



**TEN PRACTICAL GUIDELINES
FOR RESOLVING INDIANA DEPARTMENT
OF REVENUE TAX CONTROVERSIES**

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OF REVENUE TAX CONTROVERSIES**

The following guidelines are stated generally in terms of Indiana Department of Revenue audit issues. The basic principles are equally applicable with respect to property tax issues (Indiana Board of Tax Review) and Federal tax issues (Internal Revenue Service).

I. Plan transactions to eliminate or minimize the risks of disputes: An ounce of prevention.

- A. Identify issues (and potential issues) as early as possible.
- B. Identify avoidable and unavoidable issues in the context of business decisions in order to make an informed decision.
- C. Structure and document as favorably as possible: consider both "form" and "substance."
 - (1) Structuring opportunities may exist.
 - (2) Taxpayer controls the form of the transaction.
- D. Consider transactional risk allocation (indemnity, etc.) and ruling possibilities.

II. Attempt to utilize each resolution opportunity.

- A. Audit (Auditor/Audit Division).
- B. Appeals (Hearing Officer/Tax Policy and Appeals Division).
- C. Litigation (Attorney General, Governor's Office).

III. Thoroughly develop the facts of the case as early as possible.

- A. Preliminary work will allow you to make better decisions about resolving the case.
- B. Development of the facts reduces the risk of unpleasant surprises.
- C. Make an informed assessment of your case before spending additional time and money, and foregoing resolution opportunities (avoids waste).

IV. Assess the strengths/weaknesses of your position (factual and legal).

- A. Factual assessment: Are documents/witnesses available? Are they helpful? Do you need an expert witness?
- B. What do you need vs. want (Is it a recurring issue)?
- C. What are the technical merits of your position?
- D. Is your position consistent with the intent/purpose of the law?
- E. How will the Judge react to your position? Analyze prior decisions.
- F. Cost/benefit analysis (factual and/or legal issues).

Note: Factual controversies are more expensive.

- G. Develop realistic expectations.

V. Know your opponent at each step in the process.

- A. Analyze the case through your opponent's eyes.
- B. Recognize and understand the external pressures on your opponent.
- C. Communicate, Listen, Learn.
- D. What do they need or expect?
- E. What can they do?
- F. What do they perceive as important? How does this differ from what you view as important?
- G. What do they perceive as the strengths/weaknesses of their position?
- H. Who should you involve in the discussions?
- I. What is their background, attitude, knowledge, experience, etc.?
 - (1) Have they signed a prior Letter of Findings?
 - (2) Do they understand the issues?

(3) Do they have decision-making ability? Authority?

J. Seek a solution which avoids making anyone look bad.

K. Treat your opponent courteously and with respect. This attitude will facilitate communication and a favorable resolution.

VI. Resolve as much as possible.

A. Eliminate or minimize factual issues (decreases costs/reduces risk).

B. Litigate only your strong issues.

VII. Know administrative and judicial procedures (formal and informal).

A. Statutes of limitation.

B. IDR vs. STB (evidentiary considerations).

C. Trial vs. summary judgment (Costs, Tactics).

VIII. Retain Records: Taxpayer has the burden of proof: records are usually more helpful than harmful. Unique features of tax cases:

A. Taxpayer generally controls evidence: background, documents, witnesses.

B. Less focus by government on costs and hazards of litigation; This generally makes the case harder to settle.

IX. Set the tempo in discussions.

A. Focus on weaknesses of opponent's case/analysis.

B. Correct opponent's factual/legal misunderstandings and perceptions.

C. Voluntarily share supporting evidence.

D. Supply a rationale with an offer, and focus on what your opponent gets: focus settlement discussions on theory rather than numbers.

X. Be Creative.

A. Consider including additional years.

- B. Consider prospective vs. retroactive effect.
- C. Supply new theories; follow recent trends; identify developments in other jurisdictions.

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