

**TaxHelp Guide to Your Rights, Responsibilities,
Readiness and Resolution of an IRS Audit**

Empowering the Taxpayer

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INTRODUCTION

TaxHelp recommends that you read and follow this advice and strategies with the IRS. Preparation for an audit may take a lot of time and effort. Be diligent and don't get frustrated.

I. RIGHTS

You have certain rights against the IRS that are outlined in Publication 1, which you received with the IRS notice of audit. They are:

1. Right to a Representative: This is very important and the type of representative you may choose is equally important. In the field of tax law there generally are: 1) Tax Return Preparers, including Enrolled Agents (EAs); 2) Certified Public Accountants (CPAs) and 3) Attorneys. There is an inherent conflict of interest and danger in having whoever prepared your return represent you in an audit. In any event, anyone who represents you should have vast experience in representation and IRS procedure. Although many CPA's and EA's are experts in financial matters, accounting and return preparation they may have very little experience advocating for taxpayers in Court and with the IRS. Many good cases have been lost because of procedural errors of a taxpayer or their representative. And the cost of an inexperienced advocate is often excessive.

Finally, anyone who gives you a "free" consultation is trying to sell you their product without regard to your individual circumstances or strategies.

2. Free Information: As soon as you get any notice from the IRS send them the Request for Income Information shown as TaxHelp Form 1 or call 1-800-829-1040 and order the income information from the IRS Service Center. Use the IRS as a tool to gather information while giving them only enough to prove your case. Remember, that you have to pay for good advice so free advice from the IRS may not aid you significantly.

3. Assistance with return preparation: It is not often recommendable to have the IRS prepare your tax returns.

4. Privacy and Confidentiality: This is strictly enforced and the IRS is usually very respectful of your privacy.

5. Protection of Your Rights: Only you can protect your rights and that is by knowing your rights. The IRS agents are trained to respect your rights, *when you assert them*, but not if you don't. Don't look to the IRS for final advice but do use them to get information and legal analysis.

You don't have to meet with the IRS unless they issue a summons. But, if you don't want to meet with them you should consider hiring a lawyer.

6. Courtesy and Consideration: You should also be courteous and not say very much to any IRS agent. If you feel you have not been treated respectfully, you can ask to speak with the agent's manager or you can file a complaint with the IRS on their website: www.irs.gov.

7. Recording Interviews: If you decide to record the interview, the IRS will also record it. Make sure your recording equipment can record all voices and noises with distinction. By recording, you may offend the IRS agent but if you say very little then you will not be creating evidence against you. You may also bring a witness with you.

8. Payment of Only the Required Tax: But, it's your duty to show the IRS the tax you advocate for yourself.

9. No Repeat Examinations: The IRS cannot audit the same return twice. But, a Mathematical

Adjustment (CP 2000) is not an audit so the IRS can examine your records afterwards.

10. Explanation of Proposed Changes: Look at the IRS letters to you and determine what facts they say require a certain result or are in dispute. Then use the TaxHelp Program to gather organize and present your further evidence. Ask the IRS agent for all legal authority for their position *in writing*. Then, go look up the IRS authority and try to find legal authority, especially cases, to refute the IRS authority or distinguish your case from the normal.

11. Appeal Rights: Appeal within the IRS can be very difficult, especially since they have no incentive to change their decision and a reluctance to overturn another IRS employees report. Therefore, I have found that, if I can't agree, then going to Tax Court is a better option. The IRS can lose a case before a judge. When your dispute is judged solely by the IRS they have less incentive to settle with you.

12. Time Limit to Audit: The IRS typically has 3 years from the time they posted your filed return on their system to audit you. If they allege you have "grossly erroneous " items on your returns have 6 years to audit. If they allege you committed Fraud they can audit you any time. If the IRS alleges a "grossly erroneous" item is on your return or that you committed fraud, hire a lawyer to represent you. The IRS audits year around, not just during tax season.

If the time limit to audit your return is about to expire, the IRS often asks the taxpayer to sign an agreement allowing them extra time to audit. (Form 872, Appendix) I do not usually agree to this because I like to have my cases before the Tax Court, but if you decide to sign one, place whatever date you think is sufficient for the IRS to audit. Don't agree to their date, necessarily.

II. RESPONSIBILITIES

Be realistic and attentive to present your case in the light most favorable to you. Look closely at the facts in your case and the law. The IRS cannot and will not present your case or advise you fully. If you have one, your representative depends on you for the preparation of the case. Respond to all IRS correspondence. Never ignore the IRS but always question them. Don't divulge more than necessary.

But, you must also pick and choose your battles with the IRS. Don't be belligerent on every issue and learn to discern if you have a good case or not. Get legal advice. Do not make Constitutional arguments with the IRS. This is not the forum for that.

1. Income Issues: For income issues, see if you can re-characterize transactions in a different way to fit with the legal research you have done and get a more favorable outcome. Learn the different ways the IRS has of determining income and how to refute it. See TaxHelp "How to Prove Non-income Deposits". The IRS assumes that all documents they got from third parties, such as your employer, your bank, financial institution, lender, etc. are correct and you must prove otherwise by getting the third party to change their filing with the IRS. The IRS does not have the power to change these documents in your audit. So, if they are incorrect you must go to the third party and get them to file a correction with the IRS. Other ways of determining income to you:

a. Bank Deposit Analysis: The IRS assumes that all deposits in a bank account are income. You must prove otherwise. Find all deposits and determine if they were income or non-taxable such as gifts, insurance proceeds, inheritances, tort recoveries, or loans. The IRS will usually ask for all your bank records. See TaxHelp "How to Prove Non-income Deposits".

b. Lifestyle Analysis: The IRS can look at your expenditures and determine whether you could have lived off the income you reported on your return..

They may refer to the Bureau of Labor statistics in your area for the spending habits of others in your situation and attribute income to you in that manner. To refute this analysis, show that you lived off of past savings, with your family and friends, or lived off credit cards and loans or other non-taxable sources.

2. Deduction Issues: For deduction issues, you must prove to the IRS that your evidence is credible. Be prepared with all the facts, documents and evidence organized by the TaxHelp Workbook but give the IRS copies, only. Don't depend on your tax return preparer to have your documents. You keep all originals and give copies to everyone else.

Always correspond in writing by certified mail to the IRS. Always be courteous with the IRS. An audit is not necessarily the end of your case. You have various appeal rights if you choose to take them.

If you move, file Form 8822 with the IRS *by certified mail*, so they have your new address for notices.

III. READINESS

1. Narrow the Issues: When the IRS audits, they generally ask for a broad, sweeping array of documents, workpapers and they'll usually ask for multiple years' returns. However, you should only present those documents which prove your case to them, not generally every document in your files. So, you must respond specifically to each line item on the return by using the TaxHelp Program. Review the IRS Request for Documents (Form 4564) to determine which specific lines on the return they question and go prove your case for each line by using the TaxHelp Workbook. Don't give them all your files and ask them to sort through it.

You must be honest with the IRS. But, you don't have to reveal more than necessary to prove your

case. The IRS is looking for ways to expand an audit with a "fishing expedition" while you are trying to narrow the audit down to specific issues and then attack those issues. Avoid stirring up new issues. Keep the focus limited. Comply only to the extent required to prove the elements of your case you want to prove, not necessarily what the IRS wants to investigate. The information you give the IRS only has to allow them to correctly compute the tax, nothing more. Prove your case in as narrow a way as possible. You are allowed to advance alternate theories of your case or further claims, even if conflicting and were not on the original return. But, be realistic and do your homework.

2. Gather Information: If a company you dealt with is out of business or you have an ex-spouse or partner who won't cooperate, you'll have to gather other, third party records to prove your case. Try and get affidavits from everyone. Get State Court records, County or local records, agency reports, police and fire reports, insurance documents or credit reports to prove the case. You can ask the IRS to issue a Summons to the reluctant person but they may not. You can sue the other person in State Court but that does not stop the IRS action.

You will notice as you go through the TaxHelp program that you will be copying documents multiple times and placing them in different sections of your files. This is because the same evidence can prove several different aspects of the case and it is necessary to have it in several places to prove the elements necessary for each particular issue. Don't worry, just get used to making multiple copies and placing it in different spots in your files. It's better to have made multiple copies than to be searching for a document in front of the IRS.

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3. Be Honest and Credible: You must also prove the credibility of your evidence. A log book of your business mileage is the single most important document you can have. You can also use your employer's records or gas receipts, if you have to. Checks and credit card payments showing the exact payment for the exact invoice is solid proof of a deduction. If you do not have the invoices try and show

through other records that the deduction is ordinary for the business. Convince the IRS that you have sufficient records and have substantially complied with the law. Even if your evidence is deficient, be as thorough as possible and let the IRS dispute it.

Never give the IRS originals of any document to the IRS. Only if there is a question of the truth of a document should you show it to the IRS. Allow them to make copies if they want, but always ask them to return the original.

4. Evidence Issues: The evidence you give to the IRS may not be as complete as what the TaxHelp Workbook asks you to gather and it will probably not be as detailed as the IRS will request of you but don't worry, give them the information necessary to prove your case and be prepared to present other evidence if necessary. The evidence must simply be credible. It is better if it comes from a third party, not related to you, but anything can be reviewed. Be discerning about what you want to give the IRS. If your evidence is deficient, present what you can in whatever form you can and then decide if the issue is worth disputing.

You may have to get affidavits from various people who witnessed events or payments. These do not have to be elaborate. They simply need to state what the person knows under penalty of perjury. Use TaxHelp Form 2 in the Appendix.

Every piece of evidence has an origin, a life and perhaps, a terminus. Each piece of evidence is traceable through many means. Use your imagination. If you don't have one way of obtaining the evidence, get it another way. Use the internet, government records, medical records, school records, bank records, supplier records etc., depending on the issue. Don't give up just because one method of proving your case does not work. The truth is the goal.

Above all, don't use the IRS for advice. Give them your information and get as much information from

them as you can. You have an adversarial relationship with the IRS. Never admit you are at fault for anything and be unemotional. Say very little and let the evidence speak for itself.

IV. RESOLUTION

After the audit is over, the IRS will either send you a letter saying no changes are to be made to your return or that you are entitled to a further refund. Or, they may send you a Form 4549, Income Tax Examination Changes that shows the calculations for the issues which they explain on subsequent pages. Go through the explanations carefully. Often, the IRS will mischaracterize a fact. Immediately send them a letter respectfully refuting any fact that you dispute along with any further evidence supporting your case.

If you dispute any aspect of the IRS agent's report, identify specifically what you dispute and send them proof of why you dispute it. Always characterize your case in a positive way. Ask the IRS agent to send you their complete report and all notes on the case.

When negotiating with the IRS, ask for partial allowance of your claims, if they are divisible. See if they will agree to a specific treatment for an item which may aid you in other years or other cases.

At the bottom of the second page of the Statement of Income Tax Changes is the following affirmation the IRS asks you to sign:

Consent to Assessment and Collection- I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the United States Tax Court the findings in this report. Therefore, I give my consent to the immediate assessment and collection of any increase in tax and penalties, and accept any decrease in tax and penalties shown above, plus additional interest as provided by law.

If you completely agree with the IRS, you could sign it but you are waiving rights. It is best to seek legal advice before signing anything. If you do not sign it, the IRS will go ahead and process the audit and issue you a Notice of Deficiency which allows you 90 days to petition Tax Court. If you do not petition Tax Court within 90 days of when the IRS *mailed* the Notice of Deficiency to you, the tax will be assessed according to the agent's report.

If you dispute the agent's report and you have no further evidence or legal theories to advance you can: 1) appeal to the IRS agent's manager, 2) file an appeal with IRS Appeals, or 3) wait for the Notice of Deficiency and petition Tax Court. Of the 3 choices, I like going to Tax Court. I have found the proceedings there to be much more fair to taxpayers.

In a rare case, the IRS may ask you to sign a Closing Agreement. (Show Example) Get legal advice before doing so because these agreements have broad implications.

If you agree you owe something to the IRS start paying them now. Don't wait until you know the exact amount or have a bill from them. The IRS assesses very high penalties and interest against you, so the sooner you can pay them, the better. Review the TaxHelp section entitled "IRS Collections" for more information.