

AUDIT OR EXAMINATION?



Q. *What is an audit? What is an examination?*

A. An examination is an inspection of an individual's or an entity's books and records. In addition, an examination involves the questioning of witnesses to determine the individual's or entity's correct tax liability. Another term for an examination is an audit.

COMPLIANCE REVIEW



Q. *What is a compliance review?*

A. A compliance review is a review conducted by IRS under IRC section 6050I, to determine whether a trade or business is meeting its record keeping and reporting requirements regarding Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business. IRS Examiners must inspect books and records of the trade or business to make a proper determination.

Q. *Are there any other instances when the IRS may inspect books and records?*

A. Yes. IRS examiners conduct Bank Secrecy Act (BSA) compliance examination under Title 31 of the United States Code. Examiners review the entity's or financial institution's books and records to determine whether they are meeting their record keeping and reporting requirements as prescribed by law.

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COMPLIANCE



*COMPLIANCE CHECK,
AUDIT, EXAMINATION,
OR REVIEW?*

COMPLIANCE CHECK



Q. **What is a compliance check?**

A. A compliance check is a review conducted by IRS, under Title 26 of the Internal Revenue Code, to determine whether a business owner (or individual) is adhering to record keeping and information reporting requirements. It is neither an investigation, under section 7605(a) of the Internal Revenue Code, nor an audit, under section 530 of the Revenue Act of 1978.

A compliance check does not directly relate to determining a tax liability for any particular period. The check is a tool to help educate business owners about their reporting requirements to help increase voluntary compliance. At the beginning of a compliance check, the IRS representative will inform the business owner that the review is a compliance check and not an audit or examination.

- A compliance check is a review of information forms that the IRS requires business owners (tax customers) to file or maintain; for example, 940s, 941s, W-2s, 1099s, or W-4s. During a compliance check, the IRS may ask business owners whether they understand or have questions about the filing requirements for these forms. The IRS may also ask the business owners if they filed the proper forms for any workers to whom they made payments.

If not, and the business owner acknowledges they should have, the IRS may ask the owner to file them voluntarily. If the business owner does not voluntarily file the forms, the IRS may prepare substitute returns under Internal Revenue Code Section 6020(b) or initiate and examination.

- The IRS will not ask to examine any books and records during a compliance check or ask questions, regarding tax liabilities. This means that the IRS will not ask business owners why they treat an expense a certain way or the reason they treat a worker as an employee or independent contractor. IRS typically asks these types of questions during an audit or examination to determine an individual's or business entity's correct tax liability. If, during a compliance check, the IRS decides an audit or examination is appropriate, the IRS will notify the business owner that it is commencing an examination before asking questions that relate to tax liability.

Q. **Is there a penalty for refusing to submit to a compliance check?**

A. No. A business owner (or individual) may refuse to participate in a compliance check without penalty. The IRS has the option of opening a formal investigation, whether or not the business owner agrees to participate in a compliance check.

Q. **How often can one be subjected to compliance checks?**

A. IRS can make compliance check as often as facts and circumstances warrant. Because compliance checks are not examinations, the limitations on reopening examinations provided by Section 7605(b) do not apply to compliance checks.

Q. **Once a business owner has been checked for compliance, does he/she have safe haven protection under section 530 of the Revenue Act of 1978?**

A. No. Since compliance checks are not audits, the business owner does not hold safe haven protection under section 530 of the Revenue Act of 1978.

Additionally, a business owner may not rely on an audit started after December 31, 1996, for safe haven protection, unless the audit included an examination of whether the individual involved, or any individual holding a similar position as the person involved, should be treated as an employee of the taxpayer for employment tax purposes.