



Robert W. Wood

THE TAX LAWYER

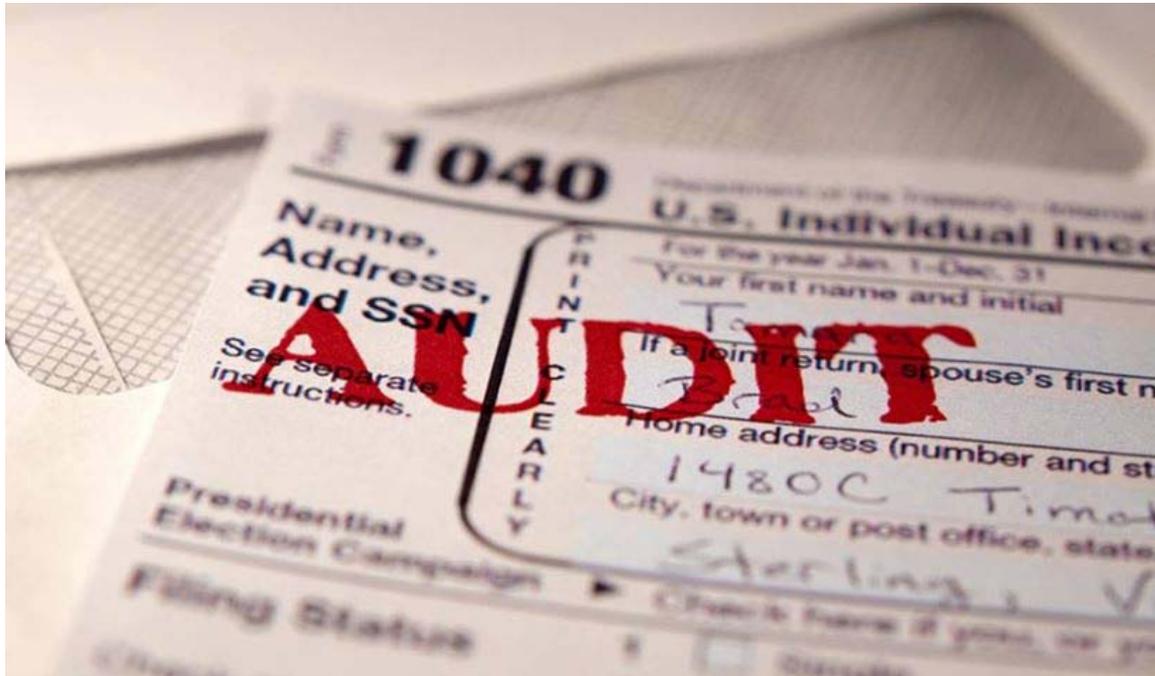
TAXES 12/29/2014

Bungled IRS Liens, Levies, Audits...But No Targeting, Just Ask Christine O'Donnell

IRS audits are infrequent, usually impacting only a tiny fraction of the populace. Yet if you are audited multiple times, you might think you were targeted. If you are a Tea Party political candidate like former Senate candidate Christine O'Donnell, you might have good reason, especially when the [IRS 'mistakenly' penalizes you again](#). She says the IRS audited her for the second time in five years and erroneously levied her bank accounts.

She couldn't access her checking account as she was preparing to visit relatives. The [tea party figure says the IRS mistakenly levied her accounts](#). "The day before I was heading out of town for the Thanksgiving weekend, my bank told me the IRS had frozen my accounts," said Ms. O'Donnell. She called the IRS, who said she owed \$30,000 in taxes from a 2008 house transaction (one she had fully reported).

She was eventually told the levy was an error and would be released. But the IRS took all her funds, later saying the funds would be returned. The funds have still not been replaced, Ms. O'Donnell said. "They said it was a mistake, and they removed the levy. I'm grateful, but I also wonder what someone with less government experience might do when they find themselves frozen from their money because the IRS got its paperwork mixed up."



Ms. O'Donnell was asked where she thought her latest IRS run-in fit in the larger controversy over the IRS's dealings with conservatives. "While I don't believe in coincidences, it's possible that this was just bureaucratic bungling. But either way, the IRS has to be held accountable. It needs to do its job right and not target or inconvenience taxpayers unfairly," she said.

Since the IRS is made up of humans, sometimes the IRS is wrong. Opinions vary whether the IRS has ever targeted people for improper reasons. Richard Nixon supposedly asked the IRS to audit his political enemies. There has been no proof that President Obama tried to influence the IRS in the Tea Party targeting scandal. Yet lost emails from Lois Lerner and other key IRS employees, and numerous changes in the 'narrative,' have generated many conspiracy theories.

The topic is always sensitive, and the more it is pooh-poohed, the more tempers flare. For example, Rep. Paul Ryan, R-WI, said, "Nobody believes you," to IRS Commissioner John Koskinen when the IRS Chief testified that IRS emails really aren't official records anyhow. As for Ms. O'Donnell, she already had a run in with the IRS when Delaware state authorities accessed her IRS tax file (!) in 2010, right around the time she announced her candidacy.

A story was leaked alleging that she owed back taxes to the IRS. The story was false, and Delaware authorities claim the records check was routine. Even so, a tax lien was placed on a house she had sold two years earlier. The lien was publicized and used to discredit Ms. O'Donnell's candidacy even though she no longer owned the home in question. The IRS eventually removed the lien, blaming it on a computer error.

Indeed, occasionally, the IRS gets a lien wrong, as occurred when [Dionne Warwick proved IRS tax liens can be wrong](#). Ms. O'Donnell also battled a three-year audit of her personal finances that eventually ended with her paying \$1,100. In the meantime, she said friends and family were subjected to intrusive audits but were eventually cleared. She believes the first round of IRS intrusions were political and malicious.

Her second erroneous tax lien was revealed as House Oversight and Government Reform Committee Chairman Darrell E. Issa released a report suggesting that the [IRS hid conservative targeting until after the 2012 Presidential election](#). Targeting and improper motive in tax matters are serious. The U.S. Supreme Court ruled unanimously that taxpayers have a right to challenge IRS summons enforcement proceedings when they can show the IRS might have issued the summons in bad faith.

In [United States v. Clarke](#), the Court vacated & remanded the case. In 2010, Michael Clarke of Florida accused the IRS of issuing a summons as payback for resisting an audit. Clarke wanted to question the IRS Agent in court about the targeting, but the IRS refused. The Supreme Court gave Mr. Clarke the right to seek an evidentiary hearing about the motives of IRS officials. The IRS says evidentiary hearings are fishing expeditions. But rogue IRS agents or not, the power of the IRS is legendary.

Under the law, the IRS can issue a summons for information when a taxpayer refuses to provide it voluntarily. If the taxpayer ignores an IRS summons, the IRS gets a court order. Judges routinely rubber-stamp such requests, enforcing summonses without evidentiary hearings. Mr. Clarke claimed the IRS improperly issued summonses as payback. He wanted to question an IRS agent why the summonses were issued and how they related to a \$17 million tax bill. For a unanimous Court, Justice Kagan, said that:

“[T]he taxpayer is entitled to examine an IRS agent when he can point to specific facts and circumstances plausibly raising an inference of bad faith. Naked allegations of improper purpose are not enough: The taxpayer must offer some credible evidence supporting his charge. But circumstantial evidence can suffice to meet that burden; after all, direct evidence of another person’s bad faith, at this threshold stage, will rarely if ever be available. And although bare assertion or conjecture is not enough, neither is a fleshed out case demanded: The taxpayer need only make a showing of facts that give rise to a plausible inference of improper motive. That standard will ensure inquiry where the facts and circumstances make inquiry appropriate, without turning every summons dispute into a fishing expedition for official wrongdoing.”

The IRS was unsuccessful in getting a blanket rule saying that the IRS could not be questioned. Still, the Supreme Court says that IRS agents cannot be forced to undergo evidentiary hearings based on bare allegations of improper purpose.

The IRS has a hard job to do and generally does it well and fairly. But that is precisely why this is so important. The power of the IRS is imposing. In general, the IRS can get the courts to order taxpayers to produce information. But sometimes the IRS is wrong. Sometimes it is worth going to

court, even over the production of documents. After all, sometimes documents can be the whole battle.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.