

STEPHEN L. ROBISON, J.D., LL.M, TAX AND BUSINESS

*advising Advisors since 1986*



## TAX ADVISOR

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### How to Minimize Errors in Handling a Tax Controversy

**Conflict of interest** is one element of Tax Audits and Tax Appeals that is given surprisingly little consideration. When the IRS conducts a Tax Audit, the Client (Taxpayer) and the original Tax Preparer are involved. In responding to an IRS Audit, inherent **conflict of interest** naturally exists between the Client and the original Tax Preparer, especially in these situations:

- The Preparer lacks experience in handling IRS Audits,
- The Preparer lacks knowledge in certain areas of tax law,
- The Preparer has given erroneous advice or
- The Preparer made mistakes in preparing the tax return, which the Tax Preparer naturally would not like to admit.
- The Preparer may be unable to take the case to Appeals or beyond, reducing the IRS's reasons to compromise on the IRS Audit.

In these situations, the Tax Preparer may be unlikely to admit an error, or may be attempting to avoid paying a tax preparer penalty. In addition, poor handling of an IRS Audit can significantly increase the claim of tax malpractice asserted against the Tax Preparers.

These are a few reasons why it is vital that a Tax Attorney assist in the defense of the Client in an IRS Audit. This is especially true where the Client has a "less than stellar" history of tax compliance. In my experience as a Tax Attorney, many Clients are grateful to their Tax Preparer for engaging the expertise of a Tax Attorney in their case. Also, many Tax Preparers are grateful that the Tax Attorney will minimize their potential for tax malpractice while handling a tax controversy.

Let me share several stories with you related to some of my clients who were asked to respond to an IRS Audit:

**Example #1: The Case of the Incorrect Tax Return and Poorly Handled Audit.** Client A had a history of pocketing cash from revenue and deducting personal expenditures. In an effort to minimize the cost of defending the IRS Audit, the Client used his Tax Preparer to handle the Audit. This Tax Preparer had prepared the tax return incorrectly, and did not have the knowledge or experience to handle an IRS Audit. The Client provided what little tax data had not already been lost. The resulting IRS Audit mushroomed from a one year audit to a 9 year audit, with significant criminal tax exposure for the Client. Robison Law Firm was called to assist in the defense of Client A, and we successfully defended all 9 years of this IRS Audit.

**Example #2. The Case of the Inept Bookkeeping Service.** Client D failed to timely remit payroll taxes. His Bookkeeping Service did not properly maintain his payroll records, causing the IRS to misapply 60,000 worth of payroll taxes. Delay, confusion, errors, and foot dragging on the part of the Bookkeeping Service caused the statute of limitations to lapse, and prevented the recapture of these misapplied payroll taxes. This error was compounded by the Bookkeeping Service, who discarded all of the payroll tax records to hide their mistakes. Robison Law Firm filed with the Tax Payer Advocate to get Client D's taxes restored beyond the date that the statute of limitations lapsed.



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#### Tax and Business

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**Example #3: The Case of the CPA who was not Keeping Up with Best Practices.** A CPA, well known among Real Estate Investors, was nearing retirement. He failed to keep up with best practices in preparing Income Tax returns for Clients. His intellectual decline was hidden from clients. His poor advice resulted in numerous errors, including revoking an election for an S Corporation for Client C. When the Client challenged his CPA on this issue, the CPA refused to take action to remedy the revocation. This could have potentially caused a tax liability for Client C in the high 6 figures. Client C contacted Robison Law Firm, who intervened with the National Office of the IRS with a Private Letter Ruling to re-establish the S election, thereby eliminating the potential tax liability.

**Example #4: The Case of the Bookkeeper who Lacked the Skill and Experience to Prepare Tax Returns.** Client B was involved in the lumber business. He handed his business records to his bookkeeper, who erroneously deducted the cost of land with timber rights as timber. The Bookkeeper lacked the necessary skill and experience to prepare income tax returns properly. As a result of the IRS identifying an error in one of her tax returns, several of her clients were audited by the IRS. Because of the Bookkeeper's resistance to providing documentation, which would expose her errors to both Client B and to the IRS, the civil examination was converted into a criminal tax investigation. **Robison Law Firm was able to demonstrate that the proper method of accounting for timber rights.** At the conclusion of this case, the taxpayer (Client B) did not owe any taxes and this case was ultimately dropped.

**How can you minimize your risk of tax malpractice when handling an IRS Audit?** Engage the services of an experienced, knowledgeable Tax Attorney at Robison Law Firm. Stephen L. Robison is a full time, practicing tax attorney, who is Board Certified as a Federal Tax Specialist. He has experience in handling a multitude of IRS tax Audits, and understands the complexities of the federal tax laws. Mr. Robison, and our team of professionals, will work with you and your clients. They will creatively and strategically assist you and your client with handling the IRS Audit, in order to minimize your risk of tax malpractice.

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