TIPS FOR AVOIDING (AND IF NECESSARY, SURVIVING) AN IRS EMPLOYMENT TAX EXAMINATION

Prepared and Presented by:

Anthony P. Daddino
adaddino@meadowscollier.com

MEADOWS COLLIER
ATTORNEYS AT LAW
MEADOWS, COLLIER, REED, COUSINS, CROUCH & UNGERMAN, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
901 Main Street, Suite 3700
Dallas, Texas 75202
Main (214) 744-3700
Direct (214) 749-2464
Fax (214) 747-3732
(800) 451-0093

Web Site: www.meadowscollier.com

TIPS FOR AVOIDING (AND IF NECESSARY, SURVIVING) AN IRS EMPLOYMENT TAX EXAMINATION

Prepared and Presented by:

Anthony P. Daddino

1. Introduction.

The ebb and flow nature of the IRS' focus on worker classification issues has reached tidal wave heights. This is the result of IRS perceived abuses in the area and the IRS' overarching goal to increase information reporting, which statistically translates to a higher level of tax compliance. Also playing a role is efforts by the government to encourage employers to provide healthcare coverage for their "employees."

2. Why is the IRS Concerned?

a) Studies show worker misclassification.

i) The IRS estimates that 15% of businesses have misclassified workers – totaling 3.4 million.
ii) The Department of Labor estimates that 30% of all businesses have misclassified workers.

b) Form W-2 reporting results in the highest level of tax compliance.

i) More than 99% of all workers that receive a Form W-2 report their income to the IRS.
ii) Only 77% of workers who receive a Form 1099 report the income.
iii) Less than 30% of workers who do not receive a Form 1099 report the income.

c) State enforcement efforts have revealed potential rewards.

i) New York recently assembled a Tax Force to tackle worker misclassification. Over a 3-year period, the Task Force conducted 67 sweeps which identified nearly 35,000 cases of misclassification and led to the payment of $457 million in taxes.
ii) Similar efforts have taken place in 20 other states.

iii) Investigations in Ohio and Colorado have shown that one-third to one-half of the businesses examined had misclassified workers.

d) Trends show increased usage of independent contractors.

i) According to a report by the Government Accountability Office, the number of independent contractors has increased 25% over a recent ten year period. The growth in the number of employees has been virtually flat.

e) Employment taxes have been identified as a material component of the Tax Gap.

i) The most recent estimate of the Tax Gap is $353 billion. Employment taxes are estimated to represent $59 billion.
ii) Worker misclassification accounts for $2.72 billion annually.

f) Pressure by TIGTA to increase worker classification enforcement.

i) TIGTA released a study in August 2013 evaluating the IRS' Form SS-8 determination program.
ii) The Form SS-8 is used by workers or employers to seek a determination from the IRS regarding the proper classification of a worker.
iii) The determination is non-binding.
iv) TIGTA's study revealed: (1) Only 17% of the "employers" complied with the ruling and issued a Form W-2 to their workers; (2) 19% did not comply with the determinations; and (3) 65% did not issue a Form 1099 nor Form W-2 to their workers.
v) Interesting, the TIGTA study showed a larger-than-expected number of cases being referred by the SS-8 Unit to IRS Exam. Of the 8,405 cases closed during FY 2011, 797 audit referrals were made (almost 10%). 742 of those referrals were made to SB/SE, which opened 538 audits leading to over $13 million of taxes.
vi) TIGTA recommended, and the IRS agreed, to establish a protocol for following up on determinations and increasing referrals to LB&I and TG/TE divisions of the IRS.

3. Why Should You Care?

The sting of worker reclassification is harsh. It is not simply an additional financial cost, both currently and prospectively, but also presents potential exposure to tort liability under the legal doctrine of *respondeat superior*. This is a common-law doctrine that makes an employer liable for the actions of an

employee when the actions take place within the scope of employment. Worker reclassification can also cause material problems with employee benefit plan qualifications and provision of benefits.

Further, employers are required to withhold an additional 0.9% Medicare tax on those earning more than $200,000. This new tax increases the employer's exposure in cases where the worker is misclassified.

Yet another reason for concern is the effect of misclassification under Obamacare. Penalties apply for failure to comply with the employer mandate as well as provide minimum essential coverage. The latter penalties are equal to the number of full-time employees multiplied by $166.66 a month for every employee, minus the first 30 employees. Employers may be responsible for not only health-plan premiums associated with misclassified works, but also potential medical claims associated with those individuals.

4. <u>Current IRS Enforcement Activities</u>.

a) <u>Enhanced information tracking</u>.

i) The IRS has recently implemented systems that compare Form 1099 filings and Form W-2 filings to industry norms to identify potential anomalies.

ii) Recent IRS system updates also flag businesses that issue Forms 1099 of $25,000 or more to at least 5 workers that have no other source of income.

iii) The IRS has information sharing agreements with 37 states, including Texas. If a TWC audit reveals a worker misclassification, the audit results are forwarded to the IRS. The possibility of IRS involvement raises the stakes for many low-dollar state disputes.

b) <u>2013 report on selected colleges and universities</u>.

i) The IRS examined 34 universities and colleges.

ii) The examinations sprung from 400 compliance check questionnaires sent in 2008.

iii) The IRS opened employment tax audits for 11 colleges and universities, all of which resulted in adjustments.

iv) These adjustments included an increase in taxable wages of more than $35 million generating more than $7 million in employment taxes.

v) Adjustments were made for a variety of reasons, a significant reason being worker misclassification.

c) National Research Project ("NRP").

i) The NRP is used by the IRS to collect data on tax filing, reporting, and payment compliance to assess the effectiveness of compliance programs and determine whether additional procedures should be implemented.
ii) The stated goals of the NRP are to reduce the Tax Gap, improve audit selection and examination techniques, and evaluate the potential elimination of Section 530 relief.
iii) The examinations are conducted by specially trained agents whose jobs are to verify "every line" of the return.
iv) It is a three year project that began in 2010.
v) The IRS will audit 6,000 returns.
vi) A key focus of these examinations has been worker classification. Other issues include fringe benefits and reimbursement plans.
vii) As of date, the IRS has completed more than 75% of all examinations and should be finished by summer 2014.
viii) The IRS has leaked that information collected involving Section 530 "should be revealing."
ix) The federal government has estimated that this increased enforcement will raise $7 billion over 10 years.

d) Obamacare and IRS Anti-Abuse Rules.

i) In regulations proposed last year, the IRS adopted an anti-abuse rule to combat the "abuse" of organizations using staffing companies to avoid the employer insurance mandate.
ii) The IRS is looking at passing other anti-abuse measures with an eye toward worker misclassification.

e) Trust Fund Penalties.

i) IRS Chief Counsel recently advised that the IRS may impose the trust fund recovery penalty to collect employment taxes that should have been collected and remitted but for the worker was misclassified as an independent contractor. CCA 201323022.

5. Anticipated IRS Enforcement Activities.

a) The IRS has expanded its workforce of its employment tax specialists to accomplish the NRP. Head of Employment Tax Policy, John Tuzynski recently stated that he intends to stay at capacity as audits close under the NRP and shift resources to increase employment tax examinations.

b) The IRS is also receiving more leads through the IRS whistleblower program, where there is a developing "cottage industry" of employment tax cases.

6. Other Enforcement Activities.

a) Department of Labor ("DOL").

i) Labor Solicitor Smith has called worker misclassification one of the "highest priorities."
ii) For the past two years, DOL has received an additional $14 million each year for the specific purpose of hiring more investigators to increase enforcement of worker misclassification.
iii) DOL Wage and Hour Division ("WHD") has significantly ramped up enforcement over that same period.
iv) In FY 2011, WHD completed 33,295 compliance actions and collected more than $224 million in back wages for more than 275,000 workers. In FY 2012, WHD completed 34,139 compliance actions, and collected more than $280 million in back wages for more than 308,000 workers.

b) Civil litigation under the Fair Labor Standards Act ("FLSA").

i) The number of private lawsuits filed under FLSA has quadrupled over the past ten years. At the same time, the number of federal lawsuits has remained steady.
ii) A significant part of this increase involves lawsuits over worker misclassification.

7. IRS Voluntary Classification Settlement Program ("VCSP").

a) Background.

i) The IRS has long offered taxpayers, subject to audit for worker classification, the ability to settle the dispute for less than their exposure, provided the taxpayer was willing to reclassify the worker as an employee going forward.
ii) In 2011, the IRS announced a settlement initiative designed to accomplish the same goals for taxpayers that are not already subject to examination.
iii) This settlement program is ongoing. *See* IRS Announcement 2011-64.

iv) In December 2012, the IRS attempted to broaden taxpayer eligibility for this program. These "loosened" eligibility requirements were temporary and expired June 30, 2013.
v) Over a 1,000 applications made thus far.

b) Eligibility requirements.

i) The organization must be currently and consistently (for the past three years) treating the disclosed workers as non-employees.
ii) The organization must have filed Forms 1099 for the workers either by the filing deadline or within 6 months thereafter.
iii) The organization cannot be under IRS employment tax audit or audit by DOL or state agency regarding classification of workers.

a. A non-employment tax audit is not a disqualifying factor.
b. A prior employment tax audit is not a disqualifying factor, provided the organization complied with the results.

c) FAQs regarding eligibility.

i) Are Form SS-8 determinations a disqualifying factor?

a. It is a non-binding determination of worker status by the IRS.
b. It is not a disqualifying factor.

ii) Must all workers within a specific class be reclassified?

a. All disclosed workers within a specific class must be reclassified.
b. IRS guidance provides as an example a construction company that contracts with drywallers, electricians, and plumbers to perform services at housing construction sites. The company may choose to reclassify only the drywallers and not the other tradesmen.

iii) What if the worker was treated as an employee more than 3 years ago?

a. IRS guidance indicates the IRS will not look behind the 3-year lookback period.

iv) Will VCSP participation be shared with any agency?

a. IRS has, on more than one occasion, represented that the IRS is not sharing VCSP participation, including denial from the program, with the DOL or any other state agency.
b. IRS has further represented that it is not sharing this information with IRS exam personnel.

d) Mechanics of applying for the VCSP.

i) Complete Form 8952, Application for VCSP.
ii) File days prior to treating workers as employees.
iii) IRS will review application and determine initial eligibility.

a. IRS will send notification if the organization is ineligible.

iv) IRS will prepare closing agreement.
v) Payment is made after closing agreement is received.

e) VCSP settlement terms.

i) Must agree to prospectively treat the workers as employees.
ii) Organizations pay 10% of the liability computed on favorable rates under Code Section 3509.

a. This translates to approximately 1% of one year's compensation to the disclosed workers.

iii) IRS agrees not to audit for prior year employment taxes.
iv) IRS waives all interest and penalties.

8. Considerations in Evaluating VCSP.

a) Potential tax exposure.

Description	Liability Exposure	IRC Sec 3509 Relief w/o 1099s	IRC Sec 3509 Relief w/ 1099s	VCSP Liability
FIT Withholding	28%	3%	1.5%	0.15%
Employee SS	6.2%	2.48%	1.24%	0.124%
Employee Medicare	1.45%	0.58%	0.29%	0.029%
Employer SS	6.2%	6.2%	6.2%	0.620%
Employer Medicare	1.45%	1.45%	1.45%	0.145%
Totals	43%	14%	10.7%	1.068%

b) Potential tax additions exposure.

i) Failure to file Form 941 – 25% (civil fraud is up to 75%).
ii) Failure to pay Form 941 taxes – 25%.
iii) Failure to deposit Form 941 taxes – 10%.
iv) Failure to file Form W-2 – $50, up to 10% of reported amount.
v) Failure to furnish Form W-2 – $50, up to 10% of reported amount.
vi) Note: The above penalties are stackable.
vii) Accuracy related penalties: 20% (fraud penalty is up to 75%).
viii) Accrued Interest (often more than the taxes).

c) Potential Section 530 relief.

i) Section 530 is broad based relief that immunizes the organization from liability for back-owed taxes and prevents the IRS from prospectively reclassifying the worker.

ii) Three general requirements for Section 530 relief.

a. Taxpayer filed Form 1099s.

b. Taxpayer consistently treated the worker, and substantially similar workers, as independent contractors.
c. Taxpayer had a "reasonable basis" for its classification decision.

i) Reliance on legal authority.
ii) Reliance on prior audit.
iii) Reliance on professional advice.
iv) Reliance on industry custom.

d) Tax certainty under VSCP.

i) No waiting game for IRS contact.
ii) Known financial costs.
iii) Quickest route to closure.
iv) Complete absolution for all years.

9. Steps for Evaluating VCSP.

a) Identify your reclassification exposure.

i) Worker classification is a facts and circumstances determination. The overarching issue is the degree of control exercised over how the work is performed.
ii) Historically IRS examined 20 factors, but now looks at three categories of evidence.

a. Behavioral control, which refers to when, where and how a job gets done.
b. Financial control, which refers to how much an individual controls the financial aspects of his or her work.
c. Relationship between parties, which examines the duration and integral nature of the working relationship.

iii) The twenty factors are still relevant and help frame the analysis:

a. Instructions. Employees are generally required to comply with instructions as to when, where, and how the work is to be performed, while independent contractors are not.
b. Training. Providing training is evidence of an employer-employee relationship.
c. Integration. If a worker's services are "integrated" into the operation of a business, the IRS claims that worker is subject to the employer's direction and control.

d. Required personal services. If the worker cannot delegate to others, that is an indication of an employment relationship.

e. Assistants. If the hiring, supervising, and paying of assistants is handled by the employer, that indicates an employment relationship.

f. Continuing relationships. A permanent relationship tends to indicate an employment relationship.

g. Set hours of work. Required work hours are an obvious indication of direction and control and hence employment status.

h. Full-time services required. An independent contractor retains the right to work when and for whom he or she chooses.

i. Location where services are performed. If the services must be performed on the employer's premises, that is an indication of an employment relationship.

j. Specifying timing. The IRS claims that controlling the order or sequence of work, including scheduling appointments, is indicative of an employment relationship.

k. Reports. A requirement for oral or written reports to the principal by the worker is indicative of an employment relationship.

l. Periodic payment. Regular hourly, weekly, or monthly payment is interpreted by the IRS as evidence of an employment relationship.

m. Payment of business expenses. The payment of business expenses, via reimbursement or otherwise, indicates an employment relationship.

n. Furnishing of tools and materials. If the person for whom the services are performed furnishes the necessary tools and materials, an employment relationship is usually found.

o. Significant investment. If the worker has a significant investment in tools, equipment, or facilities, it tends to indicate an independent contractor relationship.

p. Risk of profit or loss. Independent contractors can realize a profit or suffer a loss as a result of their endeavors, while employees are not subject to such risks.

q. Working for more than one firm. Performing services for more than one party is an indication of an independent contractor relationship.

r. Availability to general public. Making services available to the general public indicates an independent contractor relationship.

s. Right to discharge. Employers have the right to discharge their employees, but independent contractors cannot be fired as long as they perform the terms of the contract.

t. Right to terminate. If the worker can end the relationship with the firm without incurring any liability, an employer-employee relationship typically is found. By contrast, an independent contractor can be liable for breach of contract.

iv) In evaluating the risk exposure, you should consider the potential reach back of the IRS under the statute of limitations.

b) Develop potential mitigation strategies.

i) Section 530 relief.

a. Tax Return Test:

i. Taxpayers must have filed Form 1099s. The IRS states that the returns must be timely filed. But the Tax Court has ruled otherwise.

ii. Filing of employment tax returns is fatal, even in response to "missing your return" notice or Form SS-8 determination. Inconsistent state filings is not fatal.

iii. *F.J. O'Hara & Sons* – taxpayer filed employment tax returns after the IRS threatened penalties. Taxpayer sued for a refund and sought Section 530 relief. Court held that taxpayer did not qualify because of voluntary tax filings.

b. Position Test:

i. Taxpayers must have consistently treated the workers and substantially similar workers as independent contractors.

ii. Taxpayer will not lose the right to claim relief for period before the periods in which he treats the workers as employees.

iii. Consistency is often a problem. It may be possible to salvage Section 530 relief if the taxpayer identifies the inconsistency prior to IRS audit and takes action to lessen the impact by carefully defining specific subcategories of workers.

c. Reasonable Basis:

i. The taxpayer must be able to show that in classifying the worker as an independent contractor, the taxpayer (1) relied on legal authority, (2) relied on prior IRS audit results (pre-97 audits need not involve the specific issue of classification), (3) relied on industry custom, or (4) had some other reasonable basis for the classification, most commonly reliance on professional tax advice.

ii. With respect to industry custom, the taxpayer must prove that it was a long standing practice of a significant segment of the industry. The IRS and federal courts cannot require proof of more than 10 years to establish a long standing practice, and likewise cannot require proof of more than 25% of the industry to establish a significant segment.

iii. Actual reliance is required. No dumb luck protection is available after the fact. And the reliance must be at the beginning of the tax year.

iv. Industry custom is often difficult to prove because it requires contemporaneous records and, potentially, cooperation from the businesses competitors.

v. The easiest way for the taxpayer to tee-up a Section 530 defense is to secure a letter from a tax practitioner supporting the client's independent contractor treatment of its workers.

ii) Employee payment of self-employment taxes.

a. Employer will receive credit for substantiated tax payments by employees. The employer remains liable for penalties.

b. The IRS requires the submission of Form 4669 and Form 4670.

c. Obvious problem here is that these forms require employee cooperation.

d. As a matter of practice, the amount of employment taxes paid by the worker after his or her Schedule C expenses is often less than expected by the business.

iii) Tax Relief under IRC Section 3509.

a. Limits the liability to 1.5% of the wages paid and 20% of the employee's share of FICA/Medicare taxes for each year.
b. These percentages increase to 4% and 40% respectively when no Form 1099 is filed.
c. Does not apply where the IRS finds intentional disregard.
d. The organization is still fully responsible for the employer portion of employment taxes, as well as penalties.

c) Evaluate practical realities.

i) Additional costs associated with employee treatment, including state tax issues, potential vicarious tort liability, employment discrimination statutes, and significantly, the provision of employee benefits including insurance and qualified plan benefits.
ii) Classification risks with respect to non-disclosed workers.
iii) Worker reaction to reclassification.

10. Common Mistakes.

a) Relying on labels or a written contract.

b) Relying on incorporation.

c) Classifying based on economic cost.

d) Hiring former employees as independent contractors.

e) Probationary periods as independent contractors.

f) Contracting with staffing companies that treat workers as independent contractors.

g) Waiting until a dispute to develop your defenses.

11. Tips for Addressing Worker Reclassification Risks Outside of VCSP.

a) Review current agreements.

i) Both employment and independent contractor agreements.
ii) Match up contracts to IRS tax filings.
iii) Compare contract terms to actual behavior.
iv) Prepare agreements when necessary.
v) Identify risk factors.

b) Improve current agreements.

i) Suggest worker provide services through an entity.
ii) Include travel and other expenses in overall fee.
iii) Arrange for worker to hire assistants.
iv) Require invoicing for payment and attempt to base fee on non-hourly basis.
v) Fee arrangements should contemplate potential loss.
vi) Have worker provide own supplies – possibly consider subleasing office space and administrative services.
vii) Avoid training and payment for continuing education.
viii) Avoid disciplinary action or reporting hierarchy.

c) Take proactive measures.

i) Train human resource personnel on proper classification.
ii) Document initial worker classifications and reasons for it.
iii) Review and revise if necessary organization handbooks, employee manuals, websites and other external sources maintained by the organization.

12. Tips for Dealing with an IRS Examination.

a) How the exam process begins.

i) Audit Selection – 3 Ways.

a. DIF Scoring (IRS Computer in the Sky).

i) IRS equivalent of the "Coke" secret formula.

ii) Outside sources.

a. News media and public resources.

b. Websites.

c. Disgruntled workers.

iii) Special focus groups.

a. Industry specific.

b. Return related – National Research Project.

b) Behind the IRS curtain – pre-Exam review.

i) Classifier/Manager review.

a. IRS agents receive instructions to review specific items on the return from IRS classifiers and others.

ii) Pre-contact review.

a. IRS agents conduct a "pre-contact" review of the return – identify other issues.

iii) Other due diligence.

a. Prior IRS examination reports/findings

b. Company websites.

c. Asset and litigation databases.

d. "Google" searches – i.e. job postings.

c) Preparing for an IRS Exam.

i) Identify soft spots in the return.

a. Speak with your tax return preparer.

ii) Collect and organize documentation.

a. Will help you identify issues or document gaps.

b. Generally a good idea to facilitate speedy examination.

iii) Review IRS Manual for examination guidelines.

a. IRS agents must follow micro-managed standards and procedures in examining a return.

iv) Evaluate the need for representation.

a. Every taxpayer has the right to representation.

b. Not a "stigma" or "red flag".

v) Call the IRS agent.

a. Inquire as to audit "trigger" and scope of examination.

d) Enduring an IRS Exam.

i) The exam process.

a. Taxpayer interview.

(i) Not mandatory unless a summons is issued.

(ii) Early taxpayer admissions often set the stage.

(iii) Always attend and seek a copy of the interview questions.

b. Request for tour of facilities.

(i) Common practice for IRS.

(ii) Carefully select tour guide and be present at all times.

c. Information Document Requests.

d. Summons (I.R.C. Section 7602).

ii) Things to expect.

a. Rabbit-trail inducing requests.

(i) Junior agents will follow every instruction from the audit guidelines.

(ii) Congress has granted the IRS broad authority to "examine any books, papers, records or other data which may be relevant" in determining the correct tax. I.R.C. Section 7601(a).

b. Penalties.

(i) IRS agents are instructed to evaluate penalties in every case.

(ii) Reliance on in-house tax advisors does not qualify as reliance on "professional ax advice" for penalty-defense purposes. Seven Enterprises Inc. (Tax Court 2011).

e) IRS Exam Practice Tips.

i) Always have a single spokesperson.

a. Pick a "face" for the audit and stick with him or her. This is key to maintaining consistent positions.

ii) Always ask for requests in writing.

a. Helps create an audit record.

b. Forces the IRS agent to evaluate materiality of the issue.

c. Oral requests and written requests often differ.

iii) Keep a record of all responses to IRS inquiries.

a. Written response to formal IDRs.

b. Documenting oral responses.

c. Letters to IRS confirming agreements/understanding.

iv) Be involved in drafting every IDR response.

a. This may very well be "Exhibit A" in litigation.

v) Spoon-feed the examiner.

a. Frames the issue from the taxpayer's perspective.

b. Improves changes of a "rubber stamp".

c. Consider providing information in electronic form to facilitate "cutting and pasting" by IRS examiner.

vi) Communication is key.

a. Be friendly (initially) and be amazed by what you learn.

vii) Don't beat a dead horse.

a. The IRS often becomes entrenched in its position.

b. This can occur early in the process based on return selection and "pre-audit" review of the return.

c. Note: Communicating with the IRS agent early and often will help flesh out these entrenched positions.

viii) Know when to shoot your bullets.

a. Avoid further efforts to convince the IRS agent, saving evidence or best arguments for IRS Appeals.

ix) Do not automatically extend the statute of limitations.

a. Generally, there is a 3-year statute of limitations (I.R.C. Section 6501).

b. Extending the statute of limitations allows time for discovery of new issues or development of existing ones.

c. Tip: It is IRS Appeals' policy not to raise new issues or revive issues that were closed during examination.

d. Tip: IRS counsel bears the burden of proof on any issues not raised in the determination notice.

e. Generally limit extensions to those instances where resolution is near or additional time is necessary to seek Appeals' review of the matter.

f. At a minimum, seek to limit extension in both time and with respect to specific issues.

x) Do not negotiate with terrorists.

a. Do not appease an IRS agent threatening to "write everything up."

b. It does not take long for an experienced Appeals officer to recognize what occurred and to resolve issues at their level.

xi) While cases are helpful, IRS guidance is better.

a. Exam will be much more responsive to administrative pronouncements than judicial decisions. This is true because of their function is to determine correct amount of tax – not weigh litigation hazards.

xii) Avoid in Personam attacks.

a. We have never seen an attack on the IRS agent's professionalism help a client.

b. Our experience is that the offending agent works the case harder and "poisons" the file.

c. A similar concern is avoid embarrassing the ignorant agent.

xiii) Complain (if you must) in writing and with exhibits.

a. Most taxpayers will call the manager simply to vent about the agent. This occurs often without result.

b. Telephone calls may or may not become part of the administrative file and therefore lack weight.

xiv) Do not give away small-dollar adjustments

a. Every adjustment is bargaining chip.

xv) Do not give away long-shot positions too quickly.

a. Every adjustment is a bargaining chip.

b. IRS may have a different view of the position's merit.

c. IRS Exam and IRS Appeals may differ on the worthiness of, or significance of winning, the issue.

xvi) Do not mistakenly waive privilege.

a. Attorney-client communications.

b. Tax practitioner privilege.

f) <u>Beyond Exam – Next Steps.</u>

i) Potential outcomes.

a. Agreed Report.

b. Unagreed Report.

ii) Next steps.

a. Request meeting with Exam Manager

b. Prepare written protest and seek review by IRS Appeals

c. The IRS will give you 30 days to write up your position and seek IRS Appeals review.

d. Protest is your opportunity to frame future settlement negotiations and should not be taken lightly.

e. More than 80% of the cases reviewed by IRS Appeals are settled.

iii) Wait for IRS deficiency notice and/or determination notice …

a. File a petition with the Tax Court, and/or

b. Pay the taxes and pursue refund litigation

Anthony P. Daddino

Partner

Anthony P. Daddino, P.C. is a partner with the firm. Anthony focuses on handling complex, and often times delicate, tax issues that successful businesses and their owners face. For well over a decade, he has counseled clients on income and estate tax issues both before and after contact by the Internal Revenue Service. Anthony routinely represents taxpayers at every stage of the life cycle of a tax dispute, both criminally and civilly. He has resolved disputes involving a wide variety of tax matters, ranging from business and personal income tax, international tax, employment tax, estate and gift tax, and employee benefit and exempt organization tax matters. His expertise includes representing businesses before the Texas Comptroller and Texas Workforce Commission. As a trial attorney, Anthony has litigated multi-million dollar tax cases in the Court of Federal Claims and the federal district courts for the Western District and Northern District of Texas, as well as argued a civil income tax case before the Ninth Circuit Court of Appeals.

Mr. Daddino serves on the law faculty at Southern Methodist University Dedman School of Law, where he teaches Corporate Taxation and Income Taxation. He is a frequent speaker on a variety of topics, including IRS controversy, partnership tax, employment tax, international tax, and ethics issues.

Mr. Daddino was admitted to practice in Texas in 2002. He is married and has three children.

AREAS OF PRACTICE

- Income Tax Litigation
- Estate and Gift Tax Litigation
- White Collar and Government Regulatory Litigation
- State Tax Planning and Litigation
- Estate Planning and Probate
- Income Tax and Business Planning

Education

J.D., Southern Methodist University School of Law, cum laude, 2002

Order of the Coif

Member, Southern Methodist University Law Review, 2000-2002

B.B.A., Southern Methodist University, magna cum laude, 1999

Teaching

Law Professor, Dedman School of Law, Southern Methodist University

Corporate Taxation, Spring 2009 through 2012

Income Taxation, Spring 2014

Bar Admissions

State Bar of Texas

Professional Associations and Memberships

State Bar of Texas

Dallas Bar Association

Collin County Bar Association

Honors and Awards

Texas Rising Stars, as published in *Texas Monthly and in Texas Super Lawyers – Rising Stars Edition and on the web at superlawyers.com*, 2007 through 2011

Publications

"Worried About Employment Taxes? Do Not Fear.", *BarTabs*, October 2011, Collin County Bar Association

"The IRS Is Looking For Non-Compliant Taxpayers With Foreign Interests: Is Your Taxpayer One Of Them?," *The Practical Tax Lawyer*, Volume 22, Number 3, Spring 2008 (published four times a year by American Law Institute-American Bar Association Continuing Professional Education in cooperation with the ABA Section of Taxation)

2014 Speaking Engagements

East Texas Estate Planning Council, Tyler, – 2/5/14

2013 Speaking Engagements

Wichita Falls Chapter/TSCPA Free CPE Seminar, Wichita Falls – 5/22/13

Wagner, Eubank & Nichols, L.L.P., Dallas – 6/11/13

ACPEN Broadcast - "2013 Not-for-Profit Accounting, Auditing & Tax Update", Dallas – 6/26/13

TSCPA CPE Expo, Arlington, 12/13/13

2012 Speaking Engagements

International Law Section of the Dallas Bar Association, Dallas – 2/21/12

Philip Vogel & Co PC, Dallas – 3/20/12

Dallas CPA Society's 2012 Convergence, Dallas – 5/4/12

Central Texas Chapter/TSCPA CPE Expo, Waco – 5/16/12

Corpus Christi Estate Planning Council, Corpus Christi – 5/18/12

Austin Chapter/TSCPA Annual Tax Conference, Austin – 11/9/12

TSCPA Tax Institute, Dallas – 11/13/12

TSCPA Tax Institute, San Antonio – 11/14/12

Dallas Association of Young Lawyers – 12/12/12

2011 Speaking Engagements

San Angelo Chapter/TSCPA, San Angelo – 5/4/11

Dallas Bar Association's Labor and Employment Law Section, Dallas – 5/16/11

West Texas Women CPAs, Lubbock – 6/9/11

Dallas Bar Association's International Law Section, Dallas – 6/21/11

Dallas Bar Association's Corporate Counsel Section, Dallas – 7/5/11