

RUSH!

The Executive Memorandum

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WHAT THE FOUNDING FATHERS FORGOT: A TAXPAYER'S BILL OF RIGHTS

Pressures to increase federal revenues to deal with the deficit have caused Congress and the Administration to direct IRS officials to tighten up collection procedures and crack down on tax evaders. While tough action on cheaters is only fair to those pay their full taxes on time, Congress needs to make sure that the rights of law-abiding taxpayers are not infringed by over-eager IRS officials. It is thus time for a "Taxpayer's Bill of Rights" to be adopted to ensure that proper checks are placed on the Service.

Senator David Pryor, the Arkansas Democrat, and Representative Ronnie Flippo, the Alabama Democrat, have proposed bills (S. 1774 and H.R. 3470), designed to specify such taxpayer rights, in order to protect taxpayers against the actions of overzealous tax collectors.

A Taxpayer's Bill of Rights is necessary, as much as a guide to IRS officials as a protection to taxpayers. Because of the budget deficit crisis, Congress has given the IRS a mandate to bring in more revenue and during the next three years, the IRS audit staff will increase by 50 percent. Coupled with stronger powers for the IRS, increased compliance penalties, and rigorous demands on tax preparers, this means safeguards are needed to ensure tax enforcement is administered in a fair, judicious, sensitive and professional manner.

IRS collection employees possess a wide range of enforcement tools that are the envy of any private debt collector, yet taxpayers have few rights when dealing with the collection division of the IRS. The IRS, for instance, does not need a court order to seize assets or attach part of a paycheck, while the Anti-Injunction Act of the Tax Code prohibits nearly all taxpayers from petitioning the federal courts to stop the IRS from using such seizure powers.

The IRS contends that legislation is not needed to protect taxpayers because they are adequately protected by the Internal Revenue Manual--the operational guidebook of the IRS. Yet, on several occasions, the IRS has gone to court and challenged the right of taxpayers to restrain the IRS when IRS employees have violated those Manual policies, claiming that the IRS Manual is only an internal document and does not confer any rights on taxpayers. The courts have agreed. Thus protection needs to be given the force of law to have real meaning.

Note: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

The Pryor and Flippo bills provide a good start in addressing these problems. Among their provisions, the bills would:

◆◆ Establish procedures for the appeal of "jeopardy" levies (levies without the normal 10-day notice) to federal courts and appeals of the filing of tax liens through administrative channels.

◆◆ Give the IRS ombudsman statutory authority to intervene to temporarily halt certain tax collection actions.

◆◆ Require that the IRS release seized property when a taxpayer enters into an installment agreement, and prohibit seizures where the cost of the seizure is more than the value of the property.

◆◆ Increase the minimum period for payment of back taxes from 10 to 30 days.

◆◆ Enable taxpayers to recover damages in court for IRS actions that are careless, reckless, or intentionally in disregard of statute.

◆◆ Require the IRS to prove its position was substantially justified or else pay the taxpayer's legal and accounting fees.

In addition to the provisions in these bills, several more should be added. The burden of proof in tax cases should be shifted from the taxpayer to the IRS. It is ironic that a country born out of a tax rebellion and which has given legal meaning to the concept of "innocent until proven guilty" does not apply that same standard to tax cases. Moreover, taxpayers should be permitted to obtain injunctions against the IRS in certain instances, for example, where the taxpayer's equity in seized property is out of proportion to the amount owed. To protect taxpayers further, the IRS should be required to develop binding regulations, specifying the circumstances under which levies of property can be made, and to advise taxpayers at the time of seizure of their rights to have seized property redeemed or released. Lastly, the IRS taxpayer ombudsman, who represents the taxpayer interests at the IRS, should be made a presidential appointee rather than remain a career IRS bureaucrat.

A Taxpayer's Bill of Rights would go far to ensure that the IRS upholds the integrity of the tax collection system. All taxpayers deserve the right to fair, impartial, and judicious use of enforcement authority. Yet many common criminals and bankrupts currently are afforded more protections than those now granted to U.S. taxpayers. It is time to provide taxpayers with safeguards to protect their rights against unreasonable actions by the IRS.

Prepared for The Heritage Foundation by
Jack Warren Wade, Jr.
a Washington-based tax consultant
and former IRS revenue officer

For further information:

Jack Warren Wade, Jr., *The Power to Tax* (Washington, D.C.: National Taxpayers Legal Fund, 1983).

National Taxpayers Union, *Safeguarding Taxpayers' Rights*, July 1987.