Sent via email

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Mr. Thomas V. Curtin Jr.
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Re: Revenue Agents' Demands for Taxpayer Interviews in Violation of IRC Section 7521 – Request for Corrective Action

Dear Messrs. Bisignano and Curtin:

The Federal Tax Policy Committee of the Texas Society of Certified Public Accountants (TXCPA) appreciates the opportunity to bring the IRS's attention to a recurring examination practice that we believe warrants prompt corrective action. Over the past two years, our members have noted a steady increase in Revenue Agents routinely demanding taxpayer interviews in civil (non-criminal) examinations and tax compliance matters. This practice is contrary to the taxpayer rights and protections enacted by Congress under Internal Revenue Code (IRC) Section 7521(c).

These observations are not isolated. The Treasury Inspector General for Tax Administration's (TIGTA) own audit, discussed below, estimates that IRS examiners failed to follow the direct-contact rules in roughly 13,685 field examination cases involving a representative. Our comments focus on the reforms we believe are urgently needed to protect the taxpayer rights Congress purposefully enacted.

I. The Statutory Right Is Mandatory, Not Discretionary

A represented taxpayer's right to be absent from an IRS interview is not a matter of IRS grace. IRC Section 7521(c) provides that right in mandatory terms:

> "An officer or employee of the Internal Revenue Service may not require a taxpayer to accompany the representative in the absence of an administrative summons issued to the taxpayer under Subchapter A of Chapter 78."

Congress enacted this protection as part of the *Omnibus Taxpayer Bill of Rights*, Subtitle J of the *Technical and Miscellaneous Revenue Act of 1988*, Pub. L. No. 100-647. A taxpayer who has properly designated a representative by executing a Power of Attorney on Form 2848 is entitled to have that representative handle the examination without the taxpayer's personal attendance. IRC Section 7521(b)(2) provides a related protection—the right of consultation—requiring any IRS employee to immediately suspend an interview upon the taxpayer's expressed desire to consult a representative.

These laws were enacted for a reason. In 1987 and 1988, Senator David Pryor of Arkansas, then chairman of the Subcommittee on Oversight of the Internal Revenue Service of the Senate Finance Committee, led the legislative effort that documented instances in which IRS agents bypassed authorized representatives and used the leverage of the examination process to extract responses directly from taxpayers. The Joint

Committee on Taxation's (JCT) description of the resulting legislation, S. 604 and S. 579 (the *Taxpayers' Bill of Rights*), stated the law's intent: the IRS would "deal directly with the person (such as an attorney or certified public accountant) holding a written power of attorney from the taxpayer," and the only recognized exception was a supervisor-approved finding that the representative had caused "unreasonable delay or hindrance." JCT, Description of S. 604 and S. 579, JCS-9-87 (Apr. 9, 1987).

The Conference Committee's statement on the final legislation confirms that, absent an administrative summons, a taxpayer cannot be compelled to accompany the representative to an interview, and that an examiner may only request—not demand—the taxpayer's voluntary attendance. H.R. Conf. Rep. No. 100-1104, 100th Cong., 2d Sess. 211 (1988). Congress was explicit about its purpose: the 1988 Act was intended "to inject reason and protection for individual rights into the tax collection process." Congressional Record Statement of Senator David Pryor, D-Ark. upon introducing S. 2239, which would provide additional safeguards for taxpayer rights, 92 TNT 44-114.

The conduct our members are now reporting—Revenue Agents routinely demanding taxpayer interviews—is exactly what the statute was meant to prevent.

II. The "First-Hand Knowledge" Justification Has No Basis in Law

Revenue Agents routinely base taxpayer-interview demands on the alleged rationale that only the taxpayer, or only a person with "first-hand knowledge," can answer questions about books and records, internal controls, business operations, lifestyle or the minimum income probe.

The phrase "first-hand knowledge" appears nowhere in IRC Section 7521. It appears in no congressional committee report, including the Joint Explanatory Statement that provides the statute's primary legislative history. It appears in no JCT description of the predecessor bills. Most importantly, the statute does not contain a "first-hand knowledge" exception. It contains a prohibition—"may not require"—and identifies the mechanism Congress chose when the IRS seeks to compel attendance: an administrative summons issued under Subchapter A of Chapter 78.

Some Revenue Agents have attempted to fill that statutory gap by citing Treas. Reg. Sections 601.506 and 601.507. That reliance is misplaced. Those provisions do not override IRC Section 7521(c), and neither authorizes an examiner to require a represented taxpayer to appear for an interview because the examiner believes the taxpayer has more direct knowledge than the appointed representative.

Treas. Reg. Section 601.506 is not an evidentiary rule and says nothing about "first-hand knowledge." Section 601.506(a) addresses notices and communications to recognized representatives. Section 601.506(b), captioned "Cases where taxpayers may be contacted directly," addresses the separate bypass procedure. It permits direct contact only where a recognized representative has "unreasonably delayed or hindered an examination, collection or investigation by failing to furnish, after repeated request, nonprivileged information necessary to the examination, collection or investigation." Even then, the IRS employee must obtain supervisory permission, document the case file with sufficient facts showing the delay or hindrance, and provide written notice to both the taxpayer and the representative briefly stating the reason permission was granted. That procedural rule is a narrow remedy for obstruction; it is not an interview-demand rule and not a free-standing exception to IRC Section 7521(c).

Section 601.507 is likewise not an interview-demand rule. It addresses the evidence required to substantiate facts alleged by a recognized representative. It permits the IRS to require evidence submitted by a representative—other than supplementary or incidental material—to be accompanied by a declaration signed under penalty of perjury that the representative prepared the submission and that the facts contained in it are true. If the representative is unable or unwilling to declare, from his or her own knowledge, that the facts are true and correct, the regulation permits the IRS to require the taxpayer to make that declaration under penalty of perjury. By its terms, the regulation concerns declarations accompanying factual submissions. It authorizes the IRS to require sworn substantiation of facts; it does not authorize the IRS to compel the taxpayer's physical attendance at an interview in the absence of a summons.

The distinction matters. A declaration under Treas. Reg. Section 601.507 is a method of authenticating or substantiating facts submitted through a representative. It may justify asking the taxpayer, or another person with personal knowledge, to sign a declaration under penalty of perjury if the representative cannot truthfully do so. It does not convert the taxpayer into a mandatory interview witness, and it does not erase the command of IRC Section 7521(c). A regulation governing the form of evidence submitted through a representative cannot be read to create an exception Congress deliberately omitted from the statute governing compulsory taxpayer attendance.

Nor do Sections 601.506 and 601.507 operate together to create such an exception. Section 601.507 may support a request for sworn factual substantiation when a representative lacks personal knowledge of facts being asserted. Section 601.506(b) may support a supervisor-approved bypass only when the representative has actually delayed or hindered the examination by repeatedly failing to furnish nonprivileged information. Neither provision authorizes the IRS to bypass a cooperative representative merely because the examiner prefers direct taxpayer contact. A representative who responds to Information Document Requests, gathers information from the client, provides documents, supplies written explanations, and offers declarations where necessary is not delaying or hindering the examination by asserting the taxpayer's statutory right not to appear personally absent a summons.

The phrase "first-hand knowledge" appears to have arisen from Internal Revenue Manual (IRM) 4.11.55.3.1, *Taxpayer's Presence Required*, which instructs examiners that a representative may stand in for the taxpayer only if the representative has first-hand knowledge of the taxpayer's business, bookkeeping and daily operations, provides reliable factual answers, timely supplies follow-up information, and has a properly executed Form 2848 on file. If the representative cannot satisfy these conditions—which the IRM treats as a warning against a representative who is "merely acting as a messenger"—the examiner is instructed to request the taxpayer's voluntary presence or, failing that, pursue a summons. That instruction is internal guidance, not law. It cannot override IRC Section 7521(c).

The only other mechanism recognized in IRS procedure is the bypass under IRM 4.11.55.4 and Treas. Reg. Section 601.506(b), both of which require a supervisor-approved finding that the representative has unreasonably delayed or hindered the examination, together with written notice to the taxpayer and the representative explaining the basis for that finding. Neither mechanism contains, or was ever intended to contain, a generalized "first-hand knowledge" exception. An examiner's belief that the taxpayer would be a more useful witness than the representative is not a finding of delay or hindrance, and it confers no authority to compel attendance.

Some Revenue Agents have also invoked the "minimum income probe" requirements of IRM 4.10.4 as a separate basis for demanding the taxpayer's personal attendance. That reading is contradicted by the IRM's own text. IRM 4.10.4.2.3, governing minimum income probes for individual business returns, instructs examiners to "conduct an interview with the taxpayer (or representative) to gain an understanding of the taxpayer's financial history, identify sources of nontaxable funds, and establish the amount of currency the taxpayer has on hand" (emphasis added). The parenthetical is not a suggestion; it is the IRM's own acknowledgment that the representative may conduct this interview in the taxpayer's place. An agent who cites IRM 4.10.4 to demand the taxpayer's personal attendance is misreading a provision that, on its face, permits exactly the substitution the agent is attempting to prevent.

A further, more serious problem has emerged: some agents have indicated that they will respond to a representative's lawful refusal to produce the taxpayer by routinely invoking the bypass procedure or issuing an administrative summons. Use of these tools as a routine response to a taxpayer's exercise of rights under the law is inappropriate under both the IRM and the regulations.

The bypass procedure under IRM 4.11.55.4 and Treas. Reg. Section 601.506(b) requires a documented, supervisor-approved finding that the representative has unreasonably delayed or hindered the examination by repeatedly failing to furnish nonprivileged information—not that the representative has invoked the taxpayer's statutory right to decline an in-person interview. A representative who is otherwise cooperative and responsive to Information Document Requests is not hindering the examination merely by standing on IRC Section 7521(c). Treating that refusal as a failure to cooperate substitutes the agent's preference for the circumstance the regulation requires.

The IRS's own internal procedures confirm that a summons is meant to be a secondary tool of last resort, not a routine response to a lawful assertion of rights. IRM 25.5.1.1 states that a summons "may be useful" only "when a taxpayer or third-party witness will not voluntarily provide information," and IRM 5.17.6.1.1 directs that "the IRS should issue summonses only when the information is not already in the IRS's possession and the taxpayer . . . will not produce the desired records or other information voluntarily." IRM 25.5.1.3 further requires examiners to weigh the tax liability at stake, the cost of obtaining the records, the likelihood that court enforcement will be necessary, and the effect on voluntary compliance before resorting to a summons. IRM 25.5.1.3(3) limits appropriate use of summonses to cases where a taxpayer or representative has failed or refused to produce requested records, where records are suspected to be altered or incomplete, or where the existence or location of records is genuinely in doubt. None of these conditions is satisfied when a cooperative representative simply declines, as the statute permits, to produce the taxpayer for an in-person interview.

The summons power carries the same limitation, expressed in different terms in the case law. An administrative summons does not enforce itself: if a taxpayer or representative does not comply, the IRS must seek enforcement in federal district court under IRC Section 7604. A court will enforce the summons only if the government satisfies the four-part good-faith showing of *United States v. Powell*, 379 U.S. 48 (1964)—legitimate purpose, relevance, information not already in the IRS's possession, and compliance with the Code's administrative steps.

Powell itself holds that a summons issued "to harass the taxpayer or to put pressure on him" fails the "legitimate purpose" standard regardless of the other three factors. *United States v. Clarke*, 573 U.S. 248 (2014), confirms that a taxpayer who identifies specific facts or circumstances plausibly raising an inference of bad faith is entitled to examine the investigating agent about the reasons for issuing the summons. An agent who treats a lawful IRC Section 7521(c) refusal as the trigger for a summons—rather than an independent, case-specific need for information the representative cannot supply, consistent with the IRS's own summons-issuance standards—is inviting exactly that kind of challenge.

Both tools are meant to address representatives who are actually obstructing an examination. Used instead as an automatic penalty for a taxpayer's lawful assertion of rights, they become the coercive instruments Congress enacted IRC Section 7521(c) to prevent.

III. TIGTA's Own Audits Confirm This Is a Systemic Problem

TXCPA's concerns do not rest solely on member reports. TIGTA is required by IRC Section 7803(d)(1)(A)(ii) to evaluate the IRS's compliance with the direct-contact provisions of IRC Sections 7521(b)(2) and (c) every year. Its most recent review—*Fiscal Year 2025 Statutory Review of Restrictions on Directly Contacting Represented Taxpayers*, Report No. 2025-300-047 (Sept. 16, 2025)—found that "IRS employees did not consistently follow legal and procedural requirements related to direct taxpayer contact and representation." Out of a population of 48,875 SB/SE field examination cases involving a representative, TIGTA sampled 75 cases and found 38 potential violations in 21 of them—a 28% error rate—and projected that as many as 13,685 cases in the full population may have involved a similar violation. In eight of the 21 non-compliant cases, examiners committed multiple violations in the same case.

More troubling than the error rate is IRS management's response to it. TIGTA reported that IRS management disagreed with several identified violations, taking the position that direct taxpayer contact is permissible whenever there was "no intent to bypass the representative," even where the formal bypass procedure—supervisory approval and a documented finding—was never followed. TIGTA rejected that position, stating that "regardless of intent, contacting a represented taxpayer without following required procedures constitutes a bypass." This management response suggests the field-level pattern our members have observed may reflect broader agency practice rather than isolated agent error.

TIGTA also found that the Field Examination quality review process contains no attribute designed to evaluate compliance with the direct-contact requirements, meaning violations are neither detected nor tracked through ordinary quality assurance review. The IRS declined to implement TIGTA's recommendation to revise its quality review procedures to close that gap.

IV. What TXCPA Members Are Experiencing in the Field

TXCPA Federal Tax Policy Committee members report, with increasing frequency, that Revenue Agents are demanding direct taxpayer interviews as a matter of routine even where:

(a) a valid Form 2848 has been properly submitted and accepted;
(b) the appointed representative is fully cooperative and promptly responding to Information Document Requests; and
(c) no administrative summons has been issued.

These demands are often framed in language designed to obscure their unlawful character. Agents tell representatives they are "unable" to answer questions about the taxpayer's "internal controls," "business background," or "lifestyle"—invoking the "first-hand knowledge" concept addressed above, which has no basis in the statute or its legislative history. Other agents cite Treas. Reg. Sections 601.506 and 601.507 as though those provisions require the taxpayer, or the person with the most direct knowledge, to appear for questioning. Still others cite the "minimum income probe" procedures of IRM 4.10.4. None of these authorities supports a mandatory taxpayer interview absent a summons, and none converts a cooperative representative's assertion of IRC Section 7521(c) into obstruction.

V. Structural Factors Behind the Pattern

We do not attribute this pattern to bad faith on the part of individual agents. The IRS has undergone significant workforce changes in recent years. The expansion of SB/SE staffing in Fiscal Year 2024, followed by drastic workforce reductions in 2025, has left the field examination function staffed in large part by relatively inexperienced agents trained during a period of heightened enforcement emphasis. The departure of many senior managers, who historically exercised pragmatic oversight and professional judgment, has removed an important institutional check on rigid application of examination procedures.

Agents operating under pressure to close cases and satisfy "mandatory" checklist requirements may genuinely believe a direct taxpayer interview is necessary, even where a cooperative representative stands ready to address the same questions. As TIGTA found, the current quality review attributes used by Field Examination do not flag direct-contact violations—so an agent who violates IRC Section 7521(c) faces no quality review consequence and receives no corrective feedback.

The solution is clear: direction from IRS leadership instructing agents that IRC Section 7521(c) is not discretionary and cannot be overridden by an agent's preference, by the agent's subjective view that the taxpayer's personal knowledge would be more useful than the representative's answers, or by a misreading of Treas. Reg. Sections 601.506 and 601.507. The statute permits exactly one mechanism to compel the taxpayer's personal attendance: a formal administrative summons, issued consistent with the IRS's own summons-issuance standards. There is no "first-hand knowledge" exception. There is no "minimum income probe" exception. There is no regulatory exception in Sections 601.506 or 601.507. There is no exception of any kind beyond what Congress provided.

VI. The Cost to Taxpayers and Their Representatives

The consequences are obvious. A taxpayer who complies with the law by engaging a qualified representative is placed in a difficult position: either submit to an interview the law entitles him/her to decline or assert that statutory right and risk an adversarial escalation of a routine examination. Many taxpayers—particularly small business owners, unfamiliar with the procedural landscape of federal tax controversy, or lacking the resources to mount an effective challenge—may feel pressured to comply rather than assert their rights. This chilling effect undermines rights that Congress specifically enacted. For practitioners, the obligation to assert clients' rights, including the issuance of formal written refusals of unlawful interview demands, adds cost and friction to what should be a cooperative examination process.

VII. Our Requests

TXCPA's Federal Tax Policy Committee respectfully requests that the IRS take the following six actions.

First, issue clear written guidance reaffirming that IRC Section 7521(c) prohibits IRS employees from requiring a represented taxpayer to attend an interview absent a formal administrative summons, regardless of the subject matter of the inquiry, the agent's assessment of the representative's responses, or any claim that the taxpayer possesses "first-hand knowledge" of the books and records. The guidance should expressly confirm that "first-hand knowledge" is not a recognized exception under the law.

Second, direct the Office of Chief Counsel to issue a published legal memorandum—a Chief Counsel Notice or PMTA—confirming the scope of IRC Section 7521(c), the absence of any "first-hand knowledge" exception, and the proper application of Treas. Reg. Section 601.506(b), Treas. Reg. Section 601.507 and IRM 4.11.55.4 to examination cases. A published, citable Chief Counsel authority would let practitioners resolve an improper demand in the field without escalation.

Third, confirm, in the same guidance, that a representative's lawful refusal to produce the taxpayer under IRC Section 7521(c) is never, standing alone, a basis for a bypass finding under IRM 4.11.55.4 or Treas. Reg. Section 601.506(b), and is never a legitimate purpose for issuing an administrative summons under IRC Section 7602. Consistent with the IRS's own internal summons policy under IRM 25.5.1.1, 5.17.6.1.1 and 25.5.1.3, a summons is warranted only where a case-specific need for information exists that the cooperative representative cannot supply—not as an automatic consequence of a taxpayer's lawful decision to decline a personal interview. Both mechanisms require a case-specific, documented showing—repeated failure to furnish nonprivileged information for a bypass, and an independent, genuine need for information the representative cannot supply for a summons—and neither may be invoked as an automatic or routine response to a representative's assertion of the taxpayer's statutory rights.

Fourth, provide targeted training to Revenue Agents and Revenue Officers—particularly those hired in the recent staffing expansion—on the requirements of IRC Section 7521, the limited purpose of Treas. Reg. Sections 601.506 and 601.507, and the proper procedure for requesting a bypass under IRM 4.11.55.4. IRS field employees must understand that a bypass requires supervisory approval and a documented finding that the representative has been dilatory or has unreasonably hindered the examination, not merely that the agent prefers direct contact or believes the representative lacks personal knowledge of the taxpayer's operations.

Fifth, revise the Field Examination quality review system—the Embedded Quality and National Quality Review System attributes—to include compliance with IRC Sections 7521(b)(2) and (c) as a distinct, evaluated criterion. TIGTA's Report No. 2025-300-047 found that the current process does not flag direct-contact violations, leaving agents who violate the statute without corrective feedback and supervisors without the means to identify systemic non-compliance.

Sixth, amend Publication 1, Your Rights as a Taxpayer (the Taxpayer Bill of Rights), to expressly state a represented taxpayer's right, under IRC Section 7521(c), to not attend an IRS interview absent a formal administrative summons. This right is a core component of the right to retain representation, yet the current text of Publication 1 does not mention it. We recommend that the IRS incorporate this protection into item 9, "The Right to Retain Representation," by adding language substantially as follows: "Taxpayers who have retained a representative also have the right not to be required to attend an interview with the IRS, and may have their representative appear in their place, unless the IRS issues a formal administrative summons." If the IRS prefers not to expand item 9, the same protection should be incorporated elsewhere in Publication 1—for example, in the "By Interview" discussion under Examinations—so that taxpayers are plainly informed of this statutory right. Publication 1 is the document most taxpayers actually read to learn their rights, and its silence on IRC Section 7521(c) leaves taxpayers unaware of a protection Congress specifically enacted for their benefit.

VIII. Conclusion

We recognize the IRS's vital role in administering the tax laws, and we do not suggest that civil examinations should be impeded or that the Service forgo appropriate investigative tools. The proposals outlined above are grounded in the plain text of IRC Section 7521(c), its legislative history, the limited text of Treas. Reg. Sections 601.506 and 601.507, and the IRS's own internal summons-issuance standards. We ask only that examinations proceed within the boundaries Congress established.

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TXCPA is a nonprofit, voluntary professional organization representing more than 28,000 members. One of the expressed goals of TXCPA is to speak on behalf of its members when doing so is in the best interest of its constituency and serves the cause of Texas CPAs and the public interest. TXCPA has established a Federal Tax Policy Committee to represent those interests on tax-related matters. The Committee has been authorized by the TXCPA Leadership Council to submit comments on matters of interest to the Committee's membership. The views expressed herein have not been approved by the Leadership Council or Board of Directors and, therefore, should not be construed as representing the views or policies of TXCPA.

We would be happy to assist in any way possible. Please feel free to contact me at 214-276-5001 or jsmith@dallascpas.com or TXCPA Staff Liaison Patty Wyatt at 817-656-5100 or pwyatt@tx.cpa.
Sincerely,

James A. Smith

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