PILLA TALKS TAXES

DAN PILLA'S MONTHLY TAX AND FINANCIAL BULLETIN

Aug 2023
Vol. 35 Issue 7

IRS To Stop Unannounced Visits To Taxpayers

Is This a Big Deal?

The Internal Revenue Service (IRS) announced in late July that it will stop its practice of making unannounced personal visits to the homes and businesses of delinquent citizens to collect taxes. The change focuses only on the practice of Revenue Officers (ROs) making such calls, and as explained in more detail below, it will not affect other agents of the IRS. The sole job of an RO is to collect delinquent taxes, and in some cases, secure unfiled tax returns.

What does this change mean for taxpayers? Well, not much, really. In most cases, delinquent tax accounts are handled by the IRS's Automated Collection System (ACS). ACS is responsible for annually mailing tens of millions of tax delinquency notices, levy notices, and federal tax lien notices. ACS operates several call sites that field incoming calls from the citizens who receive such notices. ACS has the ability (within certain limits) to work with citizens to get their delinquent accounts resolved, release levies, and establish installment payment agreements.

When a case exceeds a certain dollar amount, usually $100,000, the IRS assigns an RO from a local office to work the case. RO's also work delinquent employment tax cases involving unfiled employment tax returns and unpaid employees' withholding taxes. An RO can issue collection notices, levy assets, and file federal tax liens. ROs also carry out investigative

IN THIS ISSUE

actions, such as issuing summonses to banks and third-party payers, to track a delinquent taxpayer's income sources.

Once assigned a case, the first job of an RO is to make contact with the taxpayer. Most often that contact is in writing. An RO's letter reminds the taxpayer of the delinquency and asks that the tax be paid in full, or the missing returns filed, by a certain deadline. If the taxpayer is unable to meet the deadline, he is encouraged to reach back to the RO to discuss alternatives. Very often, the first letter mailed by an RO is a Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing, IRS Letter 1058. This notice is required by Internal Revenue Code § 6330, the provision that allows a citizen to request a Collection Due Process hearing within thirty days of service of the Final Notice letter.

If the RO decides that she will make personal contact with the taxpayer, she does so by driving to the taxpayer's home or office. Her intent is to introduce herself, explain the collection process, and to personally serve the Final Notice (rather than mailing it). I have no doubt that ROs are under no delusion that they will collect the tax in full on the first visit.

Imagine this conversation growing from an unannounced visit:

> RO: "Good morning, Mr. ________. My name is ________. I'm from the IRS and I'm here to collect the delinquent tax you owe."
>
> Citizen: "Yea, I've been thinking about taking care of that. How much do I owe?"
>
> RO: "$130,000."
>
> Citizen: "Hold on a minute. I'll get my checkbook."

I have news for you, friends. That doesn't happen.

So rather than returning to the office with a check, the RO leaves the citizen with the Final Notice, certain IRS publications about taxpayers rights, and a form called an Information Document Request, which is a formal request for detailed financial data the RO requires in order consider alternatives to enforcement. By the way, that is exactly the same information that's mailed out by ACS, and in cases where ROs opt not to make the first contact a personal visit—which is the majority of them.

So why make personal visits at all? In the case of delinquent taxes, the IRS knows it's likely not getting the money. But it also knows it needs to get the citizen's attention. The personal visit puts the taxpayer on notice—in a very real way—that attention must be paid to the problem or it's quickly going from bad to worse. A letter in the mail simply does not generate the same "pucker factor" as does a knock on the door.

The reason given by Commissioner Danny Werfel for stopping the visits was vague. His announcement states that, "[c]hanging this long-standing procedure will increase confidence in our tax administration work and improve overall safety for taxpayers and IRS employees." I don't know what he means by either element of his statement. Why does it increase one's confidence in the system to receive a Final Notice or federal tax lien filing notice in the mail verses receiving one via personal service from an RO? Either way, you're on notice from the IRS that the string is out and collection is proceeding full force, and either way, you have collection appeal rights.

And what does he mean by suggesting they are "improving overall safety for taxpayers and IRS employees"? Is he saying that personal visits lead to shoot-outs between IRS employees and delinquent citizens? I can't cite a single example of such a thing ever happening. Besides, ROs don't even carry firearms.

The National Treasury Employees Union (NTEU) weighed in on the policy change, issuing a statement that is utterly absurd. NTEU's National President Tony Reardon claims that the jobs of tax collectors

> have only grown more dangerous in recent years because of false, inflammatory rhetoric about the agency and its workforce. We applaud Commissioner Werfel's quick action after hearing the safety concerns raised by NTEU leaders and IRS Field Collection employees who faced dangerous situations that put their safety at risk. We look forward to working with the IRS on this and other actions to protect the safety of all IRS employees.

Again, there is no evidence that ROs are targeted for violence when they make personal visits to citizens' homes and businesses. The alleged "false and inflammatory rhetoric" about the agency is a reference to the open and heated debate about whether the IRS should have gotten supplemental funding of over $80 billion to hire 87,000 additional IRS employees. To the extent that Reardon suggests that no such debate should have occurred, that position is entirely predictable coming from the head of a government labor union. I'm sure Reardon would support the hiring of 187,000 more IRS employees.

It is important to note that the policy change discussed here will not affect either Revenue Agents (RAs; tax auditors) or Special Agents (criminal investigators). RAs don't make unannounced personal visits under any circumstances. All meetings in connection with audits, including the initial conference, are scheduled with the joint consent of the RA and the taxpayer in question.

Special Agents, on the other hand, make unannounced visits as a routine part of their work. They do so to serve summonses and subpoenas, and to interview potential witnesses, including the citizen under investigation. They also serve search warrants, such as they did on June 14, 2023, in Great Falls, Montana. That's when twenty heavily-armed IRS Special Agents seized dozens of boxes of documents from Highwood Creek Outfitters, a local sporting goods store and gun dealer. While certain members of the Senate Finance Committee expressed concern to Commissioner Werfel about such actions, the new IRS policy will not affect these raids.

Moreover, unannounced visits by ROs will still take place in circumstances where ROs serve summonses or subpoenas, and where they are involved in the seizure of assets.

The bottom line is that the new policy will not have any effect on taxpayer's rights. In any collection situation, you still have the right to a Final Notice before levy and upon receiving notice of filing a tax lien. In either case, you enjoy your Collection Due Process Appeal rights. This doesn't depend on whether the notices were served personally or through the mail. For more details on the collection process and how to deal with it, see my book, **How to Get Tax Amnesty.**

ORDER NOW

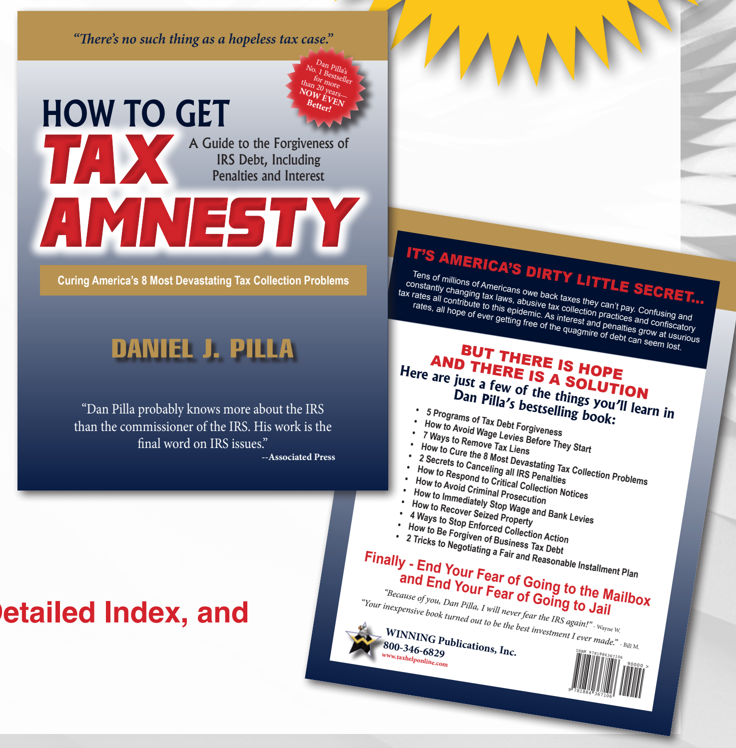
HOW TO GET TAX AMNESTY

A Guide to the Forgiveness of IRS Debt Including Penalties and Interest

ONLY $39.95 + P & H

Dan Pilla's master work and national bestseller is now all new. It's been completely re-written from cover to cover, with all new information on your rights when dealing with the IRS. Dan's book includes detailed discussions on:

- **Collection Due Process Appeals**
- **Negotiating Installment Agreements**
- **How to Appeal all Collection Actions**
- **Using the Office of the Taxpayer Advocate**
- **The Most Thorough Discussion on Negotiating Offers in Compromise Ever Written**
- **What Every Taxpayer Needs to Know About the Collection Statute of Limitations**
- **How to Identify Important IRS Correspondence**
- **How to Stop Levies Before They Happen**
- **Dealing with Penalties, Including the Oppressive "Frivolous Submissions Penalty"**
- **How to Release Wage and Bank Levies**
- **Dan's Definitive Guide to Discharging Taxes in Bankruptcy**
- **Including a Glossary, Table of Abbreviations and Detailed Index, and**
- **Much, much more.**



This is the book that changed the face of tax collection forever. It is Dan's work that forced the IRS to modify its penalty assessment and abatement procedures, and it is Dan's work that forced the IRS to revamp its Offer in Compromise program so beleaguered taxpayers now have a reasonable chance to put their problem behind them. And, Dan was the first to expose and prove unequivocally that federal income taxes were dischargeable in bankruptcy—a fact the IRS lied about for ***twenty-two years!***

How to Get Tax Amnesty is the seminal work on IRS negotiations. If you are a taxpayer dealing with the IRS, or a tax professional who interacts with the IRS on behalf of clients, you simply must have this book. There is no more thorough treatise on tax debt negotiations available anywhere, at any price, written by a more experienced author than Dan Pilla—period. Dan is the preeminent authority on IRS procedures.

As the Associated Press once said, **"Dan Pilla probably knows more about the IRS than the Commissioner of the IRS."**

ORDER YOUR COPY NOW
CALL or CLICK

800-346-6829
OR GO TO
WWW.TAXHELPONLINE.COM

"Because of you, Dan Pilla, I will never fear the IRS again." Wayne W.

2023 DEFENSE CONFERENCE

SEE WEBSITE FOR DETAILS & PRICING

The dates and location for the 2023 Taxpayers Defense Conference are set!

We are already looking forward to seeing you in Tampa Bay.

Do not miss this conference!

The Taxpayers Defense Conference is widely regarded as simply the best tax seminar in the nation when it comes to taxpayers' rights issues, IRS abuse prevention and cure, and problems resolution. And for good reason! Nobody provides more in-depth study, insight, and experience than Dan Pilla when it comes to these issues. Furthermore, our contributing professional members have—combined—hundreds of years of experience dealing with the IRS *at every level*. There is simply no other place in the nation you can go to learn the things that we teach here; things that make you a better tax pro in defense of your clients.

Conference Theme: Offers in Compromise and Penalty Relief

Two of biggest problems facing citizens are tax assessments they can't pay and penalty assessments that double or triple a tax bill. Therefore, OICs and penalty relief are two of the most important settlement strategies available. What you learn here will put you on the cutting edge of both resolution options.

AVAILABLE ON SITE OR LIVE STREAMING

Location: Tampa Bay, Florida

Embassy Suites Tampa Airport Westshore

October 26 and 27, 2023, Thursday and Friday 9 to 5pm

Taxpayers Defense Conference sessions

SEE WEBSITE FOR DETAILS & PRICING

CLICK HERE

Treasury Touts "Return On Investment"

Claims Enforcement "Victories" with Inflation Reduction Act

On the one year anniversary (August 16) of enacting the Inflation Reduction Act (IRA), the Treasury Department is taking a victory lap, claiming that the infusion of billions in supplemental funding into the IRS is leading to substantial return on investment for taxpayers. Recall that the IRA authorized over $80 billion in supplemental funding to the IRS over a ten-year period to enhance digital applications and processing, provide for taxpayer assistance, and above all, facilitate tax law enforcement. Recall also, however, that the 2023 budget deal struck by Congress and the president reduced that appropriation to $60 billion.

In its recent news release, the Treasury declares that the additional funding is responsible for "new milestones" in tax enforcement and administration.

Particularly noteworthy is the claim that the enforcement component of the IRA is responsible for "making delinquent millionaires pay up." The news release claims that, "In recent months, IRS closed about 175 delinquent tax cases for millionaires, generating $38 million in recoveries."

On the face of that simple sentence, it would seem that the IRS is corralling tax cheats as never before. However, clearly missing from the statement are the details of these cases, the absence of which — to the untrained eye — may lead to what is likely a grossly misleading conclusion.

For example, what kind of "delinquent tax cases" are they referring to? If those cases were assessed tax liabilities owed from prior years, it would seem that IRA funding would have little to do with collecting the revenue. In large-dollar cases where assessments are on the books, Revenue Officers (ROs) are assigned to collect the tax, and they do so with all the enforcement tools available to the IRS. Large-dollar collection cases have always been high priority for enforced collection and the tools used to collect are not new to the IRA. It's the small-dollar cases (generally under $100,000) that are relegated to the Automated Collection function (ACS). For more discussion on this, see the article above, wherein I discuss ACS and collection practices in more detail.

If the news release is referring to audit adjustments as constituting "delinquent tax cases," that is even more misleading. Audit adjustments are neither final assessments of tax liabilities (thus not even subject to collection), nor are they accurate. An audit adjustment is subject to two levels of appeal (see below). Unless a citizen agrees in writing to the proposed adjustment, it does not become final until after all appeals are exhausted. Only final assessments are subject to collection.

The first of the two levels of review is by the Office of Appeals. The second is by the United States Tax Court. These reviews often lead to reductions in proposed assessments, but very rarely ever lead to increases in proposed assessments above those recommended by the auditor. The reason is the Appeals Office does not open new issues that are not raised by the auditor in the first place. And in Tax Court cases, the IRS has the burden of proof in any claim of additional tax not initially asserted by the auditor.

As a result of these appeals, substantial reductions to the proposed tax are common because, as I document in my book, ***How to Win Your Tax Audit***, the IRS's audit adjustments are wrong between 60 and 90 percent of the time, depending on the issue.

An example of the potentially misleading nature of the Treasury's claim is found in two recent audit appeals I prosecuted, which were resolved last December. My clients were subjected to two audits covering three tax years — 2017, 2018 and 2019. In the first audit (2017 and 2018), the auditor made mistakes in several important areas. In the second audit (2019), the auditor didn't bother to look at the information we provided, but simply extrapolated the errors from the first two years into the third year. The examination reports claimed that my clients owed about $460,000 total. That is most certainly a "large-dollar" case.

We appealed the auditor's decisions and eventually found our way into the U.S. Tax Court. We reached a resolution in the two cases sometime later. It was agreed that, for the three tax years combined, my clients owed a total of $0 in tax, and $0 in penalties and interest. The alleged liability went from nearly a half-million dollars to nothing — zip.

And it's not all large-dollar cases that see such a reduction. We just resolved another of my client's cases in Tax Court involving the audit of his small business. The IRS disallowed several business expenses, including the claimed expense for the business use of his car. The auditor proposed a liability of about $13,000. After negotiation with the Office of Appeals and the IRS's attorney working the case, we reached a resolution of $0 in tax owed, and $0 in penalties and interest owed.

The problem with IRS's audit statistics is that all of the money asserted in the three audits mentioned above is included in the IRS's overall claim of delinquent taxes owed by citizens. As we know from the outcome of the Appeals and Tax Court cases, not a dime of tax was actually owed for any of the periods covered by the audits.

If the Treasury's claim that "$38 million in recoveries" is based on audit results prior to appeal, there is no basis in fact to believe that the taxpayers involved owe *any* of that money, never mind all it.

Please note that I reached out to the Treasury seeking clarification on exactly what is meant by the term "recoveries" as used in its news release. Are they talking about audit results before appeal (as I suspect they are), or are they talking about actual tax collected as a result of legitimate assessments? As of this writing, Treasury has not gotten back to me. I will update this article when I know more.

IRS Fails To Follow Notice Requirements

Arbitrary Administrative Rules Struck Down

BY SCOTT MACPHERSON

It always warms my heart when a taxpayer wins in court, and such happened by motion for summary judgment in the case of CIC Services, LLC v. Internal Revenue Service, 592 F.Supp.3d 677 (E.D. Tenn. March 31, 2022).

CIC was "a manager of captive insurance companies." *Id*. at 681. Ostensibly, then, it was subject to certain disclosure requirements mandated by § 6707A(c), which refers to § 6011, which refers to "regulations prescribed by the Secretary," which refers to transactions to be identified in a "notice" published by the IRS. Failure to comply with that complex string of "regulations prescribed by the Secretary," which in turn constitutes failure to comply with the "notice," can result in civil penalties or criminal prosecution.

CIC disagreed that the regulations behind § 6707A(c) were applicable, for the reason that the IRS did not follow the terms of the Administrative Procedures Act (APA) in promulgating said "notice." Interestingly, the IRS agreed that it did not follow the APA in promulgating the notice. The court observed:

> The IRS does not contend that it complied with the APA's notice-and-comment requirements but argues that Congress exempted it from the APA's notice-and-comment requirements, or, alternatively, that the Notice constitutes an interpretive rule which does not require notice and comment. Id. at 683.

But CIC was correct, meaning that the notice was null and void, which in turn means the regulation effectively was never implemented, which then means that the statute was not implemented against any taxpayer. Unfortunately this victory was slow in coming, because the district court ruled in favor of the IRS, that is, until it couldn't anymore.

On November 1, 2016, the IRS issued Notice 2016-66 ("Notice"), which purported to implement the treasury regulation behind § 6707A. The Notice was effective immediately and required taxpayers to file disclosure forms by January 30, 2017. CIC instead filed suit in March 2017 for, among other unspecified remedies, an injunction prohibiting the IRS from enforcing its Notice (and thus, the statute) for the reason that the IRS did not comply with the notice-and-comment requirements of the APA when it issued the Notice. CIC additionally argued that the Notice was "arbitrary and capricious and ultra vires in nature." *CIC Services* at 681.

The district court determined that the claims were foreclosed by the Anti-Injunction Act (AIA), and therefore denied the preliminary injunction. The court later determined that it lacked jurisdiction (and dismissed the case) because the claims were barred by the AIA. CIC appealed that decision, and in May 2021 the U.S. Supreme Court held that the AIA did not deprive district courts of subject-matter jurisdiction.

With the case back in the district court, CIC renewed its motion for a preliminary injunction. In September 2021 the court granted the injunction as to CIC only, and not to all taxpayers (which is illogical). In November the parties filed cross-motions for summary judgment, and then in March 2022, before the district court acted on the motions, the Sixth Circuit handed down a decision related to this matter: *Mann Construction v. U.S.*, 27 F.4th 1138 (6th Cir. 2022). (Tennessee is in the Sixth Circuit, so the decision was binding on the district court. *Id*. at 683.)

Mann concerned a different IRS notice but was otherwise analogous to the CIC dispute. In *Mann,* the IRS made exactly the argument it was making in this case, and importantly

> [t]he Sixth Circuit expressly rejected these arguments, holding that the IRS's notice regarding disclosure obligations for listed transactions constituted a legislative rule and that Congress did not exempt the IRS from complying with the notice-and-comment requirements set forth in the APA. *Id*. at 683.

At this point the district court had to agree with CIC. It explained the standard for review:

> The Court must "determine whether or not the evidence in the [administrative] record permitted the agency to make the decision it did." *Id*. The APA directs that a court "shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D). *Id*. at 683.
>
> The standard of review is "narrow," and the reviewing court will "uphold a decision of less than ideal clarity if the agency's path may be reasonably discerned." *Id*. The agency's reasoning, however, must be "discernible and defensible." *Id*. at 684.

That last sentence was the key, because nothing about what the IRS did was discernible. As the court explained, the IRS made no findings whatsoever to support the Notice. That's the very definition of "arbitrary."

> The Notice simply states that the IRS is aware of micro-captive transactions and "believes" these transactions have the potential for tax avoidance or evasion. While the Notice goes on to describe these transactions, it does not identify any facts or data supporting its belief. The IRS's executive summary regarding the Notice similarly fails to provide underlying facts and data; … *Id*. at 685 (internal citations omitted).

And again:

> Again, while the executive summary states that taxpayers are under audit and in litigation for using this arrangement, it does not include any underlying facts or data explaining how it became aware of "a large number of these transactions" or facts regarding taxpayers under audit and in litigation that explain how this transaction has the potential for tax avoidance or evasion. *Id*. at 686.

And as we know from the above article on audit results in the Appeals Office and Tax Court, the mere fact that the IRS challenges a position in an audit does not mean the IRS is correct.

The court went on to observe:

> This executive summary also cites to two IRS news releases from 2015 and 2016, which are included in the administrative record, in which the IRS identifies micro-captive insurance arrangements a potentially "abusive tax structure." The news releases, however, do not include any underlying facts or data supporting the IRS's determination that micro-captive insurance arrangements have the potential for tax evasion. *Id*. at 686 (internal citations omitted).

The court finally made the only conclusion it could based on the record in this case:

> While the IRS may ultimately be correct that micro-captive insurance arrangements have the potential for tax avoidance or evasion and should be classified as transactions of interest, the APA requires that the IRS examine the relevant facts and data supporting that conclusion. The administrative record in this case simply does not include underlying facts and data showing that micro-captive insurance arrangements have a potential for tax

> avoidance or evasion. As a result, the Notice must also be set aside as agency action that is arbitrary and capricious. *Id*. at 687.

The remedy the court chose was that which CIC asked for at the start: an injunction prohibiting enforcement against *any* taxpayer. Or, restated for this stage of the case, the court vacated the public notice, which makes the regulations null and void:

> In this case, vacating the Notice in its entirety is appropriate. The IRS did not comply with notice-and-comment procedures, and it acted arbitrarily and capriciously. While it may be able to rectify these deficiencies if it pursues promulgating a new rule, nothing about its actions supports leaving the Notice in place while it takes the actions necessary to comply with the APA or vacating the Notice as to CIC only, **especially given the Sixth Circuit's prior observations that the IRS does not have a great history of complying with APA procedures, and that it does not follow the basic rules of administrative law.** *Id*. at 687-88 (emphasis added, and internal citation omitted).

One must wonder how many other IRS actions were instituted by a "Notice" that fails to comply with the law. Given the steady stream of administrative rules that flow forth from the agency, I have to believe there are a great many.

Scott MacPherson *is a second-generation TFI/TDI member. He is an attorney licensed in California, Arizona, Washington D.C., and part of the MacPherson Group of attorneys. Scott can be reached at 310-773-2042.*

President Joe Biden

The Deficit King

BY DR. MERRILL MATTHEWS

As President Joe Biden travels the country to promote "Bidenomics," let's see if he highlights one area where he is the undisputed leader when compared to other presidents: the exploding federal deficit.

Recall that last October, Biden did a victory dance claiming he reduced the federal deficit.

> Today, my administration announced that this year the deficit fell by $1.4 trillion — the largest one-year drop in American history — $1.4 trillion decline in the deficit. Let me repeat that: the largest-ever decline in the federal deficit.

He made the same statement even more recently. So, how's that historic decline in the deficit going now?

The table below shows the federal deficit — which is the amount the federal government spends above and beyond its actual revenue for any given fiscal year (from Oct. 1 to Sept. 30) — for the past nine years.

FEDERAL DEFICITS IN BILLIONS

2014	2015	2016	2017	2018	2019	2020	2021	2022
$485	$442	$585	$665	$779	$984	$3,132	$2,775	$1,376

The biggest deficit increase came in 2020, when the federal government under President Trump spent massive amounts of money trying to offset the impact of government shutdowns.

The government spent too much too quickly in 2020, and it set aside normal controls that might have worked to limit fraud in the various new give-away programs it created. But at least it was meant to be a one-time effort to keep the economy and millions of people forced into unemployment from sinking into a depression.

However, since taking office, Biden has undertaken a concerted effort to keep spending high.

So, while the federal deficit declined from 2020 to 2021, and again from 2021 to 2022, it was still at historically high levels. And now that we are nearing the end of fiscal year 2023, we see the deficit is rising again.

Initially, the deficit was predicted to be in the $1.4 trillion range for 2023. It is already more than $1.6 trillion, and it could easily reach $1.7 trillion or $1.8 trillion by the end of September. The deficit is predicted to hit $1.74 trillion in FY2024.

Sensing a vulnerability, the White House is sending Democrats a memo claiming Biden wants to reduce federal deficits. Politico reports that deputy White House press secretary Andrew Bates writes in the memo, "Congressional Republicans keep indicating they want to talk about deficits. Not as much as we do." But Biden's deficit-reduction measures rely almost entirely on raising taxes, not cutting spending.

Fortunately, the public isn't buying it. That's why Biden's polling on the economy is so low, and why he's planning to hit the road to highlight all of his spending programs. It is my hope that taxpayers realize the Deficit King is only trying to buy votes with their own tax dollars.

Dr. Merrill Matthews *is a resident scholar with the Institute for Policy Innovation (*ipi.org*).*

How You Can Ask Dan Pilla a Question

If you have questions or problems you'd like Dan Pilla to address, please write to Dan at:

215 W. Myrtle Street
Stillwater, MN 55082

or e-mail to:

support@taxhelponline.com

Write the word "newsletter" in the subject line.