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Helping Your Clients Understand Their Rights



6/26/2012



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Do Taxpayers Have Rights?





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Survey Says:

TAS surveyed a nationwide sample of U.S. taxpayers who filed 2010 tax returns.

We asked respondents whether they believe they have rights before the IRS and whether they know what their rights as taxpayers are.





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Did you know you have rights?

55% said they believe they have no rights

21% said they aren't sure

Only 9% believe they have rights before the IRS





Do taxpayers have rights before the IRS?

As a result of legislation, taxpayers have dozens of rights in dealing with the IRS, but only about one out of ten taxpayers are aware of these rights. And if taxpayers don't know what their rights are, how can they claim them?

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Legislation

Three pieces of legislation provide the basis for most taxpayer rights.

The Technical and Miscellaneous Revenue Act of 1988

The Taxpayer Bill of Rights 2 (TBOR 2) Restructuring and Reform Act of 1998





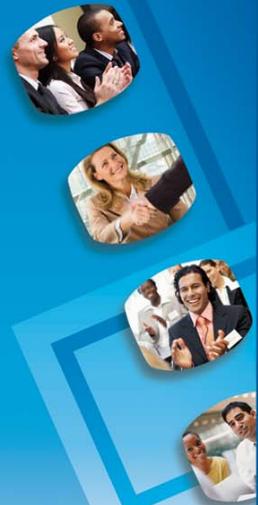
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Where Does Your Client Find His/Her Rights?

Rights are set out in Publication 1
TBOR 1, section 6227

- IRS must explain in writing in simple non-technical terms the taxpayer's rights





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Specific Rights – Pub 1

Explanation and protection of taxpayers' rights

Privacy and Confidentiality

Professional and Courteous Service

Representation





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Specific Rights – Pub 1, Cont.

Payment of Only the Correct Amount of Tax

Help with Unresolved Tax Problems

Appeals and Judicial Review

Relief from Certain Penalties and Interest





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IRS Processes – Pub 1

Examination

Appeals

Collections

Potential Third Party Contacts

Refunds

Additional resources for taxpayers





TAS Efforts to Improve Pub 1

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TAS is evaluating Pub 1's design and its success at informing taxpayers of their rights.

The National Taxpayer Advocate (NTA) has raised concerns in the past that Pub 1 does not adequately or clearly set out Taxpayer Rights. TAS now “owns” Pub 1 and is taking steps to improve the quality of the Publication.

The NTA wants to go beyond Pub 1 and codify taxpayer rights.





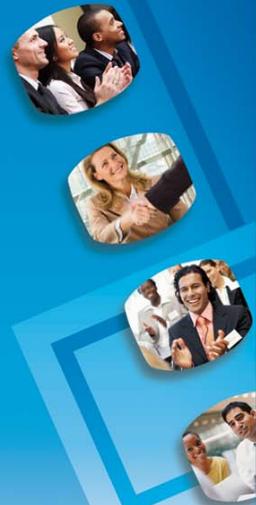
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NTA 2007 Annual Report to Congress Legislative Recommendation

Congress should enact a statutory
Taxpayer Bill of Rights that clearly and
simply sets out taxpayers' rights.

2011 Annual Report to Congress used
2007 Taxpayer Bill of Rights





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Legislative Recommendation to Codify Existing Rights

Taxpayer rights:

Right to be Informed;

Right to be Assisted;

Right to be Heard;

Right to pay no more than the correct
amount of tax;

Right of Appeal;





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Legislative Recommendation to Codify Existing Rights, Cont.

Taxpayer rights:

Right to Certainty;

Right to Privacy;

Right to Confidentiality;

Right to Representation; and

Right to a Fair and Just Tax System.





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Legislative Recommendation to Codify Existing Rights, Cont.

Taxpayer responsibilities:

Obligation to be honest;

Obligation to be cooperative;

Obligation to provide accurate
information and documents on time;

Obligation to keep records; and

Obligation to pay taxes on time.





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Legislative Recommendation to Codify Existing Rights, Cont.

Numerous states and several other countries have codified Taxpayer Bills of Rights.

The Organization for Economic Co-operation and Development conducted a survey and identified basic taxpayer rights and obligations held in multiple countries.

Canada's Taxpayer Bill of Rights

New York, Pennsylvania, and Indiana

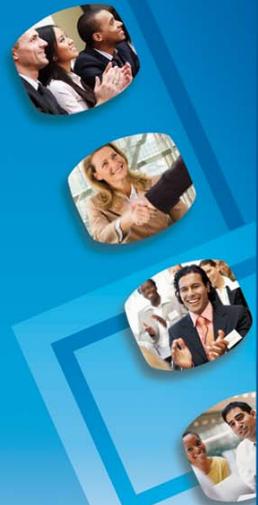




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Existing rights that could be Codified by Congress into a Taxpayer Bill of Rights





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The Right to be Informed

Throughout the life of a tax case, taxpayers have the right to be informed of rights and the administrative process.





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The Right to be Informed

Publication 1, *Your Rights as a Taxpayer*

Appeals – Publication 5, *Your Appeal Rights and How to Prepare a Protest If You Don't Agree*

Collection – Publication 594, *The IRS Collection Process*

Code provisions requiring Secretary to issue guidance

Statement of reasons for refund disallowance





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Right to be Assisted

IRS correspondence to the taxpayer should contain contact information for an IRS employee.

Taxpayers should be able to find contact information for their local office.





Right to be Heard

From examination of a return to collection of the tax, the taxpayer has the right to contact the IRS and discuss the tax situation.

In-person audit - IRS employee must explain the audit process and the taxpayer's rights

In-person collection interview - IRS employee must provide explanation of the collection process and the taxpayer's rights

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The Right to Pay the Correct Amount of Tax Due

Abatement of tax if excessive in amount
Offer In Compromise doubt as to liability
Claim for refund





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Right to Appeal (Administrative and Judicial)

During the examination and collection process, taxpayers have the right to due process in the form of both administrative and judicial review (depending on where the case is in the examination or collection process).

Appeals Dispute Resolution

– Mediation

Fast Track

Early Referral

– Arbitration





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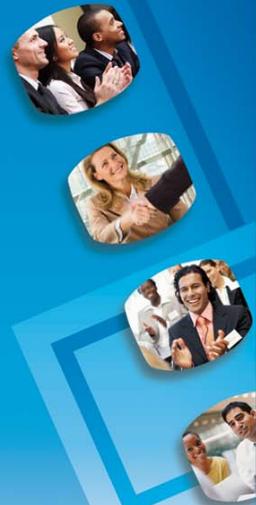
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Right to Appeal (Administrative and Judicial) Cont.

Appeals – independent, impartial, and no ex parte communications.

Rev. Proc. 2012-18 - current rules regarding the permissible communications between the Office of Appeals and other parts of the IRS.

“Ex parte communication” - communication between any Appeals employee and employees of other IRS functions, without the taxpayer/representative being given an opportunity to participate in the communication.





Examples of Communications Subject to Ex Parte Rules

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Discussions about the accuracy of the facts presented by the taxpayer and the relative importance of the facts to the determination.

Discussions of the relative merits or alternative legal interpretations of authorities cited in a protest or in a report prepared by the originating function.

Discussions of the originating function's perception of the demeanor or credibility of the taxpayer or taxpayer's representative.





Collection Due Process (IRC § 6320 and 6330)

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IRC 6320 requires IRS to formally notify the taxpayer of the filing of a Notice of Federal Tax Lien and the right to request a CDP hearing – 5 days

IRC 6330 requires IRS to formally notify the taxpayer of its intent to levy and the right to request a CDP hearing - 30 days





Collection Due Process Hearings

IRC 6330(c)(3) requires the Appeals hearing officer to take into consideration the following:

Verification from the Secretary that requirements of applicable law or administrative procedure were met;

Relevant issues relating to the unpaid tax, the filing of the NFTL or the proposed levy; and

Whether the action taken or proposed balances the government's need for the efficient collection of taxes with the taxpayer's legitimate concern that any collection action be no more intrusive than necessary.

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Collection Due Process Hearings

In certain circumstances, the taxpayer can challenge the tax liability itself at the CDP hearing.

The taxpayer can also request collection alternatives, such as an offer in compromise or an installment agreement.

Determinations can be appealed to U.S. Tax Court if the hearing request was timely.

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Other Options

U.S Tax Court - Prepayment forum for disputing notices of deficiency

Refund Suits – must pay tax and then file a claim for refund. If the claim is denied, the taxpayer can file suit in district court or the Court of Federal Claims





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Right to Certainty

At an appropriate point, the taxpayer has the right to know that the amount of tax due is final.

Assessment

- Statutory Notice of Deficiency
- U.S. Tax Court decision

Statute of limitations on assessment and collection

Statute of limitations on credit or refund claims

Only one inspection of a taxpayer's books shall be made for each taxable year unless the taxpayer requests it or after IRS investigates, it notifies the taxpayer in writing that a second exam is necessary.
IRC § 7605(b).





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Right to Privacy (freedom from unreasonable searches and seizures)

This right is vital during the collection process.

Levies generally extend only to property possessed or rights existing at the time the levy is filed.

No levy until a thorough investigation of the property or right to property has been completed

Some property is exempt from levy

Right to CDP hearing before first levy





Right to Confidentiality

From the moment taxpayers file their returns, their information must be kept confidential.

IRC § 6103: confidentiality of taxpayer returns and return information

Penalties, both criminal and civil, for disclosure or use of return information by return preparers

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Right to Confidentiality, Cont.

LTA discretion to not disclose the taxpayer has contacted TAS or any information provided by the taxpayer to TAS. IRC § 7803(c)(4)(A)(iv).

IRS must inform the taxpayer of its intent to make third party contacts and provide the taxpayer a list of those contacts upon request.

Confidentiality privilege for federal authorized tax practitioners to the extent attorney-client privilege applies, including non-attorney Circular 230 practitioners in dispute before the IRS.





The Right to Representation

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Taxpayers have the right to be represented by a person of their choosing throughout the life of a tax case.

Taxpayers can be represented by an Attorney, CPA, EA, Enrolled Actuary, or any other person should submit a written power of attorney to represent the taxpayer before the IRS.

The taxpayer cannot be required to attend an interview when he or she is represented, unless pursuant to a summons.

Low Income Taxpayer Clinics

Awarding of attorney fees and administrative and litigation costs





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The Right to a Fair and Just Tax System

Abatement of tax if excessive in amount

Abatement of interest attributable to unreasonable errors or delay by the IRS

Abatement of penalty for reasonable cause

Offer In Compromise





The Right to a Fair and Just Tax System, Cont.

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Installment Agreement

Office of the Taxpayer Advocate, the National Taxpayer Advocate, and Taxpayer Assistance Orders

Tolling of the statute of limitations on refund claims for periods when the taxpayer is financially disabled. IRC § 6511(h).





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The Obligation to be Honest

Returns & documents submitted under penalty of perjury

Penalty for committing fraud

Penalty for false or fraudulent statements

Fraudulent returns, statements, or other documentation

Willful failure to file





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The Obligation to be Cooperative

Filing of returns

Burden of proof – maintaining adequate books and records

- Under IRC § 7491, the burden of proof may shift to the government if the taxpayer has provided substantiation, such as adequate books or records.





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The Obligation to Provide Accurate Information and Documentation on Time

File returns and other documentation timely

- Failure to file return will result in penalty

Timely file return, supply information, and pay tax

Taxpayers' books and witnesses can be examined by the IRS

- Taxpayers books and witnesses can be examined for accuracy

The IRS has broad summons authority.





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The Obligation to Keep Records

IRC § 6001 “Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.”





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The Obligation to Pay Taxes

Failure to pay tax will result in penalty

Failure to make tax deposits will result in a penalty

Failure to pay estimated income tax will result in penalty

Trust Fund Recovery Penalties





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Visit www.IRS.gov/advocate

Visit TAS's Tax Toolkit at
www.taxpayeradvocate.irs.gov

Call 1.877.777.4778

Josh Beck, Attorney Advisor
Joshua.R.Beck@irs.gov

