

## How IRS Audits Can Become Criminal Investigations

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The tax law is terribly complex, and mistakes are common. But what can cause your tax audit to get vastly more serious? There is no single answer. Most criminal tax cases come out of plain old civil audits, and that fact alone is frightening. If an IRS auditor discovers something suspicious in a civil audit, the auditor can notify the IRS's Criminal Investigation Division. Notably, the IRS is not obligated to tell you that this criminal referral is occurring. In fact, normally, the civil auditors will suspend the audit without explanation. You might be pleased, thinking that the audit is over, or at least mercifully stalled so that it might not ever resume.

Meanwhile, the IRS can be quietly building a criminal case against you. Some of the pressure points are obvious. For example, one big mistake is omitting income. Whether you receive a Form 1099, W-2, K-1, or no reports at all, include all your income. Discrepancies can trigger audits, and if omissions of income are significant and do not look to be unintentional, watch out. Excess or aggressive deductions are less likely to be viewed as seriously, but some of this is a question of degree. This is especially true with items you try to write off that are clearly personal. In that sense, you may be better off if you can separate your tax life into business and personal. Many big, messy and expensive tax disputes come down to trying to morph personal into business to get a write-off.

False statements to auditors are a huge mistake. Conduct during the audit itself can be pivotal, and is one reason to hire professionals to handle it. Of course, some of what goes on at the IRS is computer matching—the endless correlation of taxpayer identification numbers and payments. Even small mismatches can be caught. Keeping good records is important, and you should keep them for six years after you file. Keep copies of your tax returns themselves forever. Moreover, you may need basis records for decades. If you buy a house and improve it over a 10 year period, 20 years later when you sell it, you'll need those receipts.

The IRS is vast and imposing, but there is a discrete part of it that is criminal and not civil. Like the FBI, the IRS Criminal Investigation Division uses the Special Agent terminology. If you are visited by an IRS Criminal Investigation Division Special Agent, you should consult with an attorney. You are not legally required to talk to them. In fact, the Fifth Amendment to the US Constitution guarantees your right against self-incrimination. That means you can't be compelled to be a witness against yourself in a criminal case.

You might assume that by answering a few simple questions you will not hurt yourself or your position—especially if you are just a witness. Don't be so sure. Regardless of how adept you are at communication, speaking up may actually help the IRS build a criminal case against you. The IRS may (quite honestly) tell you that you are not the target of the investigation but merely a witness. Even so, you are entitled to retain counsel.

In the early stages of IRS criminal investigations, a person may be told he or she is a witness. You may therefore think that there is no harm in talking. You might even think that your cooperation will make it more likely that the IRS will appreciate you and leave you alone. Be careful. As the investigation continues, a witness can become a target. Even if you are convinced you are merely a witness and will remain so, the U.S. Supreme Court has ruled that you have the right to assert your constitutional privilege against self-incrimination. See *Bellis v. United States*.

The ramifications of getting flustered and running at the mouth can be extreme. Particularly given the fluid nature of who is a witness and who is a target, even statements you think sound innocent may not be. Suppose you are asked whether you do business with Joe or know Sally. If you answer falsely, you may face felony charges. See 18 U.S.C. Sec. 1001. Plus, making a false statement can be considered evidence of an attempt to conceal other criminal conduct. If you are approached and questioned by a Special Agent, ask for his or her business card. Firmly but politely state that you do not want to answer any questions and that you will have your attorney contact the Special Agent. You can fully cooperate through your attorney.

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