

Turbulence Ahead: Being Prepared When the Government Comes to Call

Presented by:

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Who May Come Knocking?

- Immigration and Customs Enforcement
- Internal Revenue Service
- Department of Labor
- OSHA
- EEOC



Always Be:

- Calm
- Professional
- Courteous
- Careful



Immigration and Customs Enforcement ("ICE")

- Raids
- Audits ("Silent Raids")



Critical Points

- Know what to expect
- Contact counsel – ask for time
- Ask for the search warrant – request time to review
- Check the scope of the warrant to insure agents stay within scope

Critical Points

- Never alter, destroy or hide information
- Never obstruct access to documents or data
- Don't help employees hide

Critical Points

- Do not agree to expand the scope of the warrant, but do not interfere
- Refer areas of disagreement to counsel
- Let counsel negotiate legal issues, such as procedure for dealing with privileged documents

Critical Points

- Instruct employees that they are not required to answer questions of substance and that they have right to consult with counsel before they respond, BUT
 - Employees must understand that you are not instructing them to refuse to talk
 - It is the employee's choice, but if they choose to talk it must be truthful
- It is best to prepare a memorandum concerning these issues to avoid any appearance of obstruction

Good Practices

- Try to identify agents by name and who is in charge
- Ask agent for an inventory of what was taken and where documents and data were seized
- Document thoroughly where they searched and what was taken

More Good Practices

- Designate a single official to answer questions
- Designate a single official for press coverage – “cooperating to the fullest”
- Address systems that are critical to daily operations – let counsel negotiate

During the Past Year, ICE Has
Audited More Than 2,900
Companies and Levied a Record \$3
Million in Civil Fines



Notice of Inspection and Administrative Subpoena

- Three days to respond

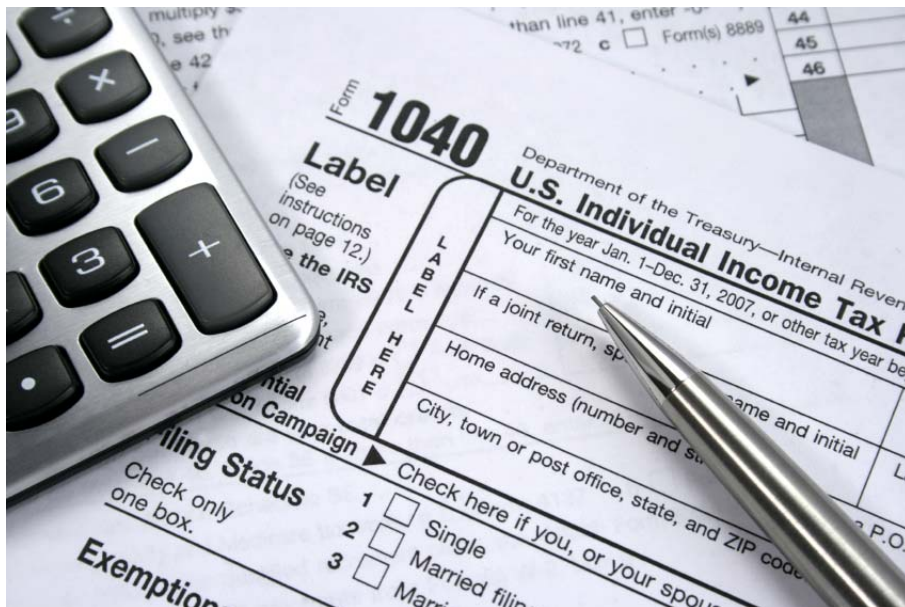


Should You Make Corrections?

- If so, make the corrections transparent



Internal Revenue Service



Employer v. Independent Contractor

- Usually a civil issue
- Usually an audit



How is the IRS Picking Companies to Audit?

- Employment Tax National Research Project
- Targeted industries
- Individual request for determination of status
- Comparison of 1099s issued and individual filings
- Paper trail from another company

Tennessee Department of Revenue

- May receive a referral from the IRS or DOL
- Primarily unemployment issues



What Should You Do?

- Call your tax professional – you want the audit to occur at your lawyer's or accountant's office



Department of Labor



DOL Investigations

- \$30 million budget increase
- 288 new investigators
- 150 wage and hour investigators



What is DOL Focusing On?

- EVERYTHING!!
- Continuous Workday
- Independent Contractor Issues versus Employee
- Off-the-Clock Work
- Child Labor
- Exempt versus Nonexempt

The Company Receives Its Audit Notice – What Do You Do?

- Call your attorney
- Decide who should be the contact point



Step One: The Opening Conference

- Discuss nature and scope of investigation
- Records to be reviewed identified
- Private interviews requested
- Set the tone for the investigation

Step Two: The Investigation

- Keep a careful record of all information requested
- If oral requests, confirm in writing
- Objecting to requests
- Witness interviews

Step Three: The Closing Conference

- Discussion regarding findings
- Summary of Unpaid Wages (WH-56)
- Ask for time to review
- Ask about a Receipt for Payment (WH-58)

OSHA



Common for OSHA to Show Up Unannounced

- Response to a complaint
- Random selection
- Publicized accident



Generally Won't Have a Warrant



What To Do:



- Review credentials
- Take good notes
- Do not make excuses or try to explain

Employee Interviews



Document Requests

- Have your OSHA 300 logs readily accessible and easy to find
- Offsite or difficult-to-assemble documents



EEOC On-site Investigations

- Who should handle?



What will the EEOC ask for?

- Possibly a tour of the facility
- Possibly additional documents



Almost always will want employee interviews

- Managers versus non-managers
- On-site versus off-site
- In-person versus telephonic
- Preparing witnesses

QUESTIONS?



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