

Representing Clients Before the IRS

Part 1: Getting Started

This is the first of a series of articles on Representing Clients Before the IRS. In this segment, Mr. Davidoff covers the first three steps of a tax controversy engagement. Future segments will cover the remaining steps and talk about the tools available to practitioners, along with some practical rules of engagement.

Representing clients before the IRS is a learned art. At the start, practitioners must understand that they are subject to the highest ethical standards. Accordingly, representatives will often find themselves turning away potential clients in order to preserve those standards. Representatives must be committed to adhering to those high standards, even though it may appear that their adversary, the IRS, is not playing fair. And, even when it plays by the rules, the “rules” grant the IRS awesome powers in its ability to place liens on taxpayers, levy wages and seize property, all of which places us at a distinct disadvantage as practitioners. To win, we must enhance our skills in communications with clients, foster relationships with IRS personnel and understand the tools available to combat an often unreasonable, unsympathetic behemoth we refer to as the IRS.

The Frantic Call & the Office Environment

For those who specialize in representation, most tax controversies are not with your own 1040 or business clients. Rather, the issues involve those who have gotten into trouble on their own or in spite of the assistance they received from their CPA. Accordingly, how your firm handles the initial call from this person will often dictate whether you get the opportunity to represent the client.

One of the best-selling tools available is a person, not an answering machine. Having a live person answering the telephone dramatically increases your odds of getting the client. Clients like to know that they can get in touch with their representative, or at least a live person at his/her office. In my firm, if I am not available to speak to a prospective client, our office policy is to forward the call to a paraprofessional who knows the process and can “sell” the firm to the potential client by noting our expertise. In most cases, I return all calls the same day or the next day; if I can’t return the call promptly, we will set up a specific date and time for a conference call or meeting.

Whenever a prospective client calls, the notes are alphabetically placed in a folder set up for the year. I often have prospects calling me a year or two later who are amazed that I have all of my notes from our previous conversation. As my office becomes paperless (a couple of years away for me), I envision my access to



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IRS REPRESENTATION ADVISOR

E. Martin Davidoff, CPA, Esq.

this information will only become that much faster when that “folder” for the year will be at my fingertips.

You can dramatically expand the number of cases handled through the use of paraprofessionals. In my office, these are former executive or legal secretaries who have honed their project management skills and understanding of IRS operations, but they also are individuals with great people skills. Such skills are often the difference between getting the deal you want!. In most cases, my paraprofessionals put in more than 75 percent of the chargeable hours, enabling me to focus on the more difficult questions and issues of each case, thus minimizing the overall charges to our clients.

Initial Client Meeting

The initial client meeting sets the tone for the entire relationship. In some cases it is the only in-person meeting that I have with the client. Our goals at this meeting are to fully understand the client’s problems, engage the client (financially), and set up a “Plan of Action.”

I have the paraprofessional who will be working the case join the meeting – at no charge to the client. Typically, I charge \$50 for the first half hour and then my normal hourly rate. If the client was referred to me by an existing client or a regular referral source, I do not charge for the first half hour and emphasize that I am doing this as a courtesy to the referral source. The referral source appreciates this and the potential client feels good that the person who referred him or her is held in such high esteem.

Throughout our discussions we are realistic. We promise only what we know we can accomplish because we want to establish trust with our clients and referral sources, and establish reasonable expectations in the minds of our clients. Because much of

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our success depends upon our advocacy skills in working with individual decision-makers at the IRS, we are often able to deliver more than our clients anticipate.

I usually leave my schedule fairly flexible so that I can spend two to three hours with the client, if necessary. During this time, multiple tasks may be taking place at one time. I may have one staff member copying documents, while another prepares an engagement letter and a third prepares powers of attorney forms. While they are doing this, I am putting together a list of additional documents or information required of the client, doing a budget with the client and/or putting together the Plan of Action.

The Engagement Letter

This is the contract between your client and you. After the initial consultation, I perform no work until the client executes the engagement letter and provides the agreed-to retainer. As you develop your standard engagement letter, keep the following points in mind:

- I will state, usually in general terms, that I will be representing the taxpayer before the tax agency for certain years with respect to particular taxes. If I anticipate submitting an offer in compromise to resolve a collection matter, I will include that information. (It should be noted that most of my collection engagements do not result in submissions of offers in compromise.) I also add the following wording: "I may also provide other services which you request." This ensures I am covered if the scope of the engagement expands.
- If the Taxpayer is married, I insist that the spouse sign the engagement letter and be fully responsible for my fees.
- I ask for a retainer in advance. The client will receive interim billings. The funds held as a retainer are applied to the last invoice.
- Since my rates increase annually, I include the following

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Form 5304-SIMPLE is used if the employee chooses the financial institution and Form 5305-SIMPLE if the employer chooses. Either of these forms establishes the SIMPLE, and is not filed with the IRS.

Summary

The chief concerns that stop a small business client from establishing a retirement plan are being required to contribute annually and the administrative burdens. SEP and SIMPLE plans can overcome these concerns. These plans do away with the complex fiduciary and reporting requirements associated with managing a standard deferred compensation plan; top-heavy rules and eligibility criteria are built into the structure of the plans. These plans offer flexibility as to how much an employer must contribute in the year. They can be presented to clients with the assurance that they will adequately address their employee's retirement concerns. ☺

Rosann Torres, J.D., is a Federal Tax analyst with LexisNexis. Formerly with PricewaterhouseCoopers, contact her at rosann.torres@lexisnexis.com. Brian J. McBreen, J.D., LL.M., LexisNexis Federal Tax analyst, is the co-author. Contact him at brian.j.mcBreen@lexisnexis.com.

language: "All rates will increase from time to time consistent with rates charged generally to the firm's clients."

•I provide that work will cease, at my option, if invoices are not paid within a set timeframe, usually 20 days. In addition, I will often issue stop-work letters if the deadline is not met. This is a tremendous tool in getting clients to pay. It really works!

•If I am providing services for a corporation, my letter includes provisions that will make the owner individually liable for any invoices issued to the corporation or the individual.

•The engagement letter provides that the costs of collecting my fees from the taxpayer are his or her responsibility, including my time. While I have not usually collected this, it does bring us to more satisfying resolution on the few times I have had a financial dispute with a client.

•We occasionally include a provision that clients may pay me on a monthly basis, ranging from \$300 to \$750 per month. By doing so, a portion of the payment will often be included by the IRS in determining the client's necessary expenditures. However, it is important to provide an end date to such an arrangement. I use three years, at which point any remaining balance becomes due.

In spite of all the provisions that our firm includes, our engagement letters for tax representation work are never longer than two pages. When presenting the engagement letter to the client, I take time to clearly explain its provisions. I pay particular attention to the retainer, which many clients think will be applied to the initial invoice, not the last.

With an office staff attuned to landing the prospect and serving the client, you can develop a profitable tax representation practice, providing cost-effective services to those in need. ☺

E. Martin Davidoff, CPA, Esq. is a sole proprietor with more than 25 years experience practicing as a CPA and tax attorney in Dayton, N.J. Davidoff is founder and current chairman of the IRS Tax Liaison Committee of the American Association of Attorney-CPAs and currently serves as its vice president. A frequent instructor having most recently appeared at the IRS Nationwide Tax Forums. Davidoff's upcoming speaking engagements can be found by emailing lisa@copeseminars.com.

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2	8	4	9	3	7	5	6	1
7	1	9	8	5	6	4	2	3
5	7	8	1	9	4	6	3	2
4	2	3	5	6	8	9	1	7
1	9	6	7	2	3	8	4	5
8	3	1	6	7	9	2	5	4
9	5	7	4	1	2	3	8	6
6	4	2	3	8	5	1	7	9

Sample Engagement Letter

BY HAND IN OUR OFFICE
Mr. and Mrs. John J. Doe
123 Main Street
Anywhere, New Jersey 08666

E. MARTIN DAVIDOFF
353 Georges Road - Suite K
P.O. Box 835
Dayton, NJ 08810-0835
EMD@taxattorneycpa.com
TEL: 732-274-1600
FAX: 732-274-1666

Dear John and Jane:

I am writing this letter to confirm and specify the financial arrangements regarding the services, which I will be providing to XYZ Corporation and you.

I will be representing XYZ Corporation in connection with the assessment and collection of Payroll taxes for the years 2001 through 2003. I will be representing you, personally, before the Internal Revenue Service in connection with the assessment and collection of income taxes for the years 2002 through 2004, for trust fund recovery penalties proposed by the IRS, and for other years and matters in the event that the Internal Revenue Service expands the scope of its investigation. I may also provide other services, which you request. Please note that it is hereby acknowledged that you have given us permission to discuss your case and provide copies of documents to Tony Kubek, CPA.

My fees are based upon the amount of time required to review and analyze information provided to me, perform necessary research, carry out additional services in representing you, and complete additional services which you request. My current hourly rate is \$330. The hourly rates for my staff range from \$75 to \$225. In addition, you will be charged for out-of-pocket expenses (photocopying, federal express, postage, etc). All rates will increase from time to time consistent with the rates charged generally to the firm's clients.

I will require an initial retainer of \$3,500 prior to commencing work. The \$3,500 will be held in my business account and will be applied towards the final bill. During the course of our engagement, you will receive invoices periodically. My invoices are due and payable immediately upon receipt. There will be a late charge equal to 1.5 percent per month on any unpaid balances. Please note that, at our option, the work on your account will cease 20 days following our issuance of an invoice if full payment of such invoice is not received, unless other mutually satisfactory arrangements have been made in writing. We have also agreed to provide you with additional flexibility with respect to the payment of fees due to this firm. So long as you make monthly payments of \$350 on the first of each month, commencing with October 1, 2006, we will continue to work on your account and we will waive any late charges through October 1, 2009. Any balance due and payable as of October 1, 2009 shall become due and payable immediately.

Although you may find it convenient and appropriate that I invoice XYZ Corporation for some or all of my services, each of you will be personally responsible for the payment of any of my invoices issued to the corporation and/or you.

In the unlikely event that it becomes necessary for me to seek legal recourse to receive payment of my fees through litigation or arbitration, you hereby agree to reimburse me for all out-of-pocket expenses, as well as any of the time expended by my staff and/or me at the hourly rates then in effect, to secure such payment. For purposes of our agreement, the term "out-of-pocket expenses" also includes any legal fees and all other expenses in connection with any attempt (including litigation) to collect my fees. By signing below, you hereby consent that I may use any information which you provide me to collect any fees due to this firm. Such information includes income tax returns which we prepare for you or which you provide us.

If the terms outlined in this letter are in agreement with your understanding of our engagement, each of you should sign the enclosed copy of this letter and return it to me as soon as possible with the \$3,500 retainer. By signing below you are each also agreeing to be jointly and individually responsible for the entire amount of my fees. Should you have any questions concerning this letter or the fees to be charged, please do not hesitate to contact me.

To facilitate our representation, please find enclosed, in triplicate, Forms 2848, Power of Attorney, which will enable us to represent you before the Internal Revenue Service. Also enclosed is Form 8821, Tax Information Authorization, which will enable other members of my staff to discuss your case with the Internal Revenue Service. Please sign two copies of each form and return them to us. You may retain the third copy for your files.

Very truly yours,
E. Martin Davidoff

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encls.

Agreed to by: _____
John J. Joe, Individually and as President of XYZ Corporation Date

Jane J. Joe

Date