Mandatory Examinations of Presidents' and Vice Presidents' Income Tax Returns

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Overview

- Since 1977, the IRS has conducted mandatory examinations of the federal income tax returns filed by Presidents and Vice Presidents of the United States (Officeholders).
- Robust safeguards ensure the integrity of the mandatory examination process.
- The mandatory examinations are conducted by experienced, career IRS Revenue Agents:
  - It is the Revenue Agent's "duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers."
  - Revenue Agents are required to objectively apply IRS examination procedures and applicable provisions of tax law.
- Efforts by certain executive branch employees to influence the examination process are prohibited by law and subject to mandatory disclosure to the Treasury Inspector General for Tax Administration (TIGTA).
- The IRS is not aware of any reports of improper bias or partiality in the conduct of an Officeholder's examination in the more than 40-year history of the mandatory procedures.

Overview

- In a memorandum dated June 6, 1977 (**Tab A**), the Internal Revenue Service (IRS) formally documented special procedures for processing the income tax returns of the President and Vice President (collectively "Officeholders") and for mandatory examinations of those returns.

- The special processing and mandatory examination procedures were incorporated into the Internal Revenue Manual and are now set forth in IRM 3.28.3 (Special Processing Procedures) (**Tab B**) and IRM 4.2.1 (General Examination Procedures) (**Tab C**).

- Because they are subject to a mandatory examination, Officeholder returns are excluded from the IRS's normal discriminant index function (DIF) selection procedures. IRM 3.28.3.4.3(3)(a); IRM 4.2.1.15(3)(a).

Special Processing Procedures: Return Intake

- If the Officeholder submits a paper income tax return, it is filed with the IRS's Austin Submission Processing Campus. IRM 3.28.3.2(3).
  - Once received, the Officeholder's return is initially processed by the Austin Campus under normal return-processing procedures, including processing of payment or refund and capturing information from the return for the IRS's account records. IRM 3.28.3.4.1(1).
  - After the original return is processed, it is delivered to the Office of the Deputy Commissioner for Services and Enforcement, a career civil servant office. IRM 3.28.3.4.1(4).
  - The original return is secured and maintained by the Office of the Deputy Commissioner as a permanent record of the United States. IRM 3.28.3.4.1(5).

Special Processing Procedures: Return Intake

- If the Officeholder submits their income tax return electronically, the return is processed in the same manner as all other e-filed individual income tax returns, including processing of payment or refund and capturing information from the return for the IRS's account records.
  - After the electronically filed return is processed, a hard copy is printed from the electronic record and delivered to the Office of the Deputy Commissioner for Services and Enforcement.
  - The paper copy of the return is secured and maintained by the Office of the Deputy Commissioner as a permanent record of the United States.

Assignment of Return for Mandatory Examination

- Upon receipt, the Office of the Deputy Commissioner for Services and Enforcement provides a copy of the Officeholder's return to the appropriate IRS business division – either Small Business/Self Employed (SBSE) or Large Business & International (LB&I) – for examination. *E.g.*, IRM 4.2.1.15.

- The appropriate business division is determined by the Office of the Deputy Commissioner for Services and Enforcement based on the complexity of the return and whether the Officeholder's return (or a related return) is already under examination by one of the divisions for prior years.

Assignment of Return for Mandatory Examination

- The head of the business division to which the return is assigned determines the appropriate revenue agent group to conduct the mandatory examination. *E.g.*, IRM 4.2.1.15(3).

- Once transmitted to a revenue agent group, the Group Manager must assign the Officeholder's return to a specific Revenue Agent for examination within 10 days. IRM 4.2.1.15(5).

- The location of the Officeholder's return is monitored at all times through the examination process and special procedures are in place to ensure its security. IRM 4.2.1.15(7).

Impartiality of the Mandatory Examination

- The mandatory audit process for Officeholders is handled by career IRS employees and managers.

- If a Revenue Agent has any reason to believe that their impartiality and independence may be questioned, the Agent is instructed to discuss the matter with their immediate supervisor for reassignment consideration. External attempts to corrupt or threaten IRS employees in the performance of their duties, including examining returns, are reported to and investigated by TIGTA.

- In the more than 40-year history of the mandatory examination procedures, the IRS is not aware of any reports of improper bias or partiality in the examination of Officeholders' returns.

Impartiality of the Mandatory Examination

- Under IRS Policy Statement 4-7, it is the assigned Revenue Agent's "duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers."

- By statute, efforts by certain executive branch employees to influence the examination process are prohibited and subject to mandatory TIGTA disclosure requirements. IRC § 7217.

  - More specifically, with narrow exceptions inapplicable to mandatory Officeholder examinations, the President, Vice President, members of the Cabinet, members of the Executive Office of the President, and other senior executive branch officials are forbidden from requesting "directly or indirectly, any officer or employee of the Internal Revenue Service to conduct or terminate any audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer." I.R.C. § 7217.

Mandatory Examination Process: Overview

- There are four general components to the mandatory Officeholder examination process:
  - Audit Planning, including scope determinations, preliminary research, and whether special expertise may be required;
  - Contact with the Officeholder's representative;
  - Information gathering; and
  - Exam determinations and response.
- All relevant IRM provisions apply to mandatory Officeholder examinations. IRM 3.28.3.4.3(3)(d).

Mandatory Examination Process: Scope Determination

- The scope and depth of the mandatory examination is determined by reference to established risk protocols.

- "[E]xaminers must use their professional judgment to set the scope of the examination. Examiners should only work issues of merit and conclude the examination when the issues no longer warrant examination."

- Examiners are expected to effectively manage their workload by prioritizing the issues so that the issues with higher audit potential are examined over those with lower potential. Issues with little or no audit potential should not be selected for examination.

  - The goal of any examination is to determine the "substantially correct" tax liability applying an 80/20 concept, *i.e.*, the principle that in general the first 20 percent of effort yields 80 percent of business results.

Mandatory Examination Process: Scope Determination

- The initial examination scope determinations are revisited throughout the course of the mandatory examination and, at a minimum, must be evaluated at the midpoint of the examination and when a significant event occurs.

- The examiner must consider the facts and circumstances, evaluate internal controls and use professional judgment to determine whether the scope should be expanded or contracted.

  - Examiners must document the reasons for expanding or contracting the scope of the examination.

Mandatory Examination Process: Scope Determination

- Based on risk protocols, the scope of the mandatory examination can be expanded to include prior year and related returns as well as other types of tax liabilities (*e.g.*, gift tax liabilities and employment tax liabilities with respect to household employees). IRM 4.2.1.15(6).

- Entity and other returns that impact the Officeholder's income tax return (*e.g.*, the return of a partnership issuing a Schedule K-1 to the Officeholder) are subject to mandatory compliance checks.

Mandatory Examination Process: Scope Determination

- After the Officeholder's return is assigned but prior to initial contact, the Revenue Agent will risk assess the return and review any large, unusual or questionable items (LUQ items).

- The IRM contains a checklist of issues that the Revenue Agent should consider in the pre-contact analysis to determine whether an item on a return is an LUQ item.

- Whether an item on an Officeholder's return is an LUQ item will depend on the Revenue Agent's perception of the return as a whole and the separate items that comprise the return.

Mandatory Examination Process: Scope Determination

- Factors Revenue Agents are directed to consider when identifying LUQs include:
  - Comparative size of the item;
  - Absolute size of the item;
  - Inherent character of the item;
  - Evidence of intent to mislead;
  - Beneficial effect of the manner in which an item is reported;
  - Relationship to other items;
  - Whipsaw issues; and
  - Missing items.

Mandatory Examination Process: Preliminary Research

- The Revenue Agent will conduct preliminary research of IRC sections, Treasury regulations, rulings and court cases concerning the proper tax treatment of a particular issue identified in the preliminary analysis of the Officeholder's return.
  - This assists the Revenue Agent in the development of specific interview questions, determining possible audit procedures, and determining what information should be requested from the Officeholder.

Mandatory Examination Process: Initial Contact

- The Examination Area Director or other appropriate manager, arranges for preliminary contact with the Officeholder's authorized representative.

- After the planning phase and the initial manager contact, the assigned Revenue Agent will contact the Officeholder's representative to initiate the mandatory examination, sending an initial contact letter. A copy of the initial contact letter is provided at **Tab D**.
  - The initial contact letter must include IRS Publication 1 **(Tab E**)**,** *Your Rights As A Taxpayer*, and Notice 609, *Privacy Act and Paperwork Reduction Act*. The letter will also provide contact information for the Revenue Agent's manager in the event that an issue needs to be elevated.
  - The initial contact letter should include a focused Information Document Request informing the Officeholder of the specific information or documents to be provided at the initial appointment.

Mandatory Examination Process: Initial Contact

- Separate initial contact letters are sent to the Officeholder and their spouse in the case of a joint return filed under IRC § 6013. Section 3201(d) of RRA 98.
- Generally, the Officeholder will have 14 days from the date of the initial contact letter to respond to the Revenue Agent.
- After sending the initial contact letter, the Revenue Agent will schedule an initial meeting with the Officeholder's representative.

Mandatory Examination Process: Information Gathering

- The Revenue Agent will request information (*e.g.*, books and records) from the Officeholder's representative by issuing Form 4564, Information Document Request. A sample Information Document Request is provided at **Tab F**.

- IRS Form 4564 will be used to document all requested information and documents needed to support items being examined.

- The Information Document Request will list the specific records, information, and documents the Officeholder should have available at the initial interview.

Mandatory Examination Process: Information Gathering

- The examination of an Officeholder may include interviews of the Officeholder, the person preparing the Officeholder's return, or third parties with knowledge of items reported on the return.

- In addition to document requests, the Revenue Agent may conduct a site visit of the Officeholder's prior residence or place of business.

- If all information necessary to resolve the examination is not provided by the Officeholder in response to Information Document Requests, the Revenue Agent may consider issuing an administrative summons, including a summons to a third party, such as a bank or other financial institution or the counterparty to a transaction involving the Officeholder.

Mandatory Examination Process: Referrals for Specialists

- During the planning phase, Revenue Agents should determine if their case requires a referral for specialist assistance in developing and resolving complex issues.
  - Informal advice from a specialist may be solicited on issues that do not appear to warrant a referral, but for which some assistance is required.
- Specialists include computer audit specialists, economists, engineers, and actuaries, among others. When a specialist is involved in a case, the Revenue Agent maintains control of the examination.
- Any specialist assigned to the case meets with the Revenue Agent and the Officeholder's representative to discuss the issue, information required, time for information to be presented, and an estimated completion date of the Specialist's report.

Mandatory Examination Process: Depth Determination

- In conducting the examination of an Officeholder's return, the Revenue Agent must exercise judgment in determining the depth required for the examination, *i.e.*, the degree of intensity and thoroughness applied in order to make a determination as to the correctness of a reported item.

- Factors that the Revenue Agent should consider in making the depth determination include:

  - Type of evidence available or expected for the issue;

  - Complexity of the issue;

  - Materiality of the issue; and

  - Internal controls.

Mandatory Examination Process: Assistance From the Office of Chief Counsel

- The Revenue Agent may request advice or guidance from the Office of Chief Counsel on any technical or procedural matter related to the tax liability of the Officeholder.

- Area Counsel may provide advice through consultation or by memorandum. Written advice is generally first requested through IRS Technical Services, which acts as a liaison in responding to examiners' technical questions.

Mandatory Examination Process: Assistance From the Office of Chief Counsel

- Examples of Area Counsel assistance include providing advice regarding:
  - The meaning, enforceability, and effect of legal terms in a contract;
  - Application of State laws to the elements of a contract;
  - Information regarding applicable State statutes that relate to corporate existence and the status of transferee assets;
  - Review of a case to ascertain favorable points, factual weaknesses, and/or adverse circumstances to the government's case in order to determine whether the Service's position on the issue would be fairly presented in court;
  - Evaluation of primary or secondary evidence in a case, which would be useful in litigation; and
  - Documentation of evidence; review of proposed statutory notices of deficiency; and advice related to the issuance and enforcement of summons.
- The Revenue Agent may also request informal advice from Counsel.

Mandatory Examination Process: Determination and Response

- After all the facts have been gathered through examination of the books, records and supporting documents, interviews, etc. and the Revenue Agent has all the information to be considered in resolving the issues, the Revenue Agent applies their professional judgment to arrive at a conclusion regarding all items that were identified for examination.

- Revenue Agents are expected to arrive at a definite conclusion by a balanced and impartial evaluation of all of the evidence. Revenue Agents are given the authority to recommend the proper disposition of all identified issues, as well as any issues raised by the Officeholder.

Mandatory Examination Process: Determination and Response

- Given the length of time it may take to gather all relevant documents and information, during the course of the mandatory examination, the Revenue Agent may solicit a consent to extend the normal three-year assessment limitations period under IRC section 6501(c)(4).
  - Statute extensions are generally requested on Form 872, Consent to Extend the Time to Assess Tax. A copy of the Form 872 is provided at **Tab G**.

Mandatory Examination Process: Determination and Response

- The Revenue Agent employs independent and objective judgment in reaching conclusions on issues being examined and in all aspects of their duties and will decide all matters on their merits, free from bias and conflicts of interest.

- Internal Revenue Manual 4.10.7.4(4) instructs that the fairness of the Revenue Agent's conclusions will be demonstrated by:
  - Making decisions impartially and objectively based on consistent application of procedures and the applicable tax law;
  - Treating individuals equitably;
  - Being open-minded and willing to seek out and consider all relevant information, including opposing perspectives;
  - Voluntarily correcting mistakes and improprieties made by the Revenue Agent or someone else in the Service and refusing to take unfair advantage of mistakes or ignorance of taxpayers; and
  - Employing open, equitable and impartial processes for gathering and evaluating information necessary to decisions.

Mandatory Examination Process: Determination and Response

- When the mandatory examination is complete, any proposed adjustments to the Officeholder's return are summarized and explained on an IRS Form 4549, Income Tax Examination Changes or an IRS Form 5701, Notice of Proposed Adjustment. Copies of the Form 4549 and Form 5701 are provided at **Tab H**.

- As part of the mandatory examination process, the Revenue Agent's determinations are subject to mandatory quality review to ensure that issues were properly identified and documented. *E.g.*, IRM 4.2.1.15(8)(b).

Mandatory Examination Process: Determination and Response

- The Revenue Agent should solicit agreement to any proposed adjustments and attempt to secure agreement to the proposed tax liability.
  - In making a proposed adjustment, the Revenue Agents should adhere to the law, regulations, rulings, and court decisions on which their conclusions are based and provide the Officeholder with copies of workpapers explaining the proposed adjustment.
- The Revenue Agent must inform their group manager when they believe an examination will have unagreed issues.

Mandatory Examination Process: Determination and Response

- If there are unagreed issues, the Revenue Agent must issue the appropriate 30-day letter (*e.g.,* **Tab I**) to transmit the examination report to the Officeholder's representative and provide 30 days to request consideration by the IRS Office of Appeals.

- IRS Publication 3498 **(Tab J**)**,** *The Examination Process*, is provided to the Officeholder's representative with the examination report and with all 30-day letters providing an opportunity to pursue administrative appeals. Section 3504 of the IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206.

Office of Appeals Consideration

- The Office of Appeals is an independent organization within the IRS that helps taxpayers, including Officeholders, resolve their tax disputes through an informal, administrative process. *See generally* IRM 8.1.

- The Appeals Mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.

- Appeals holds conferences to provide a meaningful opportunity for Officeholders, through their representatives, to present their position and to consider settlement proposals.

Judicial Review

- If a basis for settlement is not reached, Appeals will issue a statutory notice of deficiency (90 day letter) (**Tab K**) to the Officeholder.

- The Officeholder may thereafter petition the United States Tax Court for independent judicial review. IRC § § 6212, 6213.

- Officeholders may also pay the amount due, file a claim for refund, wait for the claim to be acted on (or passage of time) and file suit in the United States District Court or the United States Court of Federal Claims. IRC § 7422.

Department of the Treasury

Internal Revenue Service

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