

THE IRS AUDIT AND YOU

By Attorney Michael H. Wald

To many people, one of the most fear provoking situations is a notification from the IRS saying that your tax return is going to be audited. However, if you have been truthful and conscientious in the preparation and filing of your return, you have nothing to fear. Contrary to popular opinion, the IRS is not "out to get you." The IRS is, however, administratively responsible for enforcing the tax law.

The Service Center process of selecting tax returns for audit makes use of mathematical formulas and statistical sampling techniques, to select those returns most likely to contain errors and yield substantial amounts of additional tax upon audit. Though the IRS does not openly disclose all of its audit selection techniques, some observations have been made relative to certain groups subject to more frequent audits. While anyone can be audited, if you fall into one of the following groups, you are a prime candidate for an IRS audit:

- an individual with gross income in excess of \$50,000
- a self-employed individual with substantial income and deductions- an operator of a cash business
- a taxpayer with prior tax deficiencies

There are several types of IRS audits. The simplest is a correspondence audit. If the issue is a minor one, the matter may be resolved simply by correspondence with the IRS. Normally it will send you a notice pointing out the error on your return, and showing the amount of tax, penalty and interest you owe, and its due date. If you disagree with their finding, you can respond by mail.

However, interest will continue to build while the issue is being debated.

An office audit is restricted in scope and is conducted in the offices of the IRS. Take to the audit only the items specified in the audit notification. To save yourself time and trouble, make sure your records are complete. Failure to prove the validity of any tax return item questioned will result in an assessment of additional tax. The IRS agent cannot investigate any items not specified in the audit notification.

A field audit is conducted on the premises of the taxpayer or the taxpayer's representative. You, the taxpayer, are entitled to have professional representation (legal and/or accounting) at any audit.

Follow these rules for better results: Develop an attitude of cooperation. Produce promptly the records requested. Answer questions concisely and honestly; do not volunteer anything.

When the audit is completed, the examining agent issues a report. If additional tax is assessed, and you do not agree, you may appeal. If you take this step, you should get a lawyer, accountant, or tax practitioner to assist you.

The first step in the appeal process is to attempt an out of court negotiated settlement with the IRS. If this doesn't work, you can always go to court. Depending on which court you choose to go to you may have to pay any deficiency and sue for a refund.

Though the tax law is becoming more and more complicated, the taxpayer's rights to appeal and litigation are well protected. However, any taxpayer considering litigation should review his options carefully. Litigation can be very costly, and the outcome may well be affected by one's choice of courts: U.S. Tax Court, U.S. Court of Claims, or federal District Court. The IRS is also aware of the cost of litigation and is willing to negotiate in good faith, a fair and equitable settlement whenever possible.

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