Ten Deadly Taxpayer Mistakes

Dealing with the IRS is a battlefield filled with booby traps. You usually discover your fatal error only when it's too late. While no piece of writing can uncover all such mines, beware of these ten ticking time bombs:

1) **Putting up with an unreasonable or incompetent revenue officer.** If you think you are being overly mistreated or victimized by an incompetent or overbearing revenue officer, then request to speak with that employee's manager immediately to explain the situation and to even demand transfer of your case to another revenue officer. If you disagree with the manager's decision, you can appeal (liens, levies or seizures) under the Collections Appeal Program. You can also request a Collection Due Process hearing with the Office of Appeals after a tax lien is filed or after a final levy notice is issued. If your problem still goes unresolved, you can apply for Taxpayer Advocate Service assistance. While revenue officers must be tough to be effective and collect, they must also act reasonably. Remember, you have the right to be treated professionally, fairly, promptly and courteously by IRS employees. It is part of your Taxpayer Bill of Rights.

2) **Not knowing where you stand.** Open IRS letters and read their notices. Request an account transcript or record of account. Ask the revenue officer what further action you must take and what you might expect from the IRS. Never assume you know where matters stand or what will happen next. Avoid nasty surprises. When the IRS says something, get it in writing!

3) **Admitting to violating tax laws.** If a revenue officer tries to get incriminating statements from you, then terminate the interview and hire an attorney. If interviewed by a special agent or recited your Fifth Amendment rights, stop talking and hire an attorney immediately!

4) **Ignoring the IRS.** Never ignore the IRS, at least not without competent legal advice. Reply to IRS correspondence requiring a response and promptly return phone calls. Do not take the ostrich approach and bury your head in the sand. Your willingness to communicate will help win IRS cooperation. But do not needlessly volunteer information. If the IRS asks you for additional information and you are unsure of their legal right to the information, be aware of the Privacy Act of 1974. This Act says that when the IRS asks for information, it must first tell you its legal right to ask for the information, why it is asking for it, how it will be used, what could happen if you do not provide it, and whether you must respond under the law. If you refuse to cooperate, the IRS can summons you to an IRS office conference and even have the federal court summons you to appear, as the court can jail you and/or impose a fine for your failure to comply.

5) **Assuming the IRS is correct.** Do not assume a tax bill is correct. Request a Transcript. Check the math. If IRS tells you something, check the Internal Revenue Manual, check the Internal Revenue Code, and/or check with a tax professional.

6) **Not filing a tax return.** If you have not filed a tax return, you have not started the statute of limitations for that particular tax year. This means that there is no limit to the amount of time that the IRS can pursue you; however, as a practical matter, the IRS rarely enforces filing requirements after six years. Should IRS choose to do so, if you do not file, IRS may file a "substitute for return", the IRS version of your un-filed tax return, which is rarely filed in your best interest. And be aware that continued non-compliance by flagrant or repeat non-filers can result in additional penalties and/or criminal prosecution. Do not let your inability to pay stop you from filing. Failure to pay the IRS is only a civil matter; however, failure to file is a misdemeanor under IRC 7203 and may in egregious cases be elevated to a felony under IRC 7201 Tax Evasion.

7) **Committing perjury.** Never falsify financial information. Be truthful to the IRS because making false statements under oath is perjury. It is better to refuse to provide information than to lie and commit perjury. Do not turn a civil matter (failure to pay) into a criminal matter (perjury).

8) **Being pressured into paying your taxes when you can't afford to pay.** The IRS will incessantly pressure you to sell or borrow against your assets, and doing so if you can afford to will generally be cheaper than having the IRS as a creditor. However, do not let the IRS coerce your spouse, another family member or anyone else to sell assets or lend you money to pay your bill. Pay only to the extent the IRS can seize your assets or income. But, if you cannot afford to pay all of your taxes by selling or borrowing against your assets, consider an Offer in Compromise, Installment Agreement, or even Currently Not Collectable status before putting yourself in hock. And do not pay any one return unless you know how all past due returns will be paid, discharged or otherwise satisfied.

9) **Hiring the wrong person or firm.** Don't hire a tax representative too quickly. The best advisor for you, whether they are an attorney (best if you need attorney-client privilege), CPA or enrolled agent, must convince you that he or she has strong experience with IRS collection cases and is watching out for your best interest. And remember that old profound saying, especially in the case of an Offer in Compromise (OIC), *"If it sounds too good to be true, it probably is*." Watch out for OIC promoters who may inappropriately advise you they can settle your tax debt for "pennies on the dollar" through the OIC program, even when you clearly do not meet OIC program requirements. As stated by the IRS Commissioner, we do warn taxpayers to watch out for unscrupulous promoters charging excessive fees to taxpayers who have no chance of meeting the program's requirements. Taxpayers should not be duped by high-priced promises. This is not to say that offers cannot be settled for pennies on the dollar – they can, if the situation warrants it. Do your personal circumstances fit into the IRS formula as a pennies on the dollar case based on your assets, liabilities, income and expenses? Did the OIC promoter consider these factors and apply the formula, including the IRS national and local standards, before telling you that you qualify for a pennies on the dollar settlement?

10) **Extending the Statute of Limitations for Collection.** Do not extend statutes, at least not without competent legal advice. Under IRC 6502, the IRS has only ten years from the date of tax assessment to collect your delinquent taxes. This was extended retroactively on November 5, 1990 from six years to ten years. What this means is that each tax assessment has a Collection Statute Expiration Date (CSED) – a date on which the tax liability is no longer legally enforceable. Once the statute of limitations for collection expires, your liability expires - and with it the government's right to pursue collection of the tax! Prior to the Restructuring and Reform Act of 1998 (RRA 98), the IRS would "request" that the taxpayer "voluntarily" extend the collection statute by agreement – this unfair practice is no longer permissible, and any extension of the collection statute already in effect on December 31, 1999 will expire on the last day of the ten year collection period or December 31, 2002, whichever is later. However, the statute of limitations for collection can still be extended and/or suspended by:

- **Installment Agreements with Form 900 Waiver:** When you sign a Form 900, *Tax Collection Waiver*, you voluntarily agree to extend the statutory period for collection to the date specified on such waiver. Under new IRS policy, this waiver will only be executed in connection with the granting of a partial payment installment agreement and is limited to no more than 5 years, plus up to 1 year to account for other administrative actions. CSEDs may not be extended during installment agreements; CSEDs may be extended only in connection with new partial pay installment agreements, during the default period, or after agreements are terminated. Regardless of whether Form 900 is signed, effective March 9, 2002, the collection statute expiration date is suspended while an installment agreement is being considered, 30 days following rejection, 30 days following termination and during any appeal of the termination or rejection of the installment agreement. This change is not retroactive. The suspension is during the time that the levy is prohibited, but the collection statute is not suspended while the installment agreement is in effect.

- **Offer in Compromise:** With the submission of an Offer in Compromise, you suspend the statute of limitation for collection for the time period your Offer in Compromise remains pending (the time the offer is being processed and considered), for 30 days following rejection of an offer, and for the period that a timely filed appeal of a rejection is being considered in Appeals. This is effective for offers submitted January 1, 2000 or later. For offers submitted prior, the taxpayer executed a waiver of the statutory period for collection, extending the collection statute for the time the offer was pending, plus one year; however, RRA 98 did now allow the waiver to extend the collection statute beyond December 31, 2002, or the original CSED, whichever is later. But note that the statutory suspension was eliminated for offers (and installment agreements) from December 21, 2000 through March 9, 2002 when reinstated.

- **Bankruptcy:** Bankruptcy suspends the statute of limitations for collection on non-dischargeable taxes for the pendency of the bankruptcy, plus six months; therefore acting to suspend the collection statute while the automatic stay of the bankruptcy is in effect.

- **Collection Due Process (CDP) Appeal:** The timely filed request for a CDP hearing suspends the statutory period from the date the IRS receives the request to the date the taxpayer withdraws their request or the date the determination from Appeals becomes final, including any court appeals. If 90 days is not left on the collection statute when the determination becomes final, the statute is extended to equal 90 days. The collection statute is not extended for equivalency hearings.

- **Taxpayer Assistance Order:** The filing of Form 911, *Application for Taxpayer Assistance Order*, suspends the statutory period (for assessment and collection) by the time it is under review by the IRS.

- **Absence from the Country:** The collection statute will be suspended by the period of time you are outside the United States for six or more continuous months. However, if you are returning after having been out of the country for six months or more, the statute does not expire until six months after your return.

- **IRS Judgment/Litigation:** When the IRS starts a lawsuit to reduce tax lien to a judgment prior to the expiration of the statute of limitations for collection, the collection statute will be suspended during litigation.

- **Relief From Joint and Several Liability / Innocent Spouse:** When the requesting spouse makes an election for innocent spouse relief, the collection statute is suspended from the filing of the claim until a waiver is filed or until the expiration of the 90 day period for petitioning the Tax Court, or if a Tax Court petition is filed, when the Tax Court decision becomes final, plus in each instance 60 days. If the requesting spouse signs a waiver, the suspension of the collection statute will end 60 days after the waiver is filed with the IRS.

- **Accounts of Taxpayers Who Serve in a Combat Zone or Contingency Operation:** Individuals serving in an officially designated combat zone or a contingency operation will have payment and collection of any federal tax liability suspended during the period of the person's service, plus any period of continuous-qualified hospitalization as a result of injury received (limited to 5 years of hospitalization in the United States), plus 180 days.

- **Military Deferment:** If an individual serving in the military defers collection of any income tax liability, the collection statute is suspended during the taxpayer's military service, plus 270 days.

- **Wrongful Levy (Seizure):** A wrongful levy suspends the statute of limitations for collection from the date property (including money) of a third person was wrongfully seized or received, to the date the property is administratively returned or the date on which the wrongful levy judgment becomes final, plus 30 days; however, the suspension is only for the amount of money or value of the specific property taken, valued on the date of return.

- **Wrongful Lien:** A wrongful lien suspends the statute of limitations for collection from the date the person becomes entitled to a certificate of discharge of lien until 30 days after the earliest date on which the IRS no longer holds any amount as a deposit or bond or the date on which a judgment (concerning the deposit or bond) becomes final; however, the suspension is only for the value of the interest of the United States in the property, plus interest, penalties, additions to tax, and additional amounts.

- **Estate Tax Lien:** The collection statute for a deferred estate tax is suspended for the period of any elected extension of time for pay that is granted.

- **Enforcement of the Two-Tier tax Scheme:** If an action for refund on the first-tier tax is commenced within 90 days after the day on which the second-tier tax is assessed, the collection statute is suspended for second-tier taxes.

- **Substitute For Return:** When a taxpayer fails to file or files a false or fraudulent return, the IRS can file for the taxpayer a "substitute for return" and make a deficiency assessment, which starts the ten year collection statute. If the taxpayer later files their own "original" tax return with a smaller liability and the IRS accepts the return, the assessed liability may be reduced and the original collection statute remains intact. However, if the taxpayers own "original" return shows a larger liability and the IRS accepts the return, the original collection statute remains intact for the original assessment, but the "additional tax assessment" has a later collection statute based on the recording of the new tax liability.

Generally, the collection period is suspended during periods in which the IRS is legally barred from taking collection action against you, plus an extra 30 to 90 days in most cases.

If more than one case action suspends the running of the collection statute and the suspensions overlap, the CSED is viewed as extended only once for the period the suspensions overlap.

When the statute of limitations for collection is almost expired, the IRS may become overly aggressive in its collection efforts and offer you a "lenient" installment agreement in exchange for a Form 900 waiver. Don't sign! If the IRS could not collect from you during the preceding years, why will it succeed in the short time remaining? Once the statute of limitations expires, you are finished with the IRS. Extending the statute of limitations only extends your IRS problem!

Despite IRS collection powers, thousands of tax claims do expire each year. Until you receive confirmation that the statute has expired, assume you still owe IRS and continue to protect your assets. Becoming visibly wealthy at the last moment may be the fatal mistake the IRS patiently awaits.

So now that you know these "10 deadly mistakes", you can be sure not to make them. And if you have any additional questions or need assistance in dealing with your tax matter, I am only a phone call or email away.

I wish you every success in resolving your tax liability.

Nicole Ofstein
Attorney and Author

Ofstein Law, PA
10101 W Sample Road, Suite 417
Coral Springs, Florida 33065
Telephone: (561) 955-9395
Facsimile: (561) 482-9310

http://ofsteinlaw.com
http://www.settlewithIRS.com