

## Special Edition -

### What to do if the IRS comes for you!

Over the last 6 months I've written about the Independent Contractor controversy:

- Independent Contractor companies, in the trucking industry, have become a target of IRS.
- IRS is looking to convert as many Independent Contractors to employees as possible for the tax revenue.
- There has been some highly publicized cases such as; in the state of Arkansas, where the Supreme Court ruled Independent contractors can be deemed to be employees, and;
- There are twice as many tax audits going on today, as there was in the last 10yrs.

The fact of the matter is that IRS audits have more than doubled in the past decade. The number of taxpayers targeted is likely to continue to increase as the Feds try to boost tax revenues to close their huge budget deficit.

High earners, small business earners, the self employed and those with offshore accounts face the greatest risk – but an audit can happen to anyone.

Most audits are simple correspondent audits – an IRS computer identifies a math error... mismatched data... misinformed... or some other straight forward mistake. Once you are contacted by the IRS, you mail in the additional payment or information requested, and the matter is often resolved without further issues.

You may face a much more significant audit if the IRS requests a meeting. Although many tax payers choose to handle this on their own, it is best to hire an experienced tax attorney, certified public accountant or enrolled agent (who is required to pass a test to represent tax payers in dealing with the IRS).

- This could cost from a few hundred dollars to a few thousand dollars, depending on the experience level of the professional you engage, the complexity of the audit and where you live.
- Cost can climb even higher if there are appeals or the case goes to court.

If you can't afford to hire representation, ask local law schools if they have a free or low cost tax lawyer that can provide representation.

Whether you work with a representative or go it alone, it pays to be aware of the IRS agents' latest tactics... and the often overlooked tools available to you.

Be prepared for the trickiest techniques: a surprise telephone call. Prior to 2009, audit notifications almost always were sent through the mail. Now IRS agents sometimes contact tax payers by telephone, out of the blue to tell them they are being audited. The shock of this call may cause a tax payer to say more than he/she should.

What to do:

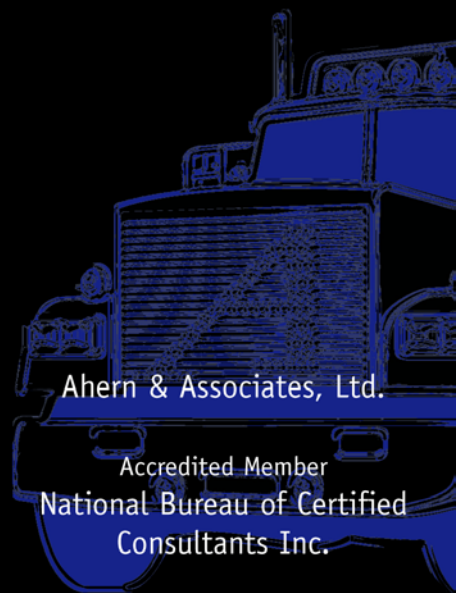
- If you receive such a call.
- Take down the IRS agents contact information.

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What To Do If IRS  
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- Tell them you are represented by a tax preparer or a tax lawyer, and;
- Advise them that your representative will be in contact.

**Say nothing else! – You have a legal right to consult a tax advisor before responding to IRS questions. And be aware that in some cases, the caller may be a “scammer”, posing as an IRS agent, in hopes of obtaining sensitive data, so don’t supply personal information.**

**The IRS requires the tax payer to respond to most audit notices within just 15 to 30 days. Those deadlines have become increasingly inflexible in recent years, for example;**

- Failure to respond to a correspondence exam notice within 30 days.
- **The disputed amount becomes a final assessment** to be handled by the IRS collections department.

**When this happens it makes it very difficult and expensive to challenge the IRS’s position, even if you can prove what the IRS has done is incorrect.**

**When you receive notice, always contact the IRS by the deadline on the notice and ask what in particular the IRS wants to cover. Do so by certified mail so that you have proof when your reply was received.** If you intend to hire a representative, do this as soon as possible so that your representative has time to respond. **It’s important to understand that anything you say to an IRS agent can be used against you;** an agent is trained to get tax payers to say things they shouldn’t. For example;

- An auditor swapped fishing stories with the owner of a part-time boat charter business, and then asked whether the business ever was likely to make money.
- **The owner jokingly replied that he loved fishing so much that he didn’t really care if it did.**
- The agent said that “this shows that the business is just a hobby and that the owners tax losses were disallowed”

**It is important to understand that you need to have somebody that can represent you, if you have a tax audit. If IRS contacts you;**

- Refer all questions from the IRS to your tax representative.
- Even questions that may seem not applicable.

**Do not meet with the IRS unless your representative specifically advises you to accompany him/her. If you do not hire a representative politely avoid small talk with the IRS agent.**

- Respond to financial inquiries by writing down the questions and promising to provide the requested information as soon as possible.
- Supply the answers in writing, to reduce the possibility of taking things out of contexts or saying too much.

**It’s important to understand that it isn’t easy to take on the IRS, but taxpayers and their representatives do have some tools at their disposal. If you believe that you have been singled out, or that a specific agent that is handling your audit is being unreasonable,** you have the right to speak with the agent’s team manager. Unfortunately, team managers generally stand behind their agent’s ruling. **If this happens, ask to speak with the teams manager’s manager – the territory manager.**

- Territory managers tend to be more reasonable and flexible, and;
- Sometimes they will overrule low level agents decisions.

**It’s also important to understand that if you are in audit, take the IRS’s strict deadlines and use them against the IRS. Send certified letters to the agent handling your audit; the letters might ask questions about your audit or provide information requested by the auditor. If 30 days pass, without a reply to your letter – (that is often the case), you have the right to request the free assistance of the IRS tax payer advocate service (877-777-4778 [www.irs.gov/advocate](http://www.irs.gov/advocate))**

**The advocate service can spur the IRS to actions when it’s dragging its feet or stand up for the taxpayer when the IRS is not following its own rules. Most important, enlisting the advocates service help encourages IRS agents to treat you kindly – agents typically tread with caution when this watchdog is looking over their shoulders.**

**If your audit involves a gray area of tax law, you can request a “fast track settlement” (FTS)**

- The FTS option lets you enter the IRS appeals process even before the initial audit has ended.

- That can work in your favor if your audit involves a gray area of tax law.

**The reason: an agent that handles an initial audit typically rules against the tax payer if there is any chance that the tax payer owes any money... but IRS appeals officers take into account the odds that the IRS may lose if the case goes to court. Thus, appeals officers are much more likely to compromise when it's unclear** which side the tax law favors. For example; an IRS agent questions whether you “actively participated in the business”. What constitutes act of participation is a legal gray area.

**You can wait until after the initial audit to appeal, but that would likely leave the audit hanging over your head for months and inflate your representative's bill, if you hire one.** The tax professional should be able to advise you as to which issues fall in the legal gray areas.

**If an FTS makes sense in your case, request it as soon as the agent handling your audit indicates he/she intends to pursue what seems like a gray area tax issue.** The new IRS policy makes this FTS unavailable ones the agent handling the initial audit sends a 30 day notice officially ruling on an issue. If that happens;

- Request a face to face penalty reduction meeting.
- **The IRS attempts to impose penalties immediately if it concludes that a tax payer has underpaid his/her taxes.**
- In some cases, these penalties are unjustified.

**Penalties are generally called for only when tax payers knowingly fail to pay taxes, not when they make honest mistakes.**

**Agents who specifically handle penalty issues are far more likely to reduce or eliminate penalties when they have looked the tax payer or tax payer representative** in the eye and heard, in person, an explanation of how the underpayment was accidental.

*(Excerpts taken from Bottom Line Personnel: Mark Sheroud, former Senior Trial Attorney and Special Assistant, US Attorney with the IRS Chief Councils Office. [www.bakertilly.com](http://www.bakertilly.com))*

## QUOTE OF THE WEEK:

**“When the outgo exceed your income, the upshot maybe your down fall”** (Paul Harvey)