

Tuesday, February 04, 2003

This document is for the Taxpayer Advocacy Panel, which is holding an event in Kansas City this coming Friday.

I appreciate the fact that you are trying to improve the IRS—most people would say there is nowhere to go but up. In this short write-up, I will address five issues that go far beyond cosmetic concerns. It is my hope you can and will do something meaningful about these issues.

**Problem #1:** IRS employees routinely violate the Internal Revenue Code, the Fourth Amendment, the Eighth Amendment, and basic legal principles such as due process. For example, over the past few years, the IRS has confiscated my refunds to pay for alleged 1982 tax debts they can't even substantiate! They have never assessed me for these alleged tax debts, and have consistently refused to provide any substantiation. I have asked over 100 IRS contacts to show me the law that allows collection without assessment. Not one single person can do this. Ditto for the question as to how they can collect after the Statute of Limitations has expired for both assessment and collection. If the IRS simply followed the law, this issue would be resolved.

**Solution #1:** Provide a means other than prohibitively expensive, deck-stacked tax court to address such obvious issues as blatant disregard for the rules and laws governing tax collection. The taxpayer should not have to be responsible for enforcing the law. IRS employees should not be allowed to bypass due process, make up tax code as they go along, or take other illegal actions without being personally and criminally liable.

**Problem #2:** Some employees of the IRS assume they can unilaterally declare a District Court judge incompetent, simply because they disagree with that judge's ruling. In my own case, a judge sent a man to prison for life on 52 counts of fraud—I was one of the defrauded parties. However, the IRS denied my theft loss deduction on the grounds there was no fraud. They told me if I don't like that I can go to court. The fact this was already decided in court carried no weight with them, even after I pointed that out. I have asked over 100 IRS contacts to show me the law that says more than 52 counts of fraud are required in a District Court sentencing to meet the test for fraud to qualify for a theft loss deduction. Not one person could show me that law.

**Solution #2:** Provide a means other than prohibitively expensive, deck-stacked tax court to address such obvious issues. The taxpayer should not have to be responsible for enforcing the law, especially when the cost of doing so makes the typical home mortgage look like chump change by comparison. IRS employees should not be allowed to flippantly assume a position contrary to the judiciary, try their own cases based on laws they make up on the fly, or take other illegal actions without being personally and criminally liable such actions.

Problem #3: People in Collections unilaterally declare other IRS employees incompetent, and over-ride them. In my own case, Claudette Roberts—a Senior Auditor with over 30 years in the IRS—personally re-did my 1998 tax return and showed the IRS owed me money for that tax year. The Collections people disregarded her re-filed return, and made up one of their own—then took collection activity against me for that tax year! Why does the IRS employ auditors if the Collections people are such rocket scientists? Answer: Collections people are not trained in auditing, or even in tax calculations, and it is not their place to over-ride auditors.

Solution #3: The taxpayer should be able to report such outrageous behavior to an IRS supervisor, who then must promptly fire the offending parties and initiate criminal charges against them.

Problem #4: Many IRS employees treat the IRS as their personal wealth-building tool, and they lie and steal to do so. Example 1: consider the 4300 computers reported stolen from the IRS offices by IRS employees in 2001. Example 2: Consider the \$103 million that is “missing” from the funds paid in by defrauded investors in the Hoyt Fiasco. Court records and other documentation show that certain IRS employees actively colluded with Jay Hoyt in this fraud. Hoyt is bankrupt—where is the money? The employees know, and one of them has a very expensive automobile to prove it. The IRS has never assessed Hoyt for any of the missing tax money—though every cent of it went through his hands—but they are abusing IRS resources to silence the victims by pursuing aggressive collection of taxes the victims don’t owe. Ann Murphy, who was an IRS attorney, quit in protest over this very issue and made her reason for quitting known to the press. She is now a law professor.

Solution #4: Establish a mechanism to protect the IRS and its “customers” from white-collar crimes. The Justice Department should take this role, but refuses to. In effect, nobody is watching the store, and the cookie jars are being raided. Prison time would solve this problem—it would convert the IRS from its present status as a de facto organized crime unit into a body that fairly administers our income tax system.

Problem #5. People abuse the few IRS tools that allow some semblance of reasonable problem resolution. For example, according to Nina Olson, some people do an Offer In Compromise for one dollar. This cheats everyone. Perhaps if the first four problems were solved, this problem would mostly go away. In my own case, the IRS approached me for an OIC for taxes they never assessed me for and that I have never owed. I have always filed and have always paid what I owed for each year. To come, fangs bared, at me 16 or 20 years later with a “tax debt” I can’t possibly pay—with no assessment and no substantiation—is completely absurd. The absurdity of a \$1 OIC pales by comparison.

Solution #5: Fix the IRS, not the folks who are exasperated by it.

Thank you,

Mark Lamendola