

Everything you ever wanted to know about fighting the IRS

By Robert W. Wood

When you disagree with the IRS, procedure is important. Most audits are via correspondence and so don't involve sitting across the desk from an IRS agent. You might be asked to send in receipts. You might receive a notice saying the IRS received a Form 1099 reflecting income you didn't report. The notice may ask you to sign and mail it back if you agree, or to explain why it's incorrect.

Almost every IRS notice is followed up by another notice or bill if you fail to respond. However, some notices will tell you specifically that no action is required of you. A more detailed notice may be called an IRS Examination Report. Most tax lawyers call the Examination Report and accompanying letter a "30-day letter."

If you receive that kind of notice, you have 30 days to respond in a written protest. Make sure you send a protest before the deadline. Explain the facts and law and attach documents where they will be helpful. Keep a copy and proof of mailing.

You will normally receive a response that the IRS is transferring your case to the IRS Appeals Division. The IRS Appeals Division is a separate part of the IRS which handles cases after the IRS auditor has recommended additional tax but the taxpayer disagrees. A tax lawyer may be best qualified to handle your case at IRS Appeals, but an accountant can too. You can even do it yourself, although that's generally less effective.

The vast majority of tax cases are resolved at the IRS Appeals level. Usually you'll be assigned to the Appeals Office closest to you. However, there are offices throughout the U.S., and you can request a different Appeals Office where your tax lawyer (or your books and records) are located. Appeals conferences can be handled over the phone or in person, but in person is best.

If you fail to protest or don't resolve your case at IRS Appeals, you'll receive a Notice of Deficiency which will come via certified mail. It is often called a "90-day letter" by tax practitioners because you'll have 90 days to respond. The IRS is required to prominently display on page one of the Notice of Deficiency the actual deadline for your response.

You can't respond to a Notice of Deficiency with a letter. In fact, only one response to a Notice of Deficiency is permitted: filing a petition in the U.S. Tax Court clerk's office in Washington, D.C. Although it is best to hire a tax lawyer, some taxpayers handle their Tax Court case *pro se*. There are special simplified procedures available to taxpayers who represent themselves in cases where less than \$50,000 in tax is in dispute.

Whether you are handling the case yourself or you hire a tax lawyer, the U.S. Tax Court cannot hear your case if you miss the 90-day deadline. Although the Tax Court building and clerks are in Washington, D.C., the 19 Tax Court judges travel to federal courthouses all around the country to conduct trials. You can pick the city where you want your case to be heard. Tax Court procedure and rules of evidence are streamlined, with no jury and relaxed rules of evidence. You can call witnesses, and many cases are presented based on a stipulated record.

Although the only way you can respond to a Notice of Deficiency is to file a petition in U.S. Tax Court, doing so doesn't mean your case will necessarily be decided in court. Once an IRS lawyer answers your Tax Court Petition you can ask the IRS lawyer to

transfer the case to IRS Appeals. If you didn't have an Appeals conference, the request should be granted.

Pay attention to due dates for all IRS notices. For many notices, the IRS will grant an extension of time to respond. If you do ask for an extension, confirm it in writing. In fact, confirm *everything* you do with the IRS in writing. In some cases, the IRS can't grant an extension. For example, when you receive a Notice of Deficiency (90-day letter) you *must* file in Tax Court within 90 days. This date can't be extended. Most other notices are less strict.

It's always best to respond to IRS notices within their stated time frames. However, it is sometimes possible to undo IRS action after the fact. For example, even after the IRS places a lien on property or levies on a bank account, these actions can be reversed. Of course, it is usually harder and more expensive to undo something than to prevent something, and you'll usually require professional help.

Whether you are handling the case yourself or you hire a tax lawyer, the U.S. Tax Court cannot hear your case if you miss the 90-day deadline.

If you *do fail* to respond to a Notice of Deficiency within 90 days, you will have an assessment, and cannot go to Tax Court to contest the taxes. However, you can contest the taxes by other means. Usually you must pay first and file a claim for refund later.

If the refund request is not granted or if the IRS fails to respond for six months, you can sue for a refund in federal district court or the U.S. Claims Court. Sometimes you are required to pay only a portion of the liability, but you can still get into court.

There are many different types of tax notices from the IRS, including a Notice of Deficiency. Among the other kinds of important notices, there are also notices of liens, levies, summonses, and Information Document Requests, to name a few. Forms of response vary and procedure and timing are both important. You're best advised to get some professional help.



Robert W. Wood is a tax lawyer at Wood LLP in San Francisco (www.WoodLLP.com). The author of more than 30 books including "Taxation of Damage Awards & Settlement Payments" (4th Ed. 2009 With 2012 Supplement www.taxinstitute.com), he can be reached 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.