

Tax System Should Be Fair — And Perceived As Fair

By Robert W. Wood

Fair warning, there is no way to entirely prevent getting audited by the Internal Revenue Service or by the California Franchise Tax Board. The FTB often sends a tax bill when the Internal Revenue Service is done with you, piggybacking on whatever the IRS did. But the FTB also has its own audit staff and sometimes audits even where the IRS does not.

Apart from the usual fear of what to claim and what to avoid, though, there is a new fear of politics. The fallout from the IRS targeting flap is not over. The key lost emails could have been the result of bona fide, unanticipated and irreversible computer crashes. Yet some still see the finger prints of a cover-up, providing fodder for today's online equivalent of water-cooler debate.

Although conservative groups remain outraged, there is a general malaise about the IRS and our tax system. That is so despite the generally good job the IRS does of enforcing the tax laws in a nondiscriminatory and fair way. It is not enough for a tax system to be fair. As important, it needs to be *perceived* as fair.

No matter how good your records may be, no one wants to face an audit. On the contrary, most of us would do just about anything within reason to steer clear of an audit or dispute. It makes the profiling issue a hot button.

Consider Logan Clements, the producer of "Sick and Sicker," a film regarded as anti-Obamacare. Fearing that it isn't a coincidence, he says it is the first audit of his life. He also claims that the IRS has demanded a "ridiculously long list" of documents. It comes on the heels of the announcement from conservative Brietbart News that it, too, is being audited.

No one can say if any of this is politically motivated. It probably isn't and is probably pure unadulterated coincidence. However, it remains troubling that retired IRS Exempt Organizations chief Lois Lerner sought to audit Sen. Chuck Grassley. Cooler heads at the IRS prevailed, but that episode too is unsettling. Some on the Committee on Ways and Means commented on the serious repercussions of having a sitting senator targeted.

President Barack Obama himself joked in about Arizona State University's decision not to award him an honorary degree in a 2009 commencement speech: "I really thought this was much ado about nothing, but I do think we all learned an important lesson. I learned never again to pick another team over the Sun Devils in my NCAA brackets.... President [Michael] Crowe and the Board of Regents will soon learn all about being audited by the IRS."

Some pundits didn't see the humor. Comedians might joke about such things, but given this issue has had a charged history, with President Richard Nixon allegedly targeting his enemies for audits. It would only be a few years after Obama's remark that the "rogue employees" excuse would be used about IRS targeting.

Presumably we can't see what Lerner told her exempt organizations subordinates in Cincinnati. All of this is disturbing since the IRS can only audit a small fraction of taxpayers. In today's world, even a tax audit or certainly a tax-fraud prosecution is seen by some as evidence that someone has done something wrong. If it comes to be seen as just politics then the moral component of the system erodes.

Throughout history, tax collectors haven't been popular. But even against the decidedly lukewarm standard applied to most tax collectors, the IRS isn't looking good. One watchdog report from the treasury inspector general for tax administration found little oversight. Another revealed that 30 percent of IRS seizures do not comply with the law.

The current IRS commissioner, John Koskinen, knows little about tax, and was brought in to head the agency as a turnaround specialist. But you have to wonder about the behemoth agency's turning radius. In the meantime, Congress — or at least congressional Republicans — are sharpening up their axes to do a little IRS profiling of their own.

If you aren't too happy with the IRS right now, you're not alone. House Republicans aren't either, so passed an Internal Revenue Code-sized passel of bills by voice vote before their August recess. If nothing else, you have to love the names:

STOP IRS Act, H.R.2565. Actually, this bill has an alternate handle too, the Stop Targeting Our Politics Act. If passed, this law that would expand the existing grounds for firing an IRS employee. New firing offenses would include performing, delaying or failing to perform (or threatening) any official action — including an audit — for purposes of personal gain or for a political purpose.

The Stop Playing on Citizen's Cash Act, H.R.2769. This proposed law would impose a moratorium on any IRS conference until the treasury inspector general for tax administration submits a report to Congress certifying that IRS has implemented all the recommendations set out in its report covering the now notoriously expensive 2010 IRS conference at Disneyland.

Government Spending Accountability Act of 2013, H.R.313. This proposed law would limit any government agency from spending more than \$500,000 to support a single conference.

Government Customer Service Improvement Act of 2013, H.R.1660. You have to love this name. This bill would require the director of the Office of Management and Budget to develop government-wide standards for customer service delivery.

The Taxpayer Bill of Rights Act of 2013, H.R.2768. This bill would amend the tax code to say the duty of the IRS commissioner is to ensure that IRS employees are familiar with and act in compliance with certain taxpayer rights.

The IRS has a hard job to do. The vast majority of its employees are fair, doing their best at a thankless job. Whatever label you give it, here's hoping the IRS gets back on its feet with real accountable leadership to get the government's work done.

Finally, if you want some concrete tips to help avoid an audit:

Don't claim flaky deductions. Don't be scared to take deductions to which you're entitled, but don't take tax positions you aren't comfortable defending. If you take reasonable tax positions, you'll likely find you won't end up needing to defend them.

Is a return prepared by a professional less likely to be audited? Maybe, but there's little reliable data. If you do your own return, use commercial software. If the software produces a result you consider wrong, don't simply override it.

Add, subtract and multiply accurately. Check your numbers and do simple math checks when you finish.

Account for every Form 1099. Regardless of how many Forms 1099 you receive, account for them on your return. One way to guarantee an IRS query is to fail to account for something.

Disclose just enough. If your return is complex, you may need to add explanations or disclosures in footnotes. Be concise, truthful and accurate, but don't provide copies of sales agreements, settlement agreements, bank statements, etc., unless you are later asked.

Do not amend a tax return just to get a small refund. Amended returns are reviewed much more regularly than initial returns. If you amend, it must be accurate, and you cannot cherry pick what you correct.

If you are entitled to a refund, consider applying it to your next year's tax payments rather than asking for a refund.