Not Every Tax Bill Has To Be Paid

By Robert W. Wood

One of Mitt Romney's gaffes on the campaign trail was the statement that no one who paid any more tax than they had to should be president. Then for his 2011 tax year he acknowledged that he didn't claim all the charitable contributions he was entitled to claim. Those seem inconsistent, but many taxpayers sometimes pay more tax than they should and sometimes pay less. But nearly everyone at some time receives a tax bill they want to fight.

If the bill is for a small amount and you just want to fight out of principle, my advice is simple: don't. It's not worth it, and the dispute could end up spilling over into bigger dollar issues. But where you do have a *bona fide* beef, you'll find that the taxing authorities will expect you to follow a strict procedural pathway.

The IRS, California Franchise Tax Board (FTB), California State Board of Equalization (SBE) and even your local county tax assessor all have their own rules and protocols. While I'll address the IRS here, many of the FTB's rules are similar. The FTB administers California's income tax, while the SBE handles sales and use tax.

When Californians talk of the SBE they may mean the large administrative agency that handles sales and use taxes. But they may *also* mean the five-member political body that sits as a kind of tax court in California. The latter offers the highest administrative hearing one can have in a California income tax case, sales and use or even property tax case.

When you disagree with the IRS, procedure is important. Most audits are via correspondence, not sitting across a desk. You might be asked to send in receipts or explain why you didn't report a Form 1099 the IRS received. If you fail to respond, an IRS Examination Report may follow.

Most tax lawyers and accountants call an Examination Report a "30-day letter" because you have 30 days to "protest." The IRS can grant an extension, but make sure to confirm it in writing. Keep a copy of your protest and proof of timely mailing. Explain the facts and law and attach documents where helpful.

Normally, the IRS will transfer your case to the IRS Appeals Division, a separate unit to resolve differences between auditors and taxpayers. A tax lawyer or accountant can handle your case. You can even do it yourself (although that's generally less effective).

There are Appeals Offices throughout the country, but usually you'll be assigned one close to you. You can request one where your tax lawyer or records are located. The majority of tax cases are resolved at Appeals. If yours can't be, you'll receive a Notice of Deficiency via Certified Mail.

Called a "90-day letter" by tax practitioners, it will list the due date for a response. Only one response is effective: filing a petition with the U.S. Tax Court in Washington, D.C. The court can't hear your case if you miss the 90-day deadline, which can't be extended. You can hire a tax lawyer, but some taxpayers handle their case *pro se* under simplified procedures where less than $50,000 in tax is in dispute.

A prime advantage of Tax Court is that you can dispute the taxes before paying. The 19 Tax Court judges travel the country and you can pick the city where you want your case heard. Tax Court procedure is streamlined with no jury and relaxed rules of evidence. Many cases are presented based on stipulated record, but you can call witnesses should you so desire.

Once an IRS lawyer answers your Tax Court petition, if you didn't have an Appeals conference, you can ask the IRS to transfer your case to IRS Appeals. If you don't respond to a Notice of Deficiency within 90 days, you will have an assessment and cannot go to Tax Court. At that stage you generally have to pay the taxes and file a claim for refund. If your refund request is not granted or the IRS fails to respond for six months, you can sue in district court or U.S. Claims Court.

There are many different types of tax notices, and many different types of tax disputes. I've noted only one common one here, and only from the IRS. Apart from Notices of Deficiency, other important notices include liens, levies and summonses. Each has its own procedural nuances. Forms of response vary, and procedure and timing are important.

It also bears noting that one tax issue will often trigger others, not unlike dominos falling. The IRS, FTB and SBE all communicate with each other and share information. Sometimes you may dispute an FTB bill which you might otherwise just pay because you are fearful about the IRS.

The FTB statute of limitations generally runs four years after filing a return. The IRS statute of limitations generally runs three years after filing a return. In some cases you may seek to delay the disposition of the FTB case until the IRS statute has run. If you think this might work in reverse, think again. California law states that you must file with California reporting an IRS adjustment. If you fail to do so the California statute of limitations will *never* expire.

Whatever you do, consider the various tentacles of the tax system. Get some advice, proceed carefully, and make sure you are following all the procedural steps to the letter. You'll be glad you did.

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