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## **TAXPAYER BILL OF RIGHTS**

### **JUDICIAL PROCEEDINGS PROVISION OF THE IRS RESTRUCTURING & REFORM ACT**

By Victor Sy, CPA, MBA

1. **Tax Court small case:** If you lose at the examination level, lose at the Appeals level, or choose to bypass the Appeals process altogether, you may go to Tax Court to settle your tax disputes. Tax Court proceedings are formal and expensive. You may elect to have your case treated as a “small case” where the proceedings are informal and, therefore, less expensive to try.

**Old Law:** You may elect to do that if the case involves \$10,000 or less of liability.

**New Act:** The new law increases the cap of a small case from \$10,000 to \$50,000. This new increased cap will allow more taxpayers to take advantage of the relaxed rules. Instead of a full-blown trial in Tax Court, the case can be returned to Appeals. Personally, all cases that I have brought to Appeals have been successfully settled. Appeals Officers are more seasoned, more understanding, more flexible. They do not have the meanness, aggressiveness of auditors or tax technicians at office audits. If you could just imagine going against a young, overzealous auditor that flashes his badge of authority, you would probably prefer dealing with a veteran who has been through the ropes. Appeals Officer are not only more experienced in tax issues, they also have a better understanding of economics and human nature. Thus, it is easier to settle at the Appeals level rather than the Examination level or the expensive Tax Court.

**Comments:** Under the small case procedures, there is a relaxed use of the rules of evidence. No written briefs are required. At the end of the case, only the Court submits a summary of the reasons for the decision.

The Tax Court usually agrees to a taxpayer's election for small case under \$50,000 unless the decision could influence on other cases and by setting precedence. In this situation, a full trial with written briefs and a complete written opinion by the Court is preferable.

2. **Refund of overpayments:** Collection action against a taxpayer is supposed to be suspended while a petition is in Tax Court. Collection action may commence only after the Tax Court renders a decision. What happens if IRS personnel collect during this prohibition period?

**Old Law:** There is no authority for ordering the refund of such prohibited collections.

**New Act:** The new law provides that the Tax Court has jurisdiction over the case and can order a refund of any amount that was collected within the period during which the IRS is prohibited from collecting by levy or through a court proceeding.

3. **Notice of deadline for filing petition:** Over my two decades of practice before the IRS, I have personally seen clients blow their chance to petition simply because of missed filing deadlines. The IRS sends you, by Certified Mail, a statutory notice more popularly known as a “90-day” letter. This notice in effect advises you of a deficiency and to file an answer within 90 days.

**Old Law:** The problem is that the warning is in fine print right in the middle of the page. Unless you work with these forms, you may not even notice this 90-day requirement. To make it worst, there is nothing in the return that tells you when the deadline is. If you miss the deadline, you lose by default.

**New Act:** The IRS is required to include the last day of filing on the statutory notice. I just hope that this filing deadline would not be in fine print as this would not be in keeping with the spirit of the new law.

3. **Burden of proof in court proceedings:** At Tax Court trials, the taxpayer generally bears the burden of proof. The IRS notice of deficiency enjoys a presumption of correctness and you have to prove that the assessment is wrong.

**Old Law:** The presumption requires you to produce prima facie evidence to disprove the IRS determination. You must also bear the burden of disproving the merits of their claim by at least a preponderance of evidence.

**New Act:** The new law shifts the burden of proof in court proceedings to the IRS. It is the IRS who should submit proofs with respect to a factual issue if you present credible evidence and satisfy the following applicable conditions:

- A. You must comply with substantiation and record keeping requirements. This includes keeping supporting documents for traveling, entertainment, gifts, charitable contributions and other expenses.
- B. You must cooperate with the IRS in producing witnesses, information, documentation and being available at meetings and interviews. Cooperation includes providing, within a reasonable period of time, access to and inspection of witnesses, information and documents.
- C. You must also satisfy a net worth limitation for taxpayers other than individuals.

**Comments:** While this shifting of the burden of proof is good news to taxpayers like you and me, early analysis of this provision could increase the cost to taxpayers. The Service is now more likely to be more intrusive at the administrative and trial level to satisfy its potential burden of proof. You must also exhaust all administrative remedies including Appeals rights even though penalties and interests continue to accrue at this time. Both practitioners and taxpayers will end up spending substantial time and effort to comply with request for documents and witnesses. The new burden of proof provisions will encourage the IRS District Counsel to engage in substantial discovery to avoid having the burden of proof. This could also burden the Tax Court that has effectively used simple stipulation procedures to avoid long and costly discovery at trials.