

Presentation to the Tax Controversy Study Group, Tax Section, Maryland State Bar Association, November 1, 2005

Life Cycle of a Maryland Tax Controversy

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Presentation Outline:

- I. Audit
 - a. Initial contact letter
 - b. Preliminary documents to be provided
 - c. Site visit by auditor
 - d. Preliminary report
 - e. Closing interview
 - f. Final report and assessment
 - g. Assessments are presumed to be correct, burden technically on the taxpayer
- II. If you miss the appeal §13-509, comptroller still has authority to correct an erroneous tax assessment.
 - a. Liquor license
- III. First level appeal
 - a. 30 days from the date assessment notice sent
 - b. even if pay assessment and seek refund, it is 30 days from date of assessment notice, not the usual 3 – 4 years for a refund request
 - c. Hearings and appeals section
 - d. No counsel for comptroller
 - e. Hearing officer, auditor, auditor's supervisor, taxpayer
 - i. Taxpayer can have counsel
 - ii. Sometimes taxpayer brings their accountant to speak on their behalf
 - f. Hearing officer has subpoena power, but request must be made 10 days in advance and you do not have an absolute right to have the subpoena issued
 - g. Hearing is recorded
 - h. Hearing office will generally introduce the audit work papers and assessment into the record and state for the record the nature of the assessment.
 - i. Taxpayer will then be given chance to proceed
 - ii. Take advantage of this opportunity to ask pointed questions of the auditor
 - iii. If expect to appeal to Maryland Tax Court, minimize amount of verbal testimony that taxpayer or his witnesses say on the record

- 1. taped and AG will get copy of tape and listen
 - iv. If hearing officer requested additional documents or keeps the record open, take advantage of the opportunity
 - v. Maintain avenue of communication with hearing officer
 - vi. Hearing officers are open to your arguments and will consider them, but mostly as they relate to the facts
 - vii. If you are basing your appeal on a nuanced interpretation of the law, problem with interpretation of law or regulation, hearing officers are not going to be much help. They will not make new law.
 - viii. Siderbar: Comptroller's office does not issue revenue rulings in the same way the IRS does, but that does not mean you cannot ask.
 - 1. recent Citicorp decision
 - i. 30 days to appeal from date of Notice of Final Determination. 3 days for mailing 13-210
- IV. Hearing Before the Tax Court
 - a. Petition for appeal
 - i. First opportunity to be heard
 - ii. Sets up your pretrial conference
 - iii. Can get form from the tax court
 - b. Pretrial conference
 - i. In almost all cases
 - ii. Feeds into petition of appeal
 - iii. Opportunity to obtain a specific schedule for discovery, briefs, etc.
 - iv. Not necessarily before the same judge who will hear the case.
 - c. Discovery
 - i. Only available mechanism is depositions
 - ii. No interrogatories or document requests
 - iii. Get a copy of the hearing tape before the hearing officer, the ag will
 - d. Settlement
 - i. Court usually will not become involved in the process
 - ii. Larger cases will have to get specific approval from Linda T.
 - e. Ag
 - i. Even though they assume that all taxpayers are full of sh---, they will consider a reasonable, well articulated legal or factual argument
 - ii. Not interested in the "auditor chose a bad sample period" unless you are prepared to open it up of another sampling period

1. court usually will not buy this argument either
- f. trial
 - i. consider a pretrial memorandum, especially in larger cases, where there is a specific legal argument to be made, or the evidence will be confusing
 - ii. taxpayer goes first, burden is on taxpayer
 1. even though burden is on taxpayer, the court will often, if given a reason, shift that burden to state to justify the results and methodology
 - iii. rules of evidence
 - iv. have copies of everything for the court, be prepared
- g. decision
 - i. can take a while
- h. misc
 - i. interest
 - ii. stay of assessment
- V. Appeal
 - a. Circuit court, 30 days

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