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THE TAX LAWYER

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### Yes, You Can Fight IRS In Court, But Which Court?

If you get a notice or bill from the IRS, first consider if you want to fight it. If you know the IRS is correct, fighting may be a waste of money. In fact, if the IRS is seeking a small amount of tax, you might be better off not fighting even if you are right. Just consider whether it is worth it if the dollars are small. Sometimes, disputing something small can end up triggering other issues that might have best been left alone. Of course, what is a small tax bill means different things to different people, and the extent to which you should watch out for other unrelated issues varies too. But in most cases, if you get a bill for additional taxes, you'll want to preserve your rights. Timelines and procedure in tax disputes are critical. To prepare a timely response and observe procedural rules, check out [13 tax notice tips you should know](#).

For example, if you receive an IRS Examination Report, prepare a written protest and sign and mail it before the deadline. Keep a copy, plus proof of mailing certified mail. Explain yourself thoroughly and attach documents where they will be helpful. Your protest should analyze the facts and the law. The IRS may review your protest and agree with you, but if they don't, how you frame your protest can help later. If you have protested in a timely way,

you will normally receive a response that the IRS is transferring your case to the IRS Appeals Division, a separate part of the IRS whose mission is to resolve cases. If you fail to protest, or if you do not resolve your case at IRS Appeals, you'll next receive an IRS [Notice of Deficiency](#), which always comes via certified mail. It can't come any other way. A Notice of Deficiency is often called a "90-day letter" because you'll have 90 days to respond. Don't write the IRS to protest a Notice of Deficiency. Only one response to a Notice of Deficiency is permitted: filing a Tax Court petition in the [U.S. Tax Court](#) clerk's office in Washington, D.C.



If you don't respond to a Notice of Deficiency properly within 90 days, you normally must pay the taxes and file a claim for refund. If your refund request is not granted, you can sue for a refund in [federal district court](#) or the [U.S. Claims Court](#). The primary advantage of proceeding in Tax Court is that you need not pay the tax first. In contrast, most taxpayer suits in U.S. District Court or U.S. Claims Court are *after* the tax has been paid. Sometimes, though, you might be able to cleverly shoehorn yourself into one forum, even

though it might seem that you don't satisfy the rules. Take the case of [\*Colosimo v. U.S.\*](#), where the IRS pursued the company and its owners for payroll taxes. The owners sued in District Court for a ruling they were not "responsible persons" required to pay the payroll taxes. But the owners paid only a fraction of the taxes the IRS was seeking. This was a clever use of the notion that sometimes you can pay only a portion of the tax due, with your suit resolve both pieces of the asserted tax: the part you paid and the part you didn't.

Be careful, there are many different types of IRS notices. There are notices relating to tax liens, levies, summonses and more. Forms of response vary and procedure is important, so if there is significant money involved, get some professional help.

*Check out my [website](#).*