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The Opinion Pages | OP-ED CONTRIBUTOR

Beware the I.R.S.'s Speeded-Up Audit

By DAVE DU VAL APRIL 29, 2015

TO those of us who fear the I.R.S. and the possibility of a tax audit, it sounded like good news. In March, the I.R.S. commissioner, John A. Koskinen, told his employees that because of budget cuts, the agency “had to do less with less” — reduce taxpayer services, delay refunds and do fewer audits. But alas, the outcome is not what it seems. Those who do get caught in the I.R.S.’s net may be in for a terrible time and lose some of the rights set out in last year’s new taxpayer bill of rights.

Examiners for the I.R.S. are giving taxpayers and their accountants much less time to respond to certain audit letters. There is no way to know how many audits are being done more quickly. My company represents taxpayers who are facing audits, and since last fall we have found that many of them have been hit with the speeded-up timetable. An initial request for an appointment is followed quickly — in some instances, on the same day — with a follow-up letter that states that the requested information has not been received.

Of course it hasn’t; the taxpayer just got the first letter! The second letter threatens the loss of the right to appeal within the I.R.S., forcing the recipient to go into the court system to resolve the case.

The letters are in language that can be mystifying for the average citizen. Here’s an example: “As of the date of this letter, we haven’t received all of the information we requested on Form 4564 ... If you don’t provide the information requested on the enclosed Form 4564 or contact me to confirm you have no additional information to provide by the response due date listed above, we will close your examination based on the information we have now. If you don’t agree, you won’t be able to appeal within the I.R.S. before we issue a notice of deficiency.”

If the letters are not taken seriously and dealt with within the prescribed time frame of 15 to 25 days, the consequences may be dire. That's far less than the 45 to 75 days that taxpayers used to have before they received a notice of deficiency. Once a notice of deficiency is issued, the audit case is in the jurisdiction of the United States Tax Court.

In other words, I could return home from a vacation or a stay in the hospital to find not only that I am being audited, but that my audit has already been closed and sent to the notice of deficiency unit. At this point I will have two choices: I can either pay the bill or file a petition with the tax court. And while I am not likely to know what losing my appeals rights means, I will soon find out that it is too late to hire an enrolled agent or accountant to help defend me against the I.R.S. Once the case is in the tax court system, my representative has to be a lawyer or tax court practitioner. These changes mean a much longer audit process for the taxpayer and more work for everyone involved. These new actions violate many provisions of the taxpayer bill of rights adopted by the I.R.S. last year. According to that document, taxpayers have the right "to be informed of I.R.S. decisions about their tax accounts and to receive clear explanations of the outcomes."

But sending follow-up letters to taxpayers on the same day as an initial appointment letter or within just a few days of it, with no clear explanation as to why they won't be able to appeal or what a notice of deficiency means, is confusing and clearly violates this right. The agency also says taxpayers have the right to "to be spoken to in a way they can easily understand, to receive clear and easily understandable communications."

Yet the follow-up letter (Letter 5262), includes no explanation of what it means to "appeal within the I.R.S." or what "notice of deficiency" means. Who but a tax professional knows this stuff?

Taxpayers also have the right to retain representation. But because certain examinations now allow 25 days or less for a response, there is not enough time to reasonably provide documents or obtain professional audit representation.

Taxpayer rights will be eroded as long as Congress keeps adding duties, reducing staff and cutting funding. The I.R.S. will not solve the problem on its own. Until Congress increases the I.R.S.'s budget and improves the oversight of its allocation, taxpayers will be deprived of their rights in audits.

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