

Introduction to the Internal Revenue Manual

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Presented by:
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About Tyrone J. Taylor



- Tyrone J. Taylor is an Enrolled Agent with 16 years of experience as a tax professional.
- Represents taxpayers in front of the Internal Revenue Service and state tax offices.
- He has assisted hundreds of taxpayers in settling their accounts with the IRS and various states throughout the country.
- Assists small businesses in their start-up phases ensuring they are compliant in their tax filings.
- Specialized in Tax Representation for the past 10 years.
- Been in the tax business for 18 years.
- Masters in Accountancy,
- Fellow of the NAEA's National Tax Practice Institute.

What is the IRM?

- A set of policies, procedures, instructions and guidelines created for IRS employees
- It is the instruction manual that is used in determining the operation and administration of the Internal Revenue Service
- Consists of thirty-nine extremely large parts
- Made up of thousands and thousands of pages that are regularly revised and updated without notice to the general public
- Constantly being updated (Note the dates next to the reference numbers)
- Where to find the IRM?
 - www.irs.gov/irm
 - Best source – Printed copies are NOT recommended

IRM – Is it the IRS Law of the Land?

- Some cases on the issue of whether the IRM has force of law:
 - U.S. vs Hom
 - ❑ “Our court of appeals, however, has foreclosed that argument by holding that “[t]he Internal Revenue Manual does not have the force of law and does not confer rights on taxpayers.” *Fargo v. Comm’r of Internal Revenue*, 447 F.3d 706, 713 [97 AFTR 2d 20062381] (9th Cir. 2006). Thus, defendant’s argument fails.”
 - U.S. v. Fargo
 - ❑ “The Internal Revenue Manual does not have the force of law and does not confer rights on taxpayers.”

Additional IRM Case Rulings

- Carlson v. United States
 - “Procedures in the Internal Revenue Manual are intended to aid in the internal administration of the IRS; they do not confer rights...”
- Marks v. Comm’r
 - “It is well-settled, however, that the provisions of the manual are directory rather than mandatory, are not codified regulations, and clearly do not have the force and effect of law. See, e.g., Pomeroy v. United States, 864 F.2d 1191, 1194-95 (5th Cir. 1989).”

More IRM Rulings

- Valen Mfg. Co. v. United States
 - “Reliance Upon Internal Revenue Manual In a final attempt to secure forgiveness of the penalty assessments, Valen Manufacturing argues that the IRS’s own Internal Revenue Manual suggests that the situation present in this case might justify a finding of reasonable cause for the delinquent tax filings and payments.
 - The provisions of the manual, however, only “govern the internal affairs of the Internal Revenue Service. They do not have the force and effect of law.” *United States v. Horne*, 714 F.2d 206, 207 (1st Cir. 1983) (quoting *Einhorn v. DeWitt*, 618 F.2d 347, 350 (5th Cir. 1980)). See generally *Reich v. Manganas*, 70 F.3d 434, 437 (6th Cir. 1995) (“Internal operating manuals . . . do not carry the force of law, bind the agency, or confer rights upon the regulated entity.”). This argument is, therefore, also without merit.

Why is it important to know about the IRM?

- Although the IRM does not have the force of law, as a tax professional it is important that you know the guidelines and regulations that IRS employees “generally” have to adhere to.
- The IRM does offer information that can be used to help your client that in some case not even the IRS employee you are speaking to may not be aware of.
- You can use this information in handling whatever issue your client has, and generally the IRS employee will follow the information you provide from the IRM

Today's discussion about the IRM

- Focus on the following portions of the IRM
 - Examinations - Part 4
 - Collections - Part 5
 - Taxpayer Advocate - Part 13
 - Penalty and Interest - Part 20

Examination – Part 4

- Examinations of Returns (4.10)
 - Pre-Contact Responsibilities (4.10.2)
 - ❑ Initial Return Screening (4.10.2.2)
 - Check Statute of Limitation (3 years from assessment)
 - 26/27 month exam cycle (months left after exam year – personal/ business)
 - Conflict of Interest (Personal Relationship w/examiner)
 - Other IRS Units working with taxpayer (AUR – Automated Underreporting)
 - Repetitive Audits (Audit within two preceding years w/no change or small change, or use of same issues.
 - ❑ In-Depth Pre-Contact Analysis (4.10.2.3)
 - Review for large, unusual and questionable items (LUQs), minimum income probes, required filing checks
 - ❑ Collectability (4.10.2.4.1)
 - Basically determine if the IRS will be able to collect any additional taxes based on a taxpayer's current financial condition (not the past condition)

Examination – Part 4 continued.../

- Initial Contact (4.10.2.8)
 - Initial appointment within 28-35 calendar days
 - First Action is after initial contact letter is sent
 - Re-schedule within 45 days of first action
- Place and Time of Examination (4.10.2.9.2)
 - Office Examination
 - Closest to Taxpayer
 - Primarily completed by Tax Compliance Officers (TCOs)
 - Field Examination
 - Primarily completed by Revenue Agents (RAs)

Examination – Part 4 continued.../

- Authority to Request Books, Records and Accountant's Workpapers (4.10.2.10.2)
 - IRC 7602 and 26 CFR 301.7602-1 (a) gives this authority
 - ❑ If any reluctance from a taxpayer
 - Appraise the taxpayer of the appropriate requirements
 - Do not ever be misleading or misrepresent the scope of the examination in effort to secure records
 - Do not assert your authority in a manner that can be considered a threat
 - Do not summons records unless approved by the group manager
 - ❑ Accountant's workpapers used in the audit of tax records or in the preparation of a tax return are not the property of the taxpayer and are not privileged information. Therefore, the workpapers can (may need to be) summons.

Examination – Part 4 continued.../

- Examination Techniques (4.10.3)
 - Very detailed portion of the IRM that describes the how, when and whys of examining a taxpayer's tax return and overall financial picture
 - Interviews and Interview techniques
 - Inspection of records
 - Balance Sheet Analysis
 - Evaluation of Internal Controls
 - Gross Receipts or Sales Testing

Examination – Part 4 continued.../

- Initial Interviews (4.10.3.4.1.1)
 - The examiner is afforded the opportunity to gain an understanding of the taxpayer's overall financial picture, the business history and operations, and an overview of the taxpayer's recordkeeping practices.
 - Prior to conducting the interview, the examiner should review all taxpayer information available to develop interview questions that are tailored to the taxpayer, their business, and the examination issues present.
- Subsequent Interviews (4.10.3.4.1.2)
 - Taxpayer hasn't provided all information
 - More details needed
 - Review of examination's progress is needed

Examination – Part 4 continued.../

- Taxpayer's Representation (4.10.3.4.3.1)
 - Examiner may interview the taxpayer's representative without the taxpayer if the representative has first-hand knowledge of the taxpayer's business, business practices, accounting and daily operations
 - Examiner should ask about:
 - Financial Accounts
 - Books and Records Maintained
 - Was a bookkeeper involved
 - Other business operations involved
 - This questions may be used to determine the rep's actual knowledge level to determine if the taxpayer needs to interview the taxpayer directly.

Collections – Part 5

- Collection Appeal Rights (5.1.9)
 - Collection Due Process (5.1.9.3)
 - Applies to Notice of Federal Lien Tax Filing and Your Right to a Hearing
 - Also Applies to Final Notice of Intent to Levy and Your Right to a Hearing (LT11 or LT 1058)
 - Notices give a taxpayer 30 days to respond
 - Note this is NOT a CP 504.

 - Equivalent Hearing (5.1.9.3.2.2)
 - Applies to any CDP hearings within one year of the notices
 - If after 31 days of CDP Hearing request was untimely
 - Can be requested instead of a CDP hearing anytime
 - No judicial review nor toiling of CSED (Collection Statute Expiration Date)

Collections – Part 5 continued .../

- Perfection of Hearing Request (5.1.9.3.2.3)
 - If information is missing, the IRM instructs that the missing information should be obtained from IRS systems.
 - If unable to find, then the IRS should give the taxpayer a reasonable time (up to 15 calendar days) to correct the missing information.
- Collection Action during the Period of the CDP or EH (5.1.9.3.5)
 - RO can continue to work with taxpayer (often don't)
 - Collection action can continue under EH, but not under CDP
 - Levies are generally suspended on tax periods not under the CDP Hearing

Collections – Part 5 continued .../

- Other Important References – Collection Appeals Rights
 - Appeals Process (5.1.9.3.8)
 - Appeals Determination (5.1.9.3.9)
 - Tax Court Appeals (5.1.9.3.10)
 - Jurisdiction Retained Under Appeals (5.1.9.3.12)
 - Collection Appeals Program (5.1.9.4)

Collections – Part 5 continued .../

- Financial Analysis Handbook (5.15)
 - Instructions for securing, verifying and analyzing financial information.
 - This analysis provides the basis for determining a taxpayer's ability to pay delinquent tax liabilities.
 - If your specialty is (or is going to be) IRS Representation in collection matters, this is the most important part of the IRM.

Collections – Part 5 continued .../

- Overview and Expectations (5.15.1.2)
 - Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals
 - Form 433-B, Collection Information Statement for Businesses
 - Form 433-F, Collection Information Statement - Used by the Automated Collection System (ACS) and the campuses for individuals. (Can be used by ROs if balance is less than 250K for individual business owners and wage earners, but they rarely do)
 - Income statements and balance sheets from a taxpayer can be used as a substitute for the income/expense section of the Collection Information Statement

Collections – Part 5 continued .../

- Verifying Financial Information (5.15.1.4)
 - How the taxpayer generates income, both foreign and domestic
 - The nature of their business process
 - The main products/services, type of customers, wholesale vs. retail, etc.
 - Major suppliers and competitors
 - Assets held in the name of the taxpayer or on their behalf, both foreign and domestic
 - Personal assets or investments like stocks, mutual funds, certificate of deposits, IRAs, 401 (k) plans.
 - Virtual currency which includes cryptocurrency (e.g. Bitcoin, Ethereum, Ripple, and Litecoin)
 - Type of internet presence the taxpayer may have

Collections – Part 5 continued .../

- National Standards (5.15.1.9)
 - Based on number within household
 - Food
 - Apparel and Service
 - Housekeeping Supplies
 - Personal Care and Products
 - Miscellaneous
 - Out of Pocket Health Care Expenses

Collections – Part 5 continued .../

- Local Standards (5.15.1.9)
 - Housing and Utilities (5.15.1.10.1)
 - Determined on a county to county basis
 - Transportation (5.15.1.10.2)
 - Ownership
 - Operating
 - Public Transportation

Collections – Part 5 continued .../

- Other Expenses (5.15.1.11)
 - Accounting/Legal Fees (Representation)
 - Childcare/Dependent Care
 - Court-Ordered Payments
 - Life Insurance (Term)
 - Secured or Legally Perfected Debts (Judgements)
 - Current Year Taxes
 - Delinquent State and Local Taxes
 - Student Loans
 - Repayment of loans for payment of federal taxes

Collections – Part 5 continued .../

- Substantiation of Expenses (5.15.1.4 (7))
 - Required when expenses are greater than the National or Local Standards
 - Bank statements
 - Credit cards vouchers,
 - Rent/lease receipts and leases
 - Payment coupons
 - Court orders
 - Contracts
 - Canceled checks

Collections – Part 5 continued .../

- Making the Collection Decision
 - Request payment in full or a partial payment based on the liquid equity in available assets
 - Consider filing a notice of federal tax lien
 - ❑ IRM 5.12 Federal Tax Liens
 - Enforce Collection
 - ❑ After taxpayers have been given the opportunity to resolve their accounts and failed to do so, consider enforcing collection.
 - ❑ IRM 5.10 Seizure and Sale
 - ❑ IRM 5.11 Notice of Levy

Collections – Part 5 continued .../

- Making the Collection Decision continued.../
 - Installment Agreement
 - IRM 5.14 Installment Agreements
 - Currently Not Collectible
 - When financial analysis indicates no means of payment
 - 5.16.1 Currently Not Collectible
 - Offer-in-Compromise
 - IRM 5.8 Offer in Compromise

Taxpayer Advocate Service – Part 13

- Taxpayer Advocate Service (TAS) employees have both statutory authorities and delegated authorities to use when advocating for taxpayers.
- Statutory authorities for TAS are found in IRC 7803(c) and IRC 7811.
- Delegated authorities are granted to the National Taxpayer Advocate (NTA) by the Commissioner and, when appropriate, redelegated by the NTA to TAS employees. Delegated authorities allow TAS employees to resolve certain issues in the same manner as other functions within IRS, exercising the same authorities that are routine in nature.
 - IRM 1.2.2.13, Delegation of Authorities for Taxpayer Advocate Service Activities, details authorities the Commissioner had delegated to the NTA.
 - IRM 13.1.4, TAS Authorities, provides extensive details about the scope of TAS's authorities

Taxpayer Bill of Right IRM 13.1.1.2.1

- On December 18, 2015, Congress passed the Consolidated Appropriations Act, 2016, which codified the TBOR that had been adopted administratively by the IRS. Section 401 of the Act amended IRC 7803(a) to add a new paragraph that states “In discharging his duties, the Commissioner shall ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title” and includes the ten TBOR rights as listed above.
- Although the IRM does not have the force of law, TBOR does.
- Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

Taxpayer Bill of Right IRM 13.1.1.2.1 continued .../



- On June 10, 2014, the IRS Commissioner announced the IRS's adoption of a Taxpayer Bill of Rights. The Taxpayer Bill of Rights lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights.
 - The Right to Be Informed
 - The Right to Quality Service
 - The Right to Pay No More than the Correct Amount of Tax
 - The Right to Challenge the IRS's Position and Be Heard
 - The Right to Appeal an IRS Decision in an Independent Forum
 - The Right to Finality
 - The Right to Privacy
 - The Right to Confidentiality
 - The Right to Retain Representation
 - The Right to a Fair and Just Tax System

Penalty and Interest – Part 20

- Penalty Handbook (20.1)
 - Twelve Different Penalties
 - Most Common are:
 - Failure to File/Failure to Pay
 - Estimated Tax
 - Failure to Deposit
 - Return Related
 - Substantial Understatement
 - Civil Fraud
 - Preparer and Promoter Penalties

Penalty and Interest – Part 20 continued .../

- Failure to File/Failure to Pay Penalties (20.1.2)
 - FTF 5% per month – Maximum 25%
 - ❑ Interest accrues on FTF Penalty from the return due date
 - FTP 0.5% per month – Maximum 25%
 - ❑ Interest accrues on FTP date from the balance due date
 - Penalty Abatement and Re-Assessments (20.1.2.2.4.1)
 - ❑ Reasonable Cause
 - Based on individual facts from each case
 - Taxpayer demonstrates they exercised ordinary business care and prudence but was nevertheless unable to file/pay within the prescribed time
 - Willful neglect involves a conscious, intentional failure or reckless indifference

Penalty and Interest – Part 20 continued .../

- Penalty for Underpayment of Estimated Tax
 - Based on the interest rates for underpayments
 - ❑ Currently 8% annual (10% for corporations)
 - ❑ Not compounded daily
- Failure to Deposit
 - 2 percent for deposits 1—5 days late,
 - 5 percent for deposits 6—15 days late,
 - 10 percent for deposits made more than 15 days late. This also applies to amounts paid within 10 days of the date of the first notice requesting payment for the tax due.
 - 10 percent for required deposits not paid by EFT.
 - 15 percent for all amounts still unpaid more than 10 days after the date of the first notice requesting payment of the tax due or the day on which the taxpayer received notice and demand for immediate payment, whichever is earlier.

Penalty and Interest – Part 20 continued .../

- Substantial Understatement (20.1.5.9)
 - An understatement is substantial if it exceeds the greater of the following:
 - 10 percent of the tax required to be shown on the return for a taxable year; or \$5,000.
 - ☐ 20% Penalty Rate
- Civil Fraud (20.1.5.16.1)
 - Intent to evade tax. Intent is distinguished from inadvertence, reliance on incorrect professional advice, honest difference of opinion, negligence, or carelessness.
 - ☐ 75% Penalty Rate

Penalty and Interest – Part 20 continued .../

- Preparer and Promoter Penalties

- Penalties That May Apply to a Tax Return Preparer (20.1.6.5)

- ❑ IRC 6695(a), Failure to Furnish Copy to Taxpayer, a \$50 penalty will be asserted for each failure, with a maximum of \$25,000 per tax return preparer per calendar year
- ❑ IRC 6695(b), Failure to Sign Return, a \$50 penalty will be asserted for each failure, with a maximum of \$25,000 per tax return preparer, per calendar year
- ❑ IRC 6695(c), Failure to Furnish Identifying Number, no more than one penalty may be imposed with respect to a single return or claim for refund. A \$50 penalty will be asserted for each failure, with a maximum of \$25,000 per tax return preparer, per calendar year
- ❑ IRC 6695(d), Failure to Retain Copy or List, a \$50 penalty will be asserted for each failure, with a maximum of \$25,000 to any return period
- ❑ IRC 6695(e), Failure to File Correct Information Returns, the penalty is \$50 for each failure to file a return as required by IRC 6060, Information Returns of Tax Return Preparers, and \$50 for each failure to include a required item in the return. The maximum amount for any return period is \$25,000
- ❑ IRC 6695(f), Negotiation of Check, the penalty is \$500 for each negotiated check. There is no maximum amount



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Questions

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