Auditing for Due Diligence Compliance

Cross References

- www.irs.gov
- Letter 6222-A, *Correspondence Due Diligence IDR*

The IRS plans to conduct due diligence audits in the coming weeks. These audits will be conducted via correspondence only due to COVID-19. Tax preparers will be contacted with Letter 6222-A, *Correspondence Due Diligence IDR,* to initiate a due diligence audit. The IRS website contains the following information on due diligence audits.

Auditing for Due Diligence Compliance

Audits for compliance with due diligence for certain tax benefits, such as the Earned Income Tax Credit (EITC), Child Tax Credit (CTC), Additional Child Tax Credit (ACTC), Credit for Other Dependents (ODC), American Opportunity Tax Credit (AOTC) and/or the Head of Household (HOH) filing status, as defined by IRC section 6695(g) are another tier of our Preparer Compliance Program. The IRS looks at returns with a high chance of errors completed by the same preparer and uses that information to select preparers for due diligence visits. The IRS may have contacted the preparer using one of the other tiers of the Prepare Compliance Program, but the IRS does not use all of them for every preparer.

Due Diligence Visit

Before the filing season begins, IRS employees conduct due diligence visits based on the prior year returns. These due diligence visits are either face-to-face or conducted via correspondence. The IRS will contact you with either Letter 6199 (Due Diligence Visit Request) or Letter 6222 (Correspondence Due Diligence IDR) to initiate a due diligence visit. These letters ask you to respond within 14 days to either set up an appointment at your office (Letter 6199) or send information and schedule a telephone interview (Letter 6222). Please call the examiner listed by the date noted. The examiner will give you more information and talk to you about the next steps. If this is a face-to-face visit, the examiner will send a follow-up Letter 6200 (Due Diligence Visit Appointment Confirmation) to confirm your conversation and appointment date.

During the filing season, the IRS may conduct due diligence visits without advance notice, however, the IRS would have previously sent you a letter regarding a potential examination.

What Happens During Your Due Diligence Visit?

When the visit begins, the IRS employee will provide their official IRS identification. The employee will interview you about your business practices. The IRS employee is looking for compliance with all four due diligence requirements.

The IRS employee will look at a minimum of 25 client returns/files and will review the following documents (including but not limited to):

- Your due diligence records,
- The probing questions you asked your client, and your client's responses,
- All questionnaires, checklists, worksheets, and
- Copies of any client provided documents relied on to determine eligibility for HOH filing status, or to determine eligibility for, or to compute the amount of, the EITC, CTC/ACTC/ODC, and/or AOTC.

If the IRS employee identifies failures to meet due diligence requirements on the 25 client returns initially reviewed, they may expand the examination to review an additional 25 client returns.

During the examination, the IRS employee is looking for evidence showing that you met all of the requirements under IRC section 6695(g), especially when it comes to knowledge and record retention. To meet the knowledge requirement, you must:

- Know the law,
- Ask the right questions, especially when your client gives information that appears incorrect, inconsistent or incomplete,
- Document the questions asked and the responses given by your client, and
- Get all the facts to make sure your client truly qualifies for EITC, CTC/ACTC/ODC, AOTC and/or HOH filing status.

To meet the record retention requirement, you must keep copies (either electronic or paper) of any client provided documents that you relied on to compute the credits or determine that they were eligible for the Head of Household filing status. These records must be kept for three years from the due date of the return or date the return was filed (whichever is later).

While auditing for due diligence, the IRS will also check that you are in compliance with the PTIN, (Preparer Tax Identification Number) requirements, as well as, your personal and business tax return filing requirements.

What Happens If My Records Don't Show I Met the Due Diligence Requirements?

The IRS will propose penalties when they find you did not comply with due diligence requirements. The IRS continuously improve our examination selection process to find those preparers with a high likelihood of filing returns with errors. Using this process, the IRS proposed penalties on over ninety percent of the preparers selected for examination. The IRS propose most penalties against preparers who did not meet the knowledge and record retention requirements.

The penalty for not meeting due diligence requirements is $520 for each credit (EITC, CTC/ACTC/ODC and AOTC), or HOH filing status claimed in a return. ($530 for returns filed in 2020, adjusted annually for inflation).

What If I Don't Agree with the Penalties?

See Appeal of Due Diligence Penalties: https://www.eitc.irs.gov/tax-preparer-toolkit/preparer-compliance-focused-and-tiered/appeal-due-diligence-penalties/appeal.