

**DEALING WITH THE TROUBLESOME
IRS AGENT;
A HOW TO GUIDE**

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Biography

KYLE COLEMAN

Kyle Coleman is a shareholder in Coleman, Anastopulos & Jackson, P.C. in Dallas, Texas. Coleman, Anastopulos & Jackson is the second largest tax boutique in the Dallas area. Over the last eight years, Coleman, Anastopulos & Jackson has held the majority of all docketed cases on the Dallas docket of the United States Tax Court.

AREAS OF PRACTICE

Mr. Coleman's practice concentrates on federal tax related controversy matters, including litigation in Federal District Court, the United States Tax Court, and the Court of Federal Claims. Mr. Coleman also represents taxpayers in Internal Revenue Service audits, appeals, and collection actions. Mr. Coleman has been admitted to the Fifth Circuit Court of Appeals Bar, the Northern District of Texas, the Eastern District of Texas, the District of Colorado, and the United States Tax Court.

In addition to tax controversy, Mr. Coleman also represents clients in estate and business planning as well as asset protection. His practice includes entity formation, asset transfers, and wills and trusts.

EDUCATION

L.L.M. in Taxation, Dedman School of Law, Southern Methodist University, 1999
J.D., Oklahoma City University School of Law, 1998
B.A. in Finance, University of Central Oklahoma, 1995

BAR ADMISSIONS

State Bar of Texas
State Bar of Oklahoma

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

State Bar of Texas
State Bar of Oklahoma
Dallas Bar Association

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I. Introduction.

Occasionally, the tax professional must deal with an IRS employee who may be having a bad day, is generally disagreeable, or simply does not like you or your client. This outline and speech discuss strategies to employ that will help the tax professional obtain a good result for the client even when dealing with a problematic IRS employee.

II. Be professional.

Usually, in the very first telephone conference with an IRS employee, the stage is set and you get a fairly good lay of the land just by the tone of the IRS person that you are communicating with. Even though the person may be curt, rude and disagreeable, you should always be professional, you should be polite and you should always do the following:

- Respond promptly to all telephone calls;
- Follow-up telephone conversations with a letter outlining the conversation and any agreements to produce information or to produce documents;
- Respond to all requests for documents in writing. Include Bates Numbered documents in response to requests.

III. Follow the rules.

A. Know your responsibilities under Circular 230.

Under Circular 230, the IRS has promulgated regulations that govern those who practice before the IRS. Any attorney, CPA, Enrolled Agent, and other person who prepares tax returns or provides tax advice are governed by Circular 230 and may be enjoined from practicing before the IRS if there are violations of the Circular 230 regulations. Some of the key provisions of Circular 230 are as follows:

§ 10.20 Information to be furnished.

(a) *To the Internal Revenue Service.*

(1) A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.

(2) Where the requested records or information are not in the possession of, or subject to the control of, the practitioner or the practitioner's client, the practitioner must promptly notify the requesting Internal Revenue Service officer or employee and the practitioner must provide any information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information. The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.

(3) When a proper and lawful request is made by a duly authorized officer or employee of the Internal Revenue Service, concerning an inquiry into an alleged violation of the regulations in this part, a practitioner must provide any information the practitioner has concerning the alleged violation and testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

(b) *Interference with a proper and lawful request for records or information.*

A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.23 Prompt disposition of pending matters.

A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

The two above-referenced Circular 230 sections specifically deal with responding to requests for information and documents and your obligations and responsibilities under Circular 230. There are numerous Circular 230 provisions that you should be familiar with. Repeated violations of Circular 230 can result in a referral to the Office of Professional Responsibility ("OPR") which could take actions to reprimand the taxpayer representative or have the representative disbarred from practicing before the IRS.

In addition to the Circular 230 requirements, there may be also other requirements imposed by the State Bar or State Board of Accountancy. You should be familiar with all the rules that govern your conduct and practice before the IRS. The IRS is aware of these rules and will seek to use them to separate you from your client. For example, a threat of a referral to OVR could create a conflict of interest between you and your client and prevent you from representing them in an audit or collection matter. The best way to prevent this from happening is to be aware of the rules, follow the rules and carefully document your interactions with IRS employees.

IV. Make the IRS follow the Rules.

Just as Circular 230 governs the practice of tax practitioners before the IRS, the IRS itself must comply with the United States Constitution, the Internal Revenue Code, Treasury Regulations and the Internal Revenue Manual. You must be aware of the various provisions in the Code and the Manual that provide for the protection and preservation of taxpayer's rights. Very often, the IRS will recognize a taxpayer's right with one hand and attempt to undermine and water down that right with the other.

One example is a right of a taxpayer to be represented by a Power of Attorney. This right is set forth in IRC § 7521(c). Under this Code section, the IRS cannot compel the taxpayer to attend an in-person interview absent an Administrative Summons. The IRS recognizes this right in its Internal Revenue Manual ("IRM"), but at the same time seeks to get around this provision when taxpayers demand their right and request that the IRS deal only with the Power of Attorney. Below are key Code and Manual provisions regarding this issue:

A. IRC § 7521 – Procedures Involving Taxpayer Interviews

(a) Recording of interviews.—

(1) Recording by taxpayer.--Any officer or employee of the Internal Revenue Service in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment.

(2) Recording by IRS officer or employee.--An officer or employee of the Internal Revenue Service may record any interview described in paragraph (1) if such officer or employee--

(A) informs the taxpayer of such recording prior to the interview, and

(B) upon request of the taxpayer, provides the taxpayer with a transcript or copy of such recording but only if the taxpayer provides reimbursement for the cost of the transcription and reproduction of such transcript or copy.

(b) Safeguards.--

(1) Explanations of processes.--An officer or employee of the Internal Revenue Service shall before or at an initial interview provide to the taxpayer--

(A) in the case of an in-person interview with the taxpayer relating to the determination of any tax, an explanation of the audit process and the taxpayer's rights under such process, or

(B) in the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer's rights under such process.

(2) **Right of consultation.**--If the taxpayer clearly states to an officer or employee of the Internal Revenue Service at any time during any interview (other than an interview initiated by an administrative summons issued under subchapter A of chapter 78) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service, such officer or employee shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.

(c) **Representatives holding power of attorney.**--Any attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer may be authorized by such taxpayer to represent the taxpayer in any interview described in subsection (a). An officer or employee of the Internal Revenue Service may not require a taxpayer to accompany the representative in the absence of an administrative summons issued to the taxpayer under subchapter A of chapter 78. Such an officer or employee, with the consent of the immediate supervisor of such officer or employee, may notify the taxpayer directly that such officer or employee believes such representative is responsible for unreasonable delay or hindrance of an Internal Revenue Service examination or investigation of the taxpayer.

(d) **Section not to apply to certain investigations.**--This section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the Internal Revenue Service.

B. Internal Revenue Manual ("IRM") § 4.10.1.6. – Taxpayer Rights

(1) Examiners have the ongoing responsibility to ensure that all taxpayer rights are protected and observed, whether these rights are mandated by statute or provided as a matter of policy.

(2) Examiners should be aware of all the rights provided by the IRC, Taxpayer Bill of Rights I & II, the IRS Restructuring and Reform Act of 1998 (RRA 98) and IRS policies.

(3) The rights specifically covered in this subsection are not all inclusive, but rather are mentioned here to provide special emphasis or to highlight some of the new rights provided in RRA 98.

(4) The taxpayer rights covered in the subsections below are as follows:

- (a.) Representation/Power-of-Attorney Requirements (1.6.1)
- (b.) Confidentiality Privileges--Accountant/Client Privilege (1.6.2)
- (c.) Notification of Appeal Rights (1.6.3)
- (d.) Innocent Spouse Relief (1.6.4)
- (e.) Interest Abatement (1.6.5)
- (f.) Consideration of Collectability (1.6.6)
- (g.) Early Referrals to Appeals (1.6.7)
- (h.) Separate Notices for Joint Filers (1.6.8)
- (i.) Providing Taxpayers with Employee Contact Information (1.6.9)
- (j.) Confidentiality of Taxpayer Information/Privacy (1.6.10)
- (k.) Unauthorized Access (UNAX) Requirements (1.6.11)
- (l.) Third Party Contacts (1.6.12)

B. IRM § 4.10.2.7.5 – Scheduling Appointments

(1) Usually the initial appointment will be scheduled with the taxpayer. Examiners cannot require the taxpayer's presence at the initial interview per IRC 7521(c). The examiner must be willing to talk to anyone who is authorized by the taxpayer. That person must commit to having first-hand knowledge of the information requested and affirm that the examiner can rely on the information provided. In addition, the representative should agree to provide follow-up information timely if information requested at the initial interview is not available.

(a.) If the taxpayer requests representation, proper authorization is required. Form 2848, *Power of Attorney and Declaration of Representative*, can be used to authorize an attorney, certified public accountant, enrolled agent/actuary, and individual with certain special relationships. See IRM 4.11.55.1.2, *Practice Before the Internal Revenue Service (IRS)*, for detail information regarding authorization to practice before the Service.

(b.) Form 8821, *Tax Information Authorization*, authorizes any individual, corporation, firm or partnership the taxpayer designates to **inspect and/or receive confidential information** for the type of tax matters listed on the form. See IRM 4.11.55.1.7.2, *Form 8821 - Tax Information Authorization*.

(c.) If any other form is submitted to request representation or tax authorization, written approval by the group manager is required before relying on the authorization. See IRM 4.11.55.1.7.3, *Non-IRS Power of Attorney Document*.

(d.) If at any time during the examination the taxpayer requests representation, the examiner should allow the taxpayer a minimum of 10 business days to secure representation before any follow-up actions.

Caution: The examiner **must** ensure that they take no actions that would violate or give the perception of violating the taxpayer's right to representation.

(e.) The person authorized to represent the taxpayer must be sufficiently knowledgeable to engage in dialogue concerning the taxpayer's business and personal affairs.

(f.) Examiners will use their judgment to determine whether an authorized representative is sufficiently knowledgeable; however, examiners should take all reasonable steps to work effectively with authorized representatives. See IRM 4.11.55.2.2.1, *Taxpayer's Presence Required*.

(g.) Procedures for handling assertions of accountant/client privilege can be found in IRM 4.11.55.2.3, *Privileged Communications*, and IRM 4.10.20, *Requesting Audit, Tax Accrual, or Tax Reconciliation Work papers*.

(h.) See IRM 4.11.55.3, *By-Pass of a Representative*, for additional guidance.

Just like there are rules governing the practice of representatives before the IRS, there are also rules that apply to the IRS in its conduct of investigations, audits and collection actions. You have a duty to represent your taxpayers competently and ensure that their rights as granted by the United States Constitution and Internal Revenue Code are respected. Be professional, but be firm and demand that any IRS employee that seeks to undermine a taxpayer's rights be required to follow the rules. As they say, what's good for the goose . . .

V. Go to the Group Manager if a problem persists.

If you continue to have a persistent problem with an IRS employee, ask for the employee's Group Manager's name and contact information. If you are being professional, courteous and following the rules, chances are you are not the only person that has had a problem with the IRS employee that you are dealing with. Have a frank discussion with the Group Manager and lay out a timeline of the actions that you have taken since becoming the taxpayer's Power of Attorney. Be prepared to fax the Group Manager support for the actions you have taken and propose a reasonable resolution to the issue or the case. If you do not get the assistance that you feel is warranted under the facts and circumstances, ask the Group Manager for the Territory Manager's name and contact information. Again, be professional and courteous and present a timeline of your actions and proposed resolution to the case to