



CLIENT REPRESENTATION IN IRS CRIMINAL INVESTIGATIONS

Clients are often involved in a variety of tax-related issues with the Internal Revenue Service that require representation by an attorney, accountant, or enrolled agent. One of the most complex client representations begins when the client meets with the IRS and is told “As a special agent, one of my functions is to investigate the possibilities of criminal violations of the Internal Revenue laws and related offenses...” You are now faced with the task of advising your client on matters that involve much more than a potential income tax liability.

A good strategy should begin prior to the initiation of the criminal investigation and should include anticipating how the IRS will likely proceed. In those instances where the client representation begins with civil issues, the following should be considered:

- Have the client execute a power of attorney authorizing the IRS to deal directly with you as opposed to your client.
- Evaluate the client’s financial and income tax situation and assess his or her risk of referral for criminal investigation.
- Understand IRS policies and procedures and monitor the actions of IRS to assess the ongoing risk of a criminal referral.
- Develop strategies to minimize the possibility of a criminal referral, while at the same time, avoiding actions that might enhance a criminal case should a referral be submitted. Some actions may be viewed as evidence of willfulness in the event a referral is made, while others may actually precipitate a criminal referral. Voluntarily providing information may be viewed as cooperation in some instances, while it may provide the support necessary to support a criminal referral.

If the likelihood of a criminal investigation is significant, the client should be advised regarding the potential visit by the special agent including the following:

- “Initial taxpayer interviews” are often conducted at the subject’s residence at night, based on the theory that the subject will be caught off-guard, and his personal financial records will be readily available to provide to the investigator.
- Do not answer questions or provide documents to the special agent during the initial interview.

If served with a summons or subpoena, provide a copy to your representative.

- Obtain business cards from the special agents and provide them

to your representative.

After the initiation of a criminal investigation, you should consider the following actions:

- Contact the special agent immediately and provide a copy of the power of attorney.
- Determine the nature of the investigation, if possible, by interviewing the special agent.
- Attempt to mirror the IRS investigation in order to determine what evidence has been documented.
- Identify procedural and evidentiary problems based on the progress of the investigation. Monitor the investigative steps of the special agent. Many deviations from established procedure will preclude prosecution by the Department of Justice.
- Determine whether documentary evidence should be voluntarily provided to the IRS. Voluntarily providing the documentation may reduce the amount of investigative time, but it may also provide leads that will establish a stronger than anticipated case. Refusal to voluntarily provide documentation might result in a prosecution recommendation for an otherwise marginal case.

In summation, a criminal tax case is a very complex issue that requires the expertise of a representative who understands income tax law, forensic accounting, and most importantly, the policies, procedures, and strategies of the IRS Criminal Investigation Division. Consult your criminal tax expert for advice and guidance in the event your client finds himself on the receiving end of the “Advice of Rights.” ☞



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