

The Tax Lawyer

## Ten Things To Know About Fighting An IRS Bill

Robert W. Wood, 08.05.10, 2:00 PM ET

Everyone must pay federal income taxes, but you also can contest many Internal Revenue Service tax bills. When you disagree with the IRS, procedure is important. You must pay attention to the order in which notices arrive and the specific ways in which you can respond. Here are 10 things you should know:

### **1. Most Audits are Via Correspondence**

Most audits these days don't involve sitting across the desk from an IRS agent. Let's say you file your tax return and later receive a notice from the IRS saying it has information that you received \$6,000 you didn't report. Usually such a notice will ask you to sign the form and mail it back if you agree. Alternatively, the letter will ask for an explanation of why the information is incorrect. You can contest it--if you do so promptly.

### **2. Watch Out for Proposed Deficiencies**

The notice described above is not a Notice of Proposed Deficiency. Still, you should answer it. An Examination Report may follow the first notice if you fail to respond. Most tax lawyers call the Examination Report and accompanying letter a "30-day letter"--it will say you have 30 days to respond in a so-called administrative protest.

### **3. Make Sure You Prepare a Timely Protest**

If you receive an IRS Examination Report, make sure you prepare a protest and sign and mail it before the deadline. Keep a copy. Keep proof of mailing too, preferably certified mail to provide verification of mailing and receipt. Explain yourself thoroughly and attach documents where they will be helpful. Analyze the facts and the law. Put your best foot forward. The IRS may review your protest and agree with you. If you have protested in a timely way, you will normally receive a response that the IRS is transferring your case to the IRS Appeals Division.

### **4. IRS Appeals is a Nationwide Division**

The IRS Appeals Division is a separate part of the IRS and its mission statement is to resolve cases. By definition these are cases in which the auditor has recommended additional tax and the taxpayer disagrees. This process of working out compromises works surprisingly well.

A tax lawyer may be best qualified to handle your case, but an accountant can too. Alternatively, you can do it yourself. Just be aware that while it's less expensive to do it yourself, it's also generally less effective.

The vast majority of tax cases get resolved at the Appeals level. Usually you'll be assigned the Appeals Office closest to you. Offices are throughout the U.S., and you can often request a different Appeals Office where your tax lawyer (or your books and records) are located to handle the Appeal.

### **5. Next Comes a Notice of Deficiency**

If you fail to protest or you don't resolve your case at IRS Appeals, you'll next receive a Notice of Deficiency. An IRS Notice of Deficiency comes via certified mail. A Notice of Deficiency 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.

Only one response to a Notice of Deficiency is permitted: filing a Tax Court 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 on their own--what's called *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.

## **6. Tax Court Judges Travel to Your Area**

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 when you file your Tax Court petition. Tax Court procedure and rules of evidence are streamlined, with no jury and with relaxed rules of evidence. You can call witnesses, and many cases are presented based on what's known as a "stipulated record." (That is, you and the government agree on certain facts.)

## **7. Your Case Can Go From Court Back to IRS Appeals**

Remember that the only way you can respond to a Notice of Deficiency is to file a timely petition in U.S. Tax Court. Fortunately, though, that doesn't mean your case will necessarily be decided in court. Once an IRS lawyer answers your Tax Court petition (generally denying whatever your petition says), you can ask the IRS lawyer to transfer the case to IRS Appeals.

## **8. You Can Sometimes Get Extensions**

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

## **9. Some IRS Actions Can Be Undone**

It's always best to respond to IRS notices within their stated time frames. Still, 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, this can be reversed. However, it is usually harder and more expensive to undo something, and it usually requires professional help.

## **10. You Can Pay Up and Then Sue**

If you don't respond to a Notice of Deficiency within 90 days, and you have an assessment, all is not lost. You won't be able to go to Tax Court, but you can contest the taxes in federal district court or the U.S. Claims Court. Usually you must pay the taxes first and file a claim for refund. If the refund request is not granted, then you can sue for a refund. Sometimes you are required to pay only a portion of the liability, but you can still get into court.

Remember, there are many, many different types of tax notices, even if you are only talking about the IRS. We've covered a few notices here, including the most important one--a Notice of Deficiency. However, there are other types of important notices, including liens, levies and summonses. You're best advised to get some professional help. Forms of response vary and procedure is important.

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