

Burden Shift May Still Be a Burden for the Taxpayer

On July 22 President Clinton signed into law the IRS Restructuring and Reform Act of 1998. This wide-ranging legislation includes many provisions aimed at making the IRS a more taxpayer-friendly operation and bolstering taxpayers' rights in disagreements with the IRS. Among those provisions is a controversial section that shifts the burden of proof in court proceedings from the taxpayer to the government.

But what exactly does this provision mean to the average taxpayer? Although this new "shift of burden" provision may sound as though the taxpayer needn't keep complete records or provide information to the IRS, that is not the case. The bottom line is the taxpayer must still overcome some major hurdles before getting the protective shift of burden.

The Old System. Prior to enactment of the new law, a legal presumption existed that the IRS's allegations of underpayment were accurate. If a taxpayer disagreed with the IRS, he had the burden of proving that the IRS was incorrect.

This burden of proof resulted in the perception that the taxpayer was "guilty until proven innocent". In the name of fairness, Congress sought to create a better balance for the generally law-abiding individuals and small businesses facing the IRS in tax litigation.

How the New Law Works. Under the new law, the IRS bears the burden of proof only if the taxpayer: (1) introduces "credible evidence with respect to any factual issue relevant to ascertaining the taxpayer's income tax liability"; (2) complies with the laws' substantiation requirements; (3) maintains records as required by the law and regulations; and (4) cooperates with reasonable IRS requests for meetings, interviews, witnesses, information, and documents. Basically, the taxpayer must comply fully with the IRS's investigation in order for the burden of proof to shift.

Additionally, the new law appears to require the taxpayer to be the first to go forward with evidence of why the burden should shift to the IRS. The law does not create a situation where the government proceeds first and the taxpayer may remain silent and still win the case.

Keep Those Records. The taxpayer must maintain complete records, cooperate fully with the IRS's investigation, and introduce evidence on issues for which he wishes to shift the burden; otherwise the burden of proof remains with the taxpayer. It is critical to note that the shift in burden is not automatic. The new law only makes a shift in the burden of proof possible.

Should you have questions regarding the burden of proof under the IRS Restructuring and Reform Act of 1998, you may contact the Headquarters, Army Materiel Command, Chief of Legal Assistance (Mr. Alex Bailey) at (703) 617-8004 or DSN 767-8004.