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Advocating for your Client Using the Taxpayer Bill of Rights





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IRS Adoption of the TBOR

- Adopted June 2014
- List of ten fundamental rights
- Did not include taxpayer obligations or responsibilities
- Provides a thematic, principle-based list of core taxpayer rights.
- Serves as a foundational framework for taxpayers and IRS employees alike.





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Publication 1



Your Rights as a Taxpayer

Publication 1

This publication explains your rights as a taxpayer and the processes for examination, appeal, collection, and refunds. Also available in Spanish.

The Taxpayer Bill of Rights

1. The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

6. The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.





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TBOR placed in the Internal Revenue Code

Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, § 401 (2015) (codified as IRC § 7803(a)(3))

“In discharging his duties, the Commissioner shall ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title, including—”



Holding the IRS Accountable

Ensuring employees are “familiar with” taxpayer rights

- Internal Revenue Manual (IRM) instructions
- Employee training and job aids
- Incorporating taxpayer rights into performance measures
- Written materials and information on the internal IRS website





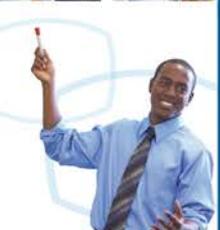
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Holding the IRS Accountable

- Ensuring employees “act in accord with” taxpayer rights
- Examples of actions this may apply to:
 - Making an exam determination
 - Providing or refusing to provide an administrative appeal
 - Taking a collection action
 - Generating a notice





Crosswalk of Statutory Protections

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TAXPAYER ADVOCATE SERVICE
YOUR VOICE AT THE IRS

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- The Right to Appeal an IRS Decision in an Independent Forum
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- The Right to Retain Representation
- The Right to a Fair and Just Tax System

Submit a tax reform suggestion ▶

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1 The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with tax laws. They are entitled to clear explanations of the law and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

What This Means for You

- If you receive a notice fully or partially disallowing your refund claim, including a refund you claim on your income tax return, it must explain the specific reasons why the claim is being disallowed. *IRC § 6402(f)*
- Generally, if you owe a penalty, each written notice of such penalty must provide an explanation of the penalty, including the name of the penalty, the authority under the Internal Revenue Code, and how it is calculated. *IRC § 6751(a)*
- During an in-person interview with the IRS as part of an audit, the IRS employee must explain the audit process and your rights under that process. Likewise, during an in-person interview with the IRS concerning the collection of your tax, the IRS employee must explain the collection process and your rights under that process. *IRC § 7521(b) (1)*

www.TaxpayerAdvocate.irs.gov/taxpayer-rights





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Right to Be Informed

FOIA and E-FOIA: You have the right to access certain IRS records, including instructions and manuals to staff, unless such records are required or permitted to be withheld under the Internal Revenue Code, the Freedom of Information Act, or the Privacy Act.

Plain Writing Act: The IRS should ensure that its written guidance and correspondence is accessible, consistent, written in plain language, and easy to understand.





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Right to Quality Service

IRC § 6304 Right to Fair Collection Practices:

When collecting tax, the IRS should treat you with courtesy. Generally, the IRS should only contact you between 8 a.m. and 9 p.m. The IRS should not contact you at your place of employment if the IRS knows or has reason to know that your employer does not allow such contacts.





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Right to Pay No More Than the Correct Amount of Tax

IRC § 6404(e) Interest abatement:

You may request that the IRS remove any interest from your account that was caused by the IRS's unreasonable errors or delays. For example, if the IRS delays issuing a statutory notice of deficiency because the assigned employee was away for several months attending training, and interest accrues during this time, the IRS may abate the interest as a result of the delay.





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Right to Challenge the IRS's Position and Be Heard

IRC § 6213(b) Math Error: If you are notified by the IRS that it adjusted your return because of a mathematical or clerical error, you have 60 days to tell the IRS you disagree. If the IRS is not persuaded, it will issue you a Statutory Notice of Deficiency proposing a tax adjustment. This notice provides you with a right to challenge the proposed adjustment in Tax Court by filing a petition within 90 days of the date of the notice, without first paying the proposed adjustment.





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Right to Appeal an IRS Decision in an Independent Forum

IRC § 7122(e) Appeals Independence:

If the IRS rejects your request for an offer in compromise asking the IRS to settle your tax debt for less than the amount owed, or a payment plan, called an installment agreement, then you may seek an independent review of the rejection with the IRS Office of Appeals.





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Right to Appeal an IRS Decision in an Independent Forum

Statement of Procedural Rules § 601.106(b):

Where taxpayer does not agree to Exam's proposed assessment, taxpayer is afforded appeal rights. If you do not agree with the proposed adjustment as a result of an examination (audit), you have the right to an administrative appeal.



Right to Finality

- **IRC § 6501:** Limitations on assessment and collection (statute of limitations).
- **IRC § 6502:** Limitations on collection after assessment (statute of limitations).
- **IRC § 6511:** Limitations on claim for credit or refund (statute of limitations)





Right to Privacy

IRC § 6320 / IRC § 6330: Collection due process hearings:

During a Collection Due Process hearing, an independent IRS Appeals/Settlement Officer must consider whether the IRS's lien filing or proposed levy action balances the government's need for the efficient collection of taxes with your legitimate concern that the IRS's collection actions are no more intrusive than necessary.





Right to Privacy

IRC § 6331: Levy and distraint rules:

The IRS cannot levy any of your personal property in the following situations: before it sends you a notice of demand, while you have a request for a payment plan pending, and if the IRS will not recover any money from seizing and selling your property.





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Right to Confidentiality

IRC § 6103 Confidentiality of taxpayer returns and tax return information:

In general, the IRS may not disclose your tax information to third parties unless you give it permission, e.g., you request that we disclose information in connection with a mortgage or student loan application





Right to Retain Representation

IRC § 7521(c): Power of Attorney to represent the taxpayer before the IRS:

You may select a person, such as an attorney, CPA, or enrolled agent to represent you in an interview with the IRS. The IRS cannot require that you attend with your representative, unless it formally summons you to appear.





Right to a Fair and Just Tax System

Abatement of penalty for reasonable cause –

IRC § 6651 (failure to file/failure to pay penalties)

IRC § 6656 (failure to deposit penalty)

IRC § 6694 (return preparer penalties)

IRC § 6662 (accuracy-related penalty on underpayment) (see
IRC § 6664(c))

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Right to a Fair and Just Tax System

Abatement of penalty for reasonable basis –

IRC § 6662 (accuracy-related penalty on underpayment)

IRC § 6676 (erroneous claim for refund or credit)



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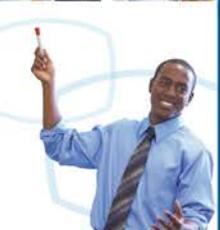
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Right to a Fair and Just Tax System

IRC § 7122(d) Standards for evaluation of offers:

If you are trying to settle your tax debt with an offer in compromise based on your inability to pay, the IRS considers your income, assets, and expenses in deciding whether to accept your offer. Generally, the IRS uses guidelines for standard allowances for cost of living expenses, unless you will not be able to pay your basic living expenses. Then, the IRS must consider your actual expenses. If you are offering to settle because you believe you don't owe the tax liability, you will not need to submit financial information.





TBOR Advocacy Examples: The Cohan Rule

- *Cohan v. Comm'r*, 39, F.2d 540 (2nd Cir. 1930).
- A famous Broadway producer incurred traveling and entertainment expenses, but did not have receipts.
- Second Circuit found the Board (predecessor to Tax Court) had some basis for coming up with an estimation, and allowing no expenses would be inconsistent with the fact that money was spent.





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TBOR Advocacy Examples: The Cohan Rule

What TBOR Rights are implicated here?

- Right to pay no more than the correct amount of tax
- Right to a fair and just tax system
- Right to challenge the IRS's position and be heard





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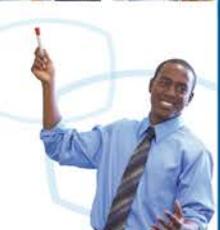
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TBOR Advocacy Examples: The Cohan Rule

- Law has since been changed to require substantiation for traveling and entertainment expenses (IRC § 274(d))
- How can the Cohan rule be applied in other circumstances?





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TBOR Advocacy Examples: The EIC 2 Year Ban

I.R.C. § 32(k): reckless or intentional disregard of the EIC rules and regulations

IRM 4.19.14.6.1 EITC 2/10 Year Ban - Correspondence Guidelines for Examination Technicians (CET)





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TBOR Advocacy Examples: The EIC 2 Year Ban

- Service Center Advice 200245051 (Nov. 8, 2002)
 - Failure to respond to request for substantiation is, in itself, insufficient to constitute a reckless or intentional disregard of rules
- *Baker v. Comm'r*, T.C. Summary Opinion 2014-57
 - Good faith reliance on tax preparer's advice in claiming EIC meant he failed to act recklessly or intentionally in disregarding the EIC rules





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TBOR Advocacy Examples: The EIC 2 Year Ban

- Right to pay no more than the correct amount of tax
- Right to a fair and just tax system
- Right to challenge the Service's position and be heard





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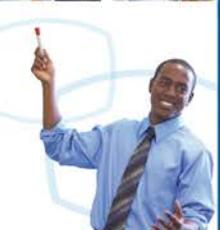
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TBOR Advocacy Examples: CDP Balancing Test

- *Budish v. Comm’r*, T.C. Memo. 2014-239.
- Letter from taxpayer’s supplier substantiating that negative effect of an NFTL on the taxpayer's longstanding business relationship
- NFTL would result in the buyers of sculptures not financing him by paying up front for artwork they might never receive, because of the tax lien.
- NFTL would harm taxpayer’s credit rating





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TBOR Advocacy Examples: CDP Balancing Test

Factors to consider:

- the taxpayer's ability to remain in business and generate sufficient income to not default on the proposed installment agreement;
- the value of the taxpayer's assets and the amount of cashflow;
- any reasonable alternatives to the proposed collection action (a bond in lieu of the NFTL)
- the validity and the priority of the lien and whether it will attach to the taxpayer's assets





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TBOR Advocacy Examples: CDP Balancing Test

- Right to privacy
- Right to a fair and just tax system
- Right to challenge the IRS's position and be heard
- Right to appeal an IRS decision in an independent forum





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- www.youtube.com/tasnta
- www.facebook.com/YourVoiceAtIRS
- twitter.com/YourVoiceatIRS
- Call 877.777.4778
- File Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance order)

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Contact TAS

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