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10 RIGHTS OF TAXPAYERS UNDER IRS AUDIT

By Victor Sy, CPA, MBA

In an answer to complaints from taxpayers, Congress enacted the Taxpayer Bill of Rights to level the playing field and prevent intimidation and abuse. Here are 10 selected provisions of that bill to protect you on audits by the Internal Revenue Service:

- 1 **The right to be free from repetitive audits.** This applies where the examination of a particular item in a prior year resulted in no change. (TIP: Do not throw away audit changes that are mailed to you at the end of an audit).
- 2 **The right to have a closed audit closed.** The IRS can examine your books and records only once per year. Unless fraud is involved, the Service also cannot reopen a case that has been closed to make an adjustment that is unfavorable to you.
- 3 **The right to an explanation of the audit process.** The Service is required to furnish plain English, easy-to-understand information about the audit process, your appeal rights, and how to contact the taxpayer advocate. The agents are also instructed to explain these same rights again at the commencement of an audit including asking you whether you read the information, understood it, and have any questions.
- 4 **The right to obtain IRS information about you.** The IRS maintains master files of individuals and business, including you and me. You may request in writing such dossier about you. I do this when new clients that I represent have communicated directly (and wrongly) with the agent or when the case is inherited from a prior practitioner. I have to analyze the strengths and weaknesses of a case that may have been jeopardized by clients who may have innocently hurt themselves by spilling data unnecessarily.
- 5 **The right to be represented.** You may hire a CPA, enrolled agent, or attorney to represent you during an audit. The agent must deal with your rep instead of you. This is an important tip to preserve your way of life, including your sanity, when there are complicated troublesome issues. Your rep will earn his/her fees anyway. So why do you have to do it yourself? Start the process by executing Power of Attorney Form 2848.
6. **The right not to be interviewed.** You can refuse to be interviewed if you have appointed an authorized representative. If you attend an interview unrepresented, the examiner must suspend the interview at your request. This is an inalienable right (unless your rep causes unreasonable delays or an administrative demand has been issued).
7. **The right to appeal results of an audit.** You have the right to appeal any examination result that you think is incorrect or unfair. You do not have to pay their bill until after the appeal is heard (You have a better chance of winning in appeals anyway).
8. **The right to abatement of penalties and interests.** If you rely on an erroneous advice from the IRS, you may have penalties and interests forgiven. This is also true when penalties are caused by unreasonable delays from agent transfers, illness, or extended training (They did have lots of training during the recent reorganization).
- 9 **The right to be notified of any third-party contacts.** The IRS is required to give you advance notice when they intend to contact banks or vendors for missing bank statement or supplier invoices.
- 10 **The right to contact your taxpayer's advocate.** Use Form 911 Taxpayer Assistance Order (TAO) to contact your local advocate when you suffer significant hardships because of the way the agent is administering tax laws. The TAO may be used to stop aggressive audit tactics or oppressive collection tactics, expedite a claim for refund, and request the transfer of a case.

These are your rights. Discuss them with your tax adviser. Congress passed these taxpayers' bill of rights in three different years. They must be serious about protecting your rights. Use them.