**Weekly Webinar – Week #9 – 2016**

**Housekeeping Items**

1. **F.I.R.E.** – **F**ully **I**nformed with **R**easonable **E**xpectations – Sales Staff, Case Review Officers, Resolution Team, and Affiliate Partners are responsible for making certain that every client knows the truth about their tax situation, and the Pro’s/Con’s of the resolution. As tax practitioners, we have an obligation to fully disclose resolutions. For a Streamline Agreement (NDIA) – this means telling them about the fee that the IRS charges to set up the IA, and that if they set the IA up on a direct debit then the IRS reduces the fee amount. For CNC (APP, ASP, or CRP) – this means telling them about CSED dates, TAX LIENS, 5-year compliance requirements for an OIC, etc. We should not only tell them in the closing call, but also disclose the details in the closing letter. In many instances, we should have this conversation prior to moving forward with a resolution.
2. If we are contracted for a Non-Disclosure Installment Agreement – known at the IRS as a Streamline Installment Agreement or a Fresh-Start Streamline Installment Agreement – we DO NOT need to prepare a financial statement, nor are we contracted to do so. Many of these clients have been sold on the idea that we do not need to disclose their financial position to the IRS, and that it would be better if we did not because their MDI exceeds the Streamline payment amount. Many have also been told that we will ensure they get the lowest payment allowed by law, and then they can make voluntary payments above the minimum payment to pay off the debt faster. These cases do not involve preparing a 433A or a 433F. For debts less than $25,000, prepare just Form 9465. For debts $25,001 to $50,000 prepare Form 433D [must be initialed and signed by client(s)].

**Training**

[**https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Introduction**](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Introduction)

1. Filing a Tax Return is voluntary.
2. Payment of Federal Income Tax is voluntary.
3. Taxpayers can reduce their federal income tax liability by filing a “zero return”
4. The IRS must prepare federal tax returns for a person who fails to file.
5. Compliance with an administrative summons issued by the IRS is voluntary.
6. Wages, tips, and other compensation received for personal services are not income.
7. Only foreign-source income is taxable.
8. Federal Reserve Notes (money) are not income.
9. Military retirement pay does not constitute income.
10. Taxpayer is not a “citizen” of the United States, and thus is not subject to the federal income tax laws.
11. The “United States” consists of only DC, federal territories, and federal enclaves.
12. Taxpayer is not a “person” as defined by the IRC, thus is not subject to the federal income tax laws.
13. The only “employees” subject to federal income tax are employees of the federal government.
14. Taxpayers can refuse to pay income taxes on religious or moral grounds by invoking the First Amendment.
15. IRS summonses violate the Fourth Amendment protections against search and seizure.
16. Federal income taxes constitute a “taking” of property without due process of law, violating the 5th Amendment.
17. Taxpayers do not have to file returns or provide financial information because of the protection against self-incrimination found in the 5th Amendment.
18. Compelled compliance with the federal income tax laws is a form of servitude in violation of the 13th Amendment.
19. The federal income tax laws are unconstitutional because the 16th Amendment was not properly ratified.
20. The 16th Amendment does not authorize a direct non-apportioned federal income tax on US Citizens.
21. IRS is not an agency of the US.
22. [Taxpayers are not required to file a federal income tax return, because the instructions and regulations associated with the Form 1040 do not display an OMB control number as required by the Paperwork Reduction Act](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-I-D-to-E#_Toc350157909).
23. [African Americans can claim a special tax credit as reparations for slavery and other oppressive treatment](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-I-D-to-E#_Toc350157910).
24. [Taxpayers are entitled to a refund of the Social Security taxes paid over their lifetime](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-I-D-to-E#_Toc350157911).
25. [An “untaxing” package or trust provides a way of legally and permanently avoiding the obligation to file federal income tax returns and pay federal income taxes](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-I-D-to-E#_Toc350157912).
26. [A “corporation sole” can be established and used for the purpose of avoiding federal income taxes](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-I-D-to-E#_Toc350157913).
27. [Taxpayers who did not purchase and use fuel for an off-highway business can claim the fuels tax credit.](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-I-D-to-E#_Toc350157914)
28. [A Form 1099-OID can be used as a debt payment option or the form or a purported financial instrument may be used to obtain money from the Treasury](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-I-D-to-E#_Toc350157915).
29. [A tax assessment is invalid because the taxpayer did not get a copy of the Form 23C, the Form 23C was not personally signed by the Secretary of the Treasury, or a form other than Form 23C is not a valid record of assessment](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157918).
30. [A tax assessment is invalid because the assessment was made from a substitute for return prepared pursuant to section 6020(b), which is not a valid return](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157919).
31. [A statutory notice of deficiency is invalid because it was not signed by the Secretary of the Treasury or by someone with delegated authority](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157921).
32. [A notice of federal tax lien is invalid because it is unsigned or not signed by the Secretary of the Treasury, or because IRS employees lack the delegated authority to file a notice of federal tax lien](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157924).
33. [The form or content of a notice of federal tax lien is controlled by or subject to a state or local law, and a notice of federal tax lien that does not comply in form or content with a state or local law is invalid](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157925).
34. [A collection due process notice (e.g., Letter 1058, LT-11 or Letter 3172) is invalid because it is not signed by the Secretary or his delegate](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157927).
35. [A collection due process notice is invalid because no certificate of assessment is attached](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157928).
36. [Verification requires the production of certain documents](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157930).
37. [A notice and demand is invalid because it is not signed, it is not on the correct form (such as Form 17), or because no certificate of assessment is attached](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157932).
38. [The Tax Court does not have the authority to decide legal issues](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157935).
39. [Revenue Officers are not authorized to seize property in satisfaction of unpaid taxes](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157937).
40. [IRS employees lack credentials.  For example, they have no pocket commission or the wrong color identification badge](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157938).
41. [Certain employees in the IRS Office of Appeals are not authorized to conduct collection due process hearings](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157938).
42. [Taxpayers are entitled to be represented at hearings, such as collection due process hearings, and in court, by persons without valid powers of attorney](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157940).
43. [The Secretary has not authorized an action for the collection of taxes and penalties or the Attorney General has not directed an action be commenced for the collection of taxes and penalties](https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Section-II#_Toc350157942).

**Penalties for Frivolous Tax Arguments**

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| Taxpayers filing returns with frivolous positions may be subject to the accuracy- related penalty under section 6662 (twenty percent of the underpayment attributable to negligence or disregard of rules or regulations), the civil fraud penalty under section 6663 (seventy-five percent of the underpayment attributable to fraud) and the erroneous claim for refund penalty under section 6676 (twenty percent of the excessive amount).  Additionally, late filed returns setting forth frivolous positions may be subject to an addition to tax under section 6651(f) for fraudulent failure to timely file an income tax return (triple the amount of the standard failure to file addition to tax under section 6651(a)(1)).  SeeMason v. Commissioner, T.C. Memo. 2004-247, 88 T.C.M. (CCH) 398 (2004) (stating that frivolous arguments “may be indicative of fraud if made in conjunction with affirmative acts designed to evade paying federal income tax”).The Tax Relief Health Care Act of 2006 amended section 6702 to allow imposition of a **$5,000** penalty for frivolous tax returns and for specified frivolous submissions other than returns, if the purported returns or specified submissions are either based upon a position identified as frivolous by the IRS in a published list or reflect a desire to delay or impede tax administration |

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| A tax return preparer, as defined by section 7701(a)(36), who prepares any return or claim of refund with respect to which any part of an understatement of liability is due to an unreasonable position, including any frivolous position discussed in this outline, and who knew or reasonably should have known of the position, may be required to pay a penalty equal to the greater of $1,000 or 50 percent of the income derived by the tax return preparer with respect to preparing the return or claim for refund. I.R.C. § 6694(a). The minimum penalty amount increases to $5,000 for willful or reckless conduct of the tax return preparer. I.R.C. § 6694(b). The IRS may impose a penalty of $1,000 for aiding or assisting in the preparation or presentation of any portion of a return with knowledge that it will result in an understatement of tax liability.  I.R.C. § 6701(a).Taxpayers who rely on frivolous arguments may also face criminal prosecution. These taxpayers may be convicted of a felony for attempting to evade or defeat tax.  I.R.C. § 7201. Section 7201 provides as a penalty a fine of up to $100,000 ($500,000 in the case of a corporation) and imprisonment for up to 5 years. Similarly, taxpayers may be convicted of a felony for willfully making and signing under penalties of perjury any return, statement, or other document that the person does not believe to be true and correct as to every material matter.  I.R.C. § 7206(1). The penalty for violating section 7206 is a fine of up to $100,000 ($500,000 in the case of a corporation) and imprisonment for up to 3 years.  Any individual found guilty of either offense may be subject to an increased fine of up to $250,000.  18 U.S.C. § 3571(b)(3).Persons who promote frivolous arguments and those who assist taxpayers in claiming tax benefits based on frivolous arguments may be prosecuted for a criminal felony for which the penalty is up to $100,000 ($500,000 in the case of a corporation) and imprisonment for up to 3 years for assisting with or advising about the preparation or presentation of a false return or other document under the internal revenue laws.  I.R.C. § 7206(2).  Any individual found guilty of a felony under section 7206 may be subject to an increased fine of up to $250,000. 18 U.S.C. § 3571(b)(3). |

**Tax Cheat of the Week**

Article by: Catherine Rampell, The Washington Post – December 15, 2014.

Get ready for your tax rates to go up.

Maybe not today, maybe not tomorrow, but sometime soon.

Not because politicians, or their constituents, are clamoring for higher tax bills; because Congress is effectively forcing itself to raise rates soon as a direct result of two distinctly foolhardy policies: aggressively defunding the nation’s main revenue collection agency, and continuing to complicate and Swiss-cheese-ify the tax code.

The [spending bill](http://www.washingtonpost.com/politics/spending-bill-forces-rare-weekend-session-for-the-senate-with-shutdown-hours-away/2014/12/13/81832bf6-82e8-11e4-81fd-8c4814dfa9d7_story.html) passed over the weekend contains a lot of terrible provisions. But long-term, the most damaging may be its cuts to the Internal Revenue Service. The IRS is hardly a popular agency, even when it isn’t giving tea party groups a hard time about applying for tax-exempt status. But this cash-flow-positive agency is crucial to our nation’s fiscal health. For every dollar appropriated to the IRS in 2013, [it collected $255](http://www.irs.gov/uac/Newsroom/National-Taxpayer-Advocate-Delivers-Annual-Report-to-Congress;-Focuses-on-Taxpayer-Bill-of-Rights-and-IRS-Funding), according to the National Taxpayer Advocate. Spending on tax collections — unlike almost any other kind of federal spending — is, unequivocally, arithmetically good for reducing deficits.

And yet, year after year, Congress continues to cut IRS funding. The agency’s appropriations in the [2015 agreement](http://www.gao.gov/assets/670/662681.pdf) are 17 percent below their [2010 level](http://blogs.wsj.com/washwire/2014/12/10/funding-bill-the-losers/), after adjusting for inflation. The number of IRS employees working on enforcement has [dropped by 15 percent](http://www.cbpp.org/cms/index.cfm?fa=view&id=4156) since 2010, according to the Center on Budget and Policy Priorities.

Amid all these cuts, the number of tax filers has grown and the agency’s responsibilities have expanded, thanks to the Foreign Account Tax Compliance Act and the Affordable Care Act.

Cuts to the IRS budget hurt compliance rates among taxpayers, both the dishonest and honest. Audits have slowed, and by many metrics, [customer service](http://www.washingtonpost.com/politics/federal_government/irs-budget-cuts-lead-to-lower-tax-collections-and-poorer-customer-service/2014/04/22/0d238720-ca4b-11e3-93eb-6c0037dde2ad_story.html) quality has plummeted. Millions of calls come into the IRS each year from taxpayers who want to pay what they owe but who have questions about how to navigate the byzantine tax code. In 2013, about [40 percent never got through](http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/IRS-BUDGET-The-IRS-Desperately-Needs-More-Funding-to-Serve-Taxpayers-and-Increase-Voluntary-Compliance.pdf) to a representative. The lucky ones who did had to wait an average of [nearly 18 minutes](http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/IRS-BUDGET-The-IRS-Desperately-Needs-More-Funding-to-Serve-Taxpayers-and-Increase-Voluntary-Compliance.pdf), up from 2.6 minutes a decade earlier. Backlogs in taxpayer correspondence have likewise become enormous.

Over the long run, IRS budget cuts make tax evasion look not only easier but also more justifiable. Our tax system functions mostly through voluntary compliance. But as taxpayers get more disgusted by their interactions with the IRS — and by reports of rich companies not paying their fair share of taxes (more on that in a bit) — “tax morale” will wane and tax cheating will likely rise. Which will require higher statutory tax rates to make up for the shortfall.

Europe provides a cautionary tale in this regard. [Italy](http://www.washingtonpost.com/world/italys-tax-evasion-culture/2011/11/24/gIQAvSletN_graphic.html) and [Greece](http://www.reuters.com/article/2014/12/03/greece-lottery-idUSL6N0TN31U20141203) have been stuck in vicious cycles in which tax evasion runs rampant, requiring politicians to raise tax rates to extract more money from the few law-abiding saps still out there, encouraging people to hide economic activity from even higher tax rates, and so on.

In addition to crippling the agency that can help pay our bills, Congress also seems pathologically committed to cluttering the tax code with more sweetheart carve-outs.

“Loopholes” and “tax breaks” are among the most frequently denounced bogeymen on Capitol Hill (second only, perhaps, to “waste, fraud and abuse”), and yet Congress continues to multiply them. Tax expenditures — spending through the tax code — totaled an estimated [$1.4 trillion](http://www.taxpolicycenter.org/UploadedPDF/1001726-TN-tax-subsidies-for-health-and-housing.pdf) in the last fiscal year, and that figure is likely to grow.

Companies that lobby for these tax breaks know this perfectly well, leading them to invest in armies of accountants and tax attorneys who cleverly exploit the ever-multiplying loopholes. You know how I mentioned that IRS agents bring in way more money than gets spent on them? The same is increasingly true of big companies’ well-resourced tax departments, which have bizarrely become profit centers. Companies have staffed up on tax experts, and [the IRS is staffing down](http://www.washingtonpost.com/blogs/federal-eye/wp/2014/12/11/analysis-spending-bills-irs-cuts-could-harm-tax-enforcement/). This combination cannot bode well for the public fisc.

If Congress really wanted to lower tax rates, it would broaden the tax base by simplifying the tax code, and it would adequately staff the agency tasked with collecting taxes. In both cases, it has done the opposite. All of this means that our political leaders have not only improved the odds for getting away with (illegal) tax evasion; they have also created more opportunities for (perfectly legal, methodically planned) tax avoidance. Put these factors together, and higher statutory tax rates look inevitable.