

## **The Due Diligence Defense**

Greta P Hicks, CPA  
**Tax Solutions, Inc.**

Recently, IRS Commissioner Mark W. Everson stated, “Our second (IRS) enforcement priority is to assure that attorneys, accountants and other tax practitioners adhere to professional standards and follow the law.” This one statement indicates that the IRS has increased its emphasis on penalizing professionals for non-compliance with the tax laws and codes of professional conduct.

Several Internal Revenue Code sections warn practitioners to exercise due diligence but exactly what the term means is elusive. A definition of due diligence can be derived by combining the AICPA Code of Professional Ethics, the Internal Revenue Code, and Treasury Department Circular 230. The key to a due diligence defense seems to be:

- Maintaining reasonable office routines procedures and reasonable compliance with any such routine, and
- Knowing each Code section’s unique rules and following them.

The American Jobs Creation Act established a best practices standard which is different to but close to the due diligence standard. Most best practices and due diligence procedures are common sense steps a practitioner (firm) exercises daily. CPAs should keep in mind that some due diligence requirements and best practices are above the ordinary due care described in the AICPA Code of Professional Ethics.

---