

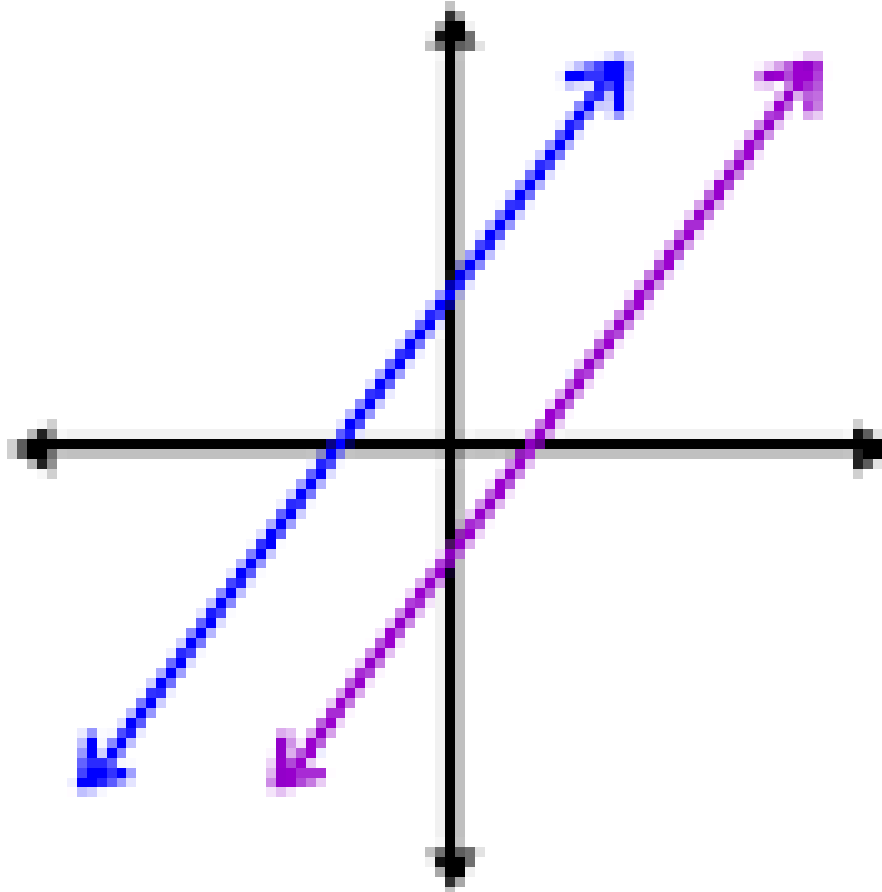


Hot Audit Issues:

1. Parallel Audits
2. Reopening Audits
3. IDR Enforcement and Summons

Shelley Leonard

Parallel Audits





Parallel Audits

- IRS may conduct multiple types of audits concurrently
 - Corporate income tax
 - Employment tax
 - Individual income tax for select executives
 - Information returns



Parallel Audits

- Agent may request returns related to a return under examination
- Returns are related if
 - Adjustments to one return require corresponding adjustments to other return for consistency, or
 - Returns are for entities taxpayer controls and can be manipulated to divert funds or camouflage financial transactions

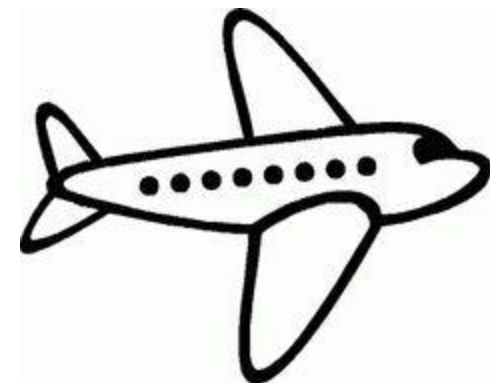


Parallel Audits

- Analysis of related returns includes
 - Identifying related returns within taxpayer's sphere
 - Determining whether transactions between related parties were correctly accounted for
 - Evaluating any large, unusual, questionable items for audit potential
- If examiner determines there is audit potential, audit will be expanded

Parallel Executive Compensation Audits

- Since 2003, audit initiative that focuses on executive compensation, especially
 - Corporate air travel, housing & other fringe benefits
 - Stock-based compensation
 - Nonqualified deferred compensation plans
 - Corporate loans to executives
 - Retirement programs
 - Sec. 162(m) compliance
- Executive compensation issues have become part of standard audit procedures for many taxpayers



Parallel Executive Compensation Audits

- Best Practices
 - Conduct internal compliance reviews to identify & address outstanding compensation issues
 - Inform senior executives of potential for individual audit at outset of corporate audit
 - Advise executives to communicate with personal tax representative
 - May want to file protective claims for refund



Parallel Employment Tax Audits

- Employment tax returns will be considered when income tax return is examined
- Employment tax issues include
 - FICA, FUTA, RRTA
 - Federal withholding
 - Back-up withholding
 - Withholding on income paid to foreign persons
 - Withholding by buyer or other transferee when U.S. real property interest disposed by foreign person (Sec. 1445)
- Potential worker classification examination

Parallel Audits & Appeals

- “Interrelated cases” forwarded to Appeals together
 - Issue in one audit has direct tax effect on another
- “Other related cases” generally not advanced together
 - Consistency in settlement of common or similar issues but no direct tax effect
- But, IRS has discretion to consider cases together

Reopening Audits





Reopening Audits

- IRS has policy against reopening closed cases unless strong reason to justify reopening
- Section 7605(b):
 - “No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer’s books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.”

Reopening Audits – Two recent cases

- *TBL Licensing LLC v. Commissioner*, T.C. No. 21146-15 (filed Aug. 7, 2015)
 - First NOPA involved a refund
 - Audit transferred to new exam team
 - Second NOPA issued with \$500 million deficiency
- CCA 201321018 – second NOPA with additional deficiency



Reopening Audits

- Service will not to reopen closed case to make unfavorable adjustment unless:
 - 1. Evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact
 - 2. Prior closing involved clearly defined substantial error
 - 3. Failure to reopen would be a serious administrative omission

Treas. Reg. Sec. 601.105(j); Rev. Proc. 2005-32



Reopening Audits

- Closed?
 - Agreed cases = taxpayer notified in writing of final proposal of adjustments or acceptance of return as filed
 - Unagreed cases = time for filing Tax Court petition has passed
- Reopening must be approved by territory manager



Reopening Audits

- Items not considered reopening include:
 - Narrow, limited contacts without inspection
 - Voluntary programs for selective issue resolution
 - Reconsiderations arising from items or transactions in different tax period or by related taxpayer
 - Information gathered from taxpayer or third party that is relevant to a different purpose, tax, or period

IDR Enforcement and Summonses



LMSB Control No.4-0508-028

Form 4564 (Rev. September 2006)	Department of the Treasury — Internal Revenue Service Information Document Request	Request Number
To: <i>(Name of Taxpayer and Company Division or Branch)</i>	Subject Cost Sharing - Stock-based Compensation	
	SAIN number	Submitted to:
Dates of Previous Requests <i>(mm/dd/yyyy)</i>		

Please return Part 2 with listed documents to requester identified below

Description of documents requested



IDR Enforcement

- In Feb. 2014 LB&I Directive established new IDR procedures and IDR enforcement process
- Objectives:
 - Less examiner discretion
 - More automatic
 - More communication at each enforcement stage
 - Involvement of management & Chief Counsel as enforcement proceeds towards summons
- Bottom line: taxpayer responsibilities + **rights**

IDR Enforcement: Issue Specific IDRs

- One IDR per issue
- Must clearly state issue
- Requested information must be relevant
- No boilerplate language
 - EXCEPT if issued at beginning of examination, e.g. for basic books and records, general information about taxpayer's business



IDR Enforcement: Required IDR Procedures

- Discuss issue with taxpayer before issuing
- Provide draft IDR to taxpayer
- Discuss reasonable response date
 - Examiner will set response date if no agreement
 - Response time not changed once agreed to
 - Process is now automatic
- Examiner must commit to date by which it will review response



IDR Enforcement: Satisfaction of Requests

- IDR process closed at any time IDR is considered by examiner or specialist to be complete
 - Examiner must inform taxpayer once complete
- One extension of up to 15 business days
 - Taxpayer must give explanation to warrant additional time



IDR Enforcement: Three Step Enforcement Process

- Step 1: Delinquency Notice
 - Issued within 10 business days of beginning of enforcement process
 - Signed by Team Manager
 - Must be discussed with taxpayer
 - Response date of no more than 10 business days
 - Chief Counsel is notified



IDR Enforcement: Three Step Enforcement Process

- Step 2: Pre-Summons Letter
 - Examiner informs managers and Counsel
 - Territory Manager discusses with taxpayer
 - Letter issued within 10 business days of Notice
 - Letter addressed to higher up taxpayer official
 - Response date of no more than 10 business days
 - Chief Counsel & Director of Field Operations are notified



IDR Enforcement: Three Step Enforcement Process

- Step 3: Summons
 - Examiner informs managers, Director of Field Operations, and Counsel
 - Issuance of Summons is coordinated with assigned Counsel
- From draft IDR to Summons, can take 4 to 5 months



IDR Enforcement: Summons

- Before issuance, IRS must weigh importance of information against:
 - Tax liability involved
 - Time and expense of obtaining records
 - Probability of having to institute court action
 - Adverse effect on voluntary compliance by others
 - Status of case with respect to any pending criminal investigations
- IRS may try to obtain information from 3rd party

IDR Enforcement: Summons

- Summons generally issued where
 - Submitted records suspected to be incomplete
 - Taxpayer appears unwilling to provide documentation until a later stage
 - Information cannot be obtained elsewhere
- IRS has broad authority to require testimony and presentation of books and records for inspection. I.R.C. Sections 7602-7613.



IDR Enforcement: Summons

- Requirements for valid summons from *United States v. Powell*, 379 U.S. 48 (1964):
 - Issued for legitimate purpose
 - Seeks information that may be relevant to that purpose
 - Seeks information that is not already within the IRS's possession
 - Satisfies all administrative steps required by I.R.C.

IDR Enforcement: Avoiding a Summons



IDR Enforcement: Avoiding a Summons

- Actively participate in IDR drafting discussions
- Satisfy the IRS that the response is complete
- Establish that information can be obtained from another, less burdensome source
- Make valid privilege objections
- Begin settlement discussions to moot the issue



Summons Enforcement

- IRS must ask DOJ to pursue summons enforcement in federal district court
 - U.S. Attorneys versus Tax Division
- Examiner unlikely to seek enforcement unless believe information is necessary
- No SOL on summons enforcement
- DOJ files Petition, IRS Declaration, Order to Show Cause

Questions

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