

IRS AUDITS: Avoid, Prepare, Manage

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EXEMPT ORGANIZATIONS TAX UPDATE
Take Aways from 2009 and What to Expect from 2010

www.steptoel.com/exemptorgs

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IRS Enforcement Efforts for Exempt Organizations

- For FY 2009 10,187 returns were examined, an increase of 30% over FY 2008 and 105% over 2005
- Due to refinements in case selection, 80% of returns examined resulted in corrective action against the organization, up from 63% in 2004
- For FY 2008 compliance contacts numbered 7,466, an increase of 18% over FY 2007 and 87% over FY 2005

Avoiding

- Forms 990 and 990-T
 - Complete and accurate
 - Quality of requested information provided on Schedule O
 - Information and data looks reasonable, consistent
 - Provide explanatory information on Schedule O if helpful to do so
- Response to study initiatives and compliance contacts
 - Compensation initiative – alone or embedded in other studies
 - Political activities
 - Hospitals, universities and colleges
 - Employment tax \approx 500 EO's to be selected

Avoiding – Continued

- Public Disclosure Requirements
 - Required to make Form 1023/1024 plus Form 990 for three most recent years available for inspection and copying
 - 501(c)(3)s must also make available Form 990-T
 - Public can file written complaint for non-disclosure with IRS

Avoiding - Continued

- Third party referrals to IRS / Information sources
 - Written complaints
 - Form 13909 Tax-Exempt Organizations Complaint (Referral) Form
 - Other sources of information reviewed and evaluated by EO for potential audit selection
 - Other IRS functional areas (*e.g.*, payroll tax examiners)
 - Other federal agencies (*e.g.*, DOL, DOJ, HUD, Commerce)
 - State and local government agencies and officials
 - Media

Avoiding - Continued

- Other sources (continued)
 - Members of EO community
 - Members of Congress
 - Whistleblowers
 - Litigation – disgruntled members, employees, donors
 - Exempt organization's website
 - FIN 48

Preparing

- Audit readiness file
- Review activities for consistency with exempt purpose
- Audit readiness study / mock audit
- Monitor:
 - IRS areas of interest
 - Congressional inquiries
 - State regulators
- Voluntary disclosures

Managing the Audit

- Classifying and Selecting Returns
 - The purpose of an EO examination is to review books, records and other data to
 - Develop all significant issues
 - Insure proper determination of exempt status, qualification, tax liability, if any
 - Determine that applicable statutory requirements are satisfied
 - Examination Planning and Programs (EPP) unit conducts market segment analysis and develops potential compliance issues
 - Project and condition codes are used to computer-select returns for forwarding to the appropriate group for examination

Managing the Audit – Continued

- Initial Contact
 - Generally by telephone to schedule time and place
 - Examination specialist will indicate generally what books and records should be available – broad authority to request any document or information that may be relevant to the examination
 - If location is not on the taxpayer's premises, examination specialist will likely request an on-site visit to assist in determining what information to request

Managing the Audit - Continued

- Taxpayer's Goals
 - Limit scope of the examination
 - Facilitate expedited conclusion of the examination
 - Document what the examination specialist has reviewed

Managing the Audit – Continued

- Elements of audit management
 - Initial meeting
 - Discuss scope of audit
 - Receive Information Document Request if not previously provided; request that all future requests for records be in writing and establish procedure for handling requests
 - Identify the contact for the examination specialist – if outside counsel, Power of Attorney will be required
 - Determine any special office needs – do not provide access to copier!!
 - Locate specialist away from major centers of employee activity
 - Make certain employees are aware of IRS presence

Managing the Audit - Continued

- Document preparation
 - Assemble requested files and records in well-organized manner
 - Review requested documents to spot any potential issues
 - Remove all attorney-client privileged documents or attorney work product
 - Keep a log of all documents reviewed and any copies provided to the specialist

Managing the Audit - Continued

- ❑ Develop and maintain a professional rapport
- ❑ However . . . Limit verbal and written responses to what was requested

Managing the Audit - Continued

- ❑ Special issues
 - Request for technical advice
 - Waiver of period of assessment
 - Privileged documents
- ❑ Unagreed cases
 - Fast-track
 - Appeals
 - Litigation
 - Tax Court
 - District Court