

Taxpayer Rights And Selective Disclosure

By Robert W. Wood

Taxes are inevitable, and so is the tax collector. Throughout history, tax collectors have probably never been popular, although in some times and places they have provoked less ire than others. Even our own Internal Revenue Service has waxed and waned in popularity.

During some decades, the IRS is viewed as too aggressive. Periodically, Congress raps them on the knuckles and enacts additional rights and protections for taxpayers. Congress did that twice in the 1990s. For a time, the IRS even referred to taxpayers as “customers,” and tried to make nice.

Since then, the pendulum has swung to a harsher IRS tasked with greater collections and generally not taking no for an answer. But once again, some in Congress and the general public have clamored for more rights. This time, the answer came from an unlikely source, the IRS itself.

The IRS released its own Taxpayer Bill of Rights this month in what some are saying really is not new at all. Even the IRS has acknowledged that this bill of rights is cobbled together from existing rights we all have in the tax code. But with a new look, they are grouped into 10 categories.

The National Taxpayer Advocate Nina E. Olson has been talking about this for years. She even listed a taxpayer bill of rights as her top priority in her most recent annual report to Congress. So she deserves some of the credit or some of the blame. Like the U.S. Constitution’s Bill of Rights, the Taxpayer Bill of Rights contains 10 provisions. They are:

1. The Right to Be Informed
2. The Right to Quality Service
3. The Right to Pay No More than the Correct Amount of Tax
4. The Right to Challenge the IRS’s Position and Be Heard
5. The Right to Appeal an IRS Decision in an Independent

Forum

6. The Right to Finality
7. The Right to Privacy
8. The Right to Confidentiality
9. The Right to Retain Representation
10. The Right to a Fair and Just Tax System

The rights have been incorporated into IRS Publication 1, “Your Rights as a Taxpayer.” This publication is sent to millions of taxpayers who receive IRS notices on issues ranging from audits to collection. The bill of rights will also be publicly visible in all IRS offices for taxpayers and employees to see.

Meanwhile, one issue that some in Congress and the public find more than a little upsetting concerns the confidentiality of taxpayer records and the right to a fair and just tax system. Those two rights are implicated by the allegations that the IRS has not played fair in political targeting of conservative groups. This story is over a year old now, yet it may be coming to a new boil.

President Barack Obama seemed almost angry when he made his now famous “not even a smidgen of corruption” remark about the IRS in February. He said there was no evidence at all that the IRS was used for political targeting. Rather, some folks down at a local IRS office were just “confused” about how to implement the law governing some kinds of tax-exempt groups.

The controversy started 13 months ago when Lois Lerner, then chief of the IRS Exempt Organizations Division, planted a question in the audience at an American Bar Association Tax Section meeting. She asked a friend to ask her whether any groups had been targeted in tax exemption applications. The extent of the targeting was due to be revealed, it later developed, and she may have been trying to do damage control.

Within days, the issue was national news, and taxpayers who had faced the full wrath of the IRS started to come forward. Many were angry. Some complained of huge legal expenses and of harassment. Everyone wanted Lois Lerner to say who did what to whom, but she repeatedly took the Fifth Amendment.

But she did so only after controversially expressing her innocence in a prepared statement to Congress. Some have claimed that she waived her Fifth Amendment rights. The acting commissioner of the IRS, Steven Miller, was fired by the president. As for Lerner, she quickly resigned and retired from the IRS (with full pension). She was eventually held in contempt by Congress.

Her case was referred to the U.S. attorney, but it is unlikely that she will be prosecuted. In the meantime, Congress has asked for documentary evidence about the targeting. A key question has been Lerner’s emails, especially ones she sent and received between the White House, the Department of Justice and the Federal Election Commission.

Although the story has faded, on June 13, the IRS sheepishly revealed to Congress that it had lost thousands of emails from and to Lerner. The missing emails were from 2009 to 2011, and Congress is now asking why this long ago (alleged) computer crash was just revealed despite a year-long investigation. It then came out that six other IRS employees’ emails were also lost.

Congress had requested all emails sent from Lerner to and from other IRS employees from early 2009 to April 2011. House Oversight and Government Reform Committee Chairman Darrell Issa (R-Calif.) noted that claims of computer crashes would have been more credible sooner. Both the IRS and its new Commissioner John Koskinen had promised full disclosure.

Issa alluded to the spin about rogue IRS employees in Cincinnati. He said it was only natural to be looking for nefarious conduct that went much higher than Lerner. Rep. Dave Camp (R-Mich.), chairman of the House Ways and Means Committee, called for an immediate investigation and forensic audit. And with a nod to the National Security Agency and its snooping capabilities, Rep. Steve Stockman (R-Texas) formally asked the NSA to turn over all the metadata it has collected on the email accounts of Lerner from January 2009 to April 2011.

Whatever happens, most Americans are probably pretty distrustful of the IRS right now. Some IRS employees received bonuses even if they were in disciplinary status. The poor publicity of the Star Trek, Gilligan’s Island and Dance Party videos — which was clearly the fault of IRS management not employees — paints an unflattering picture of the agency. In that sense, maybe the timing of the Taxpayer Bill of Rights is appropriate. We need them.



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