and the Non-Filer



- Whether they are Congressionally Challenged, just plain procrastinators or forgetful
- At some time, you will be approached by a person who has not filed in several years
- Circular 230 does provide a bit of guidance:
 - § 10.22 Diligence to Accuracy
 - § 10.33 Best Practices

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§ 10.22 Due Diligence



- 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

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Proposed Reg. 116610-20 (concerning changes to Circular 230)



- Current § 10.22 imposes standards related to diligence as to accuracy, including standards related to the preparation or approval of tax returns, documents, affidavits, and other papers
- The proposed regulations would revise current § 10.22 to specify that the diligence as to the accuracy requirement for tax returns is **limited to tax returns prepared, approved, or submitted in connection with representing a client in a matter before the IRS**
- The proposed regulations would not revise existing diligence standards related to documents, affidavits, and other papers that are not tax returns

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Proposed Reg. 116610-20 (concerning changes to Circular 230)



- The diligence requirements in the proposed regulations would also apply to a practitioner's preparation of a tax return prior to representing a client in a matter before the IRS when the subsequent representation involves the tax return
- When the representation involves a tax return prepared by a practitioner, the practitioner's diligence with respect to preparing the tax return would be treated under the proposed regulations as related to the practitioner's practice before the IRS under [31 U.S.C. 330\(a\)](#)

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§ 330(a) of U.S.C. § 31



- § 330. Practice before the Department
- (a) Subject to § 500 of title 5, the Secretary of the Treasury may—
- (1) regulate the practice of representatives of persons before the Department of the Treasury and
- (2) before admitting a representative to practice, require that the representative demonstrate—
 - (A) good character
 - (B) good reputation
 - (C) necessary qualifications to enable the representative to provide to persons valuable service and
 - (D) competency to advise and assist persons in presenting their cases

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First Question- Where Do We Start?



- Interview
- It may be helpful to know the reason behind wanting to come into IRS compliance
 - IRS is requesting, get the RA or RO 's name and contact information
 - Buying a home or getting a loan for a business
 - Getting married
 - Getting divorced
 - Wanting a lien or levy released
 - Just wanting to get straight with IRS
 - This question will give you a bit of insight into time frame, kind of records that may be needed and the client's thoughts on compliance

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Due Diligence Begins with the Interview



- Obtain a [Power of Attorney Form 2848](#) for the IRS and a Power of Attorney for the State tax authority
- Obtain copies of prior filed tax returns
- Request any correspondence the client may have received from IRS, a State Department of Revenue or other government entity
- Request information from the client as to who, if anyone, they are working with at the federal or state level
- Get a retainer
- Make it clear that a lot of work will be needed to “fix” the non-compliance
- And most important, “staying in compliance” is required if continued representation is the goal

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Due Diligence Begins with the Interview



- Check the following issues:
 - Records the client has in possession
 - Does the non-compliance apply to business as well as personal taxes
 - If business, the type of entity involved – do we have flow thrust issues?
 - Are payroll taxes an issue
 - 1099 NEC or Misc requirements
 - Any State sales tax issues, unemployment tax issues or withholding issues
 - Does the client want to repair all issues or just certain issues?

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Representing the Client



- The proposed regulations would revise current § 10.22 to specify that the diligence as to the accuracy requirement for tax returns is **limited to tax returns prepared, approved, or submitted in connection with representing a client in a matter before the IRS**
- §10.33 provides a list of “Best Practices”

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§ 10.33 Best Practices



- Consistent with Circular 230 § 10.33, the OPR encourages every practitioner to adopt a set of best practices and operating standards suitable to their federal tax practice and, if applicable, their firm (when the practitioner is an owner or a principal with authority over how the firm operates)
- Best practices should include:
 - Communicating regularly with clients and managing client expectations throughout the representation
 - It's always good practice to discuss with a client all significant aspects of the representation: scope, terms, purposes or objectives, actions to be taken, etc.

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§ 10.33 Best Practices



- At the outset, use a comprehensive engagement letter to the client or an engagement agreement signed by the client
- As the represented matter progresses, provide timely updates to the client (and maintain records of what you have done)
- Setting a well-defined policy for retention and disposition (including destruction) of client files and other records
- Clearly communicate this policy to clients, such as with a written copy of the policy
- Under the proposed regulations a practitioner must create a data security policy (to be in compliance with the law) to maintain safeguards with respect to client information and establish a plan and procedures for responding to data breaches

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§ 10.33 Best Practices



- Proposed § 10.33(a)(5) would provide that it is a best practice for practitioners to identify, evaluate, and address a mental impairment arising out of, or related to, age, substance abuse, a physical or mental health condition, or some other circumstance that could adversely impact a practitioner's ability to effectively represent a client before the IRS
- An impairment, left untreated, can have adverse consequences on a client's representation and to the health and well-being of a practitioner
- The purpose of proposed § 10.33(a)(5) is to encourage practitioners who are suffering from a mental impairment to seek and obtain assistance or treatment

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Records § 6001



- Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe
- Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title

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Rev. Proc. 97-22



- This revenue procedure provides guidance to taxpayers that maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage media, such as an optical disk
- Records maintained in an electronic storage system that complies with the requirements of this revenue procedure will constitute records within the meaning of § 6001 of the Internal Revenue Code

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Polling Question #1



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Records



- Ideally the client will have records
- Reality – maybe
- The Power of Attorney must be submitted to the IRS
- Once input by IRS you will be able to obtain a record of income that has been reported to the IRS
- Not all income is reported to the IRS so this is just part of what may be needed
- **Note:** state information such as withholding will not be present on IRS information documents

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Due Diligence and Common Sense Go Hand in Hand



- Educate the client on what is income and what expenses are allowed to be deducted
- Do the records/documentation provided make sense
- Are the expenses ordinary and necessary for the client
- If records are reconstructed review
- Ask if anything is estimated – you may be able to give the client guidance on zeroing in on a more accurate calculation
- If a business and there are losses is there enough income from other sources for the client to live on – the IRS will look at this issue
- Does the client summary include items that are not deductible?

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Summary



- We are not auditors
- The interview, the presentation of records and other information the client shares will provide you with information as to whether the client is making an honest attempt to get into compliance
- Due Diligence and Best Practices will serve you well during the preparation and submission of past due returns
- Gut and Spidey sense should not be ignored
- Protect yourself and your practice in the process of serving your client
- Manage the client's expectations

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Finally – The Social Security Records



- **Earnings Record Corrections: Time Limit:**
 - Generally, the Social Security Administration (SSA) has a statute of limitations of three years, three months, and 15 days for correcting earnings records
 - **Exceptions:** There are exceptions to this time limit, including:
 - **Tax Return Exception:** If a claimant filed a tax return for self-employment income before the expiration of the time limit, the correction may be made outside the standard time limit
 - **SSA Investigation:** If the correction is the result of an SSA investigation started before but completed after the time limit ends, it may still be made

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IRS Position on Non-Filers



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IRM 4.12.1 Enforcement Period



- Policy Statement 5-133 (P-5-133), IRM 1.2.14.1.18
- Delinquent returns—enforcement of filing requirements, discusses delinquent returns and the enforcement filing requirements
- **The enforcement period is not to be more than six years**
- However, the extent to which delinquency procedures will be enforced will depend upon the facts and circumstances of each case, and by reference to factors ensuring evenhanded administration of staffing and other Service resources
- Enforcement for longer or shorter periods may be used when consideration has been given to:

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IRM 4.12.1 Enforcement Period



- The taxpayer's prior history of noncompliance
- The existence of income from illegal sources
- The effect upon voluntary compliance
- The anticipated revenue in relation to the time and effort, required to determine tax due
- Any special circumstances existing in the case of a particular taxpayer, class of taxpayer, or industry, or which may be peculiar to the class of tax involved

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IRM 4.12.1 Enforcement Period



- [4.12.1.3.1 \(10-05-2010\)](#)
- **Management Approval**
- Management approval is necessary if the enforcement activity is less than or exceeds the six-year period
- Group manager approval is not needed if the nonflier voluntarily files returns beyond the established enforcement period

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Be Aware of Statute Issues



- The assessment statute for a secured delinquent return is limited to three years, from the date the return was filed, despite the taxpayer's fraudulent failure to file a tax return prior to the submission of the delinquent return
- After the delinquent return is filed, other exceptions to the normal 3-year period for assessment may apply such as the 6-year assessment statute under IRC § 6501(e) or the unlimited period for assessment as a result of a false or fraudulent return statute under IRC § 6501(c)(1)
- Review [IRM 25.6.1.9.5.3](#), 25% Omission and [IRM 25.6.1.9.5.2](#), Fraudulent Return
- The execution of a substitute for return **does not trigger the running of the assessment or collection statutes**
- Review [IRM 25.6.1.9.4.5](#), Substitute for Return (SFR)

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4.12.1.5.6.1 (10-05-2010) Third-Party Contacts



- Due to the nature of non-filer cases and the impact of IRC § 6201(d) and IRC § 7491 it is anticipated that third-party contacts may be warranted to confirm income sources
- Publication 1, *Your Rights as a Taxpayer*, is used to provide the taxpayer with advance notification that IRS may contact third parties regarding the determination or collection of their tax liability in accordance with IRC §7602(c), *Notice of Contact of Third Parties*
- Additional information concerning third-party contacts is provided in IRM 4.11.57, *Examining Officers Guide - Third Party Contacts*.

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4.12.1.6 (10-05-2010) Income Probes (Nonfilers)



- If the examiner secures delinquent returns during the examination process, those returns are subject to the same minimum requirements for examination of income as timely filed returns. See IRM 4.10.4.3, *Minimum Requirement for Examination of Income*, and IRM 4.10.4.5, *In-Depth Examinations of Income*.
- In determining income on a non-filer case, the examiner should be aware of the impact of § 6201(d) and § 7491
- § 6201(d) was enacted to address perceived problems with respect to determinations of unreported income based on information returns § 6201(d) creates a legal requirement to contact third parties to verify income where the taxpayer reasonably disputes the income and fully cooperated with the IRS
- If the taxpayer does not respond or raises a frivolous dispute, the taxpayer has not made a reasonable dispute; there is no legal requirement for further verification with third parties, and an income adjustment based on the IRP document is appropriate

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4.12.1.6 (10-05-2010) Income Probes (Nonfilers)



- § 7491(a) was enacted because Congress perceived taxpayers were at a disadvantage when forced to litigate with the Service
- At the examination level, the taxpayer still has the same burden of proof to supply adequate documentation and statutory authority for their position
- When going to court, the burden still does not shift to Government if taxpayer fails to provide credible evidence
- Review IRM 4.10.4.3.5, *Minimum Income Probes: Delinquently Filed Returns and Non-filed Returns*

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Additional Guidance



- 4.12.1.6.1 (10-05-2010)
- Minimum Income Probes on Nonfilers
- Review [IRM 4.10.4.3.2](#), *Minimum Income Probes: "Nonbusiness" Returns*, for a discussion on examiner responsibilities of analyzing all IRP information to ensure that all other business or investment activities are considered
- Review IRM 4.10.4.3.5(4), *Minimum Income Probes: Delinquently Filed Returns and Non-filed Returns*, for a discussion of SFRs filed on behalf of a non-filer under IRC § 6020(b) and when reconstruction and examination of income is required on nonfilers
- Review IRM 4.10.4.4.1, *Material Understatements and Managerial Involvement*, for unreported income

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4.12.1.6.2 (10-05-2010) Forms 8300 and Currency Transaction Reports



- Does this apply to your client?
- For information concerning the minimum requirements with respect to required filing checks for [Form 8300](#), Report of Cash Payments Over \$10,000 Received in a Trade or Business
 - Review IRM 4.10.5.9, Forms 8300 Report of Cash Payments Over \$10,000 Received in a Trade or Business and Currency Transaction Reports (CTR's)

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4.12.1.6.2 (10-05-2010) Forms 8300 and Currency Transaction Reports



- Title 31 forms are not part of required filing checks for income tax examiners
- Forms such as [FinCEN Form 104](#) Currency Transaction Report (CTR), and [FinCEN Form 103](#) Currency Transaction Report for Casinos (CTR-C), are examined separately as part of the BSA program
- Examiners working Title 26 examinations must not inquire about Title 31 forms

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4.12.1.6.2 (10-05-2010)

Forms 8300 and Currency Transaction Reports



- [TD F 90-22.1](#), Report of Foreign Bank and Financial Accounts, (FBAR), though not part of required filing checks, may be examined by Title 26 examiners after a related statute determination has been made and a Related Statute Memorandum signed by the examiner's Territory Manager
- Until that point, Title 26 examiners may not inquire about FBAR filings
- Title 26 examiners may accept and process delinquent CTR and FBAR forms if offered by the taxpayer, but should not solicit them, except in the case of an authorized FBAR examination.
- See [IRM 4.26.8.4](#), Delinquent BSA Forms, for delinquent Title 31 return acquisition procedures

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Polling Question # 2



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Emerging Ethical Issues in a Digital Environment



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Digital Ethics



- Digital ethics refers to the moral principles and standards governing the ethical behavior and responsibilities of individuals, organizations, and governments in the digital realm
- It involves considerations of fairness, transparency, privacy, security, and technology's impact on individuals and society as a whole
- Some of the prominent ethical issues in information technology include:
- Privacy and data protection: Collecting, storing, and using personal data raises significant ethical concerns.
- Protecting individuals' privacy rights through data privacy measures, informed consent, and robust security is essential

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Digital Ethics and AI Ethics - Definition



- Digital ethics is the branch of ethics concerning the set of rules and moral guidelines that govern interpersonal behavior between individuals and/or companies that is mediated by computer technology, either inside a company or, more broadly, in markets and society
- AI ethics are the set of guiding principles that stakeholders (from engineers to government officials) use to ensure artificial intelligence technology is developed and used responsibly
- This means taking a safe, secure, humane, and environmentally friendly approach to AI

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IRS Moving Quickly into Digital Age



- Personal data security is one of the most important aspects of digital ethics
- With the increasing threats to personal data, it's crucial for every individual to understand and apply digital ethics related to data protection
- Here are some principles of digital ethics related to personal data security:
 - Protect Personal Information
 - Use Secure Connections
 - Enable Two-Factor Authentication (2FA)
 - Manage App Permissions
 - Be Cautious on Social Media

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IRS Privacy Policy for Artificial Intelligence



- 09-30-2024 , Control Number: [PGLD-10-0924-0020](#)
- Affected IRM(s): 10.5.1
- This memorandum issues privacy policy interim guidance on artificial intelligence and is effective as of September 30, 2024
- Purpose: This interim guidance implements privacy policy related to IRS use of Artificial Intelligence (AI)
- This guidance adds a new subsection that provides context for applying the existing IRS Privacy Principles when using AI

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IRS Privacy Policy for Artificial Intelligence



- 10.5.1.6.22 (09-30-2024) Artificial Intelligence
- This policy outlines privacy requirements and considerations for IRS use of artificial intelligence (AI) and applies to IRS users, developers, and providers of AI
- Use of AI may create new privacy risks or exacerbate privacy risks present in other systems
- When using AI, IRS must consider the relationship between AI and privacy risks, such as collecting more data than is necessary, improper disclosure, misuse, and even aspects of bias that may impact privacy and civil liberties

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IRS Privacy Policy for Artificial Intelligence



- IRS may only use data for the purpose IRS originally collected it
- IRS may only use AI to analyze data when the analysis supports the need originally described at the time of collection
- The purpose may be broad, such as “tax administration,” which means the use must align to a defined tax administration purpose
- Example: The IRS can use line-item values to process a tax return (tax administration), but the IRS may also use that data (along with other taxpayers' data) to detect potential noncompliance or fraud (also a tax administration purpose)
- The full document concerning IRS use of AI can be found at:
<https://www.irs.gov/pub/foia/ig/spder/pgld-10-0924-0020-public.pdf>

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Does Your Client Have an IRS Account?



- **Access tax records and transcripts in the Individual Online Account**
- A client can view their tax records in their [Individual Online Account](#)
 - View, print or download transcripts
 - Find out how much they owe
 - Look at payment history
 - See their prior year adjusted gross income (AGI)
 - View other tax records
 - Information return documents to assist in filing

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IRS Online Business Account

<https://www.irs.gov/businesses/business-tax-account>

<input type="checkbox"/> Sole proprietorship (full access)
<input type="checkbox"/> Partnership (limited access)
<input type="checkbox"/> S corporation (limited or full access)
<input type="checkbox"/> C corporation (full access)
<input type="checkbox"/> Single-Member Limited Liability Companies (SMLLC) (limited access)
<input type="checkbox"/> Government entities (no access)
<input type="checkbox"/> Exempt organizations (no access)

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Managing Disputes with Taxing Authorities



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Dealing with Taxing Authorities is “Taxing”



- The audit is always a stressful issue
- A letter from a taxing authority can cause concern and in some cases a question about the preparer
- The number of notices/letters is unable to be determined, the majority are computer generated – stats vary across the board
- These notices are often long—with extraneous inserts—and difficult for taxpayers to understand
- Long wait times when dealing with IRS is a given

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Publication 55-B IRS Data Book

INTERNAL REVENUE SERVICE DATA BOOK, 2023

[Download XLSX](#)

Table 3. Number of Returns and Other Forms Filed, by Type and State, Fiscal Year 2023

State or area	Total [1]	C or other corporation income tax [2]	S corporation	Partnership	Individual income tax [3]	Individual estimated income tax	Estate and trust income tax
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
United States, total	271,484,482	2,464,836	5,882,030	5,117,987	163,146,934	11,799,634	3,370,406

Table 3. Number of Returns and Other Forms Filed, by Type and State, Fiscal Year 2023—Continued

State or area	Estate and trust estimated income tax	Employment taxes [4]	Estate tax [5]	Gift tax	Excise taxes [6]	Tax-exempt organizations [7]	Supplemental documents [8]
	(8)	(9)	(10)	(11)	(12)	(13)	(14)
United States, total	550,179	36,286,127	49,633	516,991	1,241,344	1,789,884	39,268,497

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Publication 55-B IRS Data Book



- The stats exclude information returns (e.g., Forms 1098, 1099, 5498, W-2 and W-2G, and Schedule K-1); tax-exempt bond returns (Forms 8038-B and 8038-TC); and employee retirement benefit plan returns (Forms 5500 and 5500-SF)

Table 24. Information Reporting Program, Fiscal Year 2023

[Money amounts are in thousands of dollars]

1	Item	Number or amount
Number of information returns received [1]:		
	Total	5,419,271,793
	Paper [2]	42,738,528
	Electronic [3]	5,026,469,375
	Other [4]	350,063,890
Automated Underreporter Program [5]:		
	Number of closed cases [6]	1,019,050
	Amount of additional assessments [7]	6,589,441
	Number of full-time equivalent positions [8]	1,149
Automated Substitute for Return Program [9]:		
	Number of closed cases [10]	252,098
	Actual closures	43,575
	Terminated closures	208,523
	Amount of additional assessments [11]	1,095,225
	Number of full-time equivalent positions [8]	33

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The Point



- The massive number of filings to process cannot be accomplished solely by the human element
- The majority of IRS processing and correspondence is handled by computers
- What is a computer paragraph?

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Tips



- Train the client to bring in taxing authorities' correspondence as soon as received
- Timely response gets you ahead of the issue
- 99% of the time a response is needed
- Train your client not to ignore a letter
- Ignoring a letter usually has a negative impact on the client
- Time limits for a response are too short - assessment is too fast
- The taxing authority mistakes are not mistakes to them, your client many times need to correct the mistake by providing an explanation or documentation

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Keys to Responding



- In audits work with the auditor to set a schedule that works for both the client and the auditor – this will not always align with what we want but can go a long way in establishing a pattern of cooperation
- The client needs to understand the seriousness of the audit process
- Be as timely as possible in responding to letters and notices
- Know the law and provide the information requested
- The IRS response time can be long – make sure you keep your client in the loop
- Advise the client to bring in any documentation received when IRS responds
- Finally, sometimes a periodic call to the client may be required to check to see if they have received a response

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Polling Question # 3



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Questions?



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