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THE TAX LAWYER

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### What To Do When IRS Agents Call On You

You may be breathing a sigh of relief at having just filed your taxes. Or, maybe you went on extension and will get to it soon. Perhaps you didn't file and didn't extend, which makes your return late. But even then, at least you didn't file a false or fraudulent return. The crime of failing to file is generally less serious than that of filing falsely.

Whatever your tax posture, one thing you don't want to experience is a run-in with the Criminal Investigation Division of the IRS. There is a noticeable uptick in criminal indictments and in convictions of tax crimes just before tax time, so you may even have noticed this arm of the IRS in the news of late. The IRS and Justice Department make a point of trumpeting such events.

Most people can be expected to reflect on their own tax returns with a little bit more conservatism upon seeing the news of an indictment or conviction. The IRS surely counts on that. When a person is convicted or even indicted of a tax crime, it may be too late to suggest some basic steps the taxpayer should follow. For the rest of us, though, sometimes the simplest rules are the most important. They can conceivably keep you from being on the IRS's publicity hit list in a future tax filing season.



The IRS is vast and imposing, but there is a discreet part of it that is [criminal](#) and not civil. Like "Special Agents" of the FBI, the IRS Criminal Investigation Division uses the Special Agent

terminology. If you are visited by IRS Criminal Investigation Division Special Agents, you should consult with an attorney. You are not legally required to talk to them.

In fact, the [Fifth Amendment to the US Constitution](#) guarantees your right against self-incrimination. That means you can't be compelled to be a witness against yourself in a criminal case. You may believe that by answering a few simple questions you will not hurt yourself or your position—especially if you are just a witness. Don't be so sure.

Regardless of how adept you are at communication, speaking up may actually help the IRS build a criminal case against *you*. The IRS may (quite honestly) tell you that you are not the target of the investigation but merely a witness. Even so, you are entitled to retain counsel.

In the early stages of IRS criminal investigations, a person may be told he or she is a witness. You may therefore think there's no harm in being forthcoming, and that your cooperation will actually make it more likely that the IRS will appreciate you and leave you alone. However, as the investigation continues, a witness can become a target.

Even if you are convinced you are merely a witness and will remain so, the U.S. Supreme Court has ruled that you have the right to assert your constitutional privilege against self-incrimination. See [Bellis v. United States](#). If you are approached and questioned by a Special Agent, ask for his or her business card. Firmly but politely state that you do not want to answer any questions and that you will have your attorney contact the Special Agent. You can fully cooperate through your attorney.

This may sound paranoid, but the ramifications of getting flustered and running at the mouth can be extreme. Particularly given the fluid nature of who is a witness and who is a target, even statements you think sound innocent may not be. Suppose you are asked whether you do business with Joe or know Sally. If you answer falsely, you may face felony charges. See [18 U.S.C. Sec. 1001](#). Plus, making a false statement can be considered evidence of an attempt to conceal other criminal conduct. Be careful out there.

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