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## IRS Controversy and Round Table Discussion James Rollinson, Jr., CPA, MST



## IRS Controversy and Roundtable Discussion

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- Issues and Concerns of the IRS (IR-2017-188)\*
- Issues and Concerns of the Practitioner\*
- Controversial Court Cases
- Controversial Regulations
- Penalty Abatement Requests
- ACS (Automated Collection Service)

## Issues and Concerns of the IRS

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- ▶ To understand controversy you have to understand the IRS.
  - ▶ What position they are in?
  - ▶ What is their approach?
  - ▶ What are some areas of their concern?

## Issues and Concerns of the IRS

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- ▶ IRS Mission (IR-2017-188)
  - ▶ Mission of “Providing America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all”.
  - ▶ How can they meet their mission?

## Issues and Concerns of the IRS

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- Funding
  - \$1 Billion decrease in funding since FY 2010
  - Antiquated system
  - Need for essential training
  - IRS increase in workload (FATCA, ACA, etc.)
  - Tax Reform ??

## Issues and Concerns of the IRS

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- LB&I Subgroup (Publication 5125)
  - Campaign approach to audits
  - IDR discussion prior to issuing it to taxpayer
  - Audit scope – Issue based
  - Post examination feedback
  - Time of completion
  - New issues raised in audit
  - Timing of responses (complex issue(s)?)

## Issues and Concerns of the IRS

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- ▶ Schedule UTP filing threshold (FIN 48)
  - ▶ \$100,000,000 in asset threshold for 2010, decreased to \$50,000,000 in assets for 2012, and since 2014, the threshold decreased to \$10,000,000 in assets
  - ▶ Requires concise disclosure of the position
  - ▶ No specific penalty for missing or incomplete form UTP
  - ▶ Low compliance level between 2010 to 2015
  - ▶ IRS recognizes burdensome reporting requirements
  - ▶ IRSAC recommends LB&I to re-visit the schedule UTP and to consider cost of compliance

## Issues and Concerns of the IRS

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- ▶ Appeals
  - ▶ FAQ on IRS website
  - ▶ Conference for appeals (be careful what you raise)
    - ▶ Mail
    - ▶ Phone (most are by phone)
    - ▶ In-person
    - ▶ Pilot Program -virtual online

## Issues and Concerns of the IRS

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- ▶ Appeals
  - ▶ Separate & independent from the IRS (1998)
  - ▶ Litigation would cost more time and money
  - ▶ Responsibilities of the taxpayer
    - ▶ Support references
    - ▶ Document as much as possible
    - ▶ Raise argument and present more information

## Issues and Concerns of the Practitioner

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- ▶ Client documentation
- ▶ Budget variance on different types of IRS audits
- ▶ Timely resolution of audit issues
- ▶ Timing of IRS audit
- ▶ Client relationship

## Issues and Concerns of the Practitioner

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- IRS funding
- Black market (cybersecurity, identity theft, ransomware)
- Penalties
- IRS agent(s) assigned to an audit reasonable?

## Issues and Concerns of the Practitioner

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- Know your client and their business
- Know the statute of limitations
  - What do you do if the agent wants to extend the statute? (almost all situations not good unless refund claim)
    - Discuss with the agent early resolution option and negotiate based on client approval
    - Funding issue?
    - Penalty concerns?

## Issues and Concerns of the Practitioner

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- How can we minimize the chance of an IRS audit? (there is no way per se...)
  - Quality control procedures in the review process
  - Analysis of high risk areas
  - Who are the high risk clients?
  - Be proactive with your clients
  - Advance pricing agreements?
  - Private letter ruling? (cost effective?)

## Controversial Court Cases

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- *Grecian Magnesite Mining v. Commissioner*
  - Foreign corporation (Grecian) sold their interest in a partnership (Premier)
  - The LLC owned US real property
  - Grecian had no other presence in the US except the partnership interest

## Controversial Court Cases

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- Grecian Magnesite Mining v. Commissioner
  - IRS audit determines an unreported gain of \$6.2 million relating to the redemption
  - Grecian agrees to pay tax on \$2.2 million relating to the portion attributable to US Real Property (FIRPTA)
  - IRS position in tax court relied on Rev. Rul. 91-32
  - Revenue Ruling 91-32 indicates gain/loss from the disposition of a partnership interest is US sourced if its attributable to a foreign partners fixed place of business in the US.

## Controversial Court Cases

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- Grecian Magnesite Mining v. Commissioner
  - Court rules contrary to Revenue Ruling 91-32
  - Sale of a partnership interest is personal property and is therefore sourced to country of owner residence
  - Court applies the entity theory under Subchapter K
  - Court considered the source of income rules



## Controversial Court Cases

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- ▶ U.S. v Bussell (Ninth circuit Court of Appeals)
  - ▶ Taxpayer liable for \$1.2 million dollar FBAR penalty
  - ▶ Taxpayer admitted willful failure
  - ▶ Taxpayer argued excessive fines (8<sup>th</sup> amendment), statute of limitations, multiple punishments, IRS abuse, etc.
  - ▶ Are there any other arguments that Bussell could of made? How would this affect other circuits? Would they see it the same way as 9<sup>th</sup>?

## Controversial Court Cases

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- ▶ Valuation cases:
  - ▶ Name the estate below:
    - ▶ Estate argued \$2105 value for the right of publicity
    - ▶ IRS indicates a \$161 million dollar value because the estate has generated about \$1 billion in income since his death

## Controversial Regulations

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- ▶ Notice 2017-38 (July 2017)
  - ▶ Executive order to identify and reduce regulatory tax burden
    - ▶ Proposed regulation on Section 2704 (repealed 10/4/17)
      - ▶ Liquidation of an interest for estate, gift & GST
      - ▶ Significant strain on ability to claim valuation discounts
    - ▶ Final & temporary regulations on Section 385
      - ▶ Notice 2017-36 Delays documentation requirement by one year to 1/1/19

## Controversial Regulations

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- ▶ Final regulations on Section 367
  - ▶ Eliminate ability under prior regulations exceptions to transfer foreign goodwill without immediate tax
- ▶ Temporary regulations under section 752
  - ▶ Liabilities recognized as recourse partnership liabilities
  - ▶ Economic risk of loss
  - ▶ Disguised sales (707)

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## Controversial Regulations

- There are many other controversial regulations.....  
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## Penalty Abatement Requests

- Penalty Abatement Requests (here are some)
  - First time abatement policy
    - No previous required return or no penalties for last 3 years of returns
    - Current returns or extensions timely (if penalty relates to an earlier year)
    - Payment arrangements were made for tax due
  - Late international informational returns relief

## Penalty Abatement Requests

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- ▶ Reasonable cause for late filing
- ▶ Statutory exception
- ▶ IRS Notice 2017-47
  - ▶ Provide relief for late filed partnership and other information returns with a new due date in 2017.
- ▶ What to do if not able to claim relief above?  
Appeal?

## IRS ACS (Collections)

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- ▶ IRS Collections
  - ▶ Private collection agencies (Publication 4518)
    - ▶ Note: Can not do an Offer in Compromise with a collection agency
    - ▶ Recent seminar indicated trust fund penalty is a "hot area"
  - ▶ Implementation of passport revocations in 2018 with a tax debt of \$50,000 or more
  - ▶ Streamlined installment agreements
  - ▶ Installment agreement or 120 days

## Roundtable

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- What areas are you seeing as high risk audit areas?
- What are your procedures for handling different types of IRS audits?
- What has your experience been like dealing with the IRS on a audit?

## Disclaimer

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- The information provided in this presentation is solely for informational purposes only and can not be relied upon for any type of communication with the IRS or any type of preparation in dealing with the IRS. The purpose of this presentation is to coordinate an open discussion and compare with the views of others in a Roundtable discussion.