

NEWSLETTER OF THE COLORADO BAR ASSOCIATION TAX SECTION

OCTOBER 2009

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Reminder: Attorneys may obtain CLE credit for authoring published articles. To request CLE credit use Colorado Supreme Court Board of Continuing Legal and Judicial Education Form 6, which is available at: <http://www.coloradosupremecourt.com/pdfs/cle/form6.pdf>. Anyone interested in publishing an article in this newsletter can contact Hank Vanderhage of Holland & Hart LLP at 303-295-8027 or hsvanderhage@hollandhart.com.

COLORADO BAR ASSOCIATION TAX SECTION TOPICAL LUNCHEONS

Date	Speaker(s)	Topic	Location
November 4*	Marc Chorney	Trusts in Divorce Property Divisions	Warwick Hotel, 11:00 AM
December 2*	Herrick Lidstone Brooke Wunnicke	Annual Ethics Update	Warwick Hotel, 11:00 AM

* **Notice:** Topical luncheons are ordinarily held on the second Wednesday of each month. The November and December topical luncheons are scheduled for the first Wednesday of those months.

NOTICE OF PRO BONO OPPORTUNITY

VOLUNTEER AT THE U.S. TAX COURT DOCKET CALL

NEXT DATES: November 2, 2009; February 22, 2010.

The United States Tax Court will hold Denver sessions on November 2, 2009, at 9:30 a.m. and February 22, 2010, at 9:30 a.m. Tax attorneys are invited to volunteer their assistance for a few hours on these dates. Attorneys interested in helping *Pro Se* taxpayers with docketed U.S. Tax Court cases can appear at 9:30 a.m. in Room C502 of the Byron G. Rogers U.S. Courthouse, 1929 Stout Street, Denver, CO 80294. Program guidelines are available on the internet at www.cobar.org. Anyone wishing to volunteer should contact Stuart S. Sargent of Stuart S. Sargent LLC, at 303-771-1148 or stuart@sargenttaxlaw.com for more information.

FEATURED ARTICLE

Recent News Affecting Tax Practitioners

by Stuart S. Sargent, Esq.

On August 13, 2009, in Denver, Colorado, a three-hour conference was held between state and federal taxing authorities and organizations representing tax practitioners. The purpose of the conference was to address issues that tax practitioners have with respect to IRS policies, practices and procedures. Internal Revenue Service representatives and a representative from the Colorado Department of Revenue presented interesting news and information.

Appeals

After a brief introduction, Jack Estoll from the IRS Office of Appeals (“Appeals”) informed attendees that IRS Campuses in Fresno, Ogden, Brookhaven, Covington, Philadelphia and Memphis have been beefing up their ranks. Nationwide, hiring has increased Appeals staff by twenty-three percent. More hiring is expected in 2010. Mr. Estoll stated that he believed that Colorado is understaffed, and that he hopes to see some local hiring in the next fiscal year.

Appeals is encouraging tax practitioners representing small businesses and self-employed individuals to use its Fast Track Mediation program. Qualifying taxpayers do not lose any administrative appeal rights under the Fast Track Mediation program, and some taxpayers have experienced faster and more favorable results. Fast Track Mediation procedures are described in Revenue Procedure 2003-41, and they are in addition to the regular Appeals mediation procedures that were recently updated in Revenue Procedure 2009-44.

Collections

IRS Supervisory Revenue Officer Linda Wiebers next discussed Collections Division developments. Over twenty new revenue officers have been hired in the Denver metro area this past summer, and the number of revenue officers in Grand Junction may double (from one to two). Practitioners should expect more hiring in the near future.

Ms. Wiebers stated that the way in which “repeater trust fund taxpayers” and “pyramiding trust fund taxpayers” are being handled has changed significantly. Generally, a repeater trust fund taxpayer is one that is in-business, not current with federal tax deposits, and has repeatedly been assigned to the field with outstanding liabilities; a “pyramiding trust fund taxpayer” is one that withholds taxes from its employees, intentionally fails to remit them to the IRS, and uses the withholdings to pay other liabilities. When quarterly employment tax liabilities accumulate (or “pyramid”) until the employer has little hope of catching up, the pyramiding trust fund taxpayer will usually shut down operations or file for bankruptcy and then start a new business under a different name, starting the cycle over.

In egregious cases, relatively new Internal Revenue Manual procedures authorize revenue officers to issue a Notice of Intent to Levy and Notice of Your Right to a Hearing letter after an initial contact with a repeater or pyramiding trust fund taxpayer. Repeater and pyramiding trust fund taxpayers are still entitled to Collection Due Process hearings, and they may find themselves having to preserve such a right at an earlier stage of the collections process.

Exams

Lois Deitrich, an Examination Division (“Exams”) Territory Manager, informed practitioners that Exams hired approximately 150 local tax compliance officers and revenue agents in April, May, and June (8,000 to 9,000 nationwide). Ms. Deitrich stated that Exams is currently looking at 2007 income tax returns and that it is pairing up new employees with more experienced ones. Thus, practitioners may be visited by two field auditors. She advised practitioners to ask for a manager if it is believed that a revenue agent is not listening.

Ms. Dietrich stated that a request for taxpayers to agree to an extension of time to assess tax if there are less than 15 months left on the assessment statute of limitations often reflects a high caseload, rather than an interest in opening new issues. She mentioned that approximately 40% of all IRS employees are eligible for retirement and Exams continues to lose experienced staff.

Exams continues to execute its National Research Project (NRP) reporting compliance study for individual taxpayers. NRP studies provide updated and more accurate audit selection tools and support efforts to reduce the nation’s tax gap. Taxpayers selected to participate will be asked to go through their tax returns line-by-line by auditors.

Finally, attendees were informed that after October 1, 2009, Form 872-I for flow-thru entities will be obsolete. After October 1, 2009, until further notice, the regular Form 872 should be used to consent to extensions of time.

Return Preparer Coordinator

Susan Brassfield, the Return Preparer Coordinator (RPC) for Exams, began her report with a description of the changes in the return preparer understatement penalties under Sections 6694(a) and 6694(b) of the Internal Revenue Code. She reminded attendees that the minimum 6694(a) return preparer penalty has increased from \$250 to \$1,000, and that the minimum 6694(b) penalty has increased from \$1,000 to \$5,000.

Ms. Brassfield then discussed her office’s procedures when a claim is made that a return preparer had violated 26 U.S.C. § 6694. The RPC gathers information on preparers from various sources including information received from the public, examiners, preparer penalty records, information items, and other IRS offices. The RPC maintains files containing information on return preparer activities. When a pattern of noncompliance is noted, actions to prohibit the preparer from practicing before the IRS are considered. Practitioners should note that when Exams audits a taxpayer, the taxpayer may be asked questions such as whether substantiating documentation was requested by a return preparer, and whether substantiating documentation was provided by the taxpayer. These questions may be aimed at supporting the assessment of a 26 U.S.C. § 6694 penalty against a return preparer.

If a claim is made against a return preparer that should be referred to the Office of Professional Responsibility (“OPR”), the claim will generally not be referred to OPR until the administrative appeals process has been completed. Generally, only after an understatement has been upheld will a claim against a return preparer be forwarded to OPR. If a Section 6694(a) or

6694(b) penalty is proposed by a revenue agent, a referral to OPR is mandatory. Understatements can result in the imposition of penalties on taxpayers and practitioners.

Colorado Department of Revenue

John Wilton, Chief Reviewer for the Colorado Department of Revenue (“CDOR”), concluded the reports by announcing that the CDOR will introduce new windows-based software on November 1, 2009. Colorado’s tax forms will be brand new and Colorado’s online system will have several new computer processes designed to protect the identities of taxpayers.

In response to a question about the time it is taking the CDOR to process refund requests, Mr. Wilton stated that delays in the processing of returns may be due to staffing issues or increased scrutiny.

Questions and Answers

Following the stakeholder reports, several questions were addressed. The IRS was asked when it will modernize its e-filed form requirements. The IRS’ response was that it will begin offering modernized e-filing of Form 1040 to filers on February 15, 2010 (for 2009 tax returns). The process should not be too noticeable to return preparers and it will be fully phased in over the next three years. Unfortunately, only a few software companies have indicated that they will participate in the initial phase in of the modernization process.

The IRS was also asked why it can sometimes take twelve to sixteen weeks to process returns when it took less time in the past and e-filing was supposed to increase efficiency. The IRS’ response was that a number of factors have caused increased processing times. Stimulus rebates, end-of-year legislation enacted after the creation of forms, and complicated new NOL carryback provisions have all led to an increase in Form 1040X filing volume. Practitioners were reminded that if hardship will result from a delay in the receipt of a refund check, they can contact the Taxpayer Advocate Service and ask for assistance.

The Next IRS/Practitioner Liaison Meeting

The meeting was concluded with an announcement that the next Colorado IRS/Practitioner Liaison Meeting will be held on Thursday, January 7, 2010, at 8:30 a.m. Any questions for the IRS from CBA Tax Section Members may be addressed to Ms. Deborah Rodgers, our Senior Stakeholder Liaison. Ms. Rodgers can be reached by telephone (303-603-4803) and email (deborah.rodgers@irs.gov).

**CURRENT OFFICERS AND COMMITTEE MEMBERS OF THE
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