

What Happens When Your Clients Have Tax Problems

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Overview of Today's Presentation

When to get tax help

IRS Collections Process

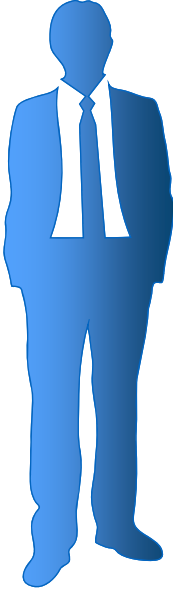
Common DR Tax Issues

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About the Speaker

- Ben Cramer formed Cramer Legal, LLC in 2011 as a boutique law firm focused on helping individuals and small businesses with tax disputes, tax planning, and business matters.
- Represents clients before the IRS, state & local tax agencies, bankruptcy court, and in civil and criminal tax disputes
- Chair of Cincinnati Bar Association's Taxation Practice Group
- Former business litigator with Cincinnati office of a large law firm
- Former law clerk on U.S. Court of Federal Claims and U.S. Court of Appeals for the Sixth Circuit



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Disclaimer: I am *not* a Domestic Relations Attorney

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Categories of Tax Professionals

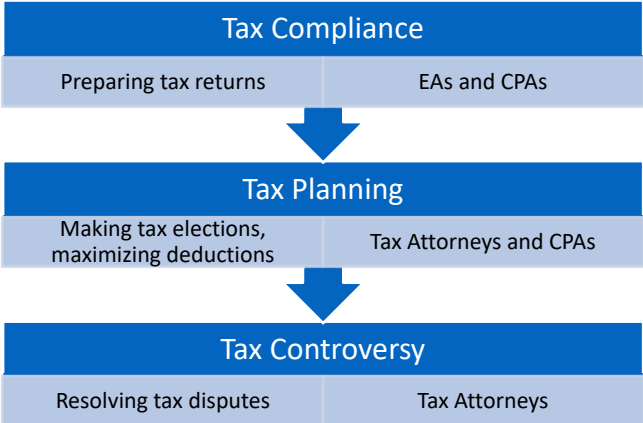
1. **Tax Attorneys**
 - Licensed by State Supreme Court
 - Attorney-Client Privilege (no accountant-client privilege*)
 - Only category that can fully litigate disputes
2. **Certified Public Accountants**
 - Licensed by State Board of Accountancy
 - Only category that can sign financial attest reports
3. **Enrolled Agents**
 - Authorized by the IRS
4. **Unenrolled Tax Preparers (i.e., everyone else)**

*CPAs and EAs have a limited "Federally Authorized Tax Practitioner Privilege" when representing clients before the IRS. The privilege is limited to civil cases and limited to the IRS. It does not extend to criminal matters or other agencies.

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Choosing the Right Tax Professional




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graph TD; A[Tax Compliance] --> B[Tax Planning]; B --> C[Tax Controversy];
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Tax Compliance
Preparing tax returns | EAs and CPAs

Tax Planning
Making tax elections, maximizing deductions | Tax Attorneys and CPAs

Tax Controversy
Resolving tax disputes | Tax Attorneys

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Beware “Tax Resolution” Companies

- Settle for “pennies on the dollar”
- IRS “Fresh Start Initiative”
- Unlicensed sales staff
- Fear-Based Sales Pitch

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When to Consult Tax Attorney

- ❖ More than 2 years of unfiled tax returns
- ❖ Tax debt other than income tax
- ❖ Business ownership
- ❖ Assets held in trust or in foreign account
- ❖ Possible tax fraud or other crime
- ❖ Audit
- ❖ Liens, Levies, Revenue Officer, or Special Counsel

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How the IRS Creates Tax Bills

The Tax Assessment Process

Voluntary Assessment of Taxes

“Our system of taxation is based upon *voluntary assessment* and payment, not upon distraint.”

Flora v. United States, 362 U.S. 245, 176 (1960)

- IRS Cannot Collect Without an Assessment
- Voluntary *does not* mean optional.
- We self-assess by filing an income tax return

Unfiled Tax Returns

- IRS begins its non-filing process approximately 10 months after the due date for the tax return (including extensions)
- IRS knows about W-2 and 1099 income
- If Taxpayer does not file a Tax Return, IRS can prepare one for the Taxpayer pursuant to 26 U.S.C. § 6020(b).

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Substitute for Return

- Filing an SFR creates an assessment, which allows the IRS to begin collections
- SFRs are worst-case-scenario tax returns
- Tax liability is frequently inflated
- Special Problems
 - SFR bars tax year from bankruptcy discharge
 - IRS shares tax return information with states

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Practice Tips for Non-Filers

Solution to SFRs → file the real tax return.

- IRS treats SFR replacement as a form of audit reconsideration
- Separate process from filing normal return

WARNING

- “Free” filing doesn’t include state tax returns
- SFRs are filed with marital status of “single.”
- BE CAREFUL with unfiled tax returns when only one spouse is self-employed

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The IRS Collections Process

Tax Penalties

Failure to File Penalty

- ❖ 5% of total tax due for each month return is unfiled up to 25%
- ❖ ALWAYS file the tax return, even if taxpayer can't pay balance
- ❖ No penalty if tax return generates a refund

Failure to Pay

- ❖ 0.5% of unpaid tax for each month balance is unpaid up to 25%
- ❖ An Installment Agreement reduces rate to 0.25%
- ❖ An extension to file a tax return *is not an extension to pay*

Other Penalties

- ❖ Failure to make estimated tax payments
- ❖ Accuracy-Related penalty of 20%
- ❖ Civil Fraud Penalty of 75%

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IRS Collections Division

Automated Collections System

- ❖ Computer-generated notices
- ❖ Computer-generated liens and levies

Revenue Officers

- ❖ Local Debt Collectors
- ❖ Can issue liens & levies
- ❖ Will make first contact in person

What the Collection Division is NOT

- ❖ Auditors
- ❖ Criminal Investigators

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Tax Notices

- IRS sends over 200 million notices per year
- Examples:
 - Non-Filing Inquiry
 - Automated Underreporting Program (CP2000)
- Collections Notices
 - Five notices spaced five to ten weeks apart

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Anatomy of a Tax Notice

Department of the Treasury
Internal Revenue Service
IRS
Kansas City, MO 64999-0010

Notice CP14
Tax Year 2015
Notice date August 28, 2017
Social Security number [REDACTED]
To contact us 1-800-829-0922
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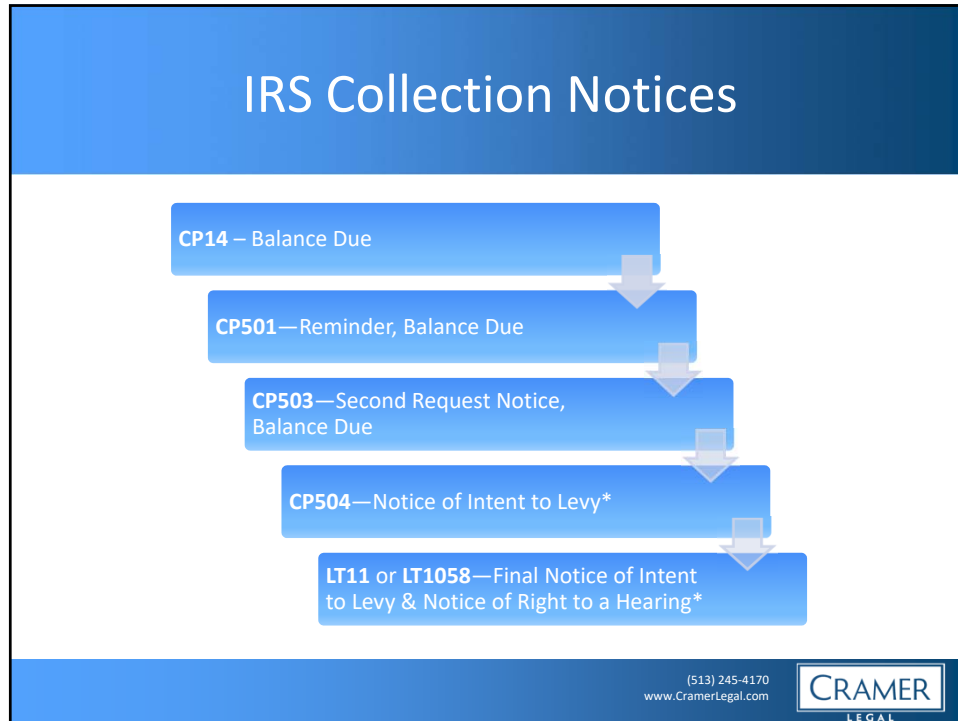
You have a balance due for 2015
Amount due: \$126,139.53

Our records show you have unpaid taxes and/or penalties and interest on your December 31, 2015 Form 1040.
If you already have an installment or payment agreement in place for this tax year, then continue with that agreement.

Billing Summary	
Tax you owed	\$94,992.00
Payments and credits	-4,381.00
Failure-to-file penalty	20,387.47
Failure to pay proper estimated tax penalty	1,623.16
Failure-to-pay penalty	2,701.93
Interest charges	5,815.97
Amount due by September 12, 2017	\$126,139.53

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Federal Tax Liens

- ❖ “Secret lien” whenever taxes are owed
- ❖ Notice of Federal Tax Lien filed with County Recorder (but state tax liens are filed with Clerk of Courts)
- ❖ Tax Liens attach to people not just to property
- ❖ Attaches to all property a taxpayer acquires while lien is active
- ❖ Stays until tax is paid or rendered uncollectible by statute of limitations or bankruptcy

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Federal Tax Levies

- ❖ Bank Levies
- ❖ Wage Garnishments
- ❖ Accounts Receivable
- ❖ Retirement Accounts
- ❖ Social Security Benefits (up to 15%)
- ❖ Property Seizure

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Tools to Resolve Tax Problems

- ❖ Installment Agreements
Streamlined vs. Non-streamlined Installment Agreements
- ❖ Currently Not Collectible Status
A temporary fix, but sometimes a necessary fix
- ❖ Offer in Compromise
Great for those that qualify—but watch out for scams
- ❖ Bankruptcy
Powerful solution in the right circumstances

The IRS will *not* negotiate if taxpayer isn't in compliance

Common Tax Issues in Domestic Relations Cases

Common DR Tax Issues

- ❖ Claiming Dependent despite Divorce Decree (Form 8332)
- ❖ Joint returns & joint liability
- ❖ Future audits for prior tax returns
- ❖ Unfiled returns
- ❖ Cancellation of debt

Spousal Defenses to Tax Liability

Innocent Spouse	Injured Spouse
<ul style="list-style-type: none">• Defense for divorced spouse• Protection against ex-spouse's tax problem• Must be "innocent"	<ul style="list-style-type: none">• Defense for married couple• Protects spouse's tax refund from being seized for other spouse's tax problems

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Contact me if I can help or
answer any questions

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Email me to join our tax tips for attorneys list

