

Being Prepared for an IRS Criminal Investigation Visit

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Very few clients or attorneys are prepared for a visit from a pair of IRS Criminal Investigation Special Agents (“IRS CI Agents”). The frequency of these unannounced drop-in interrogations is increasing with an alarming degree of frequency around Dallas and across America.

Over the decades, lawyers and clients continue to make huge mistakes when IRS CI Agents show up unexpectedly. As a result, valuable rights are being forfeited and incorrect information is being shared much to the detriment of the taxpayer. This article aims to focus on the many misconceptions taxpayers have regarding a first visit by IRS CI Agents.

The IRS CI Agents did not just happen to randomly drop by your office or home. The IRS CI Agents have been assigned the case for building a criminal prosecution. IRS CI Agents have been preparing for the unexpected surprise visit for weeks or months. They know exactly what they want to learn from the taxpayer. In other words, they have been doing their homework and are catching the taxpayer flat footed and unprepared for a detailed interrogation, which is often the building block of a criminal prosecution. They

have researched several public and law enforcement databases in preparation for this critical interview.

The IRS CI Agents do not have to read you your rights and you do not have to talk to them on the day of the unannounced visit. In a non-custodial interview, the IRS does not have to read you your rights under the 5th Amendment. The 5th amendment of the Constitution provides for the right to not incriminate yourself. Specifically, that means a taxpayer does not have to speak with the IRS CI Agents. If the IRS CI Agents have spent months preparing for the interview, it would make sense for a taxpayer to refrain from talking with them on the spot and prepare extensively before ever deciding whether to waive their 5th Amendment rights.

However, what we are finding is that taxpayers are more than willing to share critical information on the spot. In many instances, in-house counsel is encouraging the taxpayer to speak with the IRS CI Special Agent without even knowing if the taxpayer is a witness, subject or target.

There is no first-time offense “slap on the wrist” or “fine” to pay. The IRS CI Agents are not in a position to make a deal to let a taxpayer off with the mere payment of a fine or just a slap on the wrist because the taxpayer is a first-time offender. That is a call for the Depart-

ment of Justice Tax division or the U.S. Attorney’s Office to make. Many taxpayers believe that, if they just talk to the IRS CI Agents during the initial visit, they will be let off the hook with a warning like a traffic stop.

IRS CI Agents are there to secure a confession and make a case. IRS CI Agents visit a taxpayer only after the IRS Criminal Investigation Division suspects tax fraud. The IRS CI Agents’ jobs are much easier when they are able to interview a taxpayer without counsel. They are directed to interview taxpayers and obtain evidence, which can be used in a criminal tax prosecution. Taxpayers are often surprised to learn that many IRS criminal tax investigations result in the imprisonment of first-time offenders.

IRS CI Agents must respect a taxpayer’s request to contact and obtain counsel before talking to them. As strange as it may sound, many taxpayers do not realize they are making admissions or confessions to IRS CI Agents. This is true despite the fact that the IRS CI Agents clearly identify themselves. Many taxpayers wish they would have realized this fact so they could have consulted with knowledgeable criminal tax counsel before deciding whether to participate in an interview with the IRS CI Agents. This is a taxpayer’s legal right.

IRS CI Agents typically want a tax-

payer to speak to them. All statements by a taxpayer become admissions and may be used against the taxpayer. Taxpayers often do not realize that off-the-cuff remarks and inexact statements are considered binding by the IRS CI Agents. It is very difficult for a taxpayer to rescind careless or inaccurate statements made when the taxpayer was not focused on the specific area of the criminal tax investigation.

IRS CI Agents do not stop the criminal investigation upon the receipt of correct amended returns or unfiled returns. Instead, these returns may be used as admissions of taxpayer wrongdoing. Before filing amended returns, consider the consequences very carefully.

IRS CI Agents seldom arrest a taxpayer, especially on the initial visit. Almost no one is ever taken into custody on the day of the first contact with the IRS CI Agents.

The arrival of IRS CI Agents is just the beginning of what is usually a lengthy process (an average IRS criminal tax investigation lasts 12 to 18 months) with many opportunities to cooperate and clear up misunderstandings, when appropriate.

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