



Audit Horror Stories: When the IRS Audit Goes Off The Rails!

Eric L. Green, Esq.

1

Eric Green, Esq.

- ▶ Managing partner in Green & Sklarz LLC, a boutique tax firm with offices in Connecticut and New York.
- ▶ Focus is civil and criminal taxpayer representation before the Department of Justice Tax Division, Internal Revenue Service and state Departments of Revenue Services.
- ▶ A frequent lecturer on tax topics for many national organizations, including Insightful Accountant, CCH, the NAEA, the NATP, the ABA Tax Section and the Connecticut Society of CPAs.
- ▶ Has served as a columnist for CCH's Journal of Practice & Procedure.
- ▶ Attorney Green is the past Chair of the Executive Committee of the Connecticut Bar Association's Tax Section.
- ▶ Eric is a Fellow of the American College of Tax Counsel ("ACTC").

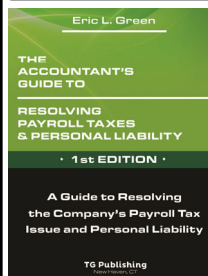
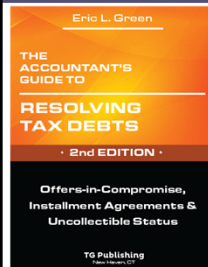


TRN
TAX REP NETWORK

2

2

Eric Green, Esq.



- ▶ Eric is the host of the weekly Tax Rep Network Podcast, available in iTunes, Apple Podcasts and Google Podcasts
- ▶ Eric is the founder of Tax Rep Network, an online community designed to help tax professionals build their IRS Representation Practice
- ▶ He is the author of the Accountant's Guide to IRS Collection and the Accountant's Guide to Resolving Tax Issues



3

3

Thank you to SmartVault



SmartVault®



Audit Horror Stories

4

4

CPE

- ▶ There will be four Attendance Check words
- ▶ Write them down
- ▶ An hour after the program look for the link
- ▶ Input them and get your certificate
- ▶ If you don't CHECK YOUR SPAM FOLDER!

5

The Clients

- ▶ The Destroyed Records
- ▶ The house flipper who paid cash
- ▶ The Day Care that did not respond
- ▶ The auditors that observed for 2 hours

Special Comments about the auditor from **hell**, and what to do about it!

6

The Destroyed Records

- ▶ Clients are in an apartment building
- ▶ Fire starts in an apartment below
- ▶ Fire suppression system kicks in and water pours into client's storage area in basement
- ▶ Records are destroyed
- ▶ Audit notice arrives 6 months later
- ▶ Reconstruction now starts (CFE introduced me to SmartVault on this case)

7

Record Reconstruction - Rules

- ▶ Cohan Rule: When the TP establishes that the TP paid or incurred deductible expenses but does not establish the amount of the deduction to which TP is entitled, TP may be entitled to estimate the amount allowable. Cohan v. Comm'r, 39 F.2d 540 (2d. Cir. 1930)
- ▶ IRC § 7491(a) shifts burden of proof to IRS when the taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the taxpayer's liability and cooperates with the audit

8

Record Reconstruction - Rules

- ▶ Section 274 prohibits claiming the following deductions unless substantiation requirements are maintained: – Meals and entertainment – Travel – Gift Expenses – Listed Property Expenses
- ▶ Why we use SmartVault – stuff is backed up in the cloud forever

9

The House Flipper Who Paid Cash

- ▶ Exactly what the title says
- ▶ Received audit notice
- ▶ Reconstructed costs by before and after photos and searching Lowes and Home Depot online for prices
- ▶ Save as much of the expenses as possible
- ▶ IRS cannot give you zero when it is obvious you spent money (except or those expenses where documentation is required)

10

The Daycare that Did Not Respond

- ▶ Daycare owner had a stroke
- ▶ Audit notice was not responded to
- ▶ Auditor took an industry standard (day cares get 30% of their payments by credit card)
- ▶ Took 1099-K, assumed it was 30% and came up with \$2 million in unreported cash
- ▶ 75% civil fraud penalty and interest

11

The Daycare that Did Not Respond

- ▶ Daycares are licensed by the state – certain number of children
- ▶ Town has prints and layouts of the building
- ▶ Provided above plus proof of payments
- ▶ This day care is in an extremely wealthy area so parents just leave credit cards on file for monthly charging
- ▶ Appeals agreed to a no-change

12

The Pizza Shop Observation

- ▶ Shop open 6:00 am – 11:00 pm
- ▶ Audited
- ▶ Auditor shows up at 8:00 am and leaves at 11:00 am
- ▶ Comes up with 90% cash
- ▶ Projects this vs 1099-K and comes up with \$300,000 if income tax due with penalties and interest

13

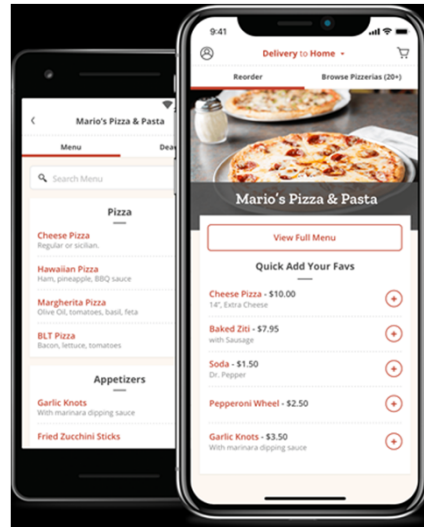
The Pizza Shop Observation

- ▶ Morning is bagels, newspapers, coffee (Cash)
- ▶ Lunch is slices, sandwiches, sodas (mix of cash and credit)
- ▶ Night is pizzas, salads, dinner platters, beer and wine (almost entirely credit)
- ▶ The vast majority of the dollars in are credit
- ▶ Observations are great but the auditor must observe the ENTIRE TIME, otherwise it is skewed
- ▶ Appeals reduced the liability to \$8,900, no penalty

14

A Comment on Industry Standards

- ▶ Helpful, but
- ▶ Must be up to date
- ▶ Technology is changing everything
- ▶ Cash businesses are not really anymore (cabs/uber/lyft, Pizza/slice, arcades/laundromats now have credit cards, etc)



15

Agent from Hell - Examination

- ▶ Examination of your client is proceeding nicely
- ▶ Requests back-up on the owner's son, who works for the business
- ▶ Back-up is provided
- ▶ Examiner states she "knows your client is really just making gifts"
- ▶ Ignores the back-up and denies the expense

16

What do you do?

Do Not:

- ▶ Panic
- ▶ Concede

Do:

- ▶ Speak to a Supervisor
- ▶ Try to reason with them
- ▶ Appeal!

17


Also

- ▶ Consider filing a 911 with TAS
- ▶ Territory Manager
- ▶ Elevate the issue
- ▶ Paul Mamo, Director of Collections: paul.j.mamo@irs.gov
- ▶ Darren Guillot, SB/SE Asst. Commissioner:
darren.guillot2@irs.gov

18

IRS Issues a 90-Day Letter

- ▶ File case in US Tax Court
- ▶ Attorney can file
- ▶ CPA/EA can file is admitted to Tax Court
- ▶ Client can file pro se

 Department of the Treasury
Internal Revenue Service
Small Business and Self-Employed
955 South Springfield Avenue
Springfield NJ 07081

CERTIFIED MAIL
CLIENT NAME
CLIENT ADDRESS
CITY, STATE ZIP

Date: OCT 28 2016

Taxpayer ID number:

Form:

1040

Person to contact:

Contact telephone number:

Contact fax number:

Employee ID number:

Last day to file petition with US tax court: JAN 24 2017

Tax Year Ended:	December 31, 2014	December 31, 2015
Deficiency:		
Increase in tax	\$18,617.00	\$10,394.00
Penalties or Additions to Tax		
IRC 6662(a)	3,723.40	2,078.80

TRN
TAX REP NETWORK

Audit Horror Stories 19

19

US Tax Court

- ▶ If admitted file the petition
- ▶ If not, your client can file pro-se
- ▶ US Tax Court petition kit
(www.ustaxcourt.gov/forms/Petition_Kit.gov)
- ▶ Case will be forwarded to Appeals (IRM 8.4.1.4, Revenue Procedure 2016-22)

TRN
TAX REP NETWORK

Audit Horror Stories 20

20

IRC 7433

Civil damages for unauthorized collection actions

If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

21

What about the IRS's ethical obligations to us and our clients?

- ▶ Taxpayer Bill of Rights
- ▶ Ten Deadly Sins
- ▶ Elements of misconduct

22

2014 Taxpayer Bill of Rights

Right to be informed

Right to finality

Right to quality service

Right to privacy

Right to pay no more than the correct amount of tax

Right to confidentiality

Right to challenge the IRS' position and be heard

Right to representation

Right to appeal IRS decision in an independent forum

Right to a fair and just tax system

23

Elements of Misconduct

- ▶ Inappropriate taxpayer treatment in the course of official business [IRM 13.1.15.2]

- ▶ Examples

- ❑ Rudeness
- ❑ Over-zealousness
- ❑ Excessive Aggressiveness
- ❑ Discriminatory treatment
- ❑ Intimidation



24

Complaining ...

- ▶ I do not like to complain ... however
- ▶ I would talk to the person I am dealing with first
- ▶ If that fails to get a change, I would talk to the group manager
 - let them clean up their own house (believer in win/win)
- ▶ If its going to be win/lose, my clients don't pay me to lose!

25

Going Nuclear

- ▶ You file a complaint with
 - Taxpayer Advocate Service
 - TIGTA
 - Senate Finance Committee
 - Mere fact of observation changes behavior
 - Congressional Constituent Services

26

Treasury Inspector General for Tax Administration (TIGTA)

- ▶ Handles complaints against IRS Employees (government practitioners)
- ▶ TIGTA's audits, investigations, and inspections and evaluations protect and promote the fair administration of the Federal tax system and work to ensure that the Internal Revenue Service (IRS) is accountable for the trillions of dollars in tax revenue it collects each year

27

Treasury Inspector General for Tax Administration (TIGTA)

- ▶ Call toll free – 1-800-366-4484
- ▶ By Fax – (202) 927-7018
- ▶ By Mail –
 - Treasury Inspector General for Tax Administration Hotline
P.O. Box 589
Ben Franklin Station
Washington, DC 20044-0589



28

Questions

Eric L. Green, Esq.
Green & Sklarz LLC
egreen@gs-lawfirm.com
(203) 285-8545

