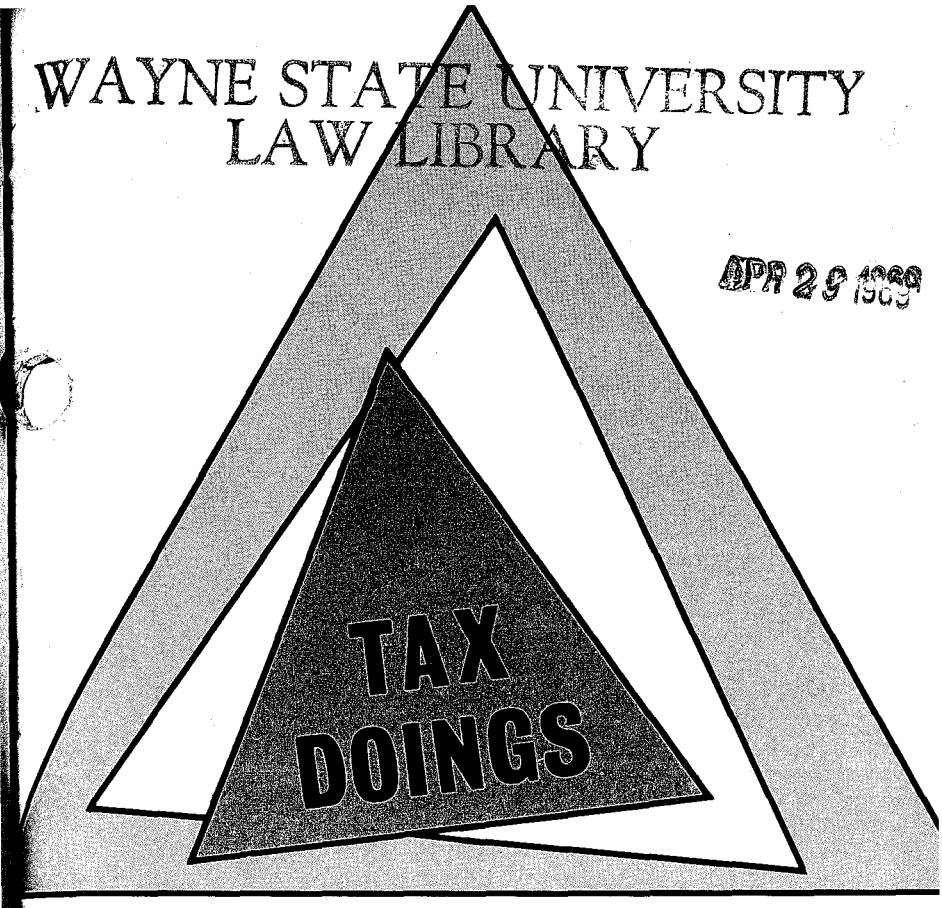

PUBLISHED BY THE STATE BAR OF MICHIGAN FOR DISTRIBUTION TO MEMBERS OF THE TAXATION SECTION

APRIL, 1969 ISSUE

TAX DOINGS

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IN THIS ISSUE

I. WHAT'S DOING — The Council

a. The Tax Court luncheon will be held May 5, 1969 at 12:00 noon in the Mediterranean Room of the Ponchartrain Hotel. The honor guest at the lunch will be the Honorable Norman O. Tietjens.

b. Professor Casner's filmed presentation "The Irrevocable Trust," will be presented on April 18, 1969 at the WWJ Auditorium. The program will begin at 9:30 A.M.

II. MINUTES OF MEETING BETWEEN INTERNAL REVENUE SERVICE OFFICIALS AND THE BAR ASSOCIATION LIAISON GROUP FOR THE CENTRAL REGION, INTERNAL REVENUE SERVICE, HELD NOVEMBER 7, 1968 AT CINCINNATI, OHIO

AGENDA COVERED

I. Recent Developments Under the Freedom of Information Act

II. Cooperation Between IRS and Taxpayer-Representatives
   (1) Ethical Conduct
   (2) Raising New or Alternative Issues After the Thirty-Day Letter
   (3) Desirability of Filing Responsive Answers
   (4) Delays in the Filing of Stipulation of Facts

III. Enforcement Program

IV. Programs in the ADP Program
   (1) Transcripts of Accounts
   (2) Delays in Securing Taxpayer's Numbers for Estates, Trusts, and Nominees
   (3) Computer Errors

V. Failure to Identify Taxpayer in the Acknowledgements of Claims and Amended Returns (Form 815)

VI. Reasons for Delays in Processing Estate Tax Returns and Methods for Relieving Executor from Liability
   (1) Delays in Processing Estate Tax Returns
   (2) Relieving Executor From Liability

VII. Selection of Returns for Audit (Including Criteria System and Discriminant Function Systems) and Repetitious Audits
   (1) Selection of Returns for Audit
   (2) Repetitious Audits

VIII. Non-Technical Problems Arising in the Pension and Profit Sharing Field
   (1) Discussion of Prospective Plans with Unauthorized Non-Practitioners

The meeting in Cincinnati, Ohio, was opened by Regional Commissioner Keebler, who discussed Central Region organizational characteristics and requested all participants to be frank and constructive in their discussions and keep channels of communication open in areas where both the Service and bar representatives had mutual interests regarding IRS practices, procedures and policies. Berrien C. Eaton, Jr., Chairman, Bar Association Liaison Group, announced the officers for the ensuing year: David B. Holden, Chairman; Alan R. Vogeler, Vice-Chairman; and James L. Ford, Secretary. Clarence E. Price, Regional Counsel, stressed that IRS is very interested in hearing about complaints and problems encountered by practitioners because the Service is deeply concerned about eliminating such problems whenever it can. Internal communications are not perfect in any organization and the Service sometimes is completely unaware of local problems and is dependent upon practitioners using meetings of this type to inform the Service.

I. RECENT DEVELOPMENTS UNDER THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act requires that Federal agencies make available to the public certain information contained in three general categories. The Act also contains nine provisions pertaining to matters specifically exempted from disclosure by any Federal agency. If a request is made for certain information and the agency refuses to make it available, a complaint may be filed in the U.S. District Court. This court has jurisdiction to enjoin the agency from withholding agency records and to order the production of any improperly withheld from the complainant. The proceedings are similar to an injunctive action and the burden is on the agency to sustain its particular conduct. The IRS believes it has been liberal in its interpretation of the Act and there has been no recent litigation involving the Service. Material on this subject, presented by the present chairman of the Bar Association Liaison Group at the 17th Annual Tulane Tax Institute, is available without charge upon request addressed to the chairman.

The reading room for the Central Region is located in Room 7106, Federal Office Building, 550 Main Street, Cincinnati, Ohio.

Additional material added since last year are copies of the cooperation agreements between the IRS and the various states.

The IRS has made determinations pertaining to the availability of items on which inquiries had been made at the previous meeting:

Specific audit criteria are considered to be exempt from the provisions of the Freedom of Information Act.

The taxpayer is not entitled to a copy of the request made by the District Director for technical advice from the National Office under the provisions of Section 3(b)(5) of the Act, since such document is an intra-agency memorandum.

Technical advice received by the District Director from the National Office, a copy of which had not been sent to the taxpayer, may or may not be available to the taxpayer depending upon the material contained therein. Each particular memorandum would have to be considered individually.

IRS telephone directories of employees according to functional listings are available to taxpayers and practitioners.

The Cincinnati District Director has issued to tax practitioners a telephone directory pertaining to his organization which may be helpful.

The confidential portion of the revenue agent's report is not available to the taxpayer.

Copies of private rulings generally are not available to other taxpayers, but this depends upon the material involved. This has been a matter of concern to the National Office, since there are many problems involved, such as the maintenance of privacy of parties, volume, and budgetary considerations. There are approximately 45,000 to 60,000 private rulings issued each year and many may not be of interest to tax practitioners. Private rulings which involve new or important principles or concepts are published as Revenue Rulings and number about 600 per year. If tax practitioners feel an absolute need for the publication of rulings pertaining to certain areas, it is suggested that action should be taken by their national organizations through meetings with the IRS in Washington.

The opinion was expressed by a bar representative that determinations made by the Government exempting certain material from the provisions of the Freedom of Information Act are premised upon explanatory material contained in the Committee Report on the Act and are not based upon the actual provisions of the statute. In some instances, the Committee Report was altering the language of the statute and the opinion was expressed that the statute should have been amended if necessary and that the Committee Report did not reflect the results of a true bona fide debate.

Some practitioners stated that having only one reading room

available in a region was not realistic and that there should be one located in each District Director's office. The cost of establishing and maintaining a reading room, and the frequency of use of such rooms by taxpayers are factors considered in providing only one room in each region at this time. However, it has been the practice of the IRS that if a request for specific information is made to the Regional Public Information Officer, and such material is available in the regional reading room, the tax practitioner will be informed and arrangements made to have this information available to him at the District Director's office where he is located.

The IRS believes it has been liberal in its interpretation of the Freedom of Information Act, and that it is required to maintain certain standards to protect the Government's interest.

II. COOPERATION BETWEEN IRS AND TAXPAYER-REPRESENTATIVES

(1) Ethical Conduct

Two handouts were given to participants for discussion with members of their local bar associations. One contained excerpts from a speech by Henry Stockell, Jr., Regional Counsel, Southeast Region, to the Georgia Bar Association on June 6, 1968, including references to Opinion 314 of the Committee on Professional Ethics of the ABA dated April 27, 1965. The other contained Deputy Commissioner Smith's speech to the ABA's Committee on Evaluation of Disciplinary Enforcement at Washington on May 4, 1968. A copy of Opinion 314 was attached.

Practitioners were requested to let IRS know if its employees are not observing ethical conduct and advised that the Service is also interested in assuring that tax practitioners observe ethical conduct. Everybody from time to time needs to stand back and make a self-examination of his own conduct and practice to determine whether actually his own particular actions have been ethical in all instances. The Regional Counsel made the observation that the attitude of the various bar associations toward helping the small taxpayer, who can only afford to pay a very nominal fee for legal assistance, should be reappraised since this particular area indirectly involves a facet of ethical conduct. He stated that possibly consideration should be given by the bar associations to having their legal aid program function in this area. The Regional Counsel also remarked that his personnel have been informed that their objective is to improve voluntary compliance. Sharp practices on their part to secure more revenue defeats this objective and such action would not be condoned by him.

The consensus of bar representatives was that there were no complaints or problems pertaining to the ethical conduct of IRS employees in the Central Region. However, it has been rumored in certain areas that if an attorney becomes involved in representing tax-

payers in criminal tax cases, it will result in his own returns being examined closely. The IRS does not have such a policy or procedure, and there is absolutely no validity to this allegation. If the return of a practitioner should be examined, it will be because of the normal selection practices of IRS.

Inquiry was made regarding a recent situation where certain public officials claimed in newspaper articles that they were being harassed by IRS for political reasons. The IRS does not initiate examinations for purposes of harassment or political reasons and under no circumstances will it initiate publicity regarding a taxpayer's tax affairs.

(2) Raising New or Alternative Issues After the Thirty-Day Letter

All participants were given the published policy of IRS (P-8780-1) which provides that an issue on which the taxpayer and the office of the District Director are in agreement should not be reopened by the Appellate Division nor should a new issue be raised, unless the ground for such action is substantial and the potential effect upon the tax liability material. While the language in the policy statement has not been changed for several years, the Appellate Division found that there had been misunderstandings of the statement and in May 1968 issued additional clarifying guidelines to its employees. In addition, seminars have been recently held with Appellate Conferees in all the branch offices. By the time a case has reached the Appellate Division the taxpayer and his representative should know exactly what issues are in dispute.

A new issue has been defined as any adjustment that changes the prior tax liability which was not in contest when the case was received by the Appellate Division. The grounds for raising a new issue must be substantial, that is, there must be a strong reason which has real merit. It must be almost certain that the Government will prevail if the issue were litigated. In addition, the effect on the tax liability must be material, that is, having real importance and great consequence. The fact that the contemplated adjustment results in a large amount of tax is not in itself critical, but its effect regarding voluntary compliance and uniformity of treatment of all taxpayers is of primary importance. Appellate Conferees cannot raise a new or alternative issue unless such action has been first approved by their branch chief. However, alternative approaches to an issue may be discussed in conference solely for the purpose of working out the settlement of an issue. The number of situations where Appellate Division raises a new issue should be rare.

While the view was expressed that representatives avoid the Appellate Division because of the possibility of new issues being raised, there is some evidence to the contrary. A survey taken by the ABA Taxation Section showed only 9 percent of those questioned were con-

cerned about new issues being raised by Appellate, and none admitted that this was their primary reason for avoiding Appellate.

A bar representative inquired whether any difference existed in the policy toward raising new issues as between the District Conferee and the Appellate Conferee. There is a difference. A case in district conference is still considered to be within the examination process and should be clearly developed both as to facts and issues involved. The District Conferee does not need the approval of his supervisor to raise a new issue. However, such action by a District Conferee rarely occurs.

The burden of proof is on the Government when it raises a new or alternative issue in a docketed case. A trial attorney cannot raise a new issue unless he first receives the approval of the Regional Counsel. Such approval is limited to unusual circumstances and rarely occurs.

(3) Desirability of Filing Responsive Answers

In many instances Regional Counsel has been unable to file a responsive answer because the case file does not contain the necessary information upon which a proper answer can be made. Some practitioners, when filing their petition, have asked Regional Counsel whether additional information is needed and have furnished such information prior to the time when the answer must be filed. This procedure has proven helpful and the resulting answers, therefore, have been more meaningful. The adoption of this practice by other tax practitioners would assist in the filing of responsive answers by Regional Counsel.

(4) Delays in the Filing of Stipulation of Facts

A bar representative inquired whether it is a policy of Regional Counsel to hold up stipulations of fact and not to release a signed copy of the stipulation to the representative until the day before trial. This definitely is not a policy of Regional Counsel. The Regional Counsel had not been previously aware of this delay, and stated the practice would be corrected and that he was anxious to, and had the responsibility of having all facts stipulated as soon as possible. However, in preparing for trial neither the representative nor Regional Counsel can rely absolutely on a stipulation until it has been accepted by the Tax Court.

III. ENFORCEMENT PROGRAM

The Intelligence Division is charged with the responsibility for the investigation of suspected criminal violation of tax laws. There are approximately 180 special agents assigned in the Central Region and their mission is to achieve the highest degree of voluntary compliance with Internal Revenue laws by enforcing the criminal statutory sanctions applicable to Federal taxes.

The activities of the Intelligence Division are based upon leads received from various sources, e.g., informants; audit examinations; and currency reports.

Preliminary investigations which usually last two or three days are conducted by special agents to evaluate information received and to determine whether a full investigation should be made.

There has been considerable litigation concerning the time when the taxpayer should be informed that he is being investigated with the purpose in mind of determining whether he should be criminally prosecuted. Today, the special agent is required at the first meeting with the taxpayer to identify himself by proper credentials; to give a detailed warning to the taxpayer stating the purpose of his visit; to advise the taxpayer of his rights under the Fifth Amendment to the Constitution, and of his rights to have an attorney present. This detailed warning (which is attached to these minutes) must be stated verbatim by the special agent who must also prepare a written report for the case file detailing what took place at this first meeting.

When the full investigation is completed at the district level, a determination is made either for recommendation for criminal prosecution, or not.

All cases recommended for criminal prosecution at the District Director's level are reviewed by the office of the ARC, Intelligence, to determine whether the recommendations are sound and conform to existing policies. Tax practitioners may request conferences with the regional office. If it is determined that the recommendation for criminal prosecution is sound, the case will be sent to the Enforcement Activity of Regional Counsel. If there it is concluded that the case does not warrant criminal prosecution, it will be returned to the District Director's office for civil action by the Audit Division.

A bar representative inquired whether the filing of a delinquent return and the payment of the tax by a taxpayer after an investigation has started will stop the interest on the tax liability; and whether at a later date he could get such money back. He was informed that the amount paid would be treated as an advance payment and the procedure for handling advance payments in a criminal case will be followed as provided in Rev. Proc. 64-13, C.B. 1964-1, 674. He will be informed by letter, Form L-58, that his payment will be retained as a deposit in the nature of a cash bond which will terminate the accrual of interest. He will be asked to execute a Notice of Understanding regarding the remittance. At his election the deposit will be returned to him, without interest, at any time prior to assessment of the deficiency.

The Enforcement Activity of Regional Counsel upon receipt of a prosecution case from the ARC, Intelligence, will send a letter to the taxpayer's representative offering him a conference. It is the

objective of Regional Counsel, after a case has been fully developed, to complete its process within a sixty-day period. The representative at the conference will be informed of the method of determining the income. If the net worth method is used he will be informed of the beginning and ending net worth, and given information relating to the amount of tax and penalty involved. The representative at this time can present the defenses which are of a substantive nature to the determination made by IRS. If the representative is cooperative, the Government will exchange information with him. The conference may result in the need for a supplemental investigation by the examining officers in order to determine the validity of the matters presented in defense. The IRS trial attorney, thereafter, must make a determination whether the taxpayer has been guilty of fraud and evaluate the probability of conviction if tried. If the conclusion is not to prosecute, the representative will receive a letter from Regional Counsel notifying him that the case has been referred to the District Director for civil action. If the conclusion is that criminal prosecution should be recommended, the case will be forwarded to the Justice Department and the representative will be notified of such action by letter from Regional Counsel. Ninety-five percent of the cases recommended by Regional Counsel for criminal prosecution have resulted in indictments against the taxpayers and ninety percent of these cases have resulted in conviction. The Department of Justice does not offer conferences and tax practitioners upon receipt of the letter from Regional Counsel notifying them that the case has been transferred to the Department of Justice should ask that department for a conference if he so desires.

The probability of conviction is taken into consideration by Regional Counsel in determining whether criminal prosecution should be recommended. Regional Counsel has no fixed policy regarding the effect of the health of the taxpayer or the fact that voluntary disclosure has been made, but these factors are taken into consideration in evaluating the probability of conviction.

IV. PROBLEMS IN THE ADP PROGRAM

(1) Transcripts of Accounts

Bar representatives stated that it had occasionally been necessary to continue docketed cases because IRS was encountering delays in securing transcripts of accounts. At the beginning of 1968, the accounting functions performed in District offices were centralized into the Central Service Center. As a result, some delays were encountered before transcripts were issued. However, there has been considerable improvement and the time required to secure transcripts should be drastically reduced.

Form 899 has been replaced by Form 4340 which is a Certificate of Assessments and Payments used to answer requests for

non-ADP account information, Form 4338 which is used when a noncertified transcript is requested on ADP returns, and Form 4339 which is used when a certified transcript of account is needed for an ADP return. Each District Director has available a copy of the microfilm pertaining to master file year returns in his area from which his office can secure information regarding assessments and payments by use of Form 3774.

An ADP coordinator has been designated in each District Director's office and has direct telephone communication with the Central Service Center to assist in expediting the securing of necessary information.

Bar representatives were advised that if common problems arise in a particular area, they should not wait for a liaison meeting before presenting them but should bring them to the immediate attention of the ADP coordinator in the particular District Director's office.

(2) Delays in Securing Taxpayer's Numbers for Estates, Trusts, and Nominees

Delays in securing identification numbers which occurred in Detroit has been solved as far as banks are concerned by the Service Center assigning certain blocks of numbers to them.

Inquiry was made whether the application or request for an identification number could be signed by the attorney for the estate rather than by the executor. It was resolved that this matter would be researched. Research has now disclosed that identification numbers must be applied for by the fiduciary where the employer is an estate or trust. [Regulation 31.6011(b)1].

(3) Computer Errors

Bar representatives commented on IRS delays in, or failure to respond to, written requests for information, or notification to the Service Center of billing errors. The delay in, or failure to answer, correspondence is of concern to IRS. The objective of the Service Center is to respond to correspondence within thirty days. It is striving to achieve this objective and is making headway. If practitioners assure that correspondence includes the taxpayer's social security or employer identification number, it will assist IRS in responding more promptly.

V. FAILURE TO IDENTIFY TAXPAYER IN IRS ACKNOWLEDGEMENTS OF CLAIMS AND AMENDED RETURNS (FORM 815)

Form 815 has been discontinued and replaced by a new form (Part 2, Form 3870, Request for Adjustment). This form is sent to the taxpayer as an acknowledgement of his request for tax adjust-

ment. Also, the new form provides specifics regarding type of tax, period involved, etc.

It was stated that some refund checks had been mailed to taxpayers where a power of attorney executed in the particular case provided that the refund checks should be mailed to the representative. In order to comply with the provisions of the power of attorney, the Service Center must be notified by the District Director or the Appellate Division to change the address contained within the master file to that of the representative. Such address must then be changed back to that of the taxpayer in order that subsequent items such as returns, notices, etc., go to the proper place. This matter is being studied in order that compliance with the provisions of the power of attorney may be carried out.

VI. REASONS FOR DELAYS IN PROCESSING ESTATE TAX RETURNS AND METHODS FOR RELIEVING EXECUTOR FROM LIABILITY

(1) Delays in Processing Estate Tax Returns

During some years estate tax returns are selected for statistical sampling. This will delay normal processing approximately two months. However, if it is necessary to expedite the audit of a particular estate tax return, it can be secured by the Audit Division within one week's time. 1968 is not a statistical sampling year for Federal estate tax returns.

The Audit Division is fairly current in their examination program. After the examination is completed it usually takes about ten days for the case to be processed through Regional Review unless it is necessary for the case to be returned to the District Director for additional information. While there has been excessive delays in making assessments on estate tax cases by the Central Service Center, after referral of the case by the Audit Division, improvement is being achieved.

Under modified Civil Service regulations, the new estate tax agent must be an attorney admitted to the state bar or a law school graduate.

(2) Relieving Executor From Liability

After an examination has been completed and it has been determined that the tax liability per return is correct, or if a deficiency is determined and it is agreed to by the executor and full payment, including interest, made to the examining agent, the general procedure is that the executor will get a closing letter and a release. However, if the agreed deficiency is not fully paid to the examining agent, delays result in processing the assessment and in determining that a payment has been made before a release can be executed by the proper official. This delay can be eliminated, either by making

full payment including interest to the examining agent after a deficiency has been determined and agreed to; or by making a request for determination of tax and discharge of the executor from personal liability under the provisions of I.R.C. Section 2204. If such a request is made, the representative will be relieved from personal liability even though no reply is received from the IRS.

In some instances estate tax returns have been filed without complete exhibits or required information. This results in correspondence from IRS and delays starting examinations. If such information is furnished at the time the return is filed, it will expedite processing and examination.

VII. SELECTION OF RETURNS FOR AUDIT (INCLUDING CRITERIA SYSTEM AND DISCRIMINANT FUNCTION SYSTEMS) AND REPETITIOUS AUDITS

(1) Selection of Returns For Audit

Formerly, all returns of certain classes and types, and sample blocks of other classes and types, were classified manually by experienced revenue agents and tax technicians to select returns for examination. Under this procedure many technical man years were expended classifying correctly filed returns. This method has become impractical in view of the continual increase in the number of returns filed each year.

When the automatic Data Processing System became operational, Audit developed a series of audit criteria which were programed into the computer to identify returns with potential issues that might require examination. The criteria were based on past examination experience and consisted of various dollar and percentage relationships between income, expense, and/or deduction items on a return. Percentages and dollar variables of the criteria can be changed each week and thus lessen the chances of the criteria becoming a non-compliance factor.

The criteria system substantially decreased classification time since only those returns meeting the selection criteria were identified during the computer processing. Audit Selection Lists for individual returns were printed several times each year, showing the Document Locator Number, adjusted gross income, city and state, audit criteria and results of prior audit. Taxpayer's name was not listed. These lists were scanned since they contained many more returns than Audit could examine. Generally, returns with multiple criteria had greater error potential than those with only one criterion, or certain specific criteria indicated greater error potential than others. Thus, the classifying officer would identify, from the list, about three returns for every one to be examined. These returns were then classified manually to select the ones most in need of audit.

Although the criteria system is a major improvement over manual classification, it still requires a substantial expenditure of manpower. As more was learned about the capabilities of high speed computers, a system called "Discriminant Function" (DIF) was developed to identify returns containing high error probability. "Discriminant Function" employs mathematical formulas developed from the Audit Research and Taxpayer Complinance Measurement Programs. The computer assigns number weights by intervals of value for each line item (on the return) included in the formulas, and arrives at a net score. (The higher the score, the greater probability of error.) The returns with the highest scores are then made available for examination to the extent of Audit's examination capacity. The DIF System will be used for some classes of individual returns in 1969 and for all individual returns in 1970. The System should result in substantial man year savings for IRS and bring about a more effective administration of the tax system. In addition to the classification programs, returns are selected for examination as the result of informants' letters, information reports, and financial relationships between taxpayers.

(2) Repetitious Audits

This has always been a problem in the Audit Division, particularly with respect to Office Audit where copies of prior examination reports are not retained in the Audit Division. In almost all instances, the tax technician is not aware of the prior examination results until after the taxpayer is contacted.

Under the ADP system, the computer has the capability of storing audit results and making them available when subsequent year returns are identified for examination under the Criteria and Discriminant Function Systems.

The Central Region began processing individual returns under the ADP System in 1966 (1967 for Detroit District). Consequently, the number of repetitious examinations of prior years no-change cases are gradually decreasing. The system will not prevent repetitious audits, since there will always be instances where a return will be selected for examination before the examination of a prior year's return is completed and the results posted to the Master File. Furthermore, Audit will make examinations of prior year no-change cases on a sampling basis as a compliance check.

VIII. NON-TECHNICAL PROBLEMS ARISING IN THE PENSION AND PROFIT SHARING FIELD

(1) Discussion of Prospective Plans with Unauthorized Non-Practitioners

Bar association representatives are concerned about the practice of insurance salesmen going to pension trust sections in District

Directors' offices with prospective plans to secure informal advice that such plans meet the provisions of the Internal Revenue Code. It was stated that these insurance agents inform prospective clients that such plans have been approved by IRS. The client then brings a plan to an attorney who may have certain qualms about the provisions of such plan but is then informed by his client that the insurance agent has already secured approval of such plan. Some were of the opinion that this might constitute practice of law by unauthorized persons. Some felt that the prototype plans suggested by IRS are eliminating the need of a taxpayer for the services of tax advisors. The representatives indicated that IRS people should not discuss prospective plans with insurance agents who intend to sell the particular plan to prospective clients.

District pension specialists ordinarily have no authorization to confer with taxpayers or representatives on matters regarding the formation or qualification of pension or similar plans or related matters, including amendments or curtailments to approved plans, prior to the formal submission of a plan, amendment, or curtailment for a determination. However, such a special conference may be granted upon written request from a taxpayer or his representative, provided the request shows that a substantive plan, amendment, etc., has been developed for submission to the Service and that special problems or issues are involved. Conferences are allowed if it is concluded that a conference would be in the interest of facilitating review and determination when the plan is formally submitted. The furnishing of advice or assistance, whether requested by personal appearance, telephone, or correspondence, with the exception of the conferences previously cited, is limited to general procedures or directs the inquirer to source material, such as pertinent Code provisions, regulations, Revnue Procedures, and Revenue Rulings which may aid the inquirer in resolving his question or problem (see Section 9, Revenue Procedure 67-4, I.R.B. 1967-1, 27). Also Revnue Procedure 68-29, I.R.B. 1968-33, provides that IRS personnel may consult with persons who have knowledge of the facts in a particular case, in order to secure information and assist in the development of such facts. All pension specialists are bound by the restrictive provisions of Section 6.05, Revenue Procedure 67-1, I.R.B. 1967-1, 5 which cites in detail standards for taxpayers or representatives presenting determination requests to the Service. None of these guides for pension specialists condone the abuses which are of concern to bar association representatives.

Most major insurers have their own legal departments and pension specialists, and questionable contacts by their insurance sales agents with IRS are rather unusual. Inquiries received from independent insurance brokers or dealers are more common and persistent. The IRS does not knowingly cooperate with any insurance people in the practice of law, although it has always been the

Service's policy to answer individual requests for general tax information as cited previously. District pension specialists have been specifically instructed by management in the past to curtail time spent with persons frequently seeking information concerning the pension area. Usually these situations related to persons in the insurance industry.

IRS is primarily interested in the tax consequences of pension arrangements; however, it is recognized that the total legal adequacy of such plans is basic to the plan durability implied by Section 1.401-1 of the Income Tax Regulations. District pension specialists will be instructed to avoid all situations which would tend to assist persons improperly engaged in legal practice.

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The Regional Commissioner suggested to the bar representatives that more specificity in presenting agenda items would enable IRS to do a better job in discussing and resolving problems; and also that their efforts to disseminate the information obtained at the liaison meetings with the members of their bar associations would be appreciated.

ATTACHMENT #1

WARNINGS OF CONSTITUTIONAL RIGHTS GIVEN TO TAXPAYERS AND POSSIBLE DEFENDANTS BY SPECIAL AGENTS OF THE INTELLIGENCE DIVISION

The following procedure will be followed by special agents in their initial non-custody meetings with subjects of investigation:

(a) At the outset of his first official meeting with the subject of an investigation, the special agent will properly identify himself as a special agent of the Internal Revnue Service and will produce his authorized credentials to the subject for examination. The special agent will further state: "As a special agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws, and related offenses,"

(b) Immediately following that explanation, the special agent will then advise the subject of the investigation substantially as follows:

> "In connection with my investigation of your tax liability (or other matter) I would like to ask you some questions. However, first I advise you that under the Fifth Amendment to the Constitution of the United States I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding."

(c) If the subject requests clarification, whether as to his rights or the purpose of the investigation, the special agent will give such explanation as is necessary to clarify the matter for the subject.

(d) If at any stage of an interview the subject indicates that he wishes to exercise his rights to withhold his testimony or records, or to first consult with an attorney, the special agent will terminate the interview.

(e) In each investigation, the special agent will make a contemporaneous memorandum stating when and where the subject was advised pursuant to the above procedures, what additional explanation, if any, was made; how the subject responded; and who was present at the time.

At any official contact with any person the special agent will not use trickery, misrepresentation or deception in obtaining any evidence or information, nor will he use language which might constitute a promise of immunity or settlement of the principal's case, or which might constitute intimidation or a threat.