

Stand Up to the IRS

14th Edition

Tax Attorney Frederick W. Daily
Stephen Fishman, J.D.

Table of Contents

Chapter 1 – Inside the IRS: What You Need to Know About IRS Operations	1
Learning Objectives	1
Introduction.....	1
IRS Inefficiency.....	3
Communicating With the IRS	4
Getting Your Tax Data from the IRS.....	4
Rules of the Game—Tax Laws.....	6
Interpreting the Tax Code	7
Self-Assessment of Income Taxes	7
Winning the IRS Game	7
Review Questions.....	9
Review Answers	10
Chapter 2 – Filing Tax Returns	13
Learning Objectives	13
Introduction.....	13
How Long Must You Worry About Not Filing a Tax Return?.....	13
Consequences of Not Filing	14
IRS Hunting for Nonfilers	14
IRS Notifying Nonfilers.....	14
When the IRS Prepares Your Tax Return for You.....	15
Nonfiling May Be a Crime	16
It's Better to File Before the IRS Contacts You	16
Suggestions for Completing Late-Filed Tax Returns.....	16
Voluntary Filing to Minimize the Chance of a Criminal Investigation.....	18
What Will Happen When You File Late.....	19
Civil Penalties and Interest Added to Your Tax Bill	19
Criminal Charges May Be Brought	20
Refunds May Be Denied	20
Requesting an Extension to File.....	21
Filing a Return When You Can't Pay What You Owe.....	21
Filing a Tax Return When You Live Out of the United States.....	22
Reducing the Chance of an Audit When Filing.....	22
Amending Tax Returns	23
How to Amend a Tax Return	23
Audit Alert for Amended Tax Returns	23
A Word About “Aggressive” Tax Filing.....	24
Review Questions.....	26
Review Answers	27
Chapter 3 – Winning Your Audit	29
Learning Objectives	29
Introduction.....	29
How Long Do I Have to Worry About an Audit?	29
What to Expect at an Audit.....	30
Do I Have to Learn Tax Law to Win My Audit?	31
Audit Selection—Why Me, O Lord?	31
Computers and Classifiers—What's the Difference?	31
Unreported Income DIF Programs.....	32
Local IRS Makes Final Decision.....	32
The IRS Looks at Significant Items.....	32
Living Beyond Your Means	33
Market Segment Specialization Program.....	35
Other Reasons for Audits.....	36

Table of Contents

When the IRS Increases Your Tax Bill without an Audit.....	37
Dealing with IRS Automated Adjustment Notices.....	38
Be Patient If You Don't Hear From the IRS Immediately.....	39
Types of IRS Audits.....	45
Correspondence Audits—Please, Mr. Postman.....	45
Office Audits—Heigh-Ho, Heigh-Ho, It's Off to the IRS We Go.....	45
Field Audits—Look Out, Here Comes the IRS.....	50
How a Field Auditor Approaches an Examination.....	53
Preparing for an Audit.....	56
Your Audit Goals.....	57
What Not to Bring to an Audit.....	57
Who Should Attend the Audit?.....	58
How to Act at an Audit.....	58
Mum's the Word.....	58
Don't Offer Any Favors to the Auditor.....	59
Try to Get Along With the Auditor.....	59
When a New Auditor Appears on the Scene.....	60
Standing Up to the Auditor.....	60
Negotiating With an Auditor.....	64
Ending the Audit.....	64
IRS Pressure on an Auditor to Finish—Extending the Audit Time Limit.....	65
Finishing Audits.....	66
Receiving the Examination Report.....	66
Understanding the Examination Report.....	66
Your Options After Getting the Examination Report.....	66
Serious Audit Problems.....	73
The Auditor Suspects You of Fraud.....	73
You're Billed for an Audit You Didn't Know About.....	74
Jeopardy Assessments of Assets.....	74
Review Questions.....	82
Review Answers.....	84
Chapter 4 – Appealing Your Audit Within the IRS.....	87
Learning Objectives.....	87
Introduction.....	87
Pros and Cons of Appealing an Audit.....	87
How to Appeal an Audit.....	88
Time Limit for an Appeal.....	88
How to Get Your Audit to the Appeals Office.....	88
IRS Form for Appeals Under \$25,000 (Small Case).....	89
Protest Letter for Appeals Over \$25,000 (Large Case).....	89
Requesting the Auditor's File.....	91
How the Independent Office of Appeals Works.....	92
Preparing for an Appeals Hearing.....	93
Organizing and Presenting Documents.....	93
Filling in the Gaps.....	94
Focusing on Challenged Items.....	94
Dealing with the Appeals Officer.....	95
Presenting a Case to an Appeals Officer.....	95
Negotiating a Settlement.....	96
Should You Hire a Tax Professional for Your Appeal?.....	99
If You Don't Settle on Appeal.....	99
Review Questions.....	100
Review Answers.....	101
Chapter 5 – Going to Tax Court: No Lawyer Necessary.....	103
Learning Objectives.....	103

Table of Contents

Introduction.....	103
Tax Court Facts	104
Small Tax Cases—People’s Court	104
The Small Tax Case Petition and Related Forms	105
Completing the Tax Court Forms	105
Filing the Tax Court Forms.....	105
Meeting With IRS Appeals Officers and Attorneys Before the Trial	108
Settlement Before Trial Is Likely.....	109
Notices From the Court Before Your Trial.....	109
Preparing Your Case for Trial.....	109
Awaiting the Judge’s Decision in a Small Case	114
The Tax Bill	114
Regular Tax Court Cases—Over \$50,000	114
Bench Decisions	114
Not Contesting Amounts over \$50,000.....	114
Other Federal Courts—Paying First Is Required.....	115
Bankruptcy Court.....	116
Review Questions.....	117
Review Answers	118
Chapter 6 – When You Owe the IRS: Keeping the Tax Collector at Bay	119
Learning Objectives	119
Introduction.....	119
When You Can’t Pay With Your Tax Return	121
Getting Time to Pay After the Tax Bill Comes.....	121
IRS Tax Billing Process.....	122
Delaying the Computerized Notice Cycle	122
Automatic Refund, Asset, and Wage Seizures	122
IRS Automated Collection System.....	123
Delaying the ACS Collector.....	123
Getting an Installment Agreement (IA) From the IRS.....	124
Requesting That Your File Be Sent to the Local Office	126
Revenue Officers—Frontline Collectors of the IRS	127
The First Visit.....	127
The Collection Interview—Meeting the Revenue Officer	127
Filling in IRS Collection Forms	129
Signing IRS Collection Forms—Proceed With Caution	134
Protecting Yourself after Making Financial Disclosures to the IRS	135
What the Collector Does Next	135
Installment Payment Plan: Individuals.....	136
Installment Agreement Set-Up Fee	138
Offers in Compromise (OICs).....	140
Grounds for Making an OIC	141
Offer in Compromise Forms.....	141
Your Minimum Offer Amount.....	141
OIC Payment Options	148
Special Circumstances: Effective Tax Administration (ETA) Exception	149
What Happens After You Send in Your OIC Application	151
If Your OIC Is Rejected	151
Using the Bankruptcy Code to Stop the IRS	152
Types of Bankruptcy	152
The Automatic Stay	152
Downsides of Bankruptcy.....	152
Taxes and Chapter 7 Bankruptcy	153
Taxes and Chapter 13 Bankruptcy	154
Taxes and Chapter 11 Bankruptcy	155
Taxes and Chapter 12 Bankruptcy	155

Table of Contents

Protecting Your Assets From the IRS	155
Suspending Collection of Your Tax Bill.....	156
Collection of Tax Debts by Private Debt Collectors.....	157
Review Questions.....	160
Review Answers	161
Chapter 7 – IRS Enforced Collection: Liens and Levies	163
Learning Objectives	163
Introduction.....	163
Federal Tax Liens	163
Notice of Federal Tax Lien	163
Effect of a Recorded Notice of Federal Tax Lien	164
Neutralizing a Recorded Federal Tax Lien.....	164
If the IRS Records a Tax Lien	164
Avoiding or Eliminating a Tax Lien	165
When the IRS Files a Tax Lien in Error	166
Getting a Tax Lien Released.....	166
Getting a Tax Lien Withdrawn	166
Tax Levies = Seizure of Assets	167
Significance of a Tax Levy	167
Dealing With the IRS Levy Process.....	167
Assets the IRS Can't or Won't Seize	168
Exempt Assets.....	168
Assets of Last Resort That the IRS Can Seize	168
You and Your Spouse's Income	169
Jointly Owned Assets.....	170
Avoiding a Levy	170
Transfer Your Assets	170
Convince the IRS That a Levy Would Be Uneconomical.....	171
Show That the Levy Would Prevent You from Working.....	171
Keep Mum about Your Assets.....	172
Keep Assets Out of Sight.....	172
Sell Your Assets	172
Move Financial Accounts	172
Rent, Don't Own	172
Deposit Money Into Retirement Accounts.....	172
File for Bankruptcy.....	172
Getting a Tax Levy Released	173
IRS Sales of Levied Assets	174
IRS Sales of Personal Property.....	174
IRS Sales of Homes and Other Real Estate	175
Levies of Business Assets	176
Levies of Joint Tax Refunds: Injured Spouse Claims	177
Suing the IRS for a Wrongful Levy	177
Review Questions.....	178
Review Answers	179
Chapter 8 – The Taxpayer Advocate: A Friend at the IRS.....	181
Learning Objectives	181
Introduction.....	181
Who Qualifies for Help From a Taxpayer Advocate?	181
Problems the Taxpayer Advocate Will Pursue	181
Problems the Taxpayer Advocate Won't Pursue.....	182
Contacting the Taxpayer Advocate Service	183
Emergency Help: Taxpayer Assistance Orders	184
What Constitutes a Significant Hardship to the IRS?	184
Getting Hardship Relief—Calling the IRS's 911 Line	185

Table of Contents

Review Questions	187
Review Answers	188
Chapter 9 – Family, Friends, Heirs, and the IRS.....	189
Learning Objectives	189
Introduction.....	189
It's a Family Affair	189
Filing Tax Returns—Joint or Separate?.....	189
Divorce and the IRS.....	192
Parenting and the IRS.....	192
The IRS Can Take a Tax Refund for Certain Nontax Debts	193
Owning Property Jointly	193
Death and Taxes	194
Filing a Federal Estate Tax Return	194
IRS Audits of Estate Tax Returns.....	195
Joint Ownership and Death	197
Review Questions.....	198
Review Answers	199
Chapter 10 – Fraud and Tax Crimes: Do You Really Have to Worry?	201
Learning Objectives	201
Introduction.....	201
How People Commit Tax Fraud	201
If You Are Caught Cheating	201
The IRS Suspects You of Fraud.....	201
Options When the IRS Finds Fraud.....	204
IRS Criminal Investigations	205
How Special Agents Conduct Investigations.....	205
IRS Considerations in Deciding Whether or Not to Recommend Prosecution	207
Crimes You Can Be Charged With	207
If You Are Prosecuted	208
Should You Plead Not Guilty?.....	208
What the Government Must Prove	208
Possible Defenses	209
If You Are Convicted.....	209
Review Questions.....	211
Review Answers	212
Chapter 11 – Small Business/Self-Employed: When IRS Trouble Comes	213
Learning Objectives	213
Introduction.....	213
Self-Employed—You're a Prime Audit Target.....	213
Employees or Independent Contractors?	213
How to Classify a Worker.....	214
People Who Are Automatically Employees by Law	215
Exempt Employees and Small Business Owners.....	215
How Independent Contractor Rules Are Applied.....	215
How Business Owners Can Protect Themselves.....	216
Payroll Taxes—IRS Dynamite.....	216
The Dreaded Trust Fund Recovery Penalty.....	217
How the IRS Determines the Responsible People	218
Appealing a Trust Fund Recovery Penalty.....	219
If You Lose Your Trust Fund Recovery Penalty Appeal	221
Cash Transactions over \$10,000.....	222
Review Questions.....	224
Review Answers	225

Table of Contents

Chapter 12 – Penalties and Interest	227
Learning Objectives	227
Introduction.....	227
Penalties Added to Tax Bills.....	227
Accuracy Penalties	227
Fraud Penalties	228
Failure to Withhold, Deposit, or Pay Taxes for Employees.....	228
Failure to File Information Returns	228
Failure to Pay Penalties	228
Late-Filing Penalties—Late Filing and Late Paying.....	228
Combined Penalties.....	228
Interest on Tax Bills	228
Understanding Penalty and Interest Notices.....	229
Reducing or Eliminating Penalties and Interest.....	229
Reasonable Cause for a Penalty Abatement.....	229
How to Request a Reasonable Cause Penalty Abatement	230
If Your Abatement Request Is Rejected.....	231
First-Time Penalty Abatement.....	234
Abating Interest	235
How to Request an Interest Abatement.....	236
Designating Late Tax Payments.....	236
Advantages of Designating Your Payments.....	236
How to Designate a Payment.....	236
Review Questions.....	238
Review Answers	239
Chapter 13 – Help Beyond the Book: Tax Professionals and Tax Information	241
Learning Objectives	241
Introduction.....	241
Finding and Using a Tax Professional	241
How Tax Professionals Can Help.....	242
Types of Tax Professionals.....	242
Choosing the Right Tax Pro.....	243
What to Look for in a Tax Professional.....	243
Tax Professionals’ Fees.....	244
Tax Pros for Serious Problems.....	244
The Right Type of Tax Professional	245
Tax Professional Analysis after an Audit	245
Hiring a Tax Return Preparer	245
Researching Tax Questions.....	246
Free IRS Information.....	246
Private Tax Guides	247
Other Research Materials—Using the Library or Internet.....	247
Review Questions.....	249
Review Answers	250
Chapter 14 – When You Owe State Income Taxes	251
Learning Objectives	251
Introduction.....	251
The IRS and State Taxing Authorities	251
Does Your State Have a Taxpayer Bill of Rights?.....	251
State Time Limits to Assess and Collect Income Taxes.....	252
State Tax Collection Departments.....	252
State Tax Bills.....	252
Getting a State Payment Plan	252
Enforced Collection—Seizing Assets	253
Bankruptcy	253

Table of Contents

Compromising a State Tax Assessment.....	253
Suspending Collection	254
When All Else Fails, Try Your Political Connections	254
Review Questions.....	255
Review Answers	256
Chapter 15 – The Taxpayer Bill of Rights.....	257
Learning Objectives	257
Introduction.....	257
Taxpayer Bill of Rights I	257
The Good	257
The So-So	258
The Window Dressing.....	258
Taxpayer Bill of Rights II	258
The Good	258
The So-So	259
The Window Dressing.....	259
Taxpayer Bill of Rights III	259
The Good	259
The So-So	261
The Window Dressing.....	261
Review Questions.....	265
Review Answers	266
Chapter 16 – The 25 Most Frequently Asked Questions.....	267
Review Questions.....	272
Review Answers	273
Glossary of Tax Terms	275
Index	283