

Working With The IRS

Overcoming Revenue Officer / Agent Bad Actions



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Learning objectives

1. Understand the scope of the taxpayer's right to representation
2. Recognize specific actions a RO/RA may take that are not in line with IRS policy, pursuant to the IRM and IRC
3. Explain to a client the practical consequences of refusing to meet or communicate with a RO/RA without their representative present
4. Identify the appropriate parties overreaching by RO/RAs should be reported: IRS Group Managers, Territory Managers, Taxpayer Advocate, and TIGTA
5. Use a client's appeal rights so an IRS Settlement Officer may intervene, rather than working directly with the RO/RA

Publication one

Taxpayer Bill of Rights (handout)



The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low-Income Taxpayer Clinic if they cannot afford representation.

Practice tip

The taxpayer expense for retaining representation is an “allowable” expense that the IRS must approve, so long as, said expense is “reasonable”.

****This is higher level advocacy when the IRS determines your client’s collection potential****

Practical rights during questioning

If a taxpayer states during any interview that he or she wishes to consult with an authorized representative, the employee **will suspend the interview to permit such consultation** regardless of whether the taxpayer may have answered one or more questions.

****IRS employee should allow 10 business days to be contacted by said authorized representative****

Loophole: the above does not apply to a summons.

Privileges Afforded a Practitioner

4.11.55.2.1.3 (05-29-2018)

A taxpayer's rights include the right to have the taxpayer's representative **present whenever the taxpayer is interviewed, interrogated, or requested to furnish information.** Right must be respected unless expressly waived.

Caveat

If a representative has **unreasonably delayed or hindered** an examination, collection or investigation by failing to furnish non-privileged information after repeated requests, the examiner may request their immediate supervisor's permission to contact the taxpayer directly, to request the non-privileged information.

Common actions by an RO or RA that are not in line with current IRS rules, regulations, and policy stance:

1. Bypassing a POA and contacting the taxpayer directly
2. Failing to timely respond to a taxpayer or their representative
3. Requesting a taxpayer personally appear (primarily to obtain a financial statement)
4. Failing to provide Group Manager contact information or notify a manager a conference has been requested
5. Make a claim of “delayed collections” (typical when CNC, PPIA, or an OIC are submitted as an alternative to enforcement action)
6. Failure to submit a valid alternative to collection to their Group Manager for a formal determination
7. Abuse of discretion – utilizing enforcement action when said action will not encourage “voluntary compliance” and may “jeopardize the health and welfare”



Contacting taxpayers

5.1.10.6.1 (12-11-2018)

Directly contacting a taxpayer is NOT permitted if the service knows the taxpayer has an authorized representative and knows or can readily ascertain the representative's name and address.

- Taxpayer tells the RO or RA there is a representative
- RO or RA checks CAF prior to any contact
- RO or RA received correspondence from a representative

By-Pass a Representative / POA

There is a chain of command that must be followed before a Revenue Agent or Revenue Officer may contact taxpayers directly.

Chain of Command for a RA or RO

1. RA or RO must document the case file with detailed instances of lack of contact from a representative or delays due to said representative.
2. Group manager approval is required before a RA or RO may contact a taxpayer directly, claiming the representative is causing *unreasonable delay or hindrance*.
3. Territory Manager signs off on the bypass, BUT post Letter 4020-A....

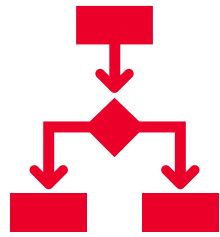
Letter 4020-A

...must be prepared and sent to the representative from the **group manager** advising the representative of responsibilities under Circular 230 and conveying advance notice of a possible by-pass because the representative is violating Circular 230.

Copies of prior document requests, a list of outstanding items and a brief chronology of events must be attached to the letter

The letter is not sent to the taxpayer but is sent to the **territory manager**.

Summary



The RO or RA and their group manager make the initial decision to by-pass a POA.



The group manager must send the “warning letter” to the POA



Permission to by-pass must come from a territory manager (stamp of approval = signature).

However, the above parties may only make the recommendation.

Letter 4020-C, final by-pass

The letter must outline the facts and circumstances for a by-pass:

- i. Letter is prepared by the RO or RA
- ii. Routed through the group manager
- iii. Only then to the territory manager for signature.

The by-pass permits direct taxpayer contact but the POA may continue with representation, **if accompanied by the taxpayer.**

Important IRS policy rule:

“Employees will not use by-pass procedures routinely or simply to interview the taxpayer.”



Use of Summons in Lieu of a By-Pass

4.11.55.4.3

A summons must be utilized as opposed to by-pass procedures in the following circumstances:

1. The taxpayer and the representative are both intentionally uncooperative.
2. The representative refuses to provide the requested documentation when they believe this documentation is privileged or that the request for such records is of doubtful legality.

What happens if...

...the RO or RA requires your client to physically appear in their office for an interview?

What happens if...

...the RO requests a personal appearance by your client for the 4180 interview (Trust Fund Recovery Penalty investigation)?

What happens if...

...a client fails to appear for a scheduled summons or asks if they **MUST** attend the scheduled appointment on the summons?

The Collection Summons Exception of IRC 7609(c)(2)(D)

Third-party summonses issued as part of tax delinquency investigations for trust fund recovery penalties or an investigation where no liability has been assessed are not considered collection summonses under IRC 7609(c)(2).

The Service must follow the notice and waiting period requirements of IRC 7609(a) for these summonses.

A collection summons that pertains to an assessed liability cannot be combined with a summons to obtain information related to a TFRP investigation without giving notice under IRC 7609(a).



Do not “no call, no show”

Taxpayers have injunctive relief, i.e., remedy of law stating a taxpayer does not need to adhere to the summons.

Motion to Quash: a challenge to the summons before the examining agent and before the district court at the summons enforcement proceeding. *Reisman v. Caplin*, 375 U.S. 440 (1964).

Civil enforcement

5.17.6.23 (12-11-2007)

The effect of a proceeding under IRC 7604 is to **obtain the assistance of the court in forcing the summoned person to give the desired information** to the Service by having the court issue an order to that effect.

Disobedience of such an order would be a civil contempt punishable by the court.

Who to contact when RO or RA is violating taxpayer rights or making requests that are not in line with current IRS policy

1. ALWAYS request the RO or RA group manager name, phone and fax number during the first communication.
2. Keep a master list of Group Manager and Territory Manager phone and fax numbers.
3. File a Form 911 with Taxpayer Advocate Service (TAS) – see Form 911 in course materials.
4. Freedom of Information Act – see FOIA request letter template in course materials.
5. Treasury Inspector General for Tax Administration (TIGTA)

TIGTA Continued: Best Practice to protect our field

THE INVESTIGATIVE PROGRAM

The Office of Investigations investigates activities related to fraud, waste, abuse and mismanagement concerning activities of the IRS and related entities (the IRS Oversight Board and Chief Counsel).

https://www.treasury.gov/tigta/about_what.shtml#8

Questions?

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