


Representing Your Clients Before the Texas Comptroller of Public Accounts

Dallas CPA Society
 Free CPE Day
 Dallas, Texas – May 4, 2010

Presented By:

David E. Colmenero, J.D., L.L.M., CPA Partner, Meadows Collier, Reed, Cousins, Crouch & Ungerman, L.L.P. Dallas, TX	Tony Luna, Manager, Audit Division Texas Comptroller of Public Accounts Austin, TX
--	--



How taxpayers are selected for audit

- Priority One Accounts are the taxpayers that generate 65% of the tax through reports
- M Accounts
 - Prior Audit generated at least \$10,000
- Informant Program
- General Audit Select – Advanced Data Base Scoring
- Audit Leads




Audit Initiatives

- Hired additional 70 Auditors including opening a third office in Houston
- House Bill 11 Grocery Convenience Store Audits
- Contract Examiner Program
- Managed Audits
- Franchise Tax Audit Program
 - Desk Audit Program
 - Secondary Audits
 - Combined Reporting Entities
- Settlement Agreements



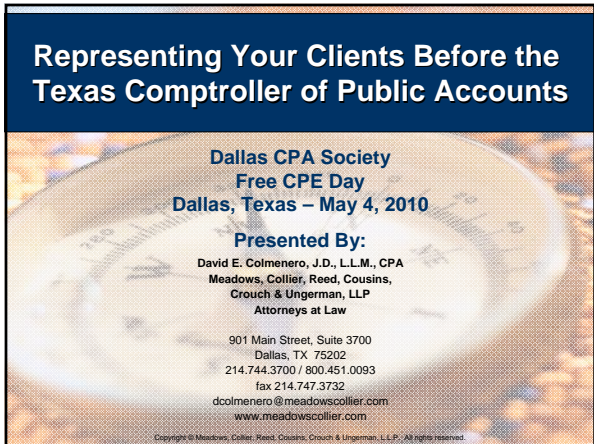
Activities of the Business Activity Research Team (BART)

- Voluntary Disclosure Agreements
- Information Sharing Agreements
 - Internal Revenue Service
 - Federal Aviation Administration
 - Customs
 - Texas Workforce Commission



Advice on dealing with auditors and the Texas Comptroller's office

- Work with the auditor and Supervisor/Team Leader
- If you are not getting a response then contact Office Manager
- If no response then contact Manager or Assistant Manager of Audit Division




Representing Your Clients Before the Texas Comptroller of Public Accounts

**Dallas CPA Society
Free CPE Day
Dallas, Texas – May 4, 2010**

Presented By:
David E. Colmenero, J.D., L.L.M., CPA
Meadows, Collier, Reed, Cousins,
Crouch & Ungerman, LLP
Attorneys at Law


901 Main Street, Suite 3700
Dallas, TX 75202
214.744.3700 / 800.451.0093
fax 214.747.3732
dcolmenero@meadowscollier.com
www.meadowscollier.com

Copyright © Meadows, Collier, Reed, Cousins, Crouch & Ungerman, LLP. All rights reserved.




Statute of Limitations

- Statute of Limitations on Assessments
 - Generally 4 years;
 - No statute of limitations applies where:
 - Taxpayer files a false or fraudulent return
 - Taxpayer files no return;
 - Taxpayer's return includes a "gross error" (i.e., amount due exceeds amount reported by 25% or more);
 - Statute of Limitations is tolled while administrative hearing is pending.
- Statute of Limitations on Refunds
 - 4 years from when tax is due and payable.



Penalties

- Civil Penalties
 - Generally 10%;
 - Comptroller may Waive the penalty;
- Fraud
 - 50% fraud penalty applies; total penalties may be as high as 70%;
 - Criminal penalties may apply.



Who is Responsible for the Tax?

- Taxpayer is liable
- Successor to Business or Assets May be Liable Also:
 - Certificate of No Tax Due: Successor is liable for Taxpayer's liability to extent of purchase price unless Successor either withholds tax from purchase price and remits to Texas Comptroller or obtains a Certificate of No Tax Due from Texas Comptroller's Office;
 - Fraudulent Transfer: Person who acquires business or assets through fraudulent transfer is liable for full amount of tax, penalty and interest owed by Taxpayer.



Who is Responsible for the Tax?

- Certain Responsible Persons (i.e., officers, managers, directors, general partners) who participate in fraudulent scheme of plan to evade payment of taxes may be liable for full amount of tax, penalty and interest;
- Officers and Directors where corporate privileges are forfeited for failure to file or pay Texas franchise tax (including penalty and interest) are liable for each debt of corporation incurred after report, tax or penalty was due. Forfeiture also denies corporation the right to sue or defend in court



Conclusion of Audit

- Comptroller will issue either Notification of Audit Results ("NAR") or Jeopardy Determination ("JD"):
 - NAR: Taxpayer has 30 days to request a re-determination hearing; tax is due and payable 20 days after Texas Comptroller decision;
 - JD: Taxpayer has 20 days to request re-determination hearing; tax is due and payable immediately;
- Failure to timely request re-determination hearing makes tax due and payable, after which the only way to challenge the assessment is to pay tax and file refund claim within SOL period.



Disputing Assessments/ Refund Denials

- There are three general avenues for disputing an assessment or refund denial:
 1. Independent Audit Review Conference;
 2. Re-determination Process;
 3. District Court Litigation.



Independent Audit Review Conference

- IAR Conference is available while audit is still open;
- If the fieldwork is complete, it can also be done in the redetermination process;
- Independent Audit Reviewer holds an informal conference to discuss issues;
- IAR will issue a written decision;
- Audit Division will follow IAR recommendation;
- IARs reports directly to Assistant Director for Tax Administration (Kevin Koller).



Re-Determination Process

- Must file petition for re-determination and statement of grounds within 30/20 days of NAR or JD;
- Will receive 60-day letter; Must produce resale/exemption certificates within that 60 day period;
- Since 2007, hearing is before SOAH judge; previously before Comptroller judges;
- Taxpayer may represent himself or may be represented by another "person of his choice."



Re-Determination Process

- Permits additional discovery;
- Texas Rules of Civil Procedure apply;
- Statute of Limitations is tolled while case is in hearings;
- In refund hearings, Comptroller may issue a notice of demand that all evidence to support refund claim be produced by specified date, but not earlier than 180 days from date refund is claimed.



Re-Determination Process

Chronology

- Comptroller AHS will issue a position letter after receiving petition for re-determination and statement of grounds;
- Taxpayer may file Reply to Position Letter within 45 days;
- Comptroller may issue Response to Reply within 45 days;
- Dates are subject to extension.



Re-Determination Process

- After briefing is complete, case is transferred to SOAH;
- Taxpayer may request either oral or written submission hearing;
- SOAH judge will set dates for additional motions, exhibits and hearing;
- Hearing process is similar to district court trial, but less formal;
- Following hearing, SOAH judge will issue a Proposal for Decision ("PFD");
- Comptroller may either accept, reject or amend PFD.



Re-Determination Process

- *Exparte* Communications with SOAH judge are strictly prohibited
- SOAH judge has authority to impose sanctions for:
 1. Certain groundless motions or pleadings;
 2. Abuse of discovery process;
 3. Failure to obey an order by the SOAH judge.



Appeals to District Court

- Taxpayer may appeal to district court by paying tax and filing protest letter;
- On refund claims, taxpayer must first exhaust administrative remedies and file motion for re-hearing;
- Issue in District Court are limited to issues raised in protest letter or motion for re-hearing.



Appeals to District Court

- Taxpayers may seek declaratory judgment without first paying the tax pursuant to Texas Supreme Court decision in *R.Communications, Inc. v. Sharp* (1994);
- Taxpayer may generally seek attorneys fees under the UDJA;
- Availability of declaratory judgment on a prepayment basis following adverse Comptroller decision remains uncertain.



Disclaimer

The information included in these slides is for discussion purposes only and should not be relied on without seeking individual legal advice.

IRS Circular 230 Disclosure

Information included in these slides is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding any penalties under U.S. federal tax law, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.
