

The #*\$@%!!! IRS Can Be Your Friend

A positive approach can
prevent a negative
outcome.

Keith Barber
Nacogdoches County Auditor

Types of IRS Reviews

Source: IRS Publication 3114 (Rev.1-2005) Catalog Number 26034G

- **IRS Audit** – An examination is an inspection of an individual's or entity's books and records. Involves the questioning of witnesses to determine the individual's or entity's correct tax liability.
- **Compliance Review** – A review under IRC section 6060I, to determine whether a trade or business is meeting its record keeping and reporting requirements regarding Form 8300.

Types of Reviews con't.

- **Bank Secrecy Act** – IRS may conduct examination under TITLE 31 of United States Code to determine if books and records are prescribed by law.
- **Compliance Check** – A review under Title 26 of the IRC to determine whether a business owner (or individual) is adhering to record keeping and information reporting requirements. It is neither an investigation, under section 7650(a) of the IRC, nor an audit, under section 530 of the Revenue Act of 1978

Compliance Check con't.

- A tool to help educate about reporting requirements.
- Help increase voluntary compliance.
- A review of information forms (940's, 941's, W-2's, 1099's, or W-4's). General discussion of proper use of forms as related to business or entity's requirements.
- Any errors are usually corrected by voluntary compliance, however IRS can prepare substitute forms or initiate an examination.

Compliance Check con't.

- IRS will not ask to examine any books or records.
- IRS will not ask questions regarding tax liabilities or why they chose to report expenses or compensations (Salary vs. contract)
- A request by the IRS to do a compliance check may be refused without penalty, but the IRS has the option of opening a formal investigation whether or not if the owner agrees.

Compliance Check con't.

- Unlike examinations which are limited by Section 7905 (b), compliance checks can be performed as often as facts and circumstances warrant.
- Compliance checks, since they are not audits, does not hold safe haven protection under section 530 of the Revenue Act of 1978.

The Nacogdoches County Experience

Texas Association of County Auditors – Code of Ethics and Rules of Conduct

2. Responsibility as Public Employees

c. They shall uphold both the letter and the spirit of the constitution, laws, and regulations governing their actions and report any known violations of the law to the proper authorities.

Background

- Nacogdoches County operates under the Unit Road System.
- Two of the county commissioners had county owned pickups and used to commute from home to courthouse and additional travel as they determined.
- County provided all fuel and maintenance.
- No mileage records or logs maintained.

The Issue

- The previous auditor, Clara Flores, determined that there was, at least, a partial taxable benefit to the commissioners that should be reported.
- The commissioners disagreed, one even had their CPA “write him a note.”
- They put diesel tanks in the back to qualify as a “specialized” vehicle.
- Clara left me with the situation and a “Good Luck” farewell.

My Turn

- The issue had become a hot political topic about the necessity of Commissioners in a Unit Road System needing 24 hour vehicles.
- However, the only issue I was professionally concerned with were the IRS requirements.
- I used the same direct approach as Clara, appealing to their sense of cooperation and willingness to abide by the IRS regulations.
- The response was the same as Clara received, only somewhat less civil and more profane.

Decision Time

- During my lifetime, I have learned that those who are unresponsive to reconciling issues usually only respond when 1 or 2 elements come into play.....

The Law and Money

Decision Time con't.

- I new I would never convince them that the law was not on their side and that I would never have the credibility and influence necessary to make them change.
- I knew it was a risk, but I concluded that my best option was to Call the IRS.

The Timeline

- July 21, 2008 – Letter to Commissioners Court restating the issues and, noting the differing opinions, that the IRS should be consulted to resolve the argument.
- Since this was during the budget preparation and continued as a hot political issue, I did not want to have my legal arguments to be construed as siding with any side in the political argument.

Timeline con't.

Therefore, I informed them that they would not receive the letter until AFTER the budget had been adopted.

- December 2008 – Contacted IRS and explained the issues and asking for advice. I told them I had all the written materials but what I needed was a “live” IRS agent writing a “specific” response directly to “the Nacogdoches Commissioners Court”.

- April 6, 2009 – Agent conducts compliance audit. Covers the proper use of reporting forms and applicable laws, not just the specific issue which I had raised. Total visit – approximately 2 hours.
- April 29, 2009 – Letter received. “It has been determined that an employment tax examination will not be conducted at this time.”

Enclosed was Form 886-A – Explanation of Adjustments, for potential problems identified during the compliance check. Items noted:

- Employer provided vehicles.
- Employer provided cell phones.
- Non-overnight employee meals.
- Substantiation of travel expenses.
- W-2's for election workers.
- Employer provided clothing and allowances.
- Social Security 218 Agreement.
- IRC section 401(a) qualified plan.

The Results

- After receiving ample news coverage, the 2 commissioners agreed to have taxes withheld for portion of vehicle use determined to be personal.
- After a few months of deductions one commissioner decided he would park his truck at the courthouse and only use for business purposes. One commissioner continues to use truck and pay the taxes.

Conclusion

- The County Auditor has the authority and the responsibility to enforce many laws, including the IRS laws.
- Having the authority does not necessarily equate to an automatic agreement of compliance because “cause I said so” does not win many arguments especially in the courthouse.

Further Conclusion

- Use Common Sense
- Use Your Authority
- Use Your Resources
- Out-think them because you can rarely “out-yell” them!