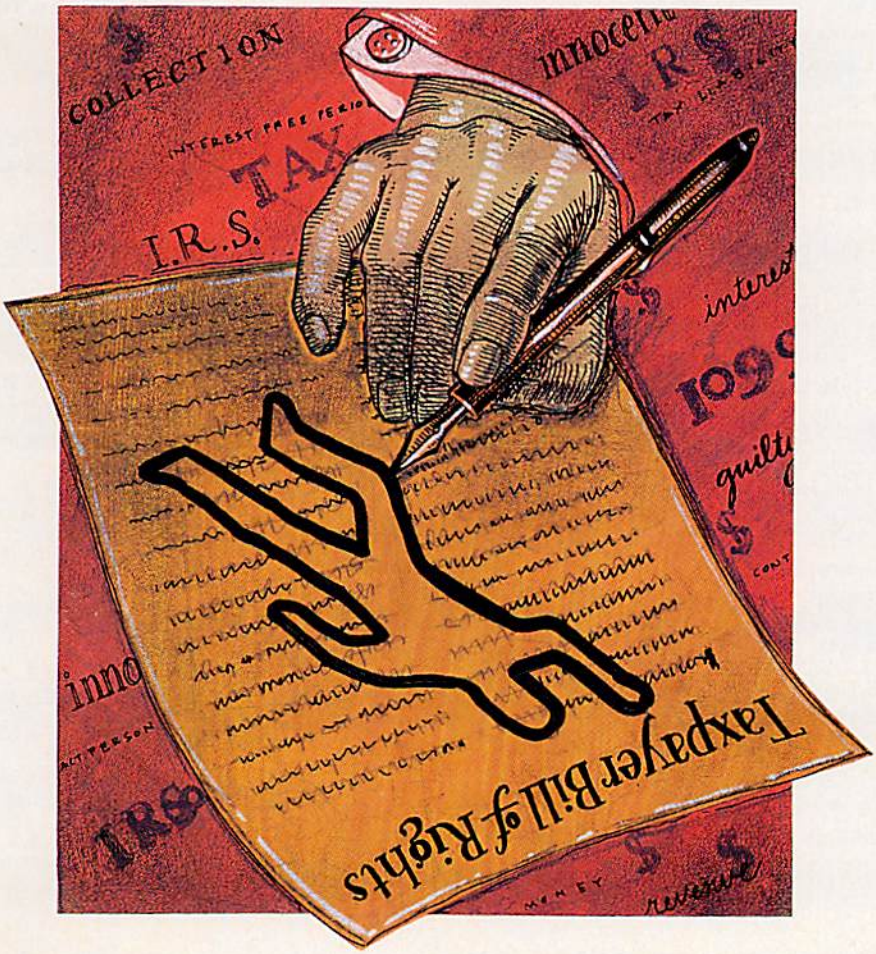
By David J. Silverman

Uncivil Rights

Why the updated Taxpayer Bill of Rights is just another bill of goods.

As April 15 approaches, let me ask you a question: Do you feel secure from the excesses of the Internal Revenue Service? Well, you're supposed to. Because that is what's promised by the so-called Taxpayer Bill of Rights—a nine-year-old set of rules that was updated by President Clinton and Congress this past summer.



Never heard of it? Congratulations. That means you probably haven't been contacted by the IRS lately. But when you do get a notice from the agency—and, for your sake, I certainly hope you don't—you'll get a two-page summary of the bill entitled "Your Rights as a Taxpayer."

When I wrote about the original Taxpayer Bill of Rights a few years ago, I complained that when it came to really protecting taxpayers, it didn't have any teeth. Sadly, even with this most recent update, it still doesn't. While the new law does pull in the IRS's practically unbridled power by a notch or two, it doesn't change the basic problem. That is, when the IRS sends you a bill, the burden falls on *you* to prove you don't owe what's being demanded. You can't prove it? Then you're out of luck, because this is one government agency that will eagerly seize your assets.

Mainly what this latest Bill of Rights does is ease the bureaucratic maze that taxpayers have to wander through. And (you'll be shocked to learn) it doesn't even do that job very efficiently. For example, according to the Taxpayer Bill of Rights 2, as it's known, you may now use private delivery services, instead of the U.S. Postal Service, to communicate with the IRS. But although this provision took effect in July 1996, the IRS still hasn't gotten around to designating which delivery services can be used. Until then, if you have to prove that you mailed in something before a certain IRS deadline—for instance, because a statute of limitations on a refund is about to expire—certified mail is the only way to go.

Another example: Form 1099s—those little slips of paper that report information about all your nonsalary income, such as think the IRS is full of evil people. But it is a gigantic bureaucracy, and it is known to have less than state-of-the-art computer technology. So I wouldn't be the least bit surprised if the IRS occasionally fails to send out those once-a-year bills. The consequences if it somehow "forgets" to send you a bill? There are none—at least for the IRS. You still owe the money, interest and penalties. This is what I mean by "no teeth" in the Bill of Rights.

Here's another example: The IRS can't take everything you own. That's right. If you get into deep financial trouble and can't pay your taxes, it can seize your property, but it has to leave you with *something*. Care to guess how much? Just $2,500, according to the new Bill of Rights. (It used to be $1,650.) Plus, you get to keep another $1,250 in books and tools used in a trade or business. That's not exactly a lot of seed capital to get yourself back on your feet and paying taxes again.

Under the old law, it was very hard to get the IRS to return property it had seized from you. It could be returned only if the levy was issued in error, if the tax had already been paid or if the tax became unenforceable (for instance, if the 10-year statute of limitations on collection had expired). Now, you can go and make your case before the IRS—pleading hardship, that you need a place to live, that you need money to cover your medical expenses, and so on. But I wouldn't count on actually getting your property back. The rules say the IRS can return levied property if the "best interest of the taxpayer... and the government" would be served. How could such a marriage come about? You work out an agreement to pay in installments. Everyone is (don't laugh) hoping the IRS will be reasonable in administering this one.

DAMAGES

IF THE IRS should seize your property when it has no right to, you can sue for up to $1 million in damages. This represents a $900,000 increase over the old law. The bad news: To get any money you have to prove that the IRS acted reckmutual fund dividends—are notorious for containing incorrect information. So now they're supposed to include the name, address and telephone number of someone you can contact at the company issuing the 1099 in case of a screw-up. But since the IRS already printed up the 1996 forms by the time this bill was passed, it decided to ignore this provision until next year. (Imagine if we could just ignore IRS rules like that....)

That said, here are some of the main points covered by the updated Taxpayer Bill of Rights, and what you ought to know about each, in case you find yourself in a showdown with the IRS.

INTEREST AND PENALTIES

THE IRS is famous for its delays. I once made a request that took IRS staffers six and a half years to respond to—and then they refused to take any action because I didn't bug them enough to find out why it was taking so long.

Formerly, the IRS had to leave you a mere $1,650 if it seized all your assets. The new amount? A whopping $2,500.

If you get audited and the IRS drags its feet in completing the job, the agency can, if it wants to, abate some of the interest that has piled up over time. That's a promise of the original Taxpayer Bill of Rights. To request that the IRS abate interest, you have to get Form 843 and check the box on line 4a, "Interest caused by IRS errors or delays." The only problem is that the IRS isn't *required* to cut the interest owed in such instances. It only has the authority to do so.

Now, according to the revised Bill of Rights, you can take the IRS to Tax Court to get your interest abated. This is a feature of the new law that I really like. But here's the fine print: You can't be worth more than $2 million, or, if you're suing as a business, $7 million. In other words, the law specifically excludes the very people who are most likely to be able to afford a lawsuit.

COLLECTION ACTIVITIES

IT DOES nothing for years and then, in a surprise attack, it descends on you and makes your life miserable. That's how the IRS operates sometimes. I know, because I've seen it firsthand.

But now, according to the new and improved Bill of Rights, the IRS can't sneak up on you like that. If you owe money, it's supposed to send you a bill at least once a year. Now, don't get me wrong. I don't