Taking the IRS to Court

Guide 7 of 7 Tax Guides

Robert G. Nath, Tax Attorney
Concentrating in IRS and State Tax Controversy Matters

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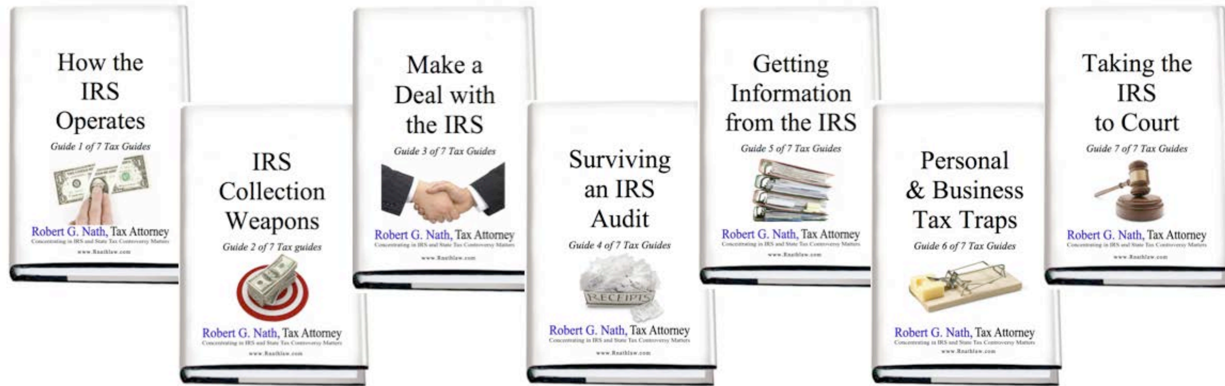

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7 of 7 Tax Guides

Written by

Robert G. Nath, Tax Attorney

Concentrating in IRS and State Tax Controversy Matters

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1

Tax Litigation: Handling Your Own Case in Tax Court – if You Dare

"Take'em to Court" – The United States Tax Court…
Getting Your Case to Court…Prepare, Prepare, Prepare…
Getting the Judge to Listen – and Hear

Have you ever pictured yourself a giant killer in the courtroom? Have you ever thought, "Wait 'til I get those IRS so-and-sos in court. I'll slash them from ear to ear." Lots of people have this vision. For about thirty thousand people each year, it's no fantasy-they sue the IRS in the U.S. Tax Court to contest a proposed tax bill. Tax court litigation is a perilous, sometimes high-stakes contest; and if there is one theme to remember, it's this: Do not try this experiment at home if you can help it. Find a competent lawyer or other qualified representative to help with your case in tax court. If you absolutely must act as your own lawyer in tax court, this chapter may help you emerge with your skin mostly intact.

For one reason or another, thousands of people try their own cases in tax court. They are called "pro se petitioners," from the Latin phrase meaning "by yourself." In fact, a significant number of all tax court cases are handled by nonlawyers, the taxpayers themselves or in rare cases certain nonlawyer representatives.

Since the IRS consistently wins 70-80 percent of cases that are not settled, it's hard enough for tax court petitioners to win even when they are represented, harder still when they go it alone. The procedures, the standards of proof, the rules of evidence, and other factors always stand in the way.

The tax court rules make available a "small case" procedure for matters involving less than $50,000 in controversy. These are usually handled by taxpayers themselves. The rules and procedures in these "S" cases are similar to those of regular cases, but here, you get a break. The judges operate more informally; the process of trial preparation and trial itself is less cumbersome. Still, the chances of winning are no greater. You don't have to elect this small-case track, but it's there if you want it. Since all of the tax court rules still apply, the trial phases described below are still important, but the judges conduct proceedings quite informally.

What is the United States Tax Court?

Our nation has many different court systems. Every state has at least one trial-level court in each county or city, sometimes more than one. States also have courts of appeal to at least one intermediate level, and then a state supreme court. The federal government also has a separate, parallel court system. The federal district courts try cases in ninety-six districts, one or more for each state. Appeals are taken to the United States Courts of Appeals, thirteen in total (one or more for groupings of states, territories, commonwealths; one for the District of Columbia; and one for a special federal circuit). Appeals from the courts of appeals are to the United States Supreme Court.

After 1913, when the permanent income tax was enacted, it became clear that tax disputes should not be funneled routinely to these court systems. Litigation was very expensive, and the judges tended to be unfamiliar with the intricacies of tax law. So, in 1924, the IRS created a board within itself, called the Board of Tax Appeals, to which you could bring a tax dispute you could not resolve with the agents or the Office of Appeals. The idea was to channel disputes to an expert neutral panel that heard nothing but tax cases. If you wanted to sue in federal district court, you could still do so. But you had to pay the whole tax in advance. Most people didn't have the money, so the Board of Tax Appeals was the place to contest their proposed tax bill without first paying. In 1969, Congress made this Board of Tax Appeals a separate, freestanding court, the United States Tax Court. Today, this court resolves more than thirty thousand cases a year. An additional twenty thousand are filed each year.

The United States Tax Court has nineteen judges to handle this litigation. The president nominates these judges; the Senate confirms them. They serve for fifteen years. They are paid the same as federal district judges.

The court's headquarters is in Washington, D.C., but the judges travel all around the country, holding two-week sessions in many major cities. This makes it very convenient for many people to file their cases in tax court; trial time is almost a judicial "house call."   The "S" cases are handled by special trial judges. Procedures are informal. Rules of evidence are relaxed. Everyone bends over backward to let you tell your story without too much lawyering or legalese getting in the way. Thousands of "S" cases are filed each year, heard by nineteen Special Trial Judges, all appointed by the chief judge of the tax court.

What Cases Can You Bring to Tax Court?

Most tax court cases are income tax appeals, that is, cases in which the IRS says you owe more personal taxes. Recently, the court has acquired jurisdiction over a number of other types of cases. Among these are:

1. Certain cases where a tax refund is available.

2. Employment tax cases to determine whether workers are "employees" or "independent contractors."

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3. Appeals of IRS denials of interest abatement.

4. Appeals from the IRS' intent to levy.

This chapter will focus on the income tax case – still the most common.

Getting Your Case to Tax Court

In most cases, the road to the United States Tax Court starts with an audit. Any type of audit will do. If you can't agree with the revenue agent on all issues, he or she writes a report called a Revenue Agent's Report and slaps on a cover letter called a "thirty-day letter." This letter states that you can appeal the revenue agent's proposed findings within thirty days. If you appeal, the case is transferred to the Office of Appeals, where appeals officers review it with an eye toward settlement.

Helpful Hint: Try to settle your case "at appeals." Appeals officers have wide authority and discretion to settle cases based on the possibility the IRS might lose in court. They can split issues, trade issues, and generally compromise cases. For this reason, many taxpayers choose to appeal rather than to settle at the audit level.

If you can't agree at that level, the IRS issues a "Notice of Deficiency," known informally as the "ninety-day letter." By law, the IRS must send you this letter (by certified mail) when it formally proposes a deficiency in your tax that was not resolved at the audit level or appeals. The attachments to the Notice of Deficiency are schedules setting out in detail taxes, penalties, and interest the IRS proposes. You'll be familiar with all the issues because you worked with them at the audit or appeals level. You then have 90 days from the date stamped on the notice to file a "Petition" in the United States Tax Court (150 days if the notice is addressed outside the United States). People sometimes call this 90-day letter the "ticket to Tax Court."

A Notice of Deficiency has a cover letter. The heart of it is a table of adjustments. Let's say the table identifies two issues, making this a "two-issue case." For example, the IRS proposes to increase your income by $5,000 for the tax year 2004 because you received a $5,000 loan from your rich and very nice Uncle Gaston. You told the IRS that it was a loan, but you had no evidence such as an IOU, a promissory note, or Uncle Gaston's check marked "loan." The second issue may be a "deduction" issue. Here, the IRS proposes to disallow your medical expense deduction for $2,000 because you couldn't prove to the agent's satisfaction that the stair climber you installed in your home was medically necessary for your aging, dependent mother. The rest of the table goes on to make the tax and penalty (sometimes interest) calculations that result from these changes. These are just two examples. Sometimes deficiency notices are very thick, with dozens of issues. Most of the time they are confined to about ten or fewer issues. But they all have the same pattern.

Representing Yourself in Tax Court

Anyone can represent himself in tax court. In most cases, it's wiser to have someone represent you, but thousands of people choose the pro se alternative either because they want to or because

financially they have no other choice. If you want someone to represent you, that person must be specially admitted to practice before the tax court. Lawyers get almost automatic admission. Anyone else must pass a rigorous examination the tax court administers once a year. Not many pass, so your choice is usually between yourself and a lawyer.

On the other side are the IRS' lawyers. Every IRS district has a legal arm called the Office of Chief Counsel. That office employs from one to several dozen lawyers, depending on the size of the district. Offices are located in all major cities. The IRS' lawyers handle many types of matters, including representing the IRS in the United States Tax Court.

Tip: It's a good ideal to make contact with the IRS' lawyer early in the case to establish a line of open communication. This prevents any damaging surprises later on as the two of you prepare for trial.

So, if you try your own case, you're going up against experienced lawyers who work with the tax code and tax court rules every day and understand them thoroughly. They probably forget more tax procedure between breakfast and lunch than most pro se petitioners will ever know. Still, all is not lost. Remember that you have only one case to try; they have dozens. Also, sometimes the tax court judges look to the IRS to bend over backward in your favor, at least in "S" cases. Often IRS lawyers will give you a bit of help with your case, trying to go the extra mile and tell you what you need to do before you get to court. Knowing pro se petitioners are unfamiliar with tax court procedures, the judges encourage this. Judges are also somewhat more lenient with you, expecting more from government lawyers who are supposed to know their business inside out.

Despite these courtesies, remember that you, the taxpayer, bear the burden of proof except on most tax court issues. This means the IRS lawyer can sit back and do nothing, coolly watching you struggle to prove your case. If you don't, the IRS wins without lifting a legal finger. All in all, you do not have a level playing field. While you may be David and the IRS Goliath, you're not at all guaranteed to win every fight or hit the mark with your first stone.

Trying Your Tax Court Case

Think of a tax court case as encompassing seven main phases. The time line for normal cases is six months to a year, so you'll have sufficient time for each phase. Each main phase also has subdivisions. The phases are these:

1. Petition
2. Discovery
3. Preparation for trial
4. Pretrial order and memorandum
5. Calendar call

6. Trial
7. Decision

Phase 1 – Get Your Foot in the Door Without Stubbing a Toe

To get started, file a "petition" within 90 days of the date on your Notice of Deficiency (150 days if the notice is addressed outside the United States). If you miss this deadline, the tax court lacks jurisdiction of your case and it will be quickly dismissed. A dismissal means you have lost your right to contest the proposed taxes in the tax court, and the IRS will soon issue a bill. This ninety-day deadline is as strict a deadline as exists in all of recorded history. It doesn't mean three months, nor ninety-one days, nor ninety days and one hour. It means ninety days. Sometimes people actually receive their statutory notice forty-five or more days into this period. That makes no difference. It's ninety days from the date stamped on the Notice. In fact, even if you never receive this notice, the ninety-day deadline holds as long as the IRS sent it to your last known address. These days the deficiency notices all bear a 90-day calculation; don’t rely on that calculation. Check it.

Tip: Some people ensure that the IRS has their correct address by writing to the agency. That’s o.k., but you can also ensure you get the Notice by verifying your address at the audit and appeals levels. The good agents do that anyway.

The safest way to ensure you meet the ninety-day deadline is to send your petition by certified or registered mail, return receipt requested. A special law says "mailing is filing" if you do it this way. Since you have proof of mailing, you can prove you filed your petition on time. Private delivery services such as Federal Express and DHL now also count but only if the IRS has approved them by name. You can send your petition on the eighty-ninth day by personal messenger or carrier pigeon, but if it arrives on the ninety-first day, you are out of luck. But if you mail your petition on the eighty-ninth day by certified or registered mail, it can arrive a month later and still be considered "on time." Don't despair if you're miles away from the court on the ninetieth day. You can mail your petition, and, as long as it's timely mailed by certified or registered mail, return receipt requested, it's "timely." The safest way is still to use the U.S. mail.

On the Tax Court website, you will find sample petitions in the “rules” section, one for regular tax court cases, the other for the informal "S" case, where less than $50,000 is at stake. The tax court provides these sample petitions to make sure everyone knows what to say. They are easy to follow. You need no formal language, and the court interprets them liberally. Just be sure to include all the issues and facts.

The heart of the petition is paragraphs four and five. In paragraph four, state which items the IRS got wrong. Usually you can take these straight from the Notice of Deficiency. You do not have to contest every issue, only the ones where you feel the IRS erred.

Caution: If you don’t contest an issue, you have conceded it. So if there is any doubt in your mind, put the issue in contest. You can always drop it later.

Paragraph five of the petition requires you to state all the facts on which you base your case. Here, proceed issue by issue, with a headline for each issue. The recitation of facts need not be lengthy. In fact, it's best to be short, sharp, and to the point. Above all, be clear. This is your first chance to convince the judge. The clearer your story, the more credibility you have as the case proceeds.

After you file the petition and pay a $60 filing fee, the clerk of court sends copies to the IRS. Court rules require the IRS to respond within sixty days. If the IRS thinks your case should be dismissed, it will make a motion to dismiss it. But if you have pleaded correctly and on time, the IRS “answers” your allegations. Usually the Answer is a point-by-point admission or denial of your facts, with a request at the end for the court to sustain the Notice of Deficiency. That ends Phase 1. You've told the IRS, "Let's fight." The IRS has said, "OK. Let's fight." Now you move on to Phase 2.

Phase 2 – What’s Up Their Sleeve – "Discovery"

It's now time to gather your stones and arrows. This is the "discovery" phase. Here, ask yourself, "If this case goes to trial, what facts must I prove, and how do I prove them by admissible evidence?" You therefore need to know the legal standards for each issue, and to assemble all the facts, witnesses, and documents to meet those legal standards. In our example, the burden is on you to prove that the $5,000 Uncle Gaston gave you was a loan, not omitted gross income. If you can't prove it was a loan or gift, the law says it’s taxable as unreported income. If you are not sure of the legal tests and standards you must meet, seek help. Ask your accountant, lawyer, or anyone else who knows the law. You can even ask the IRS' lawyer, hoping she is willing to educate you on the applicable tests or standards.

Next, assemble your proof. Recall two key words: witnesses and documents. You need people to testify for you. You also need any documents you can find that support your case. Your main witness is probably yourself, but try to convince Uncle Gaston to testify that he intended to have you pay back the money. You may bring your aging mother and her doctor to court to say that she is disabled and needs a stair climber in your narrow three-floor apartment (no elevator). Also, look for documents. Paper is probably the most important single source of proof. Examples might include medical reports, notes, minutes, and just about anything else that supports your case. None of this should surprise you. You have massaged this case at the audit level and possibly in the Office of Appeals. During that time, the revenue agent and the appeals officer have asked you for the same documents and witness statements you are now required to produce in court. Still, always look for more in this second phase of the case.

The IRS is also in its second phase. You must give the IRS lawyer any evidence she does not already have, a process called "informal discovery." She also must give you anything in the government's files that helps or hurts your case. This process can go on for several months, but it's best to conduct all informal discovery and evidence-gathering as quickly as possible. That trial date creeps up on you, and before you know it, it's tomorrow.

Finally, informal discovery exposes the weaknesses in your case. The sooner you know these, the better. If one witness is unavailable, maybe you can find another. If a document is missing, it

may take time to get a replacement. You won't get much sympathy from the judge if you start asking for bank documents the day before trial, or complain that Dr. Smith wasn't available but Dr. Jones might be, except you can't find her. The best attitude is to treat your case as if it were going to trial next week. Then you, rather than the IRS, will be in control.

In this phase, the court's procedures also strongly emphasize the "stipulation of facts." You are required to agree with the IRS on as many facts as the two sides possibly can, and to put those stipulated facts in writing. Examples would include stipulating to the Notice of Deficiency, the tax returns, background facts about you and your deductions, and any other facts that all agree are true. Phase 2 is also the time you or the IRS may make motions to the court. People make motions for a number of reasons. These include asking for enlargements of time for some deadlines, motions to compel answers to formal discovery, requests for admission of facts, consolidating trials, and many other procedural matters. The tax court rules spell out the types of allowable motions. The function of these motions is to get the case in shape, procedurally, for development and for trial, so that nothing stands in the way when trial time comes.

Caution: Don’t make a frivolous motion. The Court can impose sanctions that can damage your case or cost you a fine. Always discuss your proposed motion with the IRS’ lawyer in advance.

Either side also can file a "dispositive motion." This is a motion the granting of which decides ("disposes of") the case completely one way or another without a trial. One example of a dispositive motion is a motion to dismiss where the petition is filed late. Another is if your case is so good that the material facts and the law are all on your side. Then there is no need for a trial, so you may decide to file a "motion for summary judgment." Few tax court cases fit this category, but they are not unheard of. Again, the tax court rules spell out what motions the court can consider.

Phase 3 – Prepare, Prepare, Prepare.

In this phase, prepare your witnesses, facts, and documents for a logical presentation to the court. Some of this can be done in phase 2 as well. There is no magic formula for preparing your case for trial. Whatever is logical and whatever works is, by definition, the way to do it. Some people "have it all in their heads." Others will map their case, issue by issue, on paper. On the left side of the page, they list the issue and the elements of proof needed to satisfy their contentions. On the right side, they list the witnesses and documents that prove each element, and what they expect those witnesses and documents to prove. Contact your witnesses to inform them they might be called for trial. Advise them of the court's subpoena procedures. Use the Court’s subpoena power when necessary. It is critical to interview adverse witnesses as well. This avoids surprise at trial, often a fatal error. Study the IRS' documents, which its lawyer has sent to you through informal or formal discovery. Preparing a case for trial in the tax court can be complicated even for simple issues. As with everything else in such a court, the wise litigant gets help from a trial lawyer, even if he intends to try the case by himself. "S" cases tend to be less complex in this phase. Often there are only one or two witnesses, or only a few documents, which the judge will be lenient about admitting into evidence.

Phase 4 – Pretrial Order and Memorandum

At some time three to six months after the IRS answers your petition, the tax court judges and clerks get together to schedule calendar calls and trials. They gather all the cases to be tried in your city and list them on a huge calendar. Sometimes these calendars run two hundred to three hundred cases. The court finalizes the calendar, and the clerk publishes it. You know this is happening because you'll get a notice of calendar call about three to six months after the IRS answers your case, together with a standard pretrial order. The notice tells you when your case will be called for trial, usually three to six months after the first notice is issued. So again, you'll have time. If you have been taking a long vacation, treat this notice as a wake-up call. The judges rarely allow postponements of your case from the calendar call. Be ready.

This pretrial order also requires you to file a pretrial memorandum. This fill-in memorandum tells the court all about your case. Include your witnesses, documents, and anything else you need to bring to the court's attention. In fact, you can use this pretrial memorandum as a checklist to test your case for readiness. Of course, the IRS must reveal its case to you as well. The judges take these pretrial memoranda seriously. Many a sad taxpayer has found this by failing to file one, only to have the case dismissed as a result. Other times the judge punishes you, such as by excluding certain key evidence, even if she does not dismiss the case. So begin to write the pretrial memorandum as soon as you get the notice. By their nature, the items in the memorandum also gently nudge you to continue preparation for trial; they tell you what the court expects to see when the case is called.

At some point in phase 4 or earlier, you can also ask the judge to hold a pretrial conference. This conference can help narrow the issues, encourage a stipulation of facts, or simplify the presentation of evidence. It may also resolve issues of the burden of proof and otherwise help to ready the case for trial or possible disposition without trial. Pretrial conferences are not required, but either side can ask for one. Phase 4 is also the time to continue conferring informally with the IRS' lawyer. Discuss such matters as the stipulation of facts, discovery, evidence (including particularly documents), and settlement. At the calendar call, the judge will ask about these and many other aspects of the case.

Phase 5 – "Call the Case for Trial!"

On the appointed day, everyone comes to court for the calendar call. By now, the 200-300 cases originally on the calendar have been whittled down to a manageable load. The rest have been dismissed or settled and have been marked off the calendar. The judge proceeds to "call the calendar." In open court, the clerk recites the number of the case and the petitioner's name. When yours is called, you are expected to stand at a central lectern and tell the judge whether you are ready for trial.
Helpful Hint: The pre-trial order, standard in every case, warns that "continuances" (postponements of your trial) are granted only in exceptional circumstances. You’d better not say "I’m not ready" unless you have the world’s best reason.

Your demeanor should always show respect for the Court and the IRS attorney. Address all remarks to the Court, and use "Your Honor."

If you have not settled the case, be ready to try it or give the judge a very good reason why not. The same expectations hold for the IRS. Quite often cases don't need to be tried, or they are close to settlement and the parties just need a little more time or effort. The tax court judges understand this; they always help if settlement prospects are real.

When your case is called, the IRS lawyer might say, "Your honor, this case is for trial. We could not settle it despite our best efforts. We anticipate the trial will last one day." Then the judge will turn to you. You might say something like, "Your honor, I agree. But I think the case will last two days, not one." The judge asks many other questions, all with a view toward efficiency: there are many cases to try; the judge wants to schedule them as efficiently as possible. So the judge might say, "Your trial date is two days from now, for two days." Or, the judge might ask you to wait until the end of the calendar so she can schedule other cases for trial. Sometimes the judge will schedule a special trial date outside the usual two-week window, a procedure usually reserved for more complex cases. Some cases take only an hour or two, especially if they are one-issue or simple cases. "S" cases tend to be tried quickly, often in less than a few hours. It all depends on the number of issues, their complexity, the number of witnesses, and your estimate and that of the IRS on how long the trial will take. The calendar call usually lasts two to three hours if it's a long calendar. At the end, the judge has whittled down the calendar even further, ideally to a list of cases that can be tried within the two-week period of the calendar call. Once you have been scheduled, you are free to go. You then reappear for trial on the appointed day and hour.

Phase 6 – The Trial – Time to Fight

Now comes the actual fighting. Here's where you stand up, tell the judge what you intend to prove, and then prove it. You call witnesses (including yourself). You ask that documents be admitted into evidence. If you've done your homework, you have worked out the admissibility of most documents before trial by agreement with the IRS. If not, you must prove the admissibility of any documents you want the judge to consider.

In *pro se* cases, the judges are usually reasonably lenient about admitting contested documents. But don't count on it. *Pro se* petitioners, untrained in the rules of evidence, are at a great disadvantage. This is one of the main reasons not to try your own case if you can possibly avoid it.

After you present witnesses and move the admission of documents, your part of the case is over. Then the IRS presents its case. Then you can rebut, as can the IRS, until both sides have nothing more to say. The judge then decides the issues, either in open court or after calling for posttrial briefs from both sides. In *pro se* or "S" cases, posttrial briefs are not the norm, but the judge can ask you to research the issues if your position is not completely clear. Also, the IRS usually files a brief. Since judges are trained to read briefs, you could be at a disadvantage if you don't file one. Still, a bad brief is worse than no brief at all. If the judge knows your position and your evidence, she may not ask for a brief but simply announce that the case is ready for decision and that you will be notified when the decision is made.

Phase 7 – Decision

The judge is required to decide your case, but there is no formal deadline. It could be weeks, months, or sometimes years. Pro se cases are usually decided quickly, either right there in court or soon after in a written opinion. The fight is then over. You have won, lost, or come out somewhere in between on each of the issues. The judge then enters a one-page decision, the formal end of the case. You can appeal an adverse decision, but such appeals are rarely successful. Again, consult professional help before considering any such appeal.

Other Traps and Rules

These seven phases of a tax court case are the bare bones of what you need to know. Many questions will arise. How do you subpoena witnesses? Is arbitration or mediation available? Can you take depositions? Do you need an expert witness? In fact, the tax court's thick book of rules governs all its proceedings. Buy a copy from the clerk of court or check it on the tax court website. It will answer most of your questions, and the clerk is often available for others. The clerk won't try your case for you, but is often willing to be helpful on procedural matters.

Once you read the rules, you'll see what a difficult time any pro se petitioner will have in tax court. But if you must represent yourself, it's still possible to win. If your case is good on the facts and the law, the chances for a win or good settlement may make the effort worthwhile. Above all, when you handle a case in tax court, recall the words of a famous tax court judge, who said: "[T]he trial of a case is a human process and . . . judges, as well as litigants, are human beings with all the concomitant attributes, both good and bad." In short, judges bring their own lifelong experiences and wisdom to the trial of any case. If you present your case to address the common sense and human aspects as well as the legalities, you will have done your best.

So Here are the Broad General Guidelines

1. In Tax Court, use a lawyer if you can.
2. Prepare your petition and your evidence thoroughly.
3. Try to work cooperatively with the IRS' lawyer.
4. Be ready for trial as soon as possible, but settle if you can.

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Suing or Getting Sued by the IRS and Common Litigation Deadlines

Strike Back by "Suing the Feds"…Cases You'd Love to File…
Defending When the Empire Strikes Back…
Statutes of Limitations

Some people think you can always sue the government over taxes; others believe you never can. The answer lies in between. In colonial times, people used self-help to resolve tax disputes with the government, as by dumping tea into Boston Harbor when they didn't like the King's tax. These days, we take our tax disputes to court. But even an accessible court system is not open to tax suits whenever the mood strikes. You may sue the government over taxes (or anything else) only when Congress gives you permission, a concept known as "sovereign immunity."

Fun Fact: This prohibition dates back to medieval England, when you could not sue the king (the "sovereign") without his consent because "the King can do no wrong."

Nowadays, Congress has granted permission to sue the federal government in a wide variety of cases, including many types of tax cases. But your case must fit within the bounds of that permission, strictly construed, or the court will dismiss it. Thousands of tax cases are filed every year on behalf of individuals, corporations, and partnerships. Of those not dismissed, the government wins many, but taxpayers also win some too. Many are also settled short of trial.

This chapter will help you keep a close eye on your rights to sue over taxes.

Tip: A wise litigant uses a lawyer to sue the government over taxes. Lawsuits of any type are rarely successful when handled on your own; in tax cases, representing yourself is even more perilous. Still, no law forbids you from representing yourself in a tax case. Even if you do not engage a lawyer, it's helpful to be able to spot a possible case on your own and bring it to a lawyer's attention.

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Cases People File over Taxes

The most common types of tax cases are these:

1. Suit for tax refund. If you've over paid your tax, filed a timely claim for a tax refund with the IRS, and the claim has been denied (or six months elapse without IRS action), you can sue the United States for a tax refund.

   Tip: Your federal income tax return showing a "refund" is, by law, a claim for refund. If you made a mistake and want to amend, that Form 1040X is also a refund claim. There is a special IRS form (Form 843) for certain types of refund claims such as for employment taxes, excise taxes, or penalties.

   A tax refund suit may be filed in one of two federal courts. The first is federal district court, usually the one where you live or where you filed your tax return. It joins all other suits over which the federal courts have jurisdiction, including cases involving securities, environmental litigation, criminal cases, and civil rights, among others.

   The other forum is the United States Court of Federal Claims, located in Washington, D.C. This is a special court that handles tax cases and a few other types of claims. In a tax refund suit, you, the taxpayer who overpaid your taxes, are the plaintiff. Until 1995, the courts routinely dismissed cases in which someone other than the taxpayer tried to sue. Then the Supreme Court carved a small exception to this rule, allowing an ex-wife who paid her ex-husband's tax (so she could sell their house) to sue the government. These types of non-taxpayer refund suits are still rare.

   You may base a tax refund suit on just about any provision of the entire Internal Revenue Code that you allege requires the IRS to give money back. It could be a disallowed deduction or an IRS assessment that is barred by the statute of limitations. It might be a bank deposit the IRS concluded was unreported income, or a penalty abatement claim. Your case can be based on any events that, you contend, caused an overpayment of the proper amount of your taxes. For most tax refund suits to proceed, you must have first paid the full amount of the taxes, penalties, and interest (except for "divisible" taxes, such as the trust fund recovery penalty. See Guide 2.) Other requirements are to file a timely claim for refund with the IRS and wait six months, or wait for the IRS to disallow the claim.

   Helpful Hint: The general rule is that your refund claim must be filed within the later of: (1) three years of the due date of your tax return, or (2) two years from the date you paid the tax you now want back.

   Consider undertaking this type of refund claim or suit only with the help of a qualified professional. Many a valid claim has been lost through violations of the technical rules governing refunds.

2. <u>Civil damages for unauthorized disclosure</u>. Congress takes the sanctity of tax returns and tax information very seriously. After the Watergate scandal, it passed a law strictly limiting the IRS' authority to make tax information public. However, this law has dozens of exemptions, so many in fact, that in fiscal 1997, the IRS made over 3 million permitted disclosures of tax information.

   In general, IRS employees scrupulously observe it. If they don't, the government can be sued for unauthorized disclosure. Every once in a while a case like this is filed. Most fail, but there are some spectacular examples of real messes caused by overzealous IRS employees. Here's one true tale.

   <u>Example</u>: Roland was a professional. The IRS audited his tax returns and found a $100,000 error in his records. The Criminal Investigation Division was called in. The special agent sent a circular letter to hundreds of his clients, informing them that Roland was being investigated by the Criminal Investigation Division and asking for information about the fees they paid to Roland. Before the agent sent the letters, he had not reviewed the law forbidding unnecessary disclosures, nor had he asked the approval of his chief. The clients were furious. "Our pro, under criminal investigation? How could that be?" Many deserted Roland's practice. The fact that the Criminal Investigation Division was involved, and had made unauthorized, unnecessary disclosures, meant that the government had to answer in damages. Cases like these are rare, but the 1998 tax reform act made them somewhat easier to win.

3. <u>Civil damages for failure to release a tax lien</u>. For many years, people complained bitterly to Congress that the IRS was slow to release tax liens even after the tax had been paid or had expired. Suffering a tax lien was hard enough in the first place; it ruined credit and sabotaged the sale of property. So Congress passed a law requiring the IRS to release a lien within thirty days after a request, if the tax was paid or was no longer legally collectible. If the Service fails to release the lien and the failure causes damages, you may sue the government to recover. Not many suits like this are filed even today, if for no other reason than it is hard to prove the extent of your actual damages. But the right of action is there. The IRS, aware of it, usually releases liens quickly.

   <u>Example</u>: Albert and Jeanne, husband and wife, made a terrible mistake. They invested in a tax shelter to earn a big tax break. Of course, in the 1970s the IRS declared World War III on tax shelters. Albert and Jeanne's case went to tax court, with a neutral result: no tax was due, nor any refund payable. In other words, all their hard work earned them nothing and lost them nothing. But that didn't dissuade the IRS, which proceeded to make big assessments against them for six more years. On top of that, the revenue officer filed a notice of tax lien, seized their home, and put it up for sale. Albert and Jeanne's accountant asked the revenue officer to stop. Even an appeals officer got into the action, instructing the revenue officer to stop. Did he stop? No. He sold their home for $8,600 at auction. Albert and Jeanne were unhappy. They sued because the revenue officer had failed to remove the tax lien when it had been filed in error. "That's right," said the court. So the IRS had to pay damages.

4. Civil damages for unauthorized collection actions. This type of suit has been authorized since 1989. You have the right to sue in federal court for damages when an IRS employee negligently, recklessly or intentionally violates the tax laws, usually in connection with collecting taxes assessed against you. Once again, many procedural roadblocks stand between you and money from a suit like this. These include filing your claim first with the IRS (or else the court may reduce your damage award), mitigating your damages, and suing within two years after the violation occurs. As usual, the burden is on you to prove damages, which are limited anyway to the lower of actual damages or $1,000,000.

   But suppose there are multiple violations. That happened in one case, where a court found the IRS had made eighty-four separate illegal disclosures. Example: Remember Albert and Jeanne? Their suit included a count for unauthorized collection action. The IRS tried to defend by claiming that only the "assessment" (the tax bill) was incorrect, not the subsequent "collection." Too cute, said the court. Such a narrow interpretation of the law would thwart Congress's intent to have the IRS answer for its unauthorized actions. So again, the IRS had to pay.

5. Motion to Quash a Summons. You can sue the government to contest the enforceability of an IRS summons (an administrative “subpoena”). The IRS has always had broad authority to look into your tax affairs. For this reason, it's rare to find an IRS summons that exceeds the Service's authority. But an occasional summons may do so, for example, by requesting attorney-client privileged information or information clearly irrelevant to the tax investigation. Possibly the summons is overbroad, or procedurally its issuance may harbor other defects. The law gives you the right to have a federal judge review the legality of that summons.

6. The constitutional tort. There is a type of suit that is not authorized by any statute but by the Constitution itself. It's called a "Bivens" action, named after the 1967 Supreme Court case that established this right. In a Bivens-type case, you sue individual IRS agents on the ground that they have personally violated your constitutional rights and must answer personally in damages. Again, this is not something you do every day. There are many defenses to Bivens suits. Very few Bivens cases ever proceed to trial, much less result in a taxpayer victory. But where the agent has truly overstepped his authority and violated your constitutional rights, the Bivens-type suit is available.

   Example: Harry promoted tax shelters, many of them, whether they made any economic sense or not. Of course, the IRS said they did not and sued him for an injunction to stop this activity. They also assessed taxes against him. Harry protested long and hard because the IRS filed notices of federal lien and levied on his many bank accounts. One of Harry's allegations was that by suing him, filing notices of lien, and levying, the IRS had unconstitutionally interfered with his freedom of speech, liberty, and property rights. Specifically, he alleged it abrogated his right to engage in a chosen profession. He claimed the IRS issued the levies and liens only to punish him for criticizing the IRS. That's enough, said the court, for the lawsuit to survive. Of course, Harry would have to prove his allegations, but if the agent did as Harry claimed, the agent would not be immune from the suit.

7. Suit for wrongful levy. Sometimes an IRS seizure injures the property rights of third parties who have claims superior to that of the IRS. An example would be the IRS' seizure and sale of a tax delinquent's truck on which a bank holds the first lien. The law calls such a levy "wrongful" because it takes property already subject to a superior claim. You, the delinquent taxpayer, can never sue for wrongful levy. But a third party with a superior lien or claim can sue and often win. The claimant files this suit in federal district court and tries to prove its superior claim to the property the IRS seized.

   Here are two examples from cases:

   Example 1: Big Bank made a number of loans to Carl, who signed a promissory note pledging his deposits as security. What Carl knew, but the bank didn't, was that Carl also owed federal taxes. So the IRS naturally filed notices of federal tax lien and levied on Carl's bank deposits. The bank dutifully sent the money to the IRS and then sued for "wrongful levy." The bank said it had a perfected security interest in the accounts, an interest that arose before the IRS' liens and was therefore superior to it. By taking the money, the bank argued, the IRS destroyed the bank's superior interest. "That's right," said the court. The levy was wrongful.

   Example 2: Daniel and David had a similar story. Daniel bought a car on a promissory note, listing the car as security. He never made any payments, but instead sold the car to David. Meanwhile, the IRS filed a notice of lien and seized the car. That levy was wrongful because Daniel never had an ownership interest in the car at the time the notice of lien was filed; he had already sold it.

   The IRS also wrongfully levies when it seizes a bank account that in fact belongs to a nondelinquent taxpayer. This happens often in parent-child situations where only the parent owes taxes. If the parent can prove the money really belongs to the child, was held in trust for the child, or represented money someone else had contributed, to that extent the levy is wrongful and should be remedied.

   The wrongful levy suit has a major trap: the filing deadline is a mere nine months after the IRS seizes the property (sometimes extendable to twelve months). The court must dismiss any case filed after this short deadline. Many a lienholder has filed such a wrongful levy suit, only to find to his surprise that he acted a day, a month, or a year too late.

8. Suits for surplus proceeds. The IRS often seizes and sells property that belongs to both a delinquent taxpayer and someone else. One example might be a friend who has loaned you money secured by your home, but only after the IRS filed a notice of lien against you for taxes. Another example might be a piece of land you own as joint tenants with a friend. The nondelinquent owner is entitled to his share if the IRS sells the property. The law gives that owner the right to sue the government to claim that share. It's not always necessary to sue; usually rights are fairly clear and the IRS honors them. But since tax life is not perfect and disputes do arise, it's nice to know a "suit for surplus proceeds" is available. Even where rights are clear, there can often be a dispute about interest and penalties on taxes. These take the same priority as the underlying tax claim.

9. Suit for substituted sale proceeds. Sometimes you may need to sell real or personal property, but the IRS and others have claims against it. You've got a hot buyer, so you need to discharge the federal tax lien quickly to give clear title. You can enter into an agreement with the IRS to sell the property free of the tax lien. The IRS' lien and all other claims then attach to the proceeds. If everyone cannot agree on who is entitled to the proceeds, anyone who claims them can sue the United States to enforce the claim.

10. Suits to adjudicate rights to property. The government gets involved as a defendant in a variety of state and federal court lawsuits in which people fight over entitlement to property. One such case is called an "interpleader" suit. The basic idea is this: If some third party is holding money or property that you and the IRS are fighting over, that third party should have to pay it once-to either you or the IRS, but not both. The stakeholder's remedy is to sue you and the IRS, throw the money into court, get out of the lawsuit, and let you and the IRS fight it out.

    People file interpleader suits in all kinds of cases. A common example comes from the construction industry. Suppose a general contractor owes money to a subcontractor, who owes it to plumbers and electricians. The subcontractor also owes payroll taxes to the government. The general contractor does not know whom to pay, so it sues everybody: the IRS, the subcontractor, the plumbers and the electricians, and throws the money into court. The claimants then fight it out. The entity with the superior legal claim should win. And, despite the conventional wisdom, the IRS does not always win. Often, particularly in construction cases and other cases involving real estate, the IRS has the inferior claim. It's all determined by a combination of state and federal law.

    A second type of property case is a suit to "quiet title" to property. When real estate such as land, a building, or a home is sold, sometimes the chain of title is ambiguous. Other times, the IRS has filed a notice of lien, which itself puts a "cloud on title." The buyer needs to be absolutely certain he got what he paid for. So the buyer, a title insurance company, or any of the parties can sue the government in state court to quiet title to the property.

    A third example is a suit to partition property. A property owner may wish to divide his property, but an IRS tax lien stands in the way. The government may be sued to participate as a defendant in that type of case.

    A fourth type of property suit is a condemnation suit where the IRS has a federal tax lien on file.

    Finally, the government may be named as a defendant in a suit to foreclose a mortgage or other lien on property. This includes both real property and personal property, because the federal tax lien attaches to everything the taxpayer owns, real and personal.

    These five types of cases make it relatively easy and convenient to sort out everyone's priorities and property rights. This goal would be impossible if the government's lien could stand on the sidelines, creating uncertainty for everyone else.

11. Declaratory judgment. A "declaratory judgment" case is a lawsuit in which the court declares the rights and legal relations of the parties. This suit requests no damages, injunction, or other relief. The law prohibits suing the government for a declaratory judgment over taxes, with one exception. You can sue to declare that a charity or private foundation is tax exempt. Again, you must exhaust the remedies within the IRS before filing such a suit, and certain time limits govern, but the suit is available if all else fails.

12. Suit to contest jeopardy levy or assessment. Among the most devastating of IRS weapons is the jeopardy or termination assessment. See Guide 2. This type of assessment, followed immediately by a seizure of property (cash, bank accounts, cars, drugs, and anything else lying around), can come so swiftly that you have little if any time to react. That's the whole idea. Though giving the IRS immediate levy powers, Congress did not want to leave people without a remedy. So it enacted a law that allows you to sue the government to contest a jeopardy or termination assessment, but only after it has been made. It's not a full-scale trial, but a quick look by a federal court to rule whether the making of the assessment was reasonable and the amount assessed was appropriate. Start to finish, the whole case normally takes less than forty days. In most circumstances, neither side can appeal. The government wins most of these cases, but taxpayers win a few. This type of suit is at least somewhat of a check on the government's jeopardy assessment practices.

13. Tax Court litigation. You can sue (“petition”) the IRS in the United States Tax Court to contest a tax notice the IRS has sent to you. Guide 7 discusses this option in detail. The major advantage of Tax Court is that you don’t have to pay the tax before suing, as you must in a tax refund suit. That is why most tax cases involving the issue of “how much do I owe” wind up in US Tax Court. The Tax Court has wide jurisdiction over many types of cases, including income tax issues, “innocent spouse” cases, “independent contractor” cases, and many others.

That's it. That's the list of common tax suits that may be brought against the government. Any attempt to sue outside the allowed types of cases will be dismissed. In fact, Congress has passed several laws explicitly stating that you cannot bring certain types of lawsuits. For example, you cannot sue the government for an injunction against collection action. This would include suing the IRS when it levies on assets, files a notice of lien, or takes most other collection actions. (In fact, the only injunction available against the collection of taxes is the automatic injunction of a petition in bankruptcy. Guide 3 discusses how this works.)

People normally think of suing the government only as a last resort, usually a wise attitude. Tax litigation can be expensive. Moreover, several types of cases that are available require that you go to the IRS for relief first. Lawsuits over taxes can be viewed as the top section of a tax claim pyramid; only a few claims eventually rise to the “summit.” If you have a tax claim or dispute, you need to understand and evaluate your right to sue, even if it may never be used. Your lawyer should be in a position to discuss this "menu choice" along with other alternatives.

Deadlines when you want Money from the IRS

When you seek money from the IRS, either through a refund, a credit, or a lawsuit, pay attention to the hard-and-fast deadlines that apply to your case.

Claims for credit or refund. You must file a claim for tax refund or credit within three years from the date you file your return, or two years from the date you pay, whichever is later. (Some exceptions to these rules apply in certain types of situations.) If the government owes you a refund on your original return, no need to worry. The return itself is the claim for refund. But if you file an amended return later, claiming a refund, you must do so within the deadline. For this purpose, returns filed early (before April 15) are considered filed on the due date. Late returns are considered filed on the date you mail the return.

Now, let's say you pay a tax three years after you file your return, but you really do not owe it. Can you get it back? Yes. You have another two years from the date of payment to file a claim for refund.

Suits against the government. People sue the government over taxes all the time. For example, about thirty thousand people file Tax Court petitions each year. Thousands of others file suits in federal district court or in the United States Court of Federal Claims. Certain deadlines apply, or else your suit will be thrown out of court.

Tax Court. You must file suit in the United States Tax Court to contest the IRS' formal Notice of Deficiency within ninety days from the date stamped on the notice. That's not three months; it's ninety days, counting from the day after the date stamped on the notice. Sometimes people get the notice well into the ninety-day period; some receive it after the ninety days have run. Some people never get the notice even though it was mailed. In these disasters, the issue is always whether the IRS mailed the notice to your "last known address." If so, you're out of luck if you file your tax court case too late. These days, the IRS is noting the 90th day on the notice, but if the notice is incorrect, that still does not mean you can file after the 90th day.

Federal district court. People also sue the government in the federal district courts. The deadlines there depend on what kind of suit you file. The shortest is for a suit to contest a jeopardy assessment. That deadline is thirty days after the IRS sends you the notice of jeopardy determination.

The next deadline is nine months. This deadline applies when the IRS has levied or seized property that really belongs to a nondelinquent taxpayer with a claim superior to that of the IRS (a “wrongful levy” suit). For example, if the IRS seizes a car and you have a first lien on it, it has "wrongfully levied" the car. But you have only nine months to sue, sometimes extendable to twelve.

The next deadline is two years. This deadline applies to suits for refund of taxes. Hundreds of these suits are filed every year. They must be filed within two years of the date the IRS disallows your claim for refund.

Other Deadlines

Other deadlines pervade the tax laws. Some are formal, others informal. Many are obscure and relate to very few taxpayers. But the common thread is that all are strictly construed, either against the government or against the taxpayer. Sometimes, the law allows exceptions from these harsh deadlines, but not often and only in narrow cases.

Defending Suits by the Government

The IRS collects most taxes through its administrative enforcement powers-assessment, liens, levies, and other weapons described in other of these Tax Guides. But sometimes, the IRS resorts to the courts when its agency powers don't get the job done. In such cases, the government sues you, the taxpayer, rather than the reverse. The IRS' litigating arms are part of the Department of Justice, specifically, the Tax Division, and the United States Attorneys' offices.

Just as you may go to court only as a last resort, so too the IRS normally goes to court only when all else fails.

You'll certainly know when the government has sued you. A complaint will be filed. The United States Marshal will serve a copy on you. In these types of suits, help from a lawyer is critical, particularly a tax lawyer experienced in tax litigation. Don't try to go it alone; defending these suits is complicated and expensive. Few nonlawyers are familiar with the rules governing federal court litigation. Few others have enough skill with these rules to make informed decisions on how to defend against IRS suits. Moreover, federal district courts are reluctant to help with procedure and substance if you represent yourself. So if you face a suit by the government to collect your taxes or otherwise enforce the tax laws, it's wise, though not legally required, to get help from a lawyer. This section provides an opening acquaintance with the types of suits people may have to defend from time to time. Congress has authorized the government to file eight main types of cases relating to taxes.

1. Suit to reduce a tax assessment to judgment. Despite the IRS' firepower to collect taxes, sometimes people manage to dodge the bullet. For instance, some try to outwait the tax collection period, normally ten years after assessment. But just when you thought you were home free, the IRS drags out a little-known weapon to prolong the agony. It asks the Justice Department to file a federal lawsuit against you to reduce the tax assessment to a judgment.

   Usually, the Department of Justice files suit close to the ten-year deadline. Also, the Service often chooses high-dollar or high-profile cases; it will not sue on every assessment that otherwise would lapse. But think how you would feel if, on the last or next-to-last day before the ten-year collection period expires, the Justice Department files suit against you. It could ruin your whole decade.

   This suit will allege liability for taxes, penalties and interest accrued through the date the suit is filed. Other federal and state laws then kick in to give the Justice Department

interest on the judgment is obtains in such a suit. This type of compounding is onerous, but perfectly legal.

If the government wins, it has a court judgment on which it can collect. That judgment also gives the IRS some extra authority to put assets up for sale because it does so through the arm of the United States Marshal's Office and the Federal District Courts. The tax lien is also extended by the judgment.

The legal issue in a suit to reduce an assessment to judgment is always whether you owe the tax. The court presumes the IRS' assessment is correct. You have the burden to show it's not. That's a hard burden to bear, one you would have gladly shouldered in the previous ten years if you had adequate proof. Still, a few people try.

Example: In one case, Oscar owed taxes dating back to 1981. The government made timely assessments of these taxes in 1984, and sued him in 1994, within the ten-year time limit. Oscar's defense: "I don't owe the taxes because you didn't give me credit for many deductions." Fortunately for Oscar, he actually had the proof. Granted, he had to dig it out from among trash bags full of records, but he found it, proved his case, and eliminated the assessments.

2. Suit to enforce a lien or to subject property to the payment of tax. The Justice Department can sue to foreclose the federal tax lien on specific property such as your house, business equipment, or any other property subject to the federal tax lien. The Justice Department often combines one count to reduce the tax assessment to judgment with another to foreclose the federal tax lien (if it knows of property you own). The government's assessment and lien are again presumed valid and enforceable absent your proof to the contrary.

   If the government wins, it asks the court to appoint a United States Marshal to sell your property. In difficult cases involving many items of property or hidden assets, it may ask the court to appoint a receiver to take charge of the property and sell it over time. This happens often with homes the IRS wants to sell, where a nondelinquent third party such as a spouse or a co-owner claims legal interest in the property.

   Getting a federal court involved means that everyone will be forced to have their claims resolved in one case, once and for all.

   Example: Lance and Lisa owned farmland. Since they also owed taxes, the government sued them to reduce the assessment to judgment and to foreclose the federal tax lien on their farm. Lance and Lisa had no real defense against the tax bill, but they said the government should not be allowed to sell because they each had a "homestead" interest that state law granted to them. This type of state law could not stop the IRS, ruled the court, because federal law allowing a tax sale was superior to any state exemptions. So they lost their farm in a foreclosure sale. Owning a home as "tenants by the entirety" also did not help, since Lance and Lisa jointly owed federal taxes. But if only one owed taxes, the government would not have been able to sell their farm.

Caution: A 2002 US Supreme Court case, Craft, has undermined the "tenants by the entirety" protection. Now, it is possible that the Department of Justice could force a sale of entireties property even if only one of the two tenants owes federal taxes.

3. Suit for erroneous refund. If the government sends you a refund and later figures out that you really owed the tax, it can sue you within two years of the payment to recapture the erroneous refund. This type of case might arise where you filed an amended return to get a refund, but the IRS later adjusted your return (such as after an audit). A variation of this scenario occurs where you get a refund out of the blue. You know you are not entitled to it, but you got it because the computer skipped a beat and issued you a lottery-size refund. Should you keep it, hoping the IRS will miss the two-year deadline for filing an erroneous refund suit? No! The government can sue you simply for taking money that doesn't belong to you, a fraudulent act. The better course is to send the check back to the IRS with a cover letter explaining the circumstances.

4. Suit to enforce an IRS levy. If the IRS serves a tax levy on you, common sense and the law dictate you have to surrender the taxpayer's money or property that you possess. For example, an employer served with a levy pays a delinquent taxpayer's wages to the IRS, not the taxpayer. A bank drains the taxpayer's levied account for the IRS. If you owe the taxpayer money and the IRS levies on you, you pay the IRS, not the taxpayer. When someone refuses, the IRS can sue for the amount not surrendered, plus a 50 percent penalty.

   Banks suffer headaches over this rule, because they can't possibly police all the business loans they make. All of a sudden, when one of their borrowers gets into tax trouble, the first thing they see is a levy on the borrower's account. The bank desperately wants to call the loan and offset the borrower's bank deposits against the loan, but legally it cannot. It's too late after the levy hits. Many banks have suffered the wrong end of a suit for failure to honor a levy when they've taken the borrower's money and applied it against the loan instead of sending it to the IRS.

5. Suit to enforce estate taxes. The government has special authority to sue to collect estate taxes. Such suits are rare because the estate typically will pay the applicable tax, or the IRS collects it administratively by seizures and sales. But failing that, the government can sue to subject the decedent's property to sale by court order.

6. Suits for fraudulent conveyance and transferee liability, and other state law suits. The federal government has the same rights as any other creditor to sue under state laws. One of the most important of these is the right to rescind a fraudulent transfer of property, a cause of action in every state. With the IRS hot on their heels, many taxpayers make the mistake of transferring property. They make a "gift" of a car, house, pension, bank accounts, jewelry, or anything else of value. It's perfectly fine for someone to buy these things from you for market value, even if it's a close friend or relative, but it's not OK simply to transfer them without any payment to avoid taxes, or to sell them after the tax lien attaches. Also, if you shed assets or put them in someone else's name, becoming insolvent as a result, that too is a badge of a "fraudulent transfer" which the IRS can undo

by suing you. It happens all the time, and the courts take a dim view of such fraudulent transfers. In some cases, the government also can sue your transferees and impose liability on them for the value of the property you transferred.

Example: In one such case, the government sued William and Zack, his son. Apparently, William hadn't filed a few federal tax returns, so the government began investigating him. This is a good time, thought William, to transfer my country inn with its land to my son, Zack. And I can still run the place. Thereafter, William was indicted and convicted for willful failure to file tax returns. The government then sued him and his son to get the inn. William had transferred the property by gift (that is, without fair consideration) to a blood relative, with intent to hinder or defraud the IRS. The transfer was fraudulent. So the government's tax lien attached to the property, which was sold for taxes.

7. Suit against third-party lenders of wages. When a bank makes a business loan to a shaky employer, sometimes it stipulates that the loan be used to pay wages. The bank figures that if workers' wages are assured, the project will go to completion. For example, sometimes general contractors designate subcontractor payments to go directly to workers. But even these stipulations don't ensure that the wages will be paid; the borrower sometimes defaults on payroll taxes. Under these circumstances, the government can sue the bank or general contractor for the money that was designated to pay wages. These types of suits are not that common these days, but they are still filed from time to time.

8. Suit to enforce an IRS summons. Most IRS summonses are self-enforcing. If you, the summoned person, take no action to contest it, the summons is presumed valid. The government can then haul you into court for contempt if you don't surrender the records. But not all summonses are self-enforcing. For the exceptions, the government must sue to enforce the summons. All it takes is a quick trip to federal court, where the government asks the judge to issue an order to you. The order says, "Appear in court to show cause" why the summons should not be enforced. On the hearing date, if you or the summoned person fails to respond or cannot mount a substantial defense, the judge will order the summons enforced, with the penalty of contempt or criminal prosecution if the summoned person fails to obey.

These are the main lawsuits that the government can file against delinquent taxpayers and third parties. There are others as well. The government files thousands of them every year, in every federal district. Defending them is hazardous and expensive, but if you think you have a defense, the best course is to let a lawyer experienced in tax matters evaluate the case and advise you.

To Summarize

1. If you think the IRS has "done you wrong," see an attorney.

2. Congress has granted the right to sue the government in a wide variety of cases.

3. Don’t be afraid to take on the IRS in federal court if you have a good case.

4. Pay close attention to all procedural hurdles and deadlines before filing any type of tax case against the government, including statutes of limitation.

5. Be aware of cases the government can bring against you over taxes.

6. Pay close attention to the statutes of limitation that govern these cases.

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About the Author

Robert Nath is nationally recognized as an authority on tax matters. He holds degrees from Yale, the University of Pennsylvania, and Georgetown University. After clerking for a federal judge, Mr. Nath litigated tax cases for 8 years with the Tax Division, U.S. Department of Justice. Since 1984, he has been in private practice advising taxpayers, accountants, and attorneys on tax procedure and controversy matters, as well as representing them before the IRS and in court in tax collection, audit and tax litigation matters.

Mr. Nath is the author of numerous publications, including:

- "The Unofficial Guide to Dealing with the IRS" (Macmillan),
- "Personal & Business Tax Traps Guide,"
- "Getting Information from the IRS Guide,"
- "How the IRS Operates Guide,"
- "IRS Collection Weapons Guide,"
- "Surviving an IRS Audit Guide,"
- "Make a Deal with the IRS Guide,"
- "Taking the IRS to Court Guide."

Mr. Nath's views have been noted in New York Times, the Washington Post, The Wall Street Journal, the Los Angeles Times, Business Week, Money, Kiplinger's Personal Finance and other national business periodicals on tax procedure topics, appeared on radio and television programs, edited professional journals and his articles have appeared in law reviews and other legal periodicals.

Mr. Nath is a former Green Beret (Major) in the United States Army Reserve.

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