

**MSP
#1****TAXPAYER RIGHTS: The IRS Should Adopt a Taxpayer Bill of Rights as a Framework for Effective Tax Administration****RESPONSIBLE OFFICIAL**

John Koskinen, Commissioner of Internal Revenue

DEFINITION OF PROBLEM

The U.S. tax system is built on voluntary compliance. The IRS estimates that it collects 85.5 percent of all tax owed.¹ Of that amount, 98 percent is paid timely and voluntarily. Only two percent derives from late and enforced collection actions.²

For the government, voluntary compliance is much cheaper than enforced compliance, because the government does not have to spend money to collect amounts that are voluntarily paid. Thus, the IRS's overriding goal is to maximize voluntary compliance.³

Taxpayer rights are central to voluntary compliance. If taxpayers believe they are treated, or can be treated, in an arbitrary and capricious manner, they will mistrust the tax system and be less likely to comply with the laws voluntarily. If taxpayers have confidence in the fairness and integrity of the system, they will be more likely to comply.

The Internal Revenue Code (IRC) provides dozens of real, substantive taxpayer rights. However, these rights are scattered throughout the Code and are not presented in a coherent way. Consequently, most taxpayers have no idea what their rights are and therefore often cannot take advantage of them.

Not surprisingly, in response to a survey of U.S. taxpayers conducted for the Taxpayer Advocate Service (TAS) in 2012, less than half said they believed they have rights before the IRS, and only 11 percent said they knew what those rights are.⁴

We can and must do a better job of making taxpayers aware of their rights and enabling them to assert these rights. Since 2007, the National Taxpayer Advocate has repeatedly recommended adoption of a Taxpayer Bill of Rights (TBOR) that takes the multiple existing rights embedded in the code and groups them into ten broad categories, modeled on the U.S. Constitution's Bill of Rights.⁵ A thematic, principle-based list of core taxpayer rights would provide a foundational framework for taxpayers and IRS employees alike that would promote effective tax administration.

1 IRS News Release, IR-2012-4, *IRS Releases New Tax Gap Estimates; Compliance Rates Remain Statistically Unchanged From Previous Study* (Jan. 6, 2012).

2 *Id.* Enforcement and Late Payments percentage is computed by dividing enforcement and late payments of \$65 billion by total tax liabilities of \$2,660 billion.

3 See IRS Strategic Plan 2009-2013 ("Goal 1: Improve service to make voluntary compliance easier").

4 Forrester Research Inc., *The TAS Omnibus Analysis*, from North American Technographics Omnibus Mail Survey, Q2/Q3 2012 19-20 (Sept. 2012).

5 Congress has passed several pieces of legislation with "Taxpayer Bill of Rights" in the title. See Technical and Miscellaneous Revenue Act, Pub. L. No. 100-647, § 6226, 102 Stat. 3342, 3730 (1988) (containing the "Omnibus Taxpayer Bill of Rights," also known as TBOR 1); Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996) (also known as TBOR 2); Internal Revenue Service Restructuring and Reform Act, Pub. L. No. 105-206, 112 Stat. 685 (1998) (Title III is known as "Taxpayer Bill of Rights III" or TBOR 3). These laws create specific rights in certain instances, but they do not create a thematic, principled-based list of overarching taxpayer rights.

Simply put, labels and presentation matter. Almost all Americans know we have a Bill of Rights, and many can name specific ones. The First Amendment right to free speech, for example, is widely known. When one digs deeper, it becomes clear that the right is not absolute (*e.g.*, the First Amendment does not protect an individual's right to falsely scream "Fire!" in a crowded theater), and there are dozens of Supreme Court decisions that delineate the scope of the right. But the simplicity and clarity of a thematic Bill of Rights help Americans understand their rights in general terms, and this knowledge empowers them to assert their rights and learn the nuances when the need arises.

Taxpayer rights are central to voluntary compliance. If taxpayers believe they are treated, or can be treated, in an arbitrary and capricious manner, they will mistrust the tax system and be less likely to comply with the laws voluntarily. If taxpayers have confidence in the fairness and integrity of the system, they will be more likely to comply.

A thematic Taxpayer Bill of Rights would serve the same purpose and its value can scarcely be overstated. A Taxpayer Bill of Rights would serve as an organizing principle for tax administrators in establishing agency goals and performance measures, provide foundational principles to guide IRS employees in their dealings with taxpayers, and provide information to taxpayers to assist them in their dealings with the IRS.

At the same time, the tax system will work best if we provide transparency, not only about taxpayer rights but also about taxpayer responsibilities. The National Taxpayer Advocate views the relationship between the government and its taxpayers as a social contract of sorts — the U.S. government requires its tax collector to treat taxpayers with courtesy and respect and asks taxpayers to cooperate with the tax collector. In recognition of this two-way relationship, we recommend the Taxpayer Bill of Rights also contain a section outlining taxpayer responsibilities.⁶ Overall, the document would lay out in general but very clear terms what taxpayers must do to comply with the tax laws and what rights taxpayers possess in that process. The document would serve to heighten awareness of these rights and responsibilities among taxpayers and IRS employees alike.

Thus, the National Taxpayer Advocate recommends that the IRS adopt and promote a Taxpayer Bill of Rights, and actively apply its principles to all IRS strategic planning, compliance and taxpayer service activities, and to outreach and education.⁷ Doing so will ensure taxpayers know their rights, enable them to avail themselves of those rights, and restore trust in the tax system.⁸ A TBOR provides organizing principles — a framework — for effective tax administration.

⁶ While the National Taxpayer Advocate believes a statement of taxpayer responsibilities would promote effective tax administration by providing taxpayers with greater clarity about what is expected of them, the IRS's obligation to respect taxpayer rights should not be contingent on whether a taxpayer has fulfilled these responsibilities. For example, a taxpayer who did not keep all records or did not pay all tax timely does not forfeit his right to retain a representative to assist him in dealing with the IRS.

⁷ In her preface to the Fiscal Year 2014 Objectives Report to Congress, the National Taxpayer Advocate analyzed the IRS's processing of applications for tax-exempt status and showed that the IRS had violated eight of the ten rights she has proposed. Had there been a published Taxpayer Bill of Rights, organizations applying for tax-exempt status, IRS employees processing their applications, IRS executives overseeing the program, and Congressional offices receiving complaints likely would have flagged the inconsistencies between the applicants' rights and the IRS's actions more quickly. There is no guarantee that would have happened, of course, but the existence and broad awareness of a Taxpayer Bill of Rights would have substantially increased the odds that the problems would have surfaced and been addressed sooner.

⁸ For a comprehensive analysis of the role taxpayer rights play in effective tax administration, see National Taxpayer Advocate, *Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration (Recommendations to Raise Taxpayer and Employee Awareness of Taxpayer Rights)* (Nov. 4, 2013), available at www.TaxpayerAdvocate.irs.gov/2013AnnualReport.

ANALYSIS OF PROBLEM

I. TAXPAYER BILL OF RIGHTS SERVES AS AN ESSENTIAL FRAMEWORK FOR EFFECTIVE TAX ADMINISTRATION

“A bill of rights is what the people are entitled to against every government on earth, general or particular; and what no just government should refuse, or rest on inferences.” — Thomas Jefferson⁹

The federal Bill of Rights provides citizens with indispensable freedoms and guarantees rights that were not explicitly granted in the U.S. Constitution, such as the right to free speech and the right to be free from unreasonable searches and seizures.¹⁰ These rights are fundamental to the functioning of our society. Citizens follow the laws because they trust the government to uphold their rights and treat them fairly. Similarly, the federal tax system is based on an unwritten social contract between the government and its taxpayers: taxpayers agree to report and pay the taxes they owe to enable their government to function, and the government agrees to provide the service and oversight necessary to ensure that taxpayers can and will do so.¹¹ Taxpayers are more likely to uphold their side of this agreement and voluntarily pay taxes when they trust the government and the IRS.¹² In order for taxpayers to trust the IRS, they must understand that they have fundamental rights that apply throughout their dealings with the IRS, and they must believe that the IRS will respect these rights. For this reason, it is vital that the IRS adopt a Taxpayer Bill of Rights.

The Internal Revenue Code includes specific provisions that are crafted to ensure a fair and just tax system and protect all taxpayers from potential IRS abuse. However, the Code contains no organizing principles or formal acknowledgement of the fundamental taxpayer rights from which these statutory rights derive.¹³ The National Taxpayer Advocate has recommended numerous times that a statement of taxpayer rights, a Taxpayer Bill of Rights, be formally codified.¹⁴ While codifying a TBOR would require Congressional

9 Thomas Jefferson to James Madison, 1787. ME 6:388, Papers 12:440.

10 See U.S. Const. amends. I, IV.

11 The 16th Amendment to the U.S. Constitution provides Congress with the authority to tax. The Internal Revenue Code, which provides the legal basis for our tax system, is codified in Title 26 of the U.S. Code.

12 See National Taxpayer Advocate 2012 Annual Report to Congress, vol. 2, at 13 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

13 For example, the right of a taxpayer to be informed is included in a number of different IRC provisions. IRC § 6213(a) requires the IRS to provide a notice of deficiency giving the taxpayer 90 days (150 days if the notice is addressed to a person outside of the United States) to petition Tax Court and, as required by IRC 7522(a), it should provide the basis for and the amount of tax, interest, and penalties due. IRC § 6330 requires the IRS to notify taxpayers at least 30 days before a notice of intent to levy and provide the amount of unpaid tax, the IRS's proposed action, the IRC provisions relating to levy, the procedures available to the IRS, the administrative appeals available to the taxpayer, and the alternatives available to prevent the levy. IRC § 6320(a) requires the IRS to notify a taxpayer of the notice of federal tax lien within five days of when the lien is filed.

14 See National Taxpayer Advocate 2011 Annual Report to Congress 493-518 (Legislative Recommendation: *Enact the Recommendations of the National Taxpayer Advocate to Protect Taxpayer Rights*); National Taxpayer Advocate 2007 Annual Report to Congress 478-489 (Legislative Recommendation: *Taxpayer Bill of Rights and De Minimis "Apology" Payments*).

...the National Taxpayer Advocate recommends that the IRS adopt and promote a Taxpayer Bill of Rights, and actively apply its principles to all IRS strategic planning, compliance and taxpayer service activities, and to outreach and education. Doing so will ensure taxpayers know their rights, enable them to avail themselves of those rights, and restore trust in the tax system.

action, the IRS can articulate these rights by adopting a TBOR on its own.¹⁵

Internally, the National Taxpayer Advocate has had several discussions with senior IRS officials over the last few months about publishing a Taxpayer Bill of Rights, and she is hopeful the IRS will decide to do so in the near future if Congress does not act first.

Congress has passed multiple pieces of legislation with the title of “Taxpayer Bill of Rights,” but none of these laws provides a foundational, general description of taxpayer rights. Taxpayers need a TBOR to enable them to understand their basic rights without having to consult a multitude of Code sections that apply in specific circumstances. The U.S. Bill of Rights provides taxpayers with a clear statement of general rights so taxpayers understand they have a right to free speech, even if they do not know the court decisions that define and limit its scope. A TBOR would operate the same way. For example, a taxpayer needs to know he or she has a basic right to appeal when facing a collection action such as a levy, even if the taxpayer does not know the specific information in the Code regarding Collection Due Process hearings.

The National Taxpayer Advocate’s recommendation that Congress codify a thematic, principle-based Taxpayer Bill of Rights has attracted considerable bipartisan support. This summer, the House of Representatives by voice vote passed an earlier version of the proposal, which is now pending in the Senate.¹⁶ At the same time, we have heard very few concerns about the proposal. That is because it does not aim to create new rights or remedies — only to group existing rights into categories that are easier for taxpayers and IRS employees to understand and remember.

In response to allegations that the IRS used inappropriate criteria to screen applications for tax-exempt status,¹⁷ the Principal Deputy Commissioner issued a “30-day report” providing an initial assessment of the allegations and describing actions the IRS planned to undertake to address underlying causes.¹⁸ Among other things, the Principal Deputy Commissioner asked the National Taxpayer Advocate to provide him with recommendations to:

- 1) Improve taxpayer and employee awareness of the Taxpayer Advocate Service and the role it plays assisting taxpayers and advocating for systemic improvements; and
- 2) Raise awareness of taxpayer rights, including updating IRS Publication 1, *Your Rights as a Taxpayer*.

¹⁵ There is ample precedent for the IRS to adopt a TBOR administratively before Congress enacts legislation. In 1977, for example, the IRS established a problem resolution program nationwide to help taxpayers when regular contacts with the IRS failed. In 1979, the IRS created the Office of the Taxpayer Ombudsman to serve as the primary advocate within the IRS for taxpayers, with responsibility for managing the problem resolution program. Yet the first reference to the Taxpayer Ombudsman did not appear in the IRC until 1988. See Pub. L. No. 100-647, § 6235, 102 Stat. 3342, 3737 (Nov. 10, 1988). Similarly, in March 1988, then Commissioner Gibbs announced a new initiative authorizing problem resolution officers to issue “taxpayer assistance actions” to suspend enforcement actions or expedite procedures in certain cases. These “taxpayer assistance actions” were the precursor to “taxpayer assistance orders” created by Congress in 1988 with the enactment of IRC § 7811. See Pub. L. No. 100-647, § 6230, 102 Stat. 3342, 3733 (Nov. 10, 1988).

¹⁶ Taxpayer Bill of Rights Act of 2013, H.R. 2768, 113th Cong. (as passed by House, July 31, 2013).

¹⁷ See Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2013-10-053, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013).

¹⁸ See Principal Deputy Commissioner, *Charting a Path Forward at the IRS: Initial Assessment and Plan of Action* (June 24, 2013).

In response to the first charge, the National Taxpayer Advocate submitted a report to the Principal Deputy Commissioner on August 23, 2013.¹⁹ In response to the second charge, the National Taxpayer Advocate submitted a report, *Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration*, on November 4, 2013.²⁰ This latter report is a comprehensive analysis of the role a Taxpayer Bill of Rights could and should play in tax administration, and contains 22 action items for the National Taxpayer Advocate and 23 recommendations to the Commissioner of Internal Revenue. The National Taxpayer Advocate has also developed an updated draft color version of Publication 1, illustrated in Figure 3.

A. OECD and Other Countries Provide Models for a Taxpayer Bill of Rights

In 1988, the Organisation for Economic Co-operation and Development (OECD) sent a questionnaire to its member countries, asking about their systems of taxpayer rights and obligations. OECD published the results of the survey in 1990.²¹ The survey found that although most countries did not have an explicit charter or bill of rights, there were certain basic rights present in all tax systems that responded:

- The right to be informed, assisted, and heard;
- The right of appeal;
- The right to pay no more than the correct amount of tax;
- The right to certainty;
- The right to privacy; and
- The right to confidentiality and secrecy.²²

The OECD also identified certain “behavioral norms” that governments expect of taxpayers and are essential to the proper functioning of tax administration. These taxpayer responsibilities include:

- The obligation to be honest;
- The obligation to be cooperative;
- The obligation to provide accurate information and documents on time;
- The obligation to keep records; and
- The obligation to pay taxes on time.²³

Many countries have adopted taxpayer charters that officially articulate taxpayer rights and obligations. The charters vary, as some consist of general statements of broad principles while others offer detailed explanations of taxpayer rights for each stage of the tax process.²⁴ The OECD explains that most taxpayer charters are a guide to the legal rights a taxpayer already has and they generally do not create additional rights that are not granted by legislation.²⁵

19 Available at www.TaxpayerAdvocate.irs.gov/2013AnnualReport.

20 *Id.*

21 OECD, Committee of Fiscal Affairs, *Taxpayers' Rights and Obligations – a Survey of the Legal Situation in OECD Countries* (Apr. 27, 1990).

22 *Id.*

23 *Id.*

24 OECD, Centre for Tax Policy and Administration, *Taxpayers' Rights and Obligations – Practice Note 3-4*, (Aug. 2003).

25 OECD, Centre for Tax Policy and Administration, *Taxpayers' Rights and Obligations – Practice Note 6* (Aug. 2003).

The Canada Revenue Agency (CRA) has adopted and published a TBOR as well as a Commitment to Small Business.²⁶ Canada's TBOR consists of 16 provisions, including:

- The right to have the law applied consistently;
- The right to expect CRA to be accountable;
- The right to be treated professionally, courteously, and fairly; and
- The right to expect CRA to warn you about questionable tax schemes in a timely manner.²⁷

Recently, the Canadian Minister of National Revenue accepted the recommendation of the Taxpayers' Ombudsman to add an additional article to the Taxpayer Bill of Rights, which would "provide assurance to Canadians that lodging a service complaint or requesting a formal review would not lead to biased treatment by the CRA in the future."²⁸

The Australian Taxation Office (ATO) also has created and adopted a Taxpayer Charter, which outlines not only a taxpayer's rights and obligations, but also what the taxpayer can expect from the ATO and what a taxpayer can do if he or she is not satisfied.²⁹ The United Kingdom has a taxpayer charter that outlines what taxpayers can expect from Her Majesty's Revenue and Customs (HMRC), including the expectation to be treated as honest and with respect.³⁰ The United Kingdom charter, which includes three taxpayer obligations, also commits HMRC to do everything it can to keep the cost of dealing with HMRC as low as possible.³¹

Several states, including New York,³² Pennsylvania,³³ Indiana,³⁴ Kentucky,³⁵ Montana,³⁶ and Nebraska,³⁷ have adopted a Taxpayer Bill of Rights. While these charters vary in scope — Montana's is statutory, Nebraska's provides its taxpayers with "Freedom from Red Tape" — all contain most of the fundamental components identified by the OECD, and several outline taxpayer obligations in addition to rights. New York State also has a Consumer Bill of Rights Regarding Tax Preparers, which aims to protect taxpayers that use tax return preparers from unfair treatment.³⁸

26 The CRA Commitment to Small Business is a "a five-part statement through which the CRA pledges to support the competitiveness of the Canadian business community by ensuring that interactions with the CRA are as effective and efficient as possible." See <http://www.cra-arc.gc.ca/gncy/txpyrblrghts/tbrfq-eng.html> (last visited Sept. 15, 2013).

27 CRA, Taxpayer Bill of Rights, available at <http://www.cra-arc.gc.ca/gncy/txpyrblrghts/menu-eng.html> (last visited Sept. 15, 2013).

28 Office of the Taxpayers' Ombudsman, Perspectives; Issue 3 (Aug. 2013), available at <http://www.oto-boc.gc.ca/rprts/nslt3-eng.html>.

29 See ATO, Taxpayer's Charter: What You Need to Know (2011), available at <http://www.ato.gov.au/About-ATO/About-us/In-detail/Taxpayers-charter/Taxpayers-charter-what-you-need-to-know>.

30 HMRC, Your Charter, available at <https://www.gov.uk/government/publications/your-charter> (last visited Sept. 24, 2013).

31 *Id.*

32 N.Y. Tax Law § 3000. See <http://www.tax.ny.gov/tra/rights.htm> (last visited Sept. 15, 2013).

33 72 Pa. Stat. Ann. § 3310-101 (1996); see Taxpayer Bill of Rights, available at http://www.portal.state.pa.us/portal/server.pt/community/taxpayers_rights_advocate/13152 (last visited Sept. 24, 2013).

34 See Indiana Department of Revenue, The Taxpayer Bill of Rights, available at <http://www.in.gov/dor/3660.htm> (last visited Sept. 15, 2013).

35 Kentucky Revised Statements Annotated 131.041-131.081, Taxpayer Bill of Rights; see also Your Rights as a Kentucky Taxpayer, available at <http://www.revenue.ky.gov/nr/rdonlyres/c343eebb-2975-4f0b-82a6-855c9d15cdd2/0/10f100713.pdf> (last visited Sept. 24, 2013).

36 Montana Codes Annotated 15-1-222; see http://revenue.mt.gov/tax_appeal_process/taxpayer_bill_rights.mcp (last visited Sept. 15, 2013).

37 See <http://www.revenue.ne.gov/rights.html> (last visited Sept. 15, 2013).

38 See State of New York, Department of Taxation and Revenue, Publ. 135, *Bill of Rights Regarding Tax Preparers* (Aug. 2011), available at <http://www.tax.ny.gov/pdf/publications/income/pub135.pdf>.

B. It Is Essential that the IRS Adopt a Taxpayer Bill of Rights

A formal acknowledgement of taxpayer rights is vital to restoring and maintaining taxpayers' confidence in the IRS to fairly and impartially administer the tax laws. In a recent lecture, the National Taxpayer Advocate stated:

At their core, taxpayer rights are human rights. They are about our inherent humanity. Particularly when an organization is large, as is the IRS, and has power, as does the IRS, these rights serve as a bulwark against the organization's tendency to arrange things in ways that are convenient for itself, but actually dehumanize us. Taxpayer rights, then, help ensure that taxpayers are treated in a humane manner.³⁹

A TBOR that simply articulates the basic rights and obligations of every taxpayer should provide the organizing principle around which tax administration operates. Whenever the IRS proposes a new initiative, it should analyze the initiative to ensure that it comports with the fundamental taxpayer rights set forth in the TBOR and the Internal Revenue Code. The IRS needs a TBOR to guide not only its big-picture policy and programming decisions but the individual actions of its employees.

The National Taxpayer Advocate has used OECD's guidance to develop a list of taxpayer rights and responsibilities to be included in the TBOR.⁴⁰ Taxpayer rights apply to taxpayers in all situations, regardless of whether they have met their obligations, such as filing a tax return on time. That is, taxpayer rights are not conditioned on taxpayers' compliance. Still, including taxpayer responsibilities in the TBOR reinforces the social contract between taxpayers and the IRS. The following make up the TBOR proposed by the National Taxpayer Advocate:

Ten Taxpayer Rights

1. The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the law and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to have a way to file complaints about inadequate service.

3. The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due and to have the IRS apply all tax payments properly.

³⁹ Nina E. Olson, *A Brave New World: The Taxpayer Experience in a Post-Sequester IRS* (the Laurence Neal Woodworth Memorial Lecture), Tax Notes Today 106-118 (June 3, 2013).

⁴⁰ The National Taxpayer Advocate has shared this TBOR with the IRS Office of Chief Counsel and the Chief of Communications and Liaison, and has adopted several of their suggestions.

4. The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to IRS actions or proposed actions, to expect that the IRS will consider their objections and documentation promptly and impartially, and to receive a written response if the IRS finds them insufficient.

5. The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a prompt and impartial administrative appeal of IRS actions and have the right to receive a written response explaining the Appeals Division's decision. Taxpayers generally have the right to take their cases to court to challenge an adverse final determination.

6. The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and a collection due process hearing where applicable.

8. The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect the IRS to investigate and take appropriate action against its employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. 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 be told that if they cannot afford to hire a representative they may be eligible for assistance from a Low Income Taxpayer Clinic.

10. The Right to a Fair and Just Tax System, Including Access to the Taxpayer Advocate Service

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

Five Taxpayer Responsibilities

1. The Responsibility to Be Honest

Taxpayers have the responsibility to be truthful in preparing their tax returns and in all other dealings with the IRS.

2. The Responsibility to Provide Accurate Information

Taxpayers have the responsibility to answer all relevant questions completely and honestly, to provide all required information on a timely basis, and to explain all relevant facts and circumstances when seeking guidance from the IRS.

3. The Responsibility to Keep Records

Taxpayers have the responsibility to maintain adequate books and records to fulfill their tax obligations, preserve them during the time they may be subject to IRS inspection, and provide the IRS with access to those books and records when asked so the IRS can examine their tax liabilities to the extent required by law.

4. The Responsibility to Pay Taxes on Time

Taxpayers have the responsibility to pay the full amount of taxes they owe by the due date and to pay any legally correct additional assessments in full. If they cannot pay in full, they have the responsibility to comply with all terms of any full or partial payment plans the IRS agrees to accept.

5. The Responsibility to Be Courteous

Taxpayers have the responsibility to treat IRS personnel politely and with respect.

By establishing an official taxpayer charter, the IRS can show its current and future commitment to protecting fundamental taxpayer rights. The TBOR will also provide a valuable framework for evaluating IRS policies, programs, actions, and initiatives.

C. Recognition of Taxpayer Rights Requires Adequate Funding for the IRS

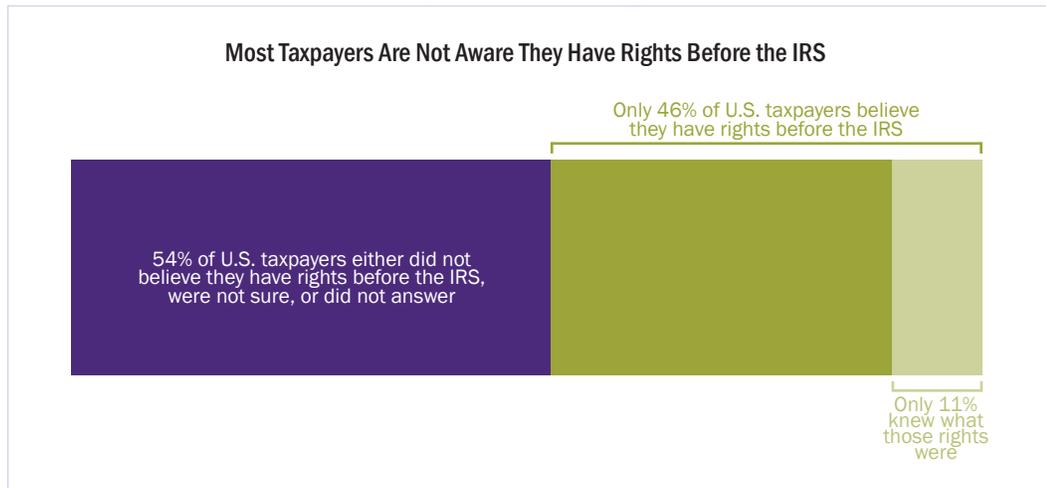
Throughout this report are examples of actions the IRS can take to implement the TBOR. However, taxpayer rights may be impaired if the IRS is not adequately funded. If there is agreement that taxpayers have certain basic rights, then Congress and the Executive Branch have a responsibility to ensure the IRS has sufficient resources to deliver these rights. For example, if taxpayers have the *right to quality service*, then the IRS must be funded so that it has the capability to provide quality service. A TBOR will be limited in its effectiveness without an adequate budget for the IRS to take actions to protect and fulfill taxpayer rights.

II. TAXPAYER AWARENESS OF TAXPAYER BILL OF RIGHTS

As noted above, the Internal Revenue Code includes a number of statutory taxpayer rights that are specific to certain situations, but it contains no organizing principles or formal acknowledgement of the fundamental taxpayer rights from which these statutory protections derive. Thus, taxpayers may not realize they have rights or know what they are. TAS research shows that many taxpayers are not aware they have

rights. The results of a recent nationwide survey of taxpayers found that fewer than half of U.S. taxpayers believed they have rights before the IRS, and only 11 percent said they knew what those rights were.⁴¹

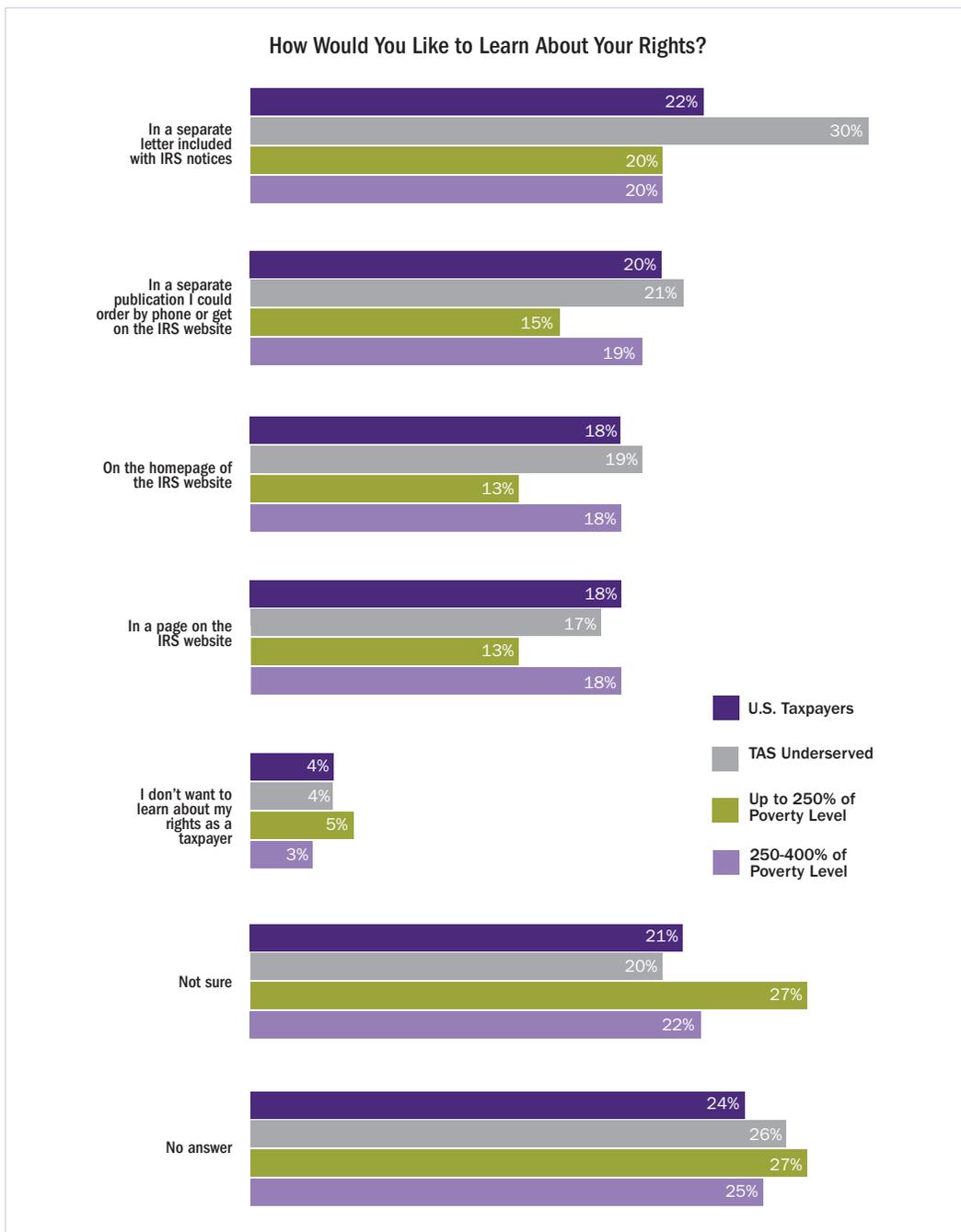
FIGURE 1.1.1, Taxpayers’ Knowledge of Taxpayer Rights



The IRS relies largely on distribution of Publication 1, *Your Rights as a Taxpayer*, to inform taxpayers about their rights. As discussed below, with revisions Publication 1 can be an important vehicle for taxpayer education about their rights, but the IRS should also educate and inform taxpayers through its public website and with posters and brochures in IRS offices. Taxpayers prefer a variety of sources, according to a 2012 TAS study that asked a statistically representative nationwide sample of 8,911 U.S. taxpayers how they would like to learn about their rights.

41 Forrester Research Inc., *The TAS Omnibus Analysis, from North American Technographics Omnibus Mail Survey, Q2/Q3 2012*, 19-20 (Sept. 17, 2012).

FIGURE 1.1.2, “How would you like to learn about your rights?”⁴²



Thus, taxpayers are best served if the IRS provides them with multiple channels of taxpayer rights information and education.

42 Forrester Research Inc., *The TAS Omnibus Analysis*, from *North American Technographics Omnibus Mail Survey*, Q2/Q3 2012, 21 (Sept. 17, 2012). “TAS underserved” refers to taxpayers who qualify for but do not seek TAS help with their tax problems. This survey was conducted only in English; TAS is seeking to administer it to Spanish-speaking taxpayers. See National Taxpayer Advocate, *Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration (Recommendations to Raise Taxpayer and Employee Awareness of Taxpayer Rights)* 12-16 (Nov. 4, 2013), available at www.TaxpayerAdvocate.irs.gov/2013AnnualReport.

Recent TAS Focus Groups Confirm that Taxpayers Would Like to Know About Their Rights

In November 2013, a contractor for TAS conducted eight focus groups with taxpayers and tax preparers to evaluate the level of taxpayers' knowledge and understanding of their rights and responsibilities relating to federal taxes.⁴³ Specifically, the focus groups were designed to qualitatively assess:

- The extent of taxpayers' and preparers' knowledge (and desire to know) of taxpayer rights and responsibilities;
- How they would like to learn about their rights and responsibilities;
- From whom, when, where, and in what form would they like to receive this information;
- Their reaction to TAS's proposed TBOR;
- Their reaction to Publication 1 (both original version and a revised version developed by TAS);⁴⁴ and
- How they would change or improve this publication.

The report found that taxpayers had little knowledge of, but high interest in, the list of taxpayer rights in our proposed TBOR, and they reacted very positively to it overall.⁴⁵ One taxpayer from Los Angeles said:

It summarizes it in one piece of paper, what everybody wants and needs to know about the IRS and that's rare.

Taxpayers were particularly happy to learn about the *right to challenge the IRS's position and be heard*;⁴⁶ the *right to appeal an IRS decision to an independent forum*;⁴⁷ and the *right to retain representation*.⁴⁸ Overall, taxpayers felt that learning about their rights made them view the IRS in a more favorable light.⁴⁹ On the other hand, they felt that publishing the rights alone would have little effect on tax compliance — which is consistent with the observation that it is *how* rights are protected and implemented that has the greatest impact on compliance. Among the rights they questioned, taxpayers found the *right to finality* and the *right to pay no more than the correct amount of tax* unclear. Significantly, they doubted the IRS's ability to fulfill the *right to quality service*.⁵⁰

⁴³ The focus groups were conducted between November 18, 2013 and November 21, 2013 in four sites: East Rutherford, New Jersey; Chicago, Illinois; Dallas, Texas; and Los Angeles, California. At each site, the contractor conducted one focus group of taxpayers and one focus group of preparers. The taxpayers participating in the focus groups had filed taxes for the past three years, which included a mix of preparer, professional, and self-prepared returns. Russell Research, *Final Report from a Focus Group Study of Taxpayer Rights & Responsibilities* (Dec. 6, 2013).

⁴⁴ In the first Taxpayer Bill of Rights legislation (TBOR 1), Congress required the IRS to prepare a statement of taxpayer rights and IRS obligations and distribute it to taxpayers when contacting them regarding the determination of tax or collection of tax. Technical and Miscellaneous Revenue Act of 1988, Pub L. No. 100-67, § 6227, 102 Stat. 3342, 3730-31 (Nov. 10, 1988). Currently, the IRS outlines these rights for taxpayers in Publication 1, *Your Rights as a Taxpayer*.

⁴⁵ *Id.* at 14.

⁴⁶ "I've had some experience with the IRS...Like the right to appeal and be heard...There were some issues that I had challenged, and the IRS was overturned and I received full restitution." (Chicago taxpayer). *Id.* at 11.

⁴⁷ "The one I like best is the right to appeal an IRS decision in an independent forum. I've been through that, so I know how important that was. I think all these are actually very important." (Los Angeles taxpayer). *Id.*

⁴⁸ "The right to retain representation [is the most important right to me]...In theory they could call you in and have you and them (representation) there and that is basically that." (New Jersey taxpayer). *Id.*

⁴⁹ "To me, I kind of like it. It looks like they're making an attempt [to be less intimidating]. Maybe they will be a little more fair." (Los Angeles taxpayer). *Id.*

⁵⁰ "Seriously, if you don't have money to pay an accountant, do they provide quality service that you can go somewhere and have them do your taxes for you?" (New Jersey taxpayer). *Id.* at 10.

Overall, the taxpayers felt most of the responsibilities were “a given” and obvious.⁵¹ Taxpayers had a negative reaction to two of the responsibilities, *to be honest*⁵² and *to be courteous*.⁵³ The National Taxpayer Advocate will use these observations, as well as those from future focus groups, to revise our proposed explanations of rights and responsibilities.⁵⁴

CONCLUSION

The Taxpayer Bill of Rights would reassure taxpayers that they have rights that the IRS must respect, reinforcing the social contract between taxpayers and the IRS. With the adoption of a TBOR, taxpayers may be more likely to perceive the IRS as fair and just, which may increase voluntary compliance. The IRS can make great strides toward protecting taxpayer rights through the adoption of a TBOR and making it the foundation for effective tax administration.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Adopt the Taxpayer Bill of Rights, including ten fundamental taxpayer rights and five taxpayer responsibilities.
2. Prominently display a link on the IRS.gov homepage (“Know Your Rights as a Taxpayer”) to a taxpayer rights webpage, which will further link to specific explanations of taxpayer rights and responsibilities.
3. In collaboration with the National Taxpayer Advocate, post taxpayer rights language on the business operating division pages of IRS.gov that refers to TAS, Low Income Taxpayer Clinics, specific taxpayer rights and responsibilities and contains links to the U.S. Tax Court webpage, where appropriate.
4. Require all public- and taxpayer-facing IRS sites and offices to display a poster and brochures about the Taxpayer Bill of Rights, to be developed in collaboration with the National Taxpayer Advocate.
5. Require all IRS operating divisions and functions when proposing initiatives, including budget initiatives, to include in their business case justifications an analysis of the proposed operation in terms of the Taxpayer Bill of Rights.

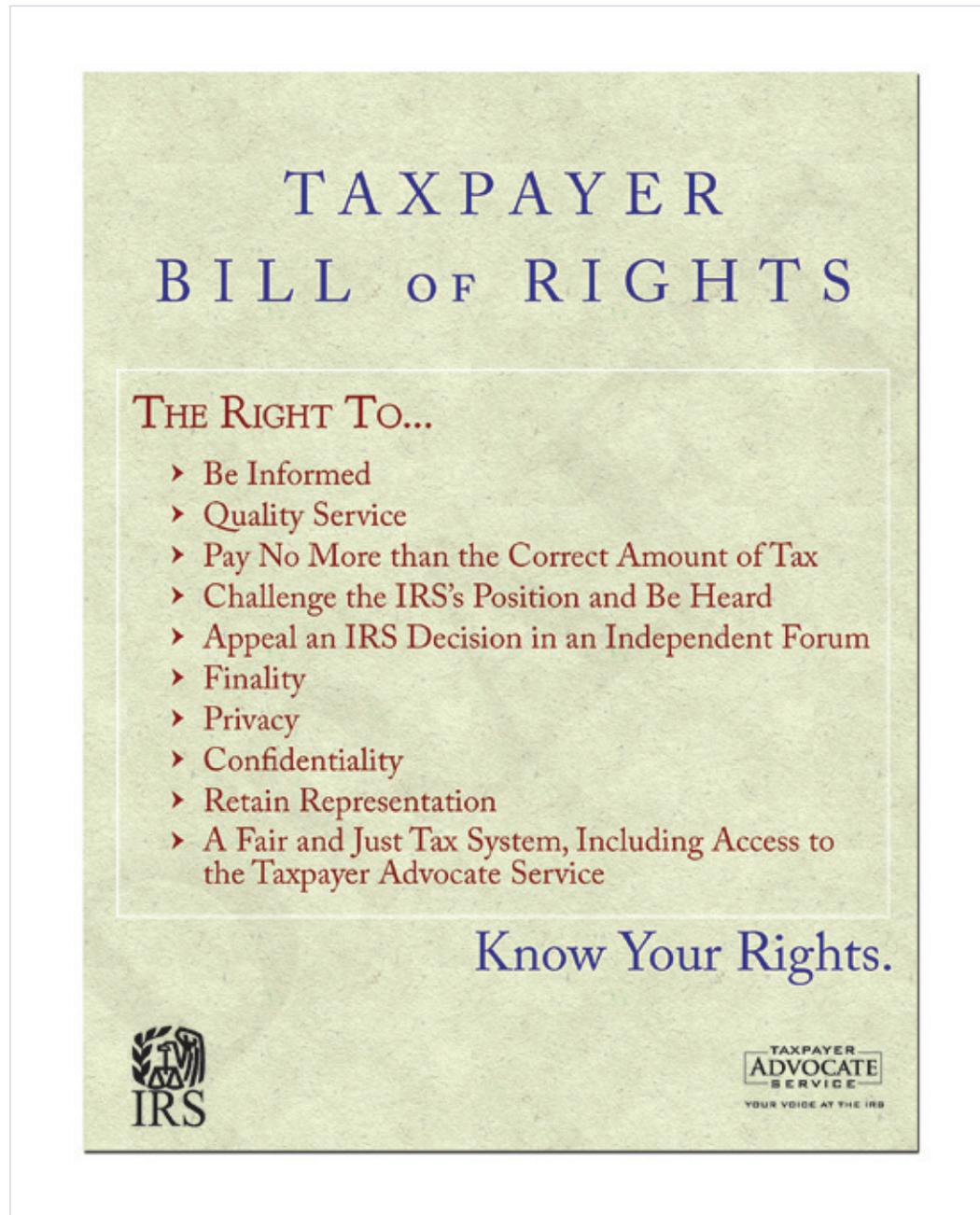
51 “I can’t imagine that you wouldn’t think you were responsible to provide accurate honest information...To me, that’s a no-brainer.” (Dallas taxpayer). *Id.* at 13.

52 “Obviously if you are not honest you are going to get audited or you could get audited.” (New Jersey taxpayer). *Id.*

53 “Well then that shouldn’t even be on there. It’s common sense to be courteous.” (Chicago taxpayer); “You better believe it. If there’s anybody I’m going to be courteous, it’s, you know, the IRS.” (Chicago taxpayer); “That, I would definitely take out...every individual in this room as a professional working adult is professional and courteous.” (Dallas taxpayer). *Id.*

54 For an in-depth discussion of the Taxpayer Advocate Service’s revised Publication 1 initiative, see National Taxpayer Advocate, *Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration* 18 (Nov. 4, 2013), available at www.TaxpayerAdvocate.irs.gov/2013AnnualReport.

FIGURE 1.1.3, Updated Draft Version of Publication 1



TEN TAXPAYER RIGHTS

- 1 THE RIGHT TO BE INFORMED**
 Taxpayers have the right to know what they need to do to comply with tax laws. They are entitled to clear explanations of the law and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.
- 2 THE RIGHT TO QUALITY SERVICE**
 Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to have a way to file complaints about inadequate service.
- 3 THE RIGHT TO PAY NO MORE THAN THE CORRECT AMOUNT OF TAX**
 Taxpayers have the right to pay only the amount of tax legally due and to have the IRS apply all tax payments properly.
- 4 THE RIGHT TO CHALLENGE THE IRS'S POSITION AND BE HEARD**
 Taxpayers have the right to raise objections and provide additional documentation in response to IRS actions or proposed actions, to expect that the IRS will consider their objections and documentation promptly and impartially, and to receive a written response if the IRS finds them insufficient.
- 5 THE RIGHT TO APPEAL AN IRS DECISION IN AN INDEPENDENT FORUM**
 Taxpayers are entitled to a prompt and impartial administrative appeal of IRS actions and have the right to receive a written response explaining the Appeals Division's decision. Taxpayers generally have the right to take their cases to court to challenge an adverse final determination.
- 6 THE RIGHT TO FINALITY**
 Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year. Taxpayers have the right to know when the IRS has finished an audit.
- 7 THE RIGHT TO PRIVACY**
 Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and a collection due process hearing where applicable.
- 8 THE RIGHT TO CONFIDENTIALITY**
 Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect the IRS to investigate and take appropriate action against its employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

- 9 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 be told that if they cannot afford to hire a representative they may be eligible for assistance from a Low Income Taxpayer Clinic.
- 10 THE RIGHT TO A FAIR AND JUST TAX SYSTEM, INCLUDING ACCESS TO THE TAXPAYER ADVOCATE SERVICE**
 Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

FIVE TAXPAYER RESPONSIBILITIES

- 1 THE RESPONSIBILITY TO BE HONEST**
 Taxpayers have the responsibility to report their income, deductions, and credits accurately according to the law; to answer all questions completely, accurately, and honestly; and to explain all relevant facts and circumstances when seeking guidance from the IRS.
- 2 THE RESPONSIBILITY TO PROVIDE ACCURATE INFORMATION**
 Taxpayers have the responsibility to answer all relevant questions completely and honestly, to provide all required information on a timely basis, and to explain all relevant facts and circumstances when seeking guidance from the IRS.
- 3 THE RESPONSIBILITY TO KEEP RECORDS**
 Taxpayers have the responsibility to maintain adequate books and records to fulfill their tax obligations, preserve them during the time they may be subject to IRS inspection, and provide the IRS with access to those books and records when asked so the IRS can examine their tax liabilities to the extent required by law.
- 4 THE RESPONSIBILITY TO PAY TAXES ON TIME**
 Taxpayers have the responsibility to pay the full amount of taxes they owe by the due date and to pay any legally correct additional assessments in full. If they cannot pay in full, they have the responsibility to comply with all terms of any full or partial payment plan the IRS agrees to accept.
- 5 THE RESPONSIBILITY TO BE COURTEOUS**
 Taxpayers have the responsibility to treat IRS personnel politely and with respect.