



Newsletter

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Our office will be closed for the following holidays:

May 27 – Memorial Day

July 4th – Independence Day

Our next newsletter will be mailed out the beginning of August 2002.

Remember if you have an article that you would like to contribute to our newsletter just fax it to us for our review. We must receive the article no later than July 15th for our August newsletter. ♦

INSIDE THIS ISSUE

- 1 **How Does the IRS Track You Down**
- 2 **How to Keep Your Financial Records From the IRS – What the IRS Already Knows About You**
- 3 **IRS Tax Leins**

HOW THE IRS TRACKS YOU DOWN

Hiding is no answer when the IRS is on your tail. The IRS has many devious ways to find you no matter where or how often you move. Their weapon? A powerful IRS computer linked to 50 state computers, as well as to social security and every other federal agency you have contact with. You are also easily tracked via state tax agencies, motor vehicle departments, unemployment offices, public welfare agencies, professional licensing boards, and even voter registration records. It's indeed difficult to hide.



Despite this vast spy network, the IRS computer works slowly. It can take the IRS a year or more to find you. So while moving around can forestall the day of reckoning, it is not a way to avoid it. Your best bet: If you owe taxes, deal with the IRS as soon as possible. Delay only costs you additional interest and penalties. You'll also receive far less cooperation from the IRS if they believe you intentionally avoided them. Caution: Delay long enough to protect your assets – so you can bargain with the IRS on your terms not theirs!♦



No legitimate business man ever got started on the road to permanent success by any other means than that of hard work, intelligent work, coupled with an earned credit, plus character.

F.D. VAN AMBURGH

HOW TO KEEP YOUR FINANCIAL RECORDS FROM THE IRS

Soon after the IRS assesses a tax against you, they will request that you complete a financial statement. This "Collection Information Statement" (IRS Form 433) requires you to disclose all your property as well as sources of income. It's obvious purpose: The IRS then knows precisely what property and wages are available for seizure and levy. The IRS also has the information to work out a payment plan with you if you have too few assets to quickly pay.

What if you refuse to provide the information? The IRS will summons you to the IRS office to provide the information. Fail to appear and the IRS can have the federal court compel your appearance. The court can jail you and also impose a fine for your failure to honor the summons.

The IRS can compel your appearance to answer questions, but that doesn't mean you must actually answer IRS questions about your assets and income. Taxpayers have successfully refused disclosure of financial information by claiming their rights under the Fifth Amendment. This involves technical questions of law, so follow the advice of your counsel. You certainly are within your rights to refuse information if you have a reasonable basis to believe that you are under criminal investigation by the IRS or any other federal or state law enforcement agency.

What is clear is that you must protect your assets before you give financial information to the IRS. The IRS will quickly lien or seize any listed assets, so time is not on your side. The key rule: Never lie when completing an IRS financial statement. Always be truthful because your statement is under perjury. It is far smarter and safer to refused information than it is to falsify information. Keep in mind that the IRS will check out your assets from other sources. They cannot easily find cash, bearer investments, but they can easily discover other assets you own.

Plan ahead so you can honestly answer the IRS asset inquiry and at the same time disclose nothing to lead the IRS to your assets. Review the IRS collection statement before you must complete it. You can then deploy your assets in a way to both honestly answer while revealing nothing of great value to the IRS.

The IRS will demand new collection information on your assets and income about once a year. The IRS is tracking your financial condition and your ability to pay. While the IRS may request annual information, more and more taxpayers are triggered for renewed collection efforts when their income increases as picked up by IRS computers monitoring tax returns.♦

WHAT THE IRS ALREADY KNOWS ABOUT YOU

You can't conceal much about your financial affairs from the IRS. The IRS already knows virtually everything about you both from your own tax returns and information obtained from third-parties. Your tax return alone tells the IRS about you:

- wages
- interest income
- dividend income
- tax refunds
- rental income
- royalty income
- capital gain distributions
- moving expense payments
- vacation allowances
- severance pay
- travel allowances

Other third-parties you deal with, either through their own tax returns or via mandatory reporting, reveal:

- mortgage interest received
- funds received from barter and broker exchanges
- unemployment income
- tax shelters
- fringe benefits received from your employer
- distributions from pension and profit-sharing plans
- cash payments over \$10,000 made to your bank account
- cash payments of over \$10,000 received in a trade or business
- gambling winning over \$600
- payments made to you if you are a health care provider under an insurance program
- fees paid to you as an accountant, attorney or entertainer

With this data-base of information, your financial past and present can be accurately reconstructed by the IRS. A seasoned IRS agent will do the necessary homework to find your assets rather than rely solely on what you voluntarily disclose. Review your own tax records, as well as the possible information provided by third-parties. Make certain you can explain the disposition of assets that may be disclosed through these records.♦

HOW TO SIDE-STEP THE IRS JEOPARDY ASSESSMENT

A jeopardy assessment grants the IRS the right to lien and seize your assets even before proceeding through the usual collection procedures.

The IRS can simply assess the tax and begin immediate collection under a jeopardy assessment, however, certain procedures must be strictly followed both before and after the assessment. First, the IRS must have good reason to believe the taxpayer: a) is planning to leave the country, or b) planning to avoid payment of the taxes by concealing, transferring or dissipating property, or c) otherwise has his or her financial solvency imperiled.

Once the request for jeopardy assessment is reviewed and approved by the IRS District Director, the taxpayer is served with the jeopardy assessment. It is now immediately collectible by the IRS through enforced collection. How do you avoid a jeopardy assessment?

- Be extremely circumspect in your transfer of assets once the IRS begins its ordinary collection process.
- Avoid unusual or protracted foreign travel that the IRS may become aware of. It's unwise to even apply for a passport.
- Continue to work cooperatively with the IRS.
- Make absolutely no pronouncements about your financial affairs or intentions concerning your property.
- Do not suddenly close your bank accounts – but do reduce them to a negligible balance.

In other words, do nothing that seems out of the ordinary or could strike the IRS as a plan to take flight or render yourself insolvent. The bottom line: While the IRS expects you to remain a "sitting duck", you must in your own circumspect way strategically protect your assets without arousing suspicion.

Even though it seems jeopardy assessments are directed against ordinary folks only trying to protect their assets, in reality the IRS uses jeopardy assessments chiefly against suspected drug dealers and those in organized crime. Still, that doesn't mean it won't be used against you. The mere fact the IRS has the power to lien and levy upon your property with little or no warning should again reinforce the need to judgment proof your assets before you incur a large tax liability. Caution: Taxpayers often assume they have ample time to insulate their assets from the IRS, only to be hit early with jeopardy assessment tax liens. Delay in protecting yourself from the IRS can be very costly.



No man is really honest, none of use is above the influence of gain.

Aristophanes

YOUR ONE KEY MOVE BEFORE A TAX LIEN HITS

Should you leave your assets in your name exposed to a forthcoming tax lien, or instead transfer or dispose of your property before the tax lien is filed?

Taxpayers often beat the IRS by conveying assets before they are encumbered with a tax lien. Transfer of your assets is absolutely your wisest strategy. Timing is critical. Conveyance after the tax lien is filed does not prevent the IRS from seizing the property now in the hands of a third-party, since a tax lien automatically follows the attached property. If your property is conveyed before the lien, the transferee takes it free and clear of the later lien.

The IRS, as any other creditor, can go to court to recover property fraudulently conveyed. The burden is on the creditor. The IRS may also file a "nominee lien" against the property now in the hands of the transferee. The IRS must then successfully litigate whether the transfer was a fraudulent conveyance. The IRS, as a giant bureaucracy, seldom goes to such great lengths to recover fraudulently transferred property unless the tax liability and the value of the transferred property is significant and the entire transaction blatant. Transferring property in the face of a tax lien comes under the adage of "nothing to lose and everything to gain.♦"

HOW TO COPE WITH A TAX LEIN

What impact will a tax have on you and your lifestyle?

An IRS tax lien remains in effect as long as the IRS has the right to enforce collection. Since the IRS has ten years under the current statute of limitations, a tax lien remains alive and enforceable for ten years. Commencement of a tax claim in court, or time out of the country, will extend the lien for an equal length of time.

The immediate effect of the tax lien is that it automatically encumbers all property owned by the taxpayer. This prevents the taxpayer from selling or borrowing against the property. But there are still other effects. Once a tax lien is filed against you, it will be virtually impossible to obtain significant credit or finance larger items such as cars and homes because the tax lien will remain superior to debts owed other creditors. A new lender will not have clear rights to the collateral in the event of default. One solution: Have your spouse take title if your spouse is free of tax problems (one of the benefits of filing tax returns separately). Even safer: Set up a corporation to take title to any new purchases. Clearly, you do not want to list yourself as a stockholder. This still may not alleviate your creditor problems if you are asked to guarantee financing since your credit won't pass the credit test. The bottom line: Keep future assets out of your name and depend on others to guarantee your future

financing.

A tax lien can also precipitate foreclosure by existing lenders who may become concerned the IRS will attempt to dispose of assets that they hold as collateral. One common situation is when accounts receivable is the collateral. The IRS gains a superior lien against a lender on receivables generated more than 45 days from the date of the tax lien. This poses a critical problem for businesspeople with receivables pledged to a bank. Since the bank would lose their priority rights to receivables generated 45 days or more from the lien date, the bank would rightfully insist upon a release of the tax lien (which would, of course, only occur if the taxpayer fully paid the taxes), or payoff on the bank loan. Alternatives may be substitution of other collateral for the receivables, or filing Chapter 11 within the 45 days. Any of these actions would keep the bank secure and in a first position. If none of these occur, the bank would be forced to foreclose on the pledged receivables to protect their priority rights to the receivables. This is one reason why so many companies with tax problems (usually unpaid withholding taxes) do file Chapter 11.

Another point to check: Although the IRS should automatically file a release of lien when the tax liability is paid or the statute of limitations runs, the IRS does not always follow through. If you're entitled to a lien release, check whether it's filed with the public records. If not, personally demand a release of lien from your local tax office. Also have your credit report reflect that you no longer have a tax problem. Unless you're diligent on this you will have continuing credit problems long after the tax lien has been satisfied. ♦

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How tight can life be without the space of hope?

Arabian Proverb

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ADDRESS CORRECTION REQUESTED

As a rough illustration of the impact of double taxation, if a corporation makes \$1 in taxable income, it might pay \$.15 of federal corporate tax, based on the minimum rate. That leaves the corporation with \$.85 after tax. If that amount is then paid in salaries or dividends to an individual at the 28% rate, he or she payes \$.24 in taxes, leaving \$.61 of the original dollar.

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Microsoft Corporation recently moved its corporation domicile out of Delaware and into its home state of Washington to get away from the bureaucracy and corporate taxes.

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Every man has three characters –that which he exhibits, that which he has, and that which he thinks he has.

Alphonse Karr

