

5 Things You Should Know About the IRS

By Howard Levy



The IRS is on a clear mission to recover revenue and fund the budget deficit. With a fragile economy hovering over it, the IRS has increased enforcement staffing across the board, including 30 percent more high-level revenue officers. Lien and levy actions are hitting 15-year highs.

At the same time, more taxes remain delinquent in the U.S. Treasury than the government has resources to collect. The IRS Taxpayer Advocate just reported that \$61 billion of tax debt is considered currently not collectible.

The IRS is faced with unprecedented enforcement challenges at time when taxpayers are in economic distress. Here are five realities that you should know about the IRS right now:

1. The “offer in compromise program” is not as advertised on television.

Pennies on the dollar! Act now before it’s too late! The laws may change!

During first consultations, my clients often have questions about advertisements they have seen on television or heard on the radio about the IRS offer in compromise process.

Here is what I tell them: The IRS is currently accepting about 11,000 compromises a year. That is about 25 percent of the offers it receives. The program is viable for the right situation, but it is not an open door policy as the advertisements lead many to believe.

A detailed understanding of what the IRS looks for in a financial statement is key to success. Finances have to match up with IRS settlement guidelines, and there

must be familiarity with permissible reasons for deviation in negotiation.

Contrary to the advertising, it is good to know that tax laws are not changing in a way that will hurt the compromise program. In fact, a bill is pending in the House Ways and Means Committee that would make entry into the compromise process more affordable and accessible. If passed, the Tax Compromise Improvement Act would remove the current requirement that 20 percent of the settlement offer be paid in advance as a nonrefundable deposit.

2. IRS seizures of houses, personal belongings and business property are rare.

In an economy where few need additional financial pressures, it is important to know IRS seizure priorities. For most, the fear of having the IRS seize a house, personal belongings or business property is greater than the reality. IRS seizures of personal and business property are rare.

There is a reason for the low “hard asset” seizure rate. If real or personal property lacks equity, the IRS will not seize it. Internal Revenue Code 6331(f) prevents the IRS from making an “uneconomical levy” — meaning there must be an economic recovery to the IRS to do it.

Internal Revenue Manual 5.10.1.2 mirrors the tax code by stating that seizures are prohibited “where the taxpayer has insufficient equity in the property.”

3. Retirement accounts are not protected from IRS collection actions.

Although account values may have dropped from the Great Recession, retirement assets are still considered a safe haven from creditors in troubled times. Even with a civil court judgment, a creditor will not be able to reach money in a qualified retirement plan.

But it is a different matter when the creditor is the IRS. Internal Revenue

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The real enforcement action is directed towards liquid assets — bank accounts and wages. Compare the 600 seizures the IRS made in 2009 on real and personal property to the 3.5 million levies it issued on liquid assets. When negotiating with the IRS, it is important to know what is at risk.

Code 6334(a) lists the few assets that the IRS cannot reach. The list does not have any exemption as to levying retirement assets.

If the Internal Revenue Code does not specifically list an asset as exempt from the IRS collection powers — like retirement accounts — it is fair game. »

Even though retirement accounts are not exempt from IRS collection powers, there are defenses. To defend a retirement account from the IRS, it is important to understand that the IRS stands in shoes of the owner, and can only get what the owner can get. Most retirement plans do not provide for present rights to the money — allowing access only at separation from service, retirement or death/disability. In most cases, the statute of limitations on collection would pass before the account becomes “liquid” for the IRS.

Proper handling, negotiation and an understanding of the process is extremely important as to defending this very sensitive asset.

4. The IRS has limits on the amount of time it has to collect a tax debt.

There is a 10-year statute of limitation on the collection of taxes (Internal Revenue Code Section 6502). Internally, IRS personnel refer to this drop dead date by the acronym “CSED,” short for Collection Statute Expiration Date.

But certain acts can extend the statute of limitations — something to always consider before plunging in with remedies. A favorite remedy — the filing of an offer in compromise - will extend the statute of limitations on collection by the time it is pending plus 30 days. As a compromise can take up to two years to complete in some cases, it is important to look before your leap.

Running out the collection statute expiration date is a strategy that must be implemented carefully, understanding when it is an appropriate remedy and what actions taken can inadvertently extend the timeframe.

After 10 years, the IRS will clear the account balances to zero. The IRS will make an entry in its database reading “Balance cleared to zero — expiration of statute collection date.” Any tax liens that were filed will also expire and become legally unenforceable.

5. Bankruptcy is a powerful tool that is capable of eliminating taxes.

A troubled economy has led more people to turn to bankruptcy — in-

cluding for resolution of IRS problems. Increased IRS enforcement and historically low compromise rates have amplified the value of a tax bankruptcy.

Taxes that could not be solved by an IRS offer in compromise can be eliminated in a Chapter 7. Installment agreements — many of which the IRS would not agree to under their stringent financial standard guidelines — may be obtained in a Chapter 13 repayment plan. Chapter 13 adds the intriguing possibility of stopping the accruals of interest and penalties while payments are made

— a virtual impossibility with direct IRS negotiations.

There is a test to determine if bankruptcy will work on the IRS: Bankruptcy can discharge an income tax liability if the case is started more than three years after the due date of the tax return and more than two years after that return was filed, whichever is later. A bankruptcy filing also stops the IRS and releases levies and seizures. [R](#)

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