



From the Desk of Dean Zerbe.



Small Business Needs IRS Relief

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Want to stimulate the private sector at little cost?

Get the IRS off small business folks' backs. As Congress labors mightily to put forward what will likely be a mouse of a jobs bill it is time to consider an alternative: If Washington can't provide any real help for small business, maybe it should at least stop being a load. From my discussions with businesses and accounting firms across the country it is clear that real benefit to the economy could be gained by putting small businesses on a fairer footing in their dealings with the Internal Revenue Service.

In recent years Congress and the Bush administration and now the Obama administration have paid great attention to closing the "tax gap." This has encouraged the whip hand of the IRS. Unfortunately, it is small business owners and their employees who are especially feeling the lash.

Some small businesses are now so worried about becoming entangled in a costly and time-consuming dispute with the IRS, that they refuse to take advantage of tax incentives and credits that Congress has provided and for which they qualify. They're leery of taking the research and development credit and might well be reluctant to participate in any new jobs credit.

Money For Life: 2010 Tax Guide

Congress and the administration need to make it clear to the IRS that it must provide a better balance of service and enforcement. They can do that by adopting a new Small Business Taxpayer Bill of Rights. Here are seven points that should be part of it.

1. Liens should not be automatic.

The IRS' view is that when a business owner owes money, it is never wrong to place a lien on his property. It places liens automatically, ostensibly to protect the public. But with credit already tight, it is all but impossible for a business owner to get credit with an IRS lien on his or her

property. In addition, the lien is on the taxpayer's record for years to come, making it all the more difficult to start a new business or even qualify for some work. The result: In many cases, the lien can hurt the Treasury by impeding the ability of a business to continue to operate and to pay the taxes that are due and owed. Congress and/or the Obama administration should put in place a process that provides for individual determination of the necessity of a lien, weighing heavily the economic impact on the individual or business of a lien. This will protect both taxpayers and the Treasury.

2. The IRS must train and test agents better.

With much fanfare, the IRS recently announced a plan to require testing and training of paid tax preparers. Swell. Goose, meet gander. While most IRS agents are capable and qualified, 90% of the problems for small businesses come from the 5% to 20% of IRS employees who have not received the testing and training to ensure they are providing an appropriate level of quality work. This failure to ensure that all IRS employees are qualified translates into significant time and cost to business owners. Small businesses should not have to suffer because an IRS employee doesn't know his or her job. Congress and/or the Obama administration should require education and testing requirements for IRS employees.

3. A business should be eligible to recover its costs when the IRS is clearly wrong.

All too often, an IRS agent, knowing that a small business owner can't afford to defend herself against an audit, will throw a claim of tax owed against the wall to see if it will stick. Business owners have a right not to be treated like under-cooked spaghetti. As a tax attorney working with businesses and their accountants every day, there is no greater frustration for me than knowing that a business owner is right about a tax issue, but that it will cost more to fight the IRS than to pay the extra, unwarranted tax. Under cur-

rent law, generally individuals with a net worth of less than \$2 million and corporations (or owners of a pass-thru businesses) worth up to \$7 million (and with up to 500 employees) have a right to attorney's fees when the IRS takes actions against them that are not substantially justified. However, the net worth limitation of \$7 million is extremely restrictive and basically makes this protection meaningless for the small businesses that are going to be doing the hiring in this country. Congress should drop the net worth limitation so that small business has a fair footing with the IRS.

Further, IRS workers and managers who approve taking actions against a taxpayer that are not substantially justified should be subject to disciplinary review. In addition to claims for attorney's fees, small business owners should be able to bring civil action for damages in cases where the IRS takes actions that are reckless or show intentional, negligent disregard of the law and regulations.

4. Forms and notices must be intelligible.

The vast majority of taxpayers want to comply with the law. But IRS forms and notices are too often incomprehensible. The Government Accountability Office and the Treasury Inspector General for Tax Administration have both concluded that if the IRS did more testing of forms, instructions and notices and modified documents based on patterns of taxpayer errors, such errors could be reduced. Testing and retesting forms and instructions is a common best practice in business. Rather than hiring hundreds more IRS agents to go after small business owners who have made errors due to confusing forms and instructions, it would be cheaper to have clear forms and instructions to start with. Congress should increase from the drop-in-the-buck that is being spent now to test and direct an additional \$25 million of the IRS budget be spent ensuring that forms, instructions and notices are clear and understandable.



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5. Small businesses deserve IRS case managers.

Getting an IRS notice that you can't understand is only the beginning of Dante's journey for a small business owner. The real inner circle of hell is trying to locate an IRS agent at the number that you are told to call who: a) actually understands the law and the specific facts at issue; and b) can resolve the matter. After spending 30 minutes on hold and 30 minutes explaining an issue to an IRS worker (who is invariably polite and kind), the frustrated business owner finds his problem can't be resolved in one call and that when he calls back he won't be able to speak to the same agent again. The failure of the IRS to provide a knowledgeable case officer to resolve tax questions is easily the top complaint I hear from small businesses in my travels across the country. The burden and cost to a small business owner of having to navigate the IRS in search of an adult who can actually deal with the notice the IRS sent is jaw-dropping. Congress and the administration should direct that the IRS not issue any notice to a small business owner unless and until it has assigned a case manager responsible for the matter. That manager should be knowledgeable about the issue (both the law and the specific facts of the case) and be the point person in resolving the issue.

6. Make appeals truly independent

The small business owner who decides to challenge an IRS agent's conclusions faces yet another hurdle--the shortcomings of the appeals office at the IRS. The appeals office is, in theory, supposed to be an objective referee who will look with fresh, unbiased eyes, at what may be a complicated tax issue that's in dispute. But the IRS has failed to keep an appropriate separation between appeals and the rest of the IRS and the appeals office functions mostly as a rubber stamp. Appeals should function independently of the rest of IRS, with discussions between IRS and appeals on all tax matters, not just case specific matters banned, unless taxpayers are also represented.

7. Alternative dispute resolution should be a serious option.

Revamp and promote alternative dispute resolution (ADR) with the IRS. Currently,

while ADR and mediation are available in theory--in practice they are not. For example, for 2009 there were 112,886 appeals cases closed as compared to 23 mediation cases and zero arbitration cases closed.

What should be an avenue for a cost-efficient way to resolve disagreements is instead another frustrating dead end for small business owners. John Klotsche, former senior advisor to the IRS Commissioner, has written thoughtfully about the need for reform of the alternative dispute resolution program--ensuring objectivity of the ADR program and making it easier for taxpayers to take advantage of ADR. The key, according to Klotsche, is to use truly neutral third-party arbitrators with no government ties; to make mediation compulsory for all disputes; and to make the entire ADR process available much earlier in a dispute. Congress and the administration should put these proposals into law. The point here is to resolve issues in a timely fashion and without burdensome legal costs. Reform would also help address another problem with appeals--the lengthy time to get a resolution.

Taking the above steps will do much to improve the climate for small business owners as they look to hire new employees in this difficult economy.

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