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What to Do When the IRS Shows Up at Your Client's Door

BY JOSH O UNGERMAN

Your client calls and frantically informs you that the IRS is at the door of her office or home and needs to know what to do. The answer varies greatly depending on the type of IRS agent standing in front of your client. Different IRS agents have differing goals. The failure to understand the IRS agent's goals is a huge trap for the unwary and snares many unsuspecting taxpayers, effectively souring the IRS interaction from the beginning.

The Criminal Investigation Special Agent

The IRS Criminal Investigation Special Agents are unique in that they have gold badges and carry guns. They are trained in interrogation and interview techniques and may show up in inopportune times such as before or after standard working hours. Special

Agents are usually easy to spot as they typically work in pairs. This allows for corroboration of each agent's recollection of the interaction, which is memorialized in a memorandum of interview. As the old saying goes, it is written in stone.

The taxpayer interviewee must be advised that even good-faith erroneous statements can be misinterpreted as false or intentionally misleading. Likewise, true statements are considered admissions or even confessions. One of the biggest misconceptions regarding statements to IRS Special Agents is that statements do not count if a taxpayer was not read his rights. In a non-custodial interview, there are scenarios in which the IRS Special Agents do not have to read you your rights or remind you of your 5th Amendment right against self-incrimination.

The IRS Special Agent's primary goal is to obtain evidence of a criminal violation; it is not to collect or determine the correct amount of tax. Accordingly, off-

the-cuff statements by a taxpayer without a complete understanding of the facts surrounding an inquiry are a recipe for disaster for both the taxpayer and the IRS. On the one hand, the taxpayer may easily lie or confess to the IRS, while on the other hand, the IRS may spend precious time and resources on taxpayer statements that were not well considered and could inadvertently lead the IRS down unproductive pathways in the criminal investigation.

The IRS Collection Revenue Officer

The IRS Revenue Officer is tasked with collecting past due taxes and delinquent tax returns. An IRS Revenue Officer will likely show up at a taxpayer's house unannounced if the amount in issue is large. Absent a search warrant, the IRS Revenue Officer is not allowed inside a taxpayer's home or office unless the taxpayer gives permission. The IRS Revenue Officer collects monies owed to the IRS regardless of whether the taxpayer believes she owes the full amount or not. If employment taxes are involved, the Revenue Officer may want to interview the taxpayer, which should be approached with caution as the unpaid employment-taxes civil Trust Fund Recovery Penalty Statute is quite similar to the criminal failure-to-pay employment-tax statute. You should coordinate the completion of IRS requested financial forms that will be signed subject to penalties of perjury. Finally, any notice providing Collection Due Process rights should be timely exercised unless the taxpayer agrees

with the amount in issue and simply pays the IRS in full.

The IRS Exam Agent

The IRS Revenue Agent is not concerned with collecting tax but rather determining the correct amount of tax. These agents typically do not show up unannounced. One group of IRS Revenue Agents are the Special Enforce Program (SEP) agents. SEP agents are tasked with identifying and developing issues with a significant fraud potential. These examinations begin as civil matters and have in the past been referred to IRS Criminal Division Special Agents. Finally, always respond to a Notice of Deficiency to protect a taxpayer's pre-assessment rights.

The Best Advice

Advise your client to obtain the business card and contact information from the IRS Agent so you, as the professional, can determine which type of IRS Agent has been assigned to your client. Next, you can contact the IRS Agent to determine the scope of information necessary and ensure that the taxpayer provides correct information and, if appropriate, truthful testimony to an IRS Special Agent or Revenue Agent. For the IRS Revenue Officer, you can determine the best way for the client to interact with the IRS regarding payment terms or, if available, a reduction in the amount owed. **HN**

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