



Freeman  
Mathis & Gary LLP  
When It Counts

# When the Government Comes Knocking: Navigating IRS Appeals and Government Investigations

[www.fmglaw.com](http://www.fmglaw.com)  
© Freeman Mathis & Gary, LLP

# PRESENTERS



[Meaghan Mahon](#)  
Partner

Freeman Mathis & Gary, LLP



[Will Covino](#)  
Partner

Freeman Mathis & Gary, LLP



[Reza Rismani](#)  
Partner

Freeman Mathis & Gary, LLP

# Agenda

- Understand the Landscape for Government Investigations and What is at Stake
- Navigate the IRS Appeals Process
- Manage Exposure in PCAOB, DOJ, and State Proceedings
- Clarify E&O Coverage Issues and Insurers' Expectations
- Implement and Apply Proactive Risk Management Strategies to Reduce Risk

# How Government Scrutiny Begins – and Why it Matters

- Investigations can start with client issues (audit, embezzlement, whistleblower, etc.).
- Accountants can be pulled in from return preparation, advice, or sign off roles
- E&O Insurers should be one of the first calls
- Small missteps can cascade into reputational harm and legal exposure
  - IRS: Penalties, interest, collections
  - PCAOB: Public sanctions and career consequences
  - DOJ: Civil/criminal exposure
  - State Boards: Licensure and reputational harm

# Common E&O Scenarios Tied to Government Investigations

- IRS-Appeals Related Allegations:
  - Claims for negligent tax advice, missed elections, or failure to advise of IRS risks
  - Failure to detect fraud or embezzlement
  - Client alleges their accountants' improper guidance led to penalties or the disallowance of deductions
- PCAOB Investigations
  - Triggered by audit failures or inadequate documentation
  - Often lead to downstream civil claims by shareholders or clients
    - *E.g. – Failure to detect material misstatement = regulatory sanction + a lawsuit*

# Additional Government Scenarios

- DOJ/State Licensure Investigation

- Often arise from referrals from the IRS, PCAOB, or state boards after audit or tax-related findings
- Stem from allegations of willful misconduct, tax shelter preparation, false filings, or ethical violation
- May involve parallel proceedings – e.g., IRS audit + DOJ inquiry + state board review
- Can trigger mandatory self-reporting obligations under professional standards or insurer notice provisions
- Potential Outcomes include, but are not limited to criminal penalties, sanctions, or license suspension or revocation
- E&O implications: defense costs, reputational harm, increased premiums, insurer cooperation requirements

# Understanding E&O Coverage: What's In, What's Out

## • **Claims-Made & Reported Policies**

- Coverage depends on when the claim is made and when it is reported
- Early notice is critical to preserving rights

## • **What May Be Covered vs What Is Likely Not Covered:**

- Can Be Covered: Professional Negligence, Tax Advice Errors, and Defense Costs in some civil regulatory matters
- Usually Not Covered: Fines, penalties, sanctions, criminal charges, and intentional misconduct

## • **Pre-Claim Assistance**

- Most policies allow reporting of a “potential claim” – even before formal proceedings
- Allows insurers to assist early and avoid waiver issues

## • **Subpoena & Disciplinary Coverage**

- Some policies cover response costs for subpoenas or board investigations
- Coverage often depends on prompt reporting and cooperation

# E&O Insurer's Role During the Life of a Claim

- **Notification and Early Communications**
  - Prompt, clear notice allows an insurer to evaluate coverage and begin strategic coordination with counsel
- **Claim Investigation**
  - The insurer will review the engagement letter, workpapers, client communications, and regulatory notices (or the subpoena)
- **Panel Counsel Assignment**
  - Insurers I appoint specialized defense counsel with experience in accounting, tax, and regulatory matters
- **Coordinated Strategy**
  - Defense and settlement strategies are developed in tandem with the accountant and counsel. It is often shaped by the trajectory of the investigation

# The Role of Counsel in an IRS Dispute

- Often brought in *after* accountant's error is alleged
- Dual-client complexity: taxpayer + accountant (via the insurer)
- Early involvement is critical in shaping strategy, preserving privilege, and mitigating (or negating) an adverse outcome

# Early Intake & Due Diligence

- Obtain and assess the engagement letter, Form 2848, IRS Notices, the Tax Returns, and the Tax Workpapers
- Build a timeline of the accountant's involvement and scope
- Identify potentially privileged communications / Kovel Application
- Begin Risk Triage (Civil v. Potential Criminal Exposure)

# Working with Accountants Strategically

- Align narrative across client, accountant, and insurer for consistent messaging
- Preserve all documents necessary for the investigation or appeal
- Regularly update protocols (especially if PL insurance counsel is involved)
- Strategically use the accountant to assist with:
  - Technical explanations;
  - The Reconstruction of Records; and
  - Declarations (if appropriate).

# IRS Appeal Overview – Structure & Strategy

- Appeals ≠ Exam
  - They are Non-Factfinding
- Can Address:
  - Audits
  - Penalties
  - Collection Actions
- Hazards of litigation Analysis – Authority to Propose Settlements
- Appeals May Return to Exam if New Facts are Introduced

# Exam Based Appeals (30-Day Letter Pathway)

- Post-Audit, IRS Issues a 30-Day Letter
- Protest = Written Response with law, facts and arguments
- Revenue Agent may rebut —> case transferred to Appeals
- Conference scheduled with Appeals Officer
- Best Practices:
  - Frame Issues early
  - Anticipate Hazards Argument

# Penalty Appeals & Abatement Requests

- Common Issues: Late Filing, 1099 Errors, CPA Delay, Illness, Oversight
- Strong Abatement Requests = Narrative + Documents + Declarations
- Outcomes: Full, partial, or denied -> Denial Can beAppealed through Administrative Process

## Penalty Relief – First Time and Reasonable Cause Abatements

- Two Main Paths to Abatement

- First Time Abatement (FTA)
  - Can be available for FTF/FTP/FTD Penalties if Taxpayer is otherwise compliant for applicable time period
  - Does not require explanation – simply, a clean history
- Reasonable Cause (RC)
  - Based on facts beyond taxpayer's control (IRC § 6651 standard)
  - Must show ordinary business care and prudence
  - Temporal connection is necessary

# Drafting Effective Abatement Requests

- Crafting an Effective Request

- Include detailed facts and supporting documentation (timeline, correspondence, payment records, etc.)
- Consider third-party declarations (accountant, physician, etc.) to corroborate diligence or hardship
- Emphasize Taxpayer diligence or reliance on professional advice (i.e., what reasonable steps were taken to comply with obligations)
- Cite to IRS Guidance

# Collection Appeals (CAP Program)

- When CPA is Used
  - IRS issues Notice of Intent to Levy, (CP504)
  - Common when prior penalty abatement requests were denied or ignored
- Grounds for Appeal
  - Procedural errors (e.g., IRS has not ruled on abatement requests)
  - Unexhausted appeal rights
  - Incorrect assessments
- The Process
  - File Form 9243 – Collection Appeal Request
  - Heard by Revenue Officer, not an Independent Appeals Officer
  - Typically faster but narrower in scope than full Appeals review
- Strategic Use
  - Preserve Rights
  - Avoid premature enforcement
  - Use as leverage while pursuing broader resolution

# Strategic Considerations for Counsel

- Preserve the Record
  - Think ahead to potential litigation: establish facts early, memorialize chronology
  - Document all communications with IRS and between counsel, accountant, and clients
- Monitor for Broader Exposure
  - Be alert to signs of preparer penalties, criminal referrals, or parallel state investigations
  - Coordinate strategy across civil, regulatory, and criminal risk tracks
- Set Realistic Client Expectations
  - Not all penalties are abatable – especially if the taxpayer is at fault
  - Appeals Officers consider hazards of litigation, not fairness or equity
- Insurance Wrinkles: Protect the File and the Coverage
  - Avoid early admissions of fault in protest letters and correspondence
  - Report early under E&O policy – do not wait for a formal claim
  - Know the policy:
    - Coverage limit
    - Defense provisions
    - Consent to settle clauses

# PCAOB Investigations

- **Triggers:** Audit Failure, workpaper issues, independent violations, self-reporting
- **Context:** Commonly follows private securities litigation
- **Consequences**
  - Sanctions may include fines, censure, suspension or permanent bar
  - Public disclosure → Reputational Harm – Loss of Clients
- **Process overview**
  - Request for Information (RFI)
    - May include audit workpapers, emails, firm policies, internal review, and personnel interviews
  - Interview and On-Site Meetings
    - Staff may conduct interviews of engagement team members and of firm leadership
    - Site visits may occur for both small and large high-risk matters
    - Go above and beyond in cooperating in making information available
  - Staff Expectations During the Investigation

# PCAOB Litigation

- Wells Submissions
- Forum for Litigation
  - In-House Litigation before PCAOB Hearing Officer
  - Through the Judiciary
    - Post-Jarkesy: ability to seek fees or impose financial penalties
- Outcomes: Findings and Disciplinary Actions
  - Settled Orders with Sanctions
  - Public Disciplinary Proceedings
  - Referral to State Boards
- Appellate Right

# PCAOB – Strategic Considerations

- Key Risks: Altering documents or failure to cooperate (broadly defined)
- Balance cooperation with caution
  - Be responsive, but control the narrative
- Understand the Staff's objectives
  - Distinguish between fact-finding and enforcement posture early
- Maintain Privilege
  - Coordinate with Counsel BEFORE providing analyses or internal reviews
- Plan for the downstream effects – collateral consequences
  - Be mindful of referrals, client disclosures, insurer notice

# DOJ Investigations & Grand Jury Subpoenas

- Can run parallel to civil proceedings
- Focus
  - PPP Loans (false statements on applications, fake businesses, inflated headcounts, misuse of funds for ineligible purposes)
  - Employee Retention Credit Fraud
  - Unemployment Fraud
- Key Defenses
  - Reliance on client-provided information
  - Clear disclaimers on scope of services
  - Internal notes reflecting guidance given

- Preparing the Accountant for their Examination
  - Consider and Resolve Notification Issues with the Client
  - Clarify Privilege Boundaries
    - Is there a state specific accountant-client privilege?
  - Determine the Scope of the Inquiry
  - Tone and credibility matter
  - Keep it simple – less is more
    - Answering only what is asked; avoiding speculation

# Navigating State Licensing Boards: How and Why These Claims Arise

- How These Claims Arise
  - Inter-agency coordination from the PCAOB, IRS, or DOJ
  - Client complaints or tax return disputes
  - Leveraged for civil litigation to build negligence fraud claims
- Common Ethical Claims
  - Competence – Failure to exercise due care
  - Failure to supervise
  - Conflicts of interest
  - Breach of confidentiality or improper disclosures
- Primary Risks: Reputation and Business
  - Even without formal fault, public consent orders or reprimands can impact client trust
  - Disciplinary notices can be publicly searchable online

# State Board Coordination, Sanctions, and Risk Management

- When Boards Coordinate
  - Have findings been shared from another agency, increasing exposure
  - Duplicate or overlapping inquiries expand cost and timelines
  - Consistency in response and documentation is critical
- Early Resolution is Key
  - Never – Never – Never do this alone
  - Engage in In-House Review
  - Be mindful of “Repeat Offender” classification
  - Prevent Claim Momentum
- Risk Management
  - Client selection - Watch for red flags and boundary-testing clients
  - Documentation - Memorialize advice, scope, and limits of engagement
  - Clear expectations - Use Engagement Letters!

## What Insurers Expect from Accountants & Counsel

- Report Early: Potential claims, subpoenas, or investigations
- Avoid admissions: even casual emails can undercut the defense
- Documentation is Everything: Engagement letters, scope of services, client emails
  - Bad news is sometimes expected, surprises are not

# Risk Management for Accounting Firms

- Avoid Scope Creep – Do not allow your clients to become the “family accountant” or de facto business manager
- Clarify Boundaries – Explain how engagement letters should both define what is included and what is excluded
- Keep Records – Notes on client conversations, draft return changes, disclaimers, and the like can change the course of litigation

# Risk Management Continued

- Train for Red Flags – Embezzlement patterns, audit anomalies, cash activity
- Have a Playbook You Follow: Who to call when a subpoena or notice arrives, what initial steps to take, and when to pivot
- Have experienced and trusted counsel – no problem is too small

## Counsel's Playbook – Practical Tips for Defending Accountants

- Coordinate Messaging: Between taxpayer, accountant, insurer and counsel
- Preserve Privilege: Use Kovel arrangements when helpful
- Shape the Narrative: From the first IRS contact through the appeal
- Don't Over-Disclose: Stick to the facts, preserve defenses
- Preserve the Record: Especially for future litigation or coverage defense

- Government scrutiny may decrease under the new administration, but the consequences remain high
- Like first impressions, your first moves can protect or unravel the defense. Plan ahead based on the ultimate strategy, the facts in your file, and your clients' situations.
- Tax appeals offer real opportunity to resolve malpractice claim before the start and to minimize (or negate) damages.
- Claim specialists must be kept informed of, and part of, strategy decisions

# Final Takeaways Continued

- Appreciate the gravity of PCAOB and state investigations
- Positions before regulators must be consistent and showcase how your continued practice in the profession will serve the public interest
- Always involve experienced counsel earlier—tone, timing, and framing matter.



Freeman  
Mathis & Gary LLP  
When It Counts

# Q&As

- Questions or Comments?



Freeman  
Mathis & Gary LLP  
When It Counts



[www.fmglaw.com](http://www.fmglaw.com)

Information conveyed in this presentation should not be construed as legal advice or represent any specific or binding policy or procedure of any organization. Information provided in this presentation is for educational purposes only. These materials are written in a general format and not intended to be advice applicable to any specific circumstance. Legal opinions may vary when based on subtle factual distinctions. All rights reserved. No part of this presentation may be reproduced, published or posted without the written permission of Freeman Mathis & Gary, LLP.