

The Newsletter



FAUCHER LAW

TAX & BANKRUPTCY

Audit Result You're Unhappy With?

Suing IRS Is Most Effective Challenge to Bad Audit Result

INSIDE STORIES

- It's Spring at Faucher Family Farms!
- Potato-Leek Soup Recipe
- Sebastian the Feline Paralegal Takes the IRS to court!

My primary recommendation for a bad audit result almost always is to take the IRS to U.S. Tax Court. This stuns most clients. Isn't suing the IRS a huge overreaction? No. **Suing the IRS is the way to access IRS Appeals Officers and Attorneys who have the discretion to change audit results.** Of the tens of thousands of lawsuits filed annually against the IRS, only about one percent make it into the courtroom. Most settle long before then. So, if you dislike your audit result, then you *should* sue the IRS. It's not as complicated or costly as you may think. To challenge an IRS audit, keep in mind:

1. Auditors Don't Have Much Power or Discretion.

In fact, they are at the bottom of the IRS hierarchy. Auditors are judged on following tax law and procedures precisely. They collect proof for deductions. Congress mandates that the IRS apply tax law and process equally to all taxpayers; your auditor is at the frontline of this mandate. She cannot allow deductions without documentation, or with unusual documentation. If the deduction or documentation is non-standard, the auditor won't allow it. Moreover, she knows the matter can go to other decision-makers – to a Group Manager, Appeals Officer, IRS attorney or Tax Court judge, all of whom have more authority and discretion.

2. Contact Auditor's Group Manager.

Each auditor has a Group Manager - someone promoted from within because they were a good auditor. Most will meet with a taxpayer who politely but firmly articulates their disagreement with the auditor's *Audit Report*. This document outlines the deductions being disallowed and then specifies the additional tax, interest and possibly penalties owing as a result. The Group Manager may feel comfortable overriding the auditor – great news for you. More often, however, the Group Manager won't override the auditor, either because she believes the auditor is correct or she also doesn't know the correct resolution.

3. Don't File a Formal Appeal!

Huh? Your *Audit Report* provides the information to file a formal appeal if you don't like the audit outcome (this is also available at www.irs.gov), **but I usually advise not to.** Instead, you want to do nothing (at first), which forces the IRS to issue a *Statutory Notice of Deficiency* a few months after the *Audit Report* (examples are on my website FaucherLaw.com). Isn't an appeal a reasonable step to try before all-out litigation? Not always—or even usually.

4. You Want the IRS to Issue A *Statutory Notice of Deficiency*.

This document is the bill for the additional taxes and interest owed as a result of your audit. It's an intimidating document but it also “freezes” the IRS from raising additional issues on the tax year(s) in question – which is good. Moreover, if you file a formal appeal, the IRS may ask you to give it two more years to impose tax on top of its usual three-year statute of limitation. You don't want to give the IRS more time or opportunity to poke around in parts of the audited return that it has left alone so far.

5. File A Lawsuit Against the IRS in U.S. Tax Court Within 90 Days of Receiving the *Statutory Notice of Deficiency*.

Instructions for filing the petition come with the *Statutory Notice of Deficiency*. This is when most clients hire me. Why? I file petitions against the IRS and negotiate with IRS bureaucrats daily. Most people are confused and intimidated by this bureaucracy and its processes. For me, it's just another day at the office. Suing the IRS is when specialized knowledge becomes valuable. Once your petition is filed, you're automatically assigned an IRS Appeals Officer with whom to make the case for where the auditor got it

wrong. Ironically, if you file a formal appeal (see #3 above), it often takes longer to be assigned an Appeals Officer than if you file a lawsuit – yet another reason to take the IRS to Tax Court immediately.

Found this interesting? Want to know more? Sebastian, my Feline Paralegal, recommends FaucherLaw.com for more fascinating details on challenging an audit result.



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6. Make Your Case to an Appeals Officer. This is the second IRS employee a taxpayer can negotiate with. Appeals Officers always have more discretion in the kind of allowances they can make to settle a case than auditors do. They aren't allowed to contact the auditor but rather receive your document file, meet with you (or your attorney) to understand objections to the auditor's determinations, and potentially make adjustments. Many cases settle here. Which means that **suing the IRS almost never involves actually taking it to court, but rather gets you access to an Appeals Officer (or IRS lawyer) with the power to alter your audit outcome.**

7. Office of Chief Counsel of the IRS. If you don't get the result you want with the Appeals Officer,

then it's time to negotiate with an IRS attorney (like me, when I worked at the IRS), who has even more discretion to settle cases than even the Appeals Officer had. Indeed, the Tax Court requires the taxpayer and IRS attorney to prepare a stipulation outlining the facts on which both sides agree and disagree prior to trial. The Court pushes the IRS and the taxpayer together like this because it leads to settlement in the vast majority of cases not already settled.

8. Tax Court Trial and Judge. If the dispute isn't settled by the IRS attorney, then it's on to trial and a Tax Court judge who has the greatest discretion of all to rule in the taxpayer's favor. But this hardly ever happens because most lawsuits settle before then.

Bottom line: **Don't Be Afraid To Sue The IRS!!! JDF**



Faucher Family Farms

Thank goodness most of us will be vaccinated soon, and I can start seeing clients and colleagues in person again! First, I really miss face-to-face interaction. Zoom was a tolerable substitute (don't get me wrong - I'm really grateful to have it during this pandemic), but I don't like living or conducting business electronically. Second, I need to meet people in person again to get rid of these eggs! As you can see, the hens are laying like crazy. And I really enjoy surprising clients and colleagues with some of their bounty. The girls have even found time to get out: here they are on their way to visit our friends at Four Oaks Farms!



WORTH A THOUGHT...



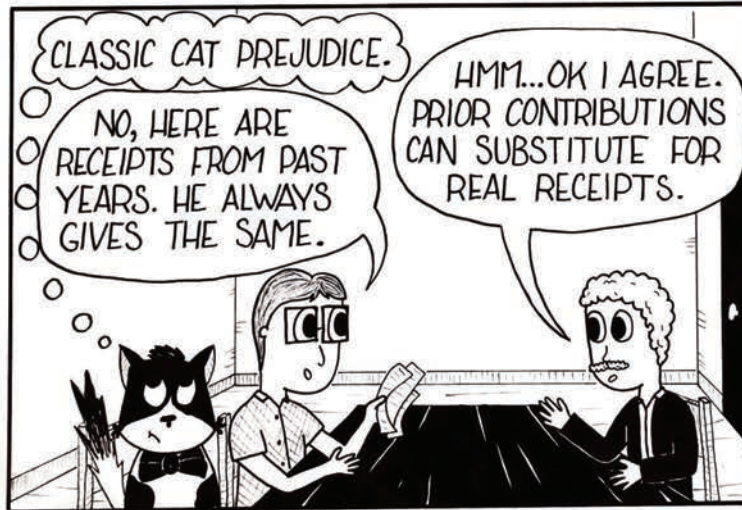
"Nobody made a greater mistake than he who did nothing because he could do only little."

-Edmund Burke





Sophie Schwartz 03/21



Potato-Celery Root-Leek Soup

There are some major Soup Heads in my family. I'm actually one of them. But, the first time Karen said, "Here's a great potato-celery root-leek soup," I said, "Huh? That sounds awful." I was wrong. It's seriously good.

Instructions:

- Heat oil in stock or soup pot with tight-fitting lid, over medium-high heat until simmering. Add leek and cook until softened and translucent, stirring occasionally, about 5-6 minutes. Add celery root, potatoes, apples, garlic, salt and pinch of pepper; stir to coat vegetables, about 1-2 minutes.
- Add chicken or vegetable broth and bring to boil. Add fresh thyme and rosemary, cayenne and nutmeg; cover pot with lid, reduce heat to medium-low. Simmer until vegetables just give way when pierced with a knife, about 25-30 minutes.
- Using blender or food processor, puree the mixture in batches, until smooth, creamy consistency. Once it is all pureed, transfer soup back to the stock or soup pot and keep warm over low heat. If soup is too thick, add more chicken/vegetable stock or water until desired consistency is reached. Adjust spices if you like more flavor, spiciness, or salt. **Serves 6-8**

4 TBS olive oil	5 cups chicken or vegetable broth
1 cup thinly sliced leek (about 1 leek), white & light green-yellow portion, cut into 1/2-inch rings	1-2 tsps each fresh rosemary & thyme, chopped finely
12 ounces Gold potatoes (about 2 large)	Ground black pepper to taste
2 ½ lbs celery root (about 3), peeled and cut into 1-inch cubes	½ tsp cayenne pepper
1 Granny Smith or tart apple, peeled, cored & cut into 1-inch chunks	½ tsp ground nutmeg
2 garlic cloves, peeled and finely chopped	2 tsp coarse salt
1 medium sweet red pepper, chopped	4 lemon wedges

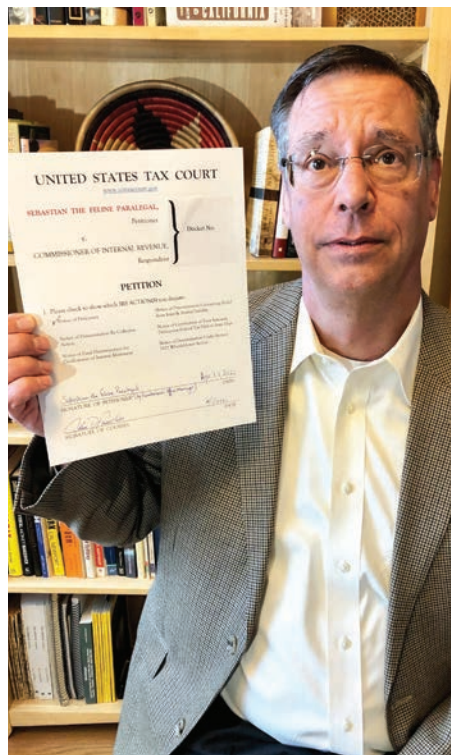
WELCOME TO FAUCHER LAW

John D. Faucher worked for 10 years as an IRS trial attorney and has been in private practice since 2008. He and his team speak the legal language. They know the **tax and bankruptcy systems** and can help you get the best result. Have other legal issues? Call us. We'll find the lawyer who's right for you, your friends, or family.

(818) 889-8080
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So, You Were Audited and Hate the Result...

Sue the IRS! It's Not As Drastic As It Seems...



I'm not an inherently litigious man. I don't tell recipients of **The Newsletter** to sue the IRS because I'm particularly aggressive, or government-hating, or trying to scare up lots of clients. In fact, suing the IRS doesn't mean taking them in front of a U.S. Tax Court judge so much as it means getting access to an Appeals Officer with the discretion to alter your audit results. Find out inside why suing the IRS is usually the only **effective** way to challenge a bad audit outcome.

Also inside is an update on **Faucher Family Farms** – spoiler alert: it's spring and my hens are laying tons of eggs! **Sebastian the Feline Paralegal** illustrates why suing the IRS is the best way to get a bad audit result overturned. Finally, a soup recipe before it gets too warm to eat hot soup.