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## Which “Haves” Come Out Ahead and Why? Cultural Capital and Legal Mobilization in Frontline Law Enforcement

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Sociolegal theories of why “haves” might come out ahead in the legal system have emphasized legal mobilization and the use of legal representation. Small group research points to the influence of cultural capital on social expectations and interpersonal processes of social influence and deference as another potential explanation for status advantage. This study tests these explanations in the context of state income tax audits. The results indicate that taxpayers owning larger businesses are more likely to mobilize legally, but that legal mobilization does not affect audit outcomes. Instead, taxpayers with high occupational prestige and the owners of family businesses are more likely to come out ahead in tax audits, pointing to a cultural capital explanation of why the “haves” come out ahead. Prestige effects, however, are concentrated among taxpayers who represent themselves; when tax practitioners are involved in audits, status advantages disappear. Further analyses indicate that tax practitioners level the playing field by disrupting social influence and deference processes.

**S**everal strands of research in criminology and sociolegal studies argue that higher-status individuals are less subject to law than middle- or lower-status persons (Black 1976; Sutherland 1983). One of the most clearly articulated theories of status differences in law appears in Galanter’s seminal 1974 article “Why the ‘Haves’ Come Out Ahead” (see also Black 1976). We refer to this theory as the legal mobilization hypothesis. Galanter argues that parties with greater resources can mobilize the law more proactively than others to achieve instrumental goals. They can hire more and better-quality legal representation and are more likely to be repeat players knowledgeable about the workings of the legal system. From Galanter’s theory, both repeat playership and legal representation provide higher-status parties with an advantage.

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Prior research on whether the “haves” come out ahead in the legal system has focused primarily on civil and criminal cases (see, for example, Songer & Sheehan, 1992; Weisbrud et al. 1990; Wheeler et al. 1987). As Edwin Sutherland pointed out, though, most allegations of illegal behavior against high-status individuals and organizations are primarily handled through administrative and regulatory law enforcement agencies. Do the “haves” come out ahead in the front lines of civil law enforcement? This article examines this question in the context of state income tax audits. Tax audits are an especially good area for examining questions of relative advantage and equal treatment under the law. Income taxation touches virtually everyone, whatever one’s position in society. The enforcement net sweeps broadly, with routine enforcement contacts made with a wide range of people of different social statuses, arguably more than any other form of law enforcement in society.

Taxation is also an area of law permeated with claims of victimization and accusations of privilege, a preoccupation with fundamental questions of distributive justice. The general public tends to perceive economic elites as exploiters of tax loopholes and recipients of “corporate welfare” while believing the “have nots”—ordinary citizens like themselves—pay more than their fair share (Kinsey & Grasmick 1993). At the same time, a case can be made that the “haves” are treated more harshly by tax law than others. For example, higher-income taxpayers face higher marginal tax rates than other taxpayers. Those who try to lower taxes through legal tax avoidance—the “loopholes” decried by so many others—find in consequence that they have become even more subject to law in the form of complex rules and regulations, increased record-keeping requirements, greater costs of filing a tax return, and higher risk of audit (Long & Swingen 1988, 1989; Slemrod & Sorum 1984).<sup>1</sup> Business owners also face regulatory burdens through the withholding system and requirements to submit information reports to tax agencies. Their compliance burdens are further complicated by the multiple federal, state, and local tax agencies they have to satisfy.

The first goal of our study was to examine which “haves” do or do not come out ahead in tax audits. To summarize our results, we find strong and consistent evidence that taxpayers who own businesses with 10 or more employees are more likely to mobilize legally than other taxpayers. They are more likely to be repeat players, to engage in legal tax avoidance, and to employ a tax practitioner to represent them during the audit. The key vari-

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<sup>1</sup> In 1985, for example, tax returns with total positive income greater than \$50,000 were 2.7 times more likely to be audited by the Internal Revenue Service (IRS) than the average return (IRS 1985:Table 7). Similarly, 62% of the audited taxpayers in our sample had filed Schedule C for sole proprietors, whereas nationally, only 13% of taxpayers file a Schedule C (IRS 1994).

ables predicting audit outcomes, however, are occupational prestige and whether the taxpayer runs a “mom and pop” business. This pattern of findings points to the cultural capital of taxpayers, more than legal mobilization, as a key factor shaping auditor decisions. Further analyses suggest that culturally shared expectations that people in prestigious occupations are trustworthy and capable of influencing authorities give higher prestige taxpayers an edge in shaping the auditor’s decisionmaking.

The results point to a somewhat surprising conclusion about the role of tax practitioners in shaping the relative advantages and disadvantages of different groups of taxpayers. Instead of increasing the advantages of the “haves,” the involvement of tax practitioners *levels the playing field*: status differences in auditors’ decisions to assert changes on individual tax issues and to assess higher taxes appear among unrepresented taxpayers but not among represented taxpayers. The analysis suggests that practitioner involvement dampens the influence of status-based normative expectations that otherwise structure audit interactions when taxpayers represent themselves.

## The Case for Legal Mobilization

Galanter (1974) argues that the greater resources and repeat playership of the “haves” make them better able to accomplish instrumental goals by positioning themselves within the requirements of law and couching arguments advancing their viewpoint in the language and format of law. Law in the hands of the ‘haves,’ and their legal representatives, is malleable, a tool to be used, not commandments writ in stone.

Several case studies in sociolegal research have described ways in which legal experts create new law and legal forms (see, for example, Powell 1993). Taxation is an area of law that sees an extraordinarily high degree of the mobilization of expertise and creative uses of law in ways not intended by legislators, and often opposed by enforcers. Klepper and Nagin (1989) describe the role of the tax practitioner in the tax system as a two-edged sword: practitioners increase clients’ compliance in areas of tax law where the rules and regulations are clear, but also identify and exploit gray areas of the law to their clients’ advantage.<sup>2</sup>

<sup>2</sup> Tax audit representation is the province of a wide array of practitioners with varying levels of credentials. Most are not lawyers yet nonetheless serve as legal representatives in that they have power of attorney to make binding agreements. Certified public accountants (CPAs) and lawyers are automatically certified to practice before the IRS and other tax agencies, as are enrolled agents (practitioners who are either former IRS employees or who have passed a certifying exam administered by the IRS). The state of Oregon, where our study took place, is also one of the few states in the nation to license tax practitioners. Licensed tax consultants are persons who have completed 2 years of formal training and have passed a state exam on taxation, whereas licensed tax preparers have completed 80 hours of training and have passed a tax preparation exam.

McBarnet (1992a, 1992b) argues that the crafters of legal tax avoidance schemes use highly legalistic application of the details of tax law to evade the spirit, although not the letter, of the law.

The legal mobilization hypothesis makes specific predictions about the use of law and the role of tax practitioners in tax audits. Any advantage the “haves” might have in tax audits reflects their greater ability to afford legal representation and to use the gray areas of tax law to their own advantage. If true, social status should be related to use and type of tax representation and to indicators of legal tax avoidance. The limited research available on tax practice provides support for the legal mobilization hypothesis in that higher-status taxpayers are more likely than other taxpayers to use the services of highly trained professionals, who in turn are more aggressive in their interpretation of tax law than other types of practitioners (Jackson et al. 1988; Kinsey 1987). Kinsey (1992) also found that people with prior IRS enforcement contacts feel less intimidated by the agency than others, suggesting an advantage for repeat players.

### **Cultural Capital and Normative Expectancies**

One of the earliest and most common findings of small-group research is that higher-status individuals have more influence and receive more deference from others in newly formed groups. For example, one of the first things the 12 strangers in a jury room usually do is to elect a high-status person as foreman (Strodtbeck et al. 1958). Laboratory studies find that high-status persons are among the first to talk and tend to hold the floor for longer periods than other persons. Lower status individuals are usually quieter and tend to get interrupted should they try to talk. Status expectations theory argues that the influence attempts of high-status individuals succeed, and those of lower-status people fail, due to *socially shared* cognitions and expectations that link social status to attributions about personal ability and worth (Berger et al. 1966, 1972; Webster & Driskill 1978); we refer to these socially shared cognitions as normative status-based expectancies. In short, individuals of higher status have more cultural capital due to culturally held beliefs about their character and reputation (see also DiMaggio 1990; Hagan et al. 1991).

The generality of the findings from laboratory studies of small groups to real-life settings is, of course, open to question. As many commentators have noted, laboratory studies are conducted in artificial settings and are potentially subject to a number of demand characteristics that might bias results (Billig 1976; Orne 1962; Rosenthal 1966). The laboratory studies' attention to the microprocesses of interaction, however, suggests some powerful hypotheses for explaining not only the results of the early jury studies—which used real-life jurors—but the status dynamics of

interaction in other arenas of law enforcement. Suggestive evidence of generality can be found in various sociolegal settings. Yngvesson (1993), for example, reports that magistrate clerks tend to dismiss of the concerns of lower-class complainants as “garbage” cases unworthy of legal intervention.

Some of the laboratory research suggests that status-based expectancies especially influence decisions or judgments about people under conditions of ambiguity or lack of information (Freese & Cohen 1973; Webster & Driskill 1978). The indeterminacy of tax compliance opens the door for status-based normative expectancies to influence the enforcement of tax laws. Determining compliance with tax laws is a highly problematic task; it is often difficult even for officials at the same tax agency to agree on what the correct tax assessment should be in specific cases (Elffers et al. 1989; Long & Swingen 1991). Qualitative studies of practitioners are abundant with signs of influence attempts in practitioners’ descriptions of their covert efforts to control the auditor’s focus of attention and decision process (Kinsey 1987; McBarnet 1992a).

Status expectations theory points to two ways high-prestige taxpayers may come out ahead in tax audits. The tendency of high-status persons to take the initiative points to a *self-fulfilling prophecy* effect.<sup>3</sup> Because high-status individuals have a greater amount of cultural capital than others, they are more poised and comfortable with the prospect of exercising power. In contrast, a lower-status person will be more nervous and uncertain. Linguistic studies of courtroom interaction (cf. O’Barr & O’Barr, 1995) and legal analyses of Miranda appeals (Ainsworth 1993) find characteristic patterns of “powerless” speech among persons of lower social statuses that suggest uncertainty and hesitation, thus undercutting their ability to convince powerful others of their credibility.

The self-fulfilling prophecy hypothesis argues that, because they enter the audit with greater self-confidence and expectations of good treatment, higher-status taxpayers may end up actually taking a more active role than others in defining audit issues and eliciting cooperation from the auditor. Lower-status persons, on the other hand, might take a more passive role because they feel more insecure and do not believe authorities will respond positively to their influence attempts.

Because our audit data included a panel component, we can test the self-fulfilling prophecy component of the cultural capital hypothesis. If it is true, then higher-status individuals should have

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<sup>3</sup> Earlier usages of the term *self-fulfilling prophecy* referred mainly to instances where expectations of one person elicited behavior by another that otherwise would not have been demonstrated (Merton 1957; Rosenthal & Jacobson 1968). We use it more in accordance with later research, which applies the term more generally to include the effects of expectations about oneself as well as others (Jones 1977).

greater expectations of future influence over the tax auditor than other individuals. Furthermore, preaudit expectations should affect audit outcomes and reduce the direct effect of social status in statistical analyses.

Status expectations theory also points to a *burden of proof* variant of cultural capital effects. For example, laboratory studies of newly formed groups find that individuals of a higher social status are automatically assumed by others to be knowledgeable and reliable sources of information. Lower-status persons, however, bear an extra burden of proof in establishing their credibility. They are not trusted automatically, but are instead required to prove themselves first (Freese & Cohen 1973; Webster & Driskill 1978). Based on this research, both authorities such as auditors and laypeople may assume that individuals in highly prestigious jobs (such as professors and medical doctors) are trustworthy. This shared assumption leads to differences in the extent to which higher- and lower-status individuals are required to support their statements with additional evidence.

In the burden of proof hypothesis, status effects arise not so much from the initiative and actions of high-status taxpayers, but more from a tendency by people to assume from the onset that high-status taxpayers are more credible and trustworthy people than taxpayers with a lower social status. We have in our data set one variable that directly measures the burden of proof: whether the auditor accepted oral testimony instead of insisting on seeing documentation related to an audit issue. Based on status expectancy theory, we hypothesized that auditors will more often accept the oral testimony of higher-status taxpayers than of lower-status taxpayers.

## Data Sources

The data come from a study of state tax audits conducted by researchers at the American Bar Foundation and Oregon State University. A state income tax audit is essentially an audit of the federal return. The Oregon Department of Revenue provided access to information about audit cases in four offices that handle about 70% of the statewide audit caseload.

The study began with individual hour-long semistructured interviews with all auditors about their perceptions of taxpayers and preferred work styles. Over the next couple of years, auditors sent copies of initial audit notice letters to Oregon State University ( $n = 533$ ).<sup>4</sup> After audits were completed, the auditors also

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<sup>4</sup> Audit selection processes varied across offices and auditors. All offices begin by selecting a computer-generated pool of potential returns by specifying certain parameters. These were not revealed to the researchers, but were probably weighted to oversample higher-income returns and businesses. Some audit managers select and assign returns from the pool to individual auditors based on current enforcement priorities and goals for developing auditor expertise. Others allow auditors to select their own returns to ex-

filled out an audit report form describing the issues examined in the audit and their perceptions of the taxpayer and tax practitioners involved. A random sample of taxpayers was selected from the pool of audit notices for a panel study that included both preaudit and postaudit surveys with taxpayers. Another taxpayer sample was selected for postaudit interviews only. Audit case files were also content-coded, and financial information was compiled from departmental records.

This analysis is based on 117 cases for which we have both preaudit and postaudit taxpayer surveys and report forms filled out by auditors. In 92 cases, content codings of specific audit issues recorded in the audit files are also available. In addition, a small sample of the tax practitioners involved were also interviewed ( $n = 36$ ); this information is used to provide descriptive data about practitioner characteristics.

### Measures of “Have” Status

#### *Indicators of Cultural Capital*

Occupational prestige is probably the purest measure of general social status employed in this study. Studies find an unusually strong social consensus among all groups in society about the relative rankings of the prestige of individual occupations (Nock & Rossi 1978). Moreover, occupation is highly salient during a tax audit.

Occupation was ascertained by a series of questions asking respondents if they were self-employed or had worked for others as an employee. Follow-up questions for self-employment asked what kind of work was done and whether the work was a respondent's primary job or a sideline. Follow-up questions for employees asked what kinds of jobs they had in the past 3 years. The prestige of the type of work or jobs held by the respondent was coded using the coding categories developed by the National Opinion Research Center for the General Social Surveys (NORC 1991). For those respondents reporting both self-employment and working for others, the primary occupation was determined by the question of whether their self-employment was a sideline or primary work. For those with multiple jobs, the most recent job was used to indicate primary occupation.

The resulting occupational prestige scores were reduced to a three-point scale. Examples of occupations in the high-prestige category are physicians, lawyers, corporate managers, and college

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amine. In general, the auditor would go to the file cabinet containing the pool of returns, pull out some files, and go through them looking for potential audit issues. Some preferred variety in their caseloads and sought out different types of business or financial situations. Others concentrated on auditing returns reflecting issues in which they had already developed expertise. Others liked to do network audits, where audit of one return would provide leads to other returns worth auditing (e.g., business partners, suppliers).

professors (33%). The middle-prestige group includes shop owners, real estate agents, restaurant managers, and construction contractors (42%). The low-status group includes occupations such as truck driver, janitorial service providers, food service employee, and general laborers (25%).

Education is another important indicator of cultural capital, but one that is likely confounded with objective knowledge of tax law. It is measured on a four-point scale. About one-fourth (23%) of respondents had a high school education or less, 36% had some college or training school experience, another 16% obtained a bachelor's degree, and 25% had graduate degrees.

A less traditional, measure of cultural capital in this study is whether taxpayers run a "mom and pop" business. Family-owned and operated businesses capture a special place in the American imagination; people seem to care more about their fate than more impersonal organizations. Whether the audit involved a family business was operationalized by whether survey respondents reported that they or their spouse were self-employed in the same line of work. About one-fourth (27%) of the sample consisted of family-owned businesses.

### *Organizational Size*

In civil court studies, organizational litigants are hypothesized to be more powerful than individuals and larger organizations to be more powerful than smaller ones. Organizational size was measured with two dummy variables: whether self-employed taxpayers have fewer than 10 full-time equivalent employees (42%) or more than 10 employees (9%). The reference group consists of taxpayers who were employees only (14%) and self-employed taxpayers who work by themselves (35%).<sup>5</sup>

Unfortunately, our data do not include a good measure of income. Because income is an especially sensitive topic in the audit context, it was not asked in the taxpayers' surveys. Data on adjusted gross income (AGI) are available for 101 cases, but AGI systematically underestimates the true income of both tax avoiders and tax cheats. Reflecting its poor reliability as an income measure, AGI is not correlated to either occupational prestige or education. Income is therefore not included in the analysis.

### **Legal Mobilization Variables**

Repeat playership is measured as a three-point scale of whether the respondent has never been audited (50%), was audited once before (30%), or has been audited more than once

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<sup>5</sup> Earlier analyses included a dummy variable for taxpayers who are employees only. It produced no significant results and was dropped to conserve degrees of freedom.

(20%). Consistent with Kinsey (1992), repeat players are less nervous than others about their upcoming audit. A full 67% of those without prior audit experience report feeling nervous, compared with 37% of those with one prior audit, and 23% with two or more ( $\chi^2_{(df 2)} = 5.68, p < .001$ ).

Two objective indicators of legal tax avoidance are available from the data. The number of partnership and S-corporation schedules filed by the taxpayer was computed from information provided on the auditor report form. Partnerships have historically been a primary vehicle for tax shelters, and the decision by small business owners to become an S Corporation is often driven by tax considerations. About three-fourths of audited taxpayers filed neither type of schedule, whereas 17% filed one and 8% filed two or more such schedules.

In the audit report forms, auditors also described up to four types of issues examined during the audit. These issues were classified according to whether they involved complex issues typically reflecting legal tax avoidance, such as timing issues about the year in which something is reported, capitalization and depreciation issues, asset basis and value, and other issues about distributions from partnerships and corporations (see Smith 1995). These types of issues are often implicated in legal tax avoidance schemes. The measure of the legal complexity of audit issues was constructed by first calculating the percent of issues involving legal complexity. This measure was then collapsed into a three-point scale of whether no legally complex issues were involved (61%), up to half the issues were legally complex (23%), or more than half the issues were complex (16%).

Whether a tax practitioner was involved in the audit (48% yes) was measured using information from both the survey forms and the auditor report forms. In 36 cases, we also had interview data from practitioners whose clients had given permission to be interviewed about their audit. Of those, 64% were CPAs, 28% were licensed tax consultants, and 11% were licensed tax preparers. Taxpayers of higher social statuses tended to employ CPAs: 92% of those with college degrees employed CPAs, as did 86% of business owners with 10 or more employees and 92% of high-prestige taxpayers.

### **Taxpayer Expectations of Influence**

Research finds that perceptions and attitudes that come to mind most readily tend also to be more important to the person than other attitudes (Krosnick 1989). At the very beginning of their first interview, taxpayers were asked four open-ended questions to assess their expectations of the upcoming audit:

1. "Most people have some idea of what an audit will be like. Take a moment to imagine what you think your audit may be like and describe it to me in your own words."
2. "How do you imagine the auditor will behave during the audit?"
3. "What do you think will go on during the audit—that is, what do you think the procedures will be?"
4. "How do you think things will be decided during the audit?"

All the preaudit interviews were content-coded for major themes. Two researchers developed a coding scheme and used it to code an initial set of interviews. The coding scheme was updated by adding other frequent categories that emerged. Then one of the researchers coded the remaining interviews, while consulting with the other about ambiguous or unusual responses. A third researcher unfamiliar with the purpose of the study coded 50 protocols to check on interrater reliability. They ranged from .90 to 1.00.

Indicators of taxpayers' expectations that they could influence the auditor included codes for statements of whether the outcome would be favorable or unfavorable, whether the taxpayer would be capable of influencing the auditor, and whether the auditor would base decisions on facts and the law or would be biased in favor of the state (and thus resistant to influence attempts). A typical example of an expected lack of influence is the statement, "Someone like them, they have the power/authority, so they'll probably do the deciding." Examples of expected influence were more varied, including statements such as "Auditor will accept my explanations," "The final decision will be a compromise between the auditor and me," and "They can be intimidated."

The resulting measure of taxpayers' expectations of influence consisted of the number of positive comments minus the number of negative comments (mean =  $-.12$ ,  $SD = 1.50$ ). Almost half (44%) of taxpayers had more positive than negative expectations; the converse was true for 34%. The remaining 22% either expressed no expectations or had an even mixture of positive and negative expectations.

### **Auditor Acceptance of Oral Testimony**

Data were available in 87 cases from the audit files as to whether the auditor accepted oral testimony or estimates of expenses in lieu of documentation. The percent of issues involving oral testimony was first calculated and then collapsed into three categories: no oral testimony (58%), oral testimony accepted up to half the issues (18%), and oral testimony accepted more than half the issues covered in the audit (18%).

## Audit Outcomes

The first audit outcome measure consists of auditors' decisions to accept taxpayer positions on individual issues or to assert changes to the return. Cases where the auditor accepted the taxpayer's position on all issues covered in the audit were assigned a zero (26%), those where every issue was either changed or unresolved (meaning both auditor and taxpayer were holding firm to their respective positions) were assigned a value of 1 (49%), and intermediate cases showing a mixture of acceptance and rejection of taxpayer positions were assigned a value of .5 (25%).

The total amount of taxes, penalties, and interest assessed to the taxpayer was obtained from departmental records. The mean amount assessed was \$1,188 (*SD* \$2,530), but the median was considerably lower, with half paying less than \$196. A substantial minority of taxpayers (38%) paid no additional taxes, 24% paid less than \$500, and 38% paid more than \$500 in additional assessments. Due to the skewed nature of the distribution, a log transformation of income was used in multivariate analyses.

## Auditor Perceptions of Taxpayers and Tax Practitioners

The auditor report form asked auditors to rate on a five-point scale how well they got along interpersonally with the taxpayer and any tax practitioners involved in the audit. In addition, they were asked to rate taxpayers and practitioners on an adjective checklist, also with a five-point scale. Rapport with taxpayers was calculated as the mean rating of how friendly and cooperative the taxpayer was, and how well they got along interpersonally. The mean rating was 3.97 (*SD* = .80), and the scale had a Cronbach's alpha of .84.

## Control Variables

Other factors that might be expected to shape audit outcomes include the quality of taxpayers' records and whether the audit involved such basic compliance issues as math errors, unreported income, and lack of documentation for deductions. The measure of the quality of taxpayer records was based on an average of auditor ratings of the degree to which taxpayers' records were complete and organized (Cronbach's alpha = .91). This measure was trichotomized into equal-size groups of high, medium, and low record quality.

Auditors were also asked to describe the issues covered in the audit, using 14 categories provided by the researchers. These 14 categories fell into three generic groups: the legal avoidance issues used in constructing the complex audit issue measure described above; questions about the taxpayers' eligibility to claim

expenses and deductions; and basic compliance issues involving unreported income, undocumented deductions; or math errors. The basic compliance issues are legally quite straightforward, whereas both the legally complex and eligibility issues require some degree of interpretation by the auditor.

Measures of the degree to which audit issues involved basic compliance issues and eligibility issues were constructed using the same procedures as for the measure of complex legal issues. The measure of eligibility issues was eventually dropped from the analysis because it reduced degrees of freedom without yielding any significant findings. We also explored including individual measures for each of the basic compliance issues; doing so yields some marginally significant effects while restricting the degrees of freedom. The combined measure seemed to work best as a control for issue effects that might otherwise confound the status analysis. The resulting measure has a distribution of 35% of cases having no compliance issues (i.e., interpretive issues only), 30% where less than half the issues involved compliance issues, and 35% where most of the issues were basic compliance issues.

## Results

### Which "Haves" Come Out Ahead in Tax Audits?

We begin the data analysis by describing who comes out ahead in tax audits and whether legal mobilization accounts for their success. Table 1 investigates this issue using regression analyses that begin by entering the "have" variables in the first equation and then by entering the legal mobilization and control variables in a second equation. Equations are estimated using ordered probit analyses for auditor decisions against the taxpayer, due to the ordinal character of this variable. Because the distribution of amount assessed is truncated, tobit regression is used to estimate equations for the amount owed.

The results for the first equation show significant effects of occupational prestige on both audit outcome measures, with taxpayers of high prestige receiving better outcomes. Bivariate analyses indicate that high-prestige taxpayers are especially less likely than others to have auditors make decisions against them on specific tax issues. Auditors ruled against the taxpayer on every issue in only one-fifth (22%) of cases involving high-prestige taxpayers, compared with almost two-thirds of cases involving lower- (65%) and middle-prestige taxpayers (62%). The median amount of money assessed against high-prestige taxpayers was \$0 (only 42% had any additional tax assessments), compared with \$287 for medium- and \$515 for lower-prestige taxpayers.

The results also indicate that family businesses are assessed less money than other types of taxpayers, but education and or-

**Table 1.** Effects of Cultural Capital and Legal Mobilization on Auditor Decisions, Unstandardized Coefficients (Standard Errors)

	Decides against Taxpayer <sup>a</sup>				Log Amount of Tax Assessed <sup>b</sup>			
	Equation (1)		Equation (2)		Equation (1)		Equation (2)	
	Coefficient	SE	Coefficient	SE	Coefficient	SE	Coefficient	SE
Cultural capital indicators:								
Occupational prestige	-.72***	(.20)	-.86***	(.22)	-2.02*	(.79)	-2.62***	(.71)
Education	.20	(.13)	.25+	(.14)	-.44	(.53)	.29	(.47)
Family business	-.46	(.32)	-.42	(.33)	-3.50**	(1.33)	-3.01*	(1.18)
Organizational size:								
1-9 employees	.43	(.28)	.14	(.31)	1.23	(1.18)	.83	(1.03)
10 or more employees	.13	(.45)	.17	(.54)	.93	(2.06)	-.82	(2.16)
Legal mobilization:								
Repeat playership	—	—	.06	(.18)	—	—	.20	(.65)
Partnership/ S corporation	—	—	.22	(.28)	—	—	1.63+	(.96)
Complex audit issues	—	—	.22	(.23)	—	—	1.48+	(.82)
Use of representation	—	—	-.37	(.28)	—	—	1.68	(1.03)
Controls:								
Quality of documentation	—	—	-.31*	(.13)	—	—	-1.61***	(.44)
Basic compliance issues	—	—	.65***	(.20)	—	—	2.06**	(.67)
Intercept(s):								
First	1.67**		1.35*		7.22***		5.86*	
Second	.91***		.44		n.a.		n.a.	
N of cases		92				111		

<sup>a</sup>Ordered probit regressions. The chi-square statistic for the entire equation is 18.41 ( $p < .01$ ) for equation (1) and 37.41 ( $p < .001$ ) for equation (2).  
<sup>b</sup>Tobit regression analysis.  
+  $p < .10$  \*  $p < .05$  \*\*  $p < .01$  \*\*\*  $p < .001$

ganizational size have no effect on either dependent variable. At the bivariate level, less than half (45%) of family businesses paid more taxes (median = 0), compared with 68% the remaining taxpayers (median = \$316).

The results for prestige and family business remain significant even after the legal indicators and control variables are entered into the analysis. Organizational size has no effect on audit outcomes, nor do any of the legal mobilization variables affect outcomes in the predicted direction. Two legal mobilization variables—complex audit issues and use of legal representation—reach a borderline significance for amounts owed, but in a direction *opposite* to the predictions of the legal mobilization hypothesis. Both complex audit issues and use of representation tend to be associated with higher, rather than lower, amounts of taxes being assessed.

Not surprisingly, audits involving basic compliance issues of math errors, undocumented deductions, and unreported income are more likely to yield additional assessments than other audits. Likewise, the higher the quality of taxpayer documentation, the less likely auditors are to decide against the taxpayer and to assess new tax dollars.

It could be argued that the findings for the amount of taxes assessed might be distorted by the lack of a control variable for income, because the amount of taxes owed is influenced by the taxpayer's marginal tax rate, which in turn is determined by income. That is, family businesses might have less income and therefore lower tax rates than other taxpayers and thus end up paying less tax. This argument cannot explain the results for prestige, because studies routinely find that occupational prestige is positively correlated with higher income. In fact, this argument suggests that the prestige effect would become even stronger once income were controlled.

We do not have either an income or tax rate variable to test empirically this alternative explanation for the family business effect. Tax rate differences, however, should affect only the amount owed, not the basic question of whether *any* tax was assessed. Logistic regression analysis of a dichotomized version of the amount assessed (0 = none, 1 = some) yielded the same results as the tobit analysis, arguing against an interpretation of an income confound.

### Why Do "Haves" with Prestige Come Out Ahead?

#### *Legal Mobilization*

Equation (2) in Table 1 demonstrates that legal mobilization does not account for the greater success of high-prestige taxpayers in obtaining favorable audit outcomes. The results show no

**Table 2.** Which “Haves” Mobilize Legally? Unstandardized Probit Coefficients (Standard Errors)

	Indicators of Legal Mobilization			
	Repeat Audit Player	Partnership/ S Corporation	Complex Tax Issues	Use of Representation
Social capital:				
Occupational prestige	-.09 (.16)	-.04 (.49)	-.28 (.17)	.07 (.18)
Education	.16 (.11)	.08 (.13)	.05 (.12)	-.15 (.12)
Family business	.13 (.26)	-.20 (.31)	-.56* (.29)	.29 (.28)
Organizational size:				
1–9 employees	.08 (.24)	.52 (.29)	.28 (.25)	.06 (.26)
10 or more employees	1.16** (.40)	1.88**** (.43)	1.57*** (.42)	1.05* (.49)
Intercepts:				
First	-.38	-1.19**	-1.09**	.00
Second	-1.28**	-2.10***	-1.93**	n/a
-2 log-likelihood chi- square	10.93*	21.69***	24.75***	8.58
Gamma	.28	.48	.46	.27
N of cases	117	117	117	117

\*  $p < .05$  \*\*  $p < .01$  \*\*\*  $p < .001$

significant effects in the predicted direction for any of the legal mobilization variables on either audit outcome measure.

Table 2, which examines which “haves” are more likely to mobilize, further bolsters this finding in that high-prestige taxpayers are no more likely to mobilize legally than lower-prestige individuals. In fact, the only group of “haves” in this sample who are consistently high in legal mobilization are taxpayers who own businesses that employ 10 or more workers. They are significantly more likely than others to be repeat players, to file partnership and S-corporation returns, to have audits involving complex legal issues, and to have a tax practitioner represent them during the audit. This finding is consistent with studies of courts, which argue that organizations are more capable of mobilizing legally than individuals. The puzzle is why legal mobilization does not translate into better outcomes in frontline tax enforcement.

#### *Different Audit Situations and Types of Issues*

Another potential explanation for the findings is that family businesses and people in occupations of varying prestige are in fundamentally different tax situations that lead to different types of issues arising in their audits. For example, high-prestige taxpayers may face more questions about their eligibility for deductions, but low-prestige taxpayers may experience math and clerical errors. The inclusion of the control variable of basic

compliance issues (and eligibility issues in other analyses), however, rules out this interpretation. Even though compliance issues (but not eligibility issues) increase tax assessments, the inclusion of controls for the types of issues audited does not affect the basic findings for occupational prestige and family businesses.

#### *Cultural Capital and Normative Expectancies*

The finding that prestige and family business ownership, but not organizational size or legal mobilization, predict audit outcomes suggests that cultural capital plays a pivotal role in shaping what goes on during an audit. A stronger case could be made for the cultural capital explanation, however, if there were evidence that taxpayers' expectations of influence varied by their social status (the self-fulfilling prophecy effect) or that auditors were more willing to accept oral testimony without substantiating records from higher-status taxpayers than from lower-status taxpayers (the burden of proof effect).

Table 3 examines the evidence for and against the self-fulfilling prophecy effect. To begin, the effects of social status on taxpayer expectations before the audit of their ability to influence auditor decisions were examined using ordered probit analysis. Of the cultural capital indicators, only occupational prestige significantly affects taxpayer expectations, with an unstandardized coefficient of .39 ( $p < .01$ ). The coefficient for family businesses is not only nonsignificant, but negative in sign, indicating that self-fulfilling prophecies of greater self-confidence do not play a role in explaining the family business effect.

When analyzed at the bivariate level, the pessimism of low-prestige taxpayers is a quite striking feature of our data. More than half (52%) expressed more negative than positive expectations before the audit, compared with 35% of middle-prestige and 21% of high-prestige taxpayers. A feeling of powerlessness in the face of arbitrary state authority underlies many of these negative feelings: 34% of low-prestige taxpayers report beliefs that they could not influence the auditor or the audit outcome, compared with only 8% to 10% of middle- and high-prestige taxpayers. Middle- and high-prestige taxpayers were more likely to believe auditor decisions would be impartial ones driven by facts and the law (27% to 31% for middle- and high-prestige taxpayers versus 10% for low-prestige taxpayers).

The finding that high-prestige taxpayers have greater expectations of influence entering the audit provides support for one prong of the self-fulfilling prophecy explanation for prestige effects on audit outcomes. The case would be stronger, though, if expectations in turn influenced the outcome of the audit and reduced the size of the effect of prestige on outcomes. The last

**Table 3.** Tests of Self-Fulfilling Prophecy Effects, Unstandardized Coefficients (Standard Errors)

	Taxpayer Expects to Influence Auditor <sup>a</sup>		Audit Outcomes			
			Decides against Taxpayer <sup>a</sup>		Log of Amount Owed <sup>b</sup>	
	Coefficient	SE	Coefficient	SE	Coefficient	SE
Indicators of cultural capital:						
Occupational prestige	.39**	(.15)	-.86***	(.23)	-2.23**	(.71)
Education	.05	(.10)	.26+	(.15)	.38	(.47)
Family business	-.27	(.24)	-.42	(.34)	-3.27**	(1.17)
Organizational size:						
1-9 employees	.14	(.22)	.14	(.31)	.75	(1.00)
10 or more employees	.26	(.42)	.17	(.54)	-.54	(2.12)
Legal mobilization:						
Repeat player Partnership/ S corporation	-.18	(.13)	.06	(.19)	-.21	(.64)
Complex audit issues	.06	(.19)	.22	(.28)	1.68+	(.94)
Use of representation	-.34*	(.16)	.22	(.23)	1.15	(.81)
Controls:	-.01	(.18)	-.37	(.28)	1.81+	(1.00)
Quality of documentation						
Basic compliance issues	.13	(.21)	-.31*	(.13)	-1.63***	(.41)
Mediating variable: Expectations of influence	.37	(.22)	.65***	(.20)	1.95**	(.45)
Intercept(s):	—		(.01)	(.10)	-.70*	(.22)
First	.92*		1.37+		8.32**	
Second	.49		.46		n.a.	
Third	.03		n.a.		n.a.	
Fourth	-.59		n.a.		n.a.	
Fifth	-1.77***		n.a.		n.a.	
N of cases	117		92		111	

<sup>a</sup>Ordered probit regression. For taxpayer expectations, the chi-square statistics for the equation as a whole is 16.03 ( $p = \text{n.s.}$ ) and for auditor decisions against the taxpayer the chi-square is 34.41 ( $p < .01$ ).

<sup>b</sup>Tobit regression.

+ $p < .10$  \* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$

two columns of Table 3 examine this hypothesis and show mixed support. To begin, expectations of influence have no discernible effect on auditor decisions on specific tax issues, ruling out a self-fulfilling prophecy effect for this particular outcome measure. Some support, however, is found for the amount of taxes assessed. The unstandardized coefficient for taxpayer expectations on the amount owed is  $-.70$  ( $p < .05$ ). A comparison of this equation with equation (2) in Table 1 also shows a drop in the size of the prestige coefficient, from  $-2.62$  ( $p < .001$ ) when expectations are not included in the analysis to  $-2.23$  ( $p < .01$ ) when taxpayer expectations are included in the analysis. This result indicates

that self-fulfilling prophecies mediate to some degree the relationship between prestige and amounts of taxes assessed. They do not completely account for the prestige effect, however, because the coefficient for prestige remains significant.

A similar analysis was conducted to test the burden of proof explanation, using auditor acceptance of oral testimony as the dependent variable. The results suggest some basis in reality for the pessimism of low-prestige taxpayers about their inability to influence auditors in that prestige has a significant negative effect on auditor acceptance of oral testimony ( $B = -.58, p < .01$ ). These results indicate that taxpayers of a low occupational prestige face a higher burden of proof than either middle- or high-prestige taxpayers. At the bivariate level, when a low-prestige taxpayer is involved, auditors accepted oral testimony in 22% of cases, compared with 43% of cases involving middle-prestige taxpayers and 59% involving high-prestige taxpayers.

Evidence for the burden of proof hypothesis, however, is weaker than that for the self-fulfilling prophecy effect. Acceptance of oral testimony has only a borderline effect on auditor decisions for or against the taxpayer on specific issues ( $B = -.33, p < .06$ ) and an even weaker effect on the amount of money owed ( $B = -.92, p < .14$ ).

### In What Situations Does "Prestige" Make a Difference?

Analyses of the overall sample of audit cases provide modest support for self-fulfilling prophecies of expected influence but weaker support for the overall argument of the burden of proof hypothesis in explaining prestige effects on audit outcomes. Cultural capital effects, however, may be contingent in nature, more likely to be triggered in some audit situations than others. Research on small-group processes and qualitative interviews with practitioners suggest that the situational features of task ambiguity and the involvement of a representative may condition the likelihood that normative status expectancies will come into play.

#### *Task Ambiguity and the Burden of Proof*

A central feature of the burden of proof hypothesis is that, *absent other evidence*, individuals use status cues to make inferences about the competence and credibility of other people. The laboratory literature reports that people tend to rely less on status to infer credibility when there is more pertinent task-relevant information at hand (Freese & Cohen 1973; Webster & Driskill 1978). If the burden of proof hypothesis is true, then prestige should have stronger effects on auditors' deference in situations that require the auditor to make a credibility judgment in the face of ambiguous information. Moreover, acceptance of oral testimony

in turn should in ambiguous situations mediate prestige effects on audit outcomes.

The two control variables provide information useful to constructing a measure of task ambiguity. To begin, the basic compliance issues are legally straightforward: taxpayers are supposed to report all their income, keep adequate records to support claims for documentation, and correctly calculate the amount owed. The remaining two types of issues, eligibility for deductions and the application of complex tax laws, involve some degree of interpretation. Regarding eligibility issues, the auditor must answer questions such as, How much was a car used for business and how much for personal use? Was that trip to Hawaii a business trip or a vacation? Does that loss on a Schedule C reflect a poor year for business or an attempt to deduct the costs of a hobby? These questions all involve instances where the auditor must determine whether the “tax-deductible” label the taxpayer has applied to expenses is legitimate. No matter how complete the documentation, the auditor must still make judgments calls about past situations for which there is no definitive evidence about what really occurred or what the taxpayer’s intentions were.

Another element of task ambiguity concerns the quality of taxpayer records. According to qualitative interviews with auditors, the quality of records often serves as an important heuristic for deciding how to approach the audit. Taxpayers who have messy records automatically start off with a low degree of credibility. As several auditors pointed out, how can taxpayers accurately fill out tax returns without organizing their records? Conversely, taxpayers with highly organized records are granted more credibility; the visible signs of diligence and effort convey the impression of a desire on the part of the taxpayer to comply fully with the law. In such cases, there is less incentive for the auditor to spend time going through the records because the auditor knows the numbers are all going to add up.

More difficult are situations where the taxpayer’s records are of an intermediate quality. The taxpayer has taken some time and effort to maintain records, but there are gaps and lapses. The auditor is faced with a question: Do the gaps mainly reflect instances where the taxpayer made a reasonable “guesstimate” of legitimate expenses for which they forgot to get receipts, or are they fake or mislabeled expenses invented to lower tax liabilities? In such instances, the burden of proof hypothesis suggests that the auditor would use social status cues to fill in the gaps of knowledge. The auditor might reason that a physician’s records are lacking because “doctors are busy people” while thinking that

a truckdriver's mixed quality of records reflects low compliance norms.<sup>6</sup>

The burden of proof hypothesis predicts that occupational prestige will shape auditors' acceptance of oral testimony primarily in situations requiring interpretation. That is, the social status of the taxpayer will be used as a heuristic for judging the credibility of the taxpayer's position. If correct, then one would expect a significant and positive interaction between prestige and task ambiguity on auditor acceptance of oral testimony.

To test this hypothesis, we defined cases as evidencing task ambiguity if they either involved a mixed quality of records or involved only issues requiring interpretation. By this definition, 54% of audit cases had at least some task ambiguity. Table 4 reports results from two ordered probit analyses testing the interaction hypothesis. In the first equation, without the interaction ef-

**Table 4.** Prestige and the Burden of Proof in Tax Audits for Ambiguous Tax Issues, Unstandardized Coefficients from Ordered Probit Analyses (Standard Errors)

	Auditor Accepts Oral Testimony			
	Equation (1)		Equation (2)	
	Coefficient	SE	Coefficient	SE
Social capital:				
Occupational prestige	.58**	(.21)	-.26	(.32)
Education	-.16	(.14)	-.10	(.15)
Family business	-.32	(.34)	-.36	(.35)
Organizational size:				
1-9 employees	.16	(.29)	.30	(.31)
10 or more employees	-.42	(.58)	-.23	(.62)
Legal mobilization:				
Repeat player	.16	(.19)	.06	(.20)
Partnership/ S corporation	-.26	(.29)	-.29	(.31)
Complex audit issues	.16	(.20)	.04	(.21)
Representation	-.13	(.29)	-.05	(.30)
Ambiguity effects:				
Main effect of ambiguity	.18	(.27)	-2.68**	(.88)
Prestige ambiguity interaction	—		1.34***	(.40)
Intercept 1	-1.29*		.42	
Intercept 2	-2.06***		-.43	
Summary statistics:				
-2 log-likelihood chi- square	11.41		23.44**	
Gamma	.35		.49	
N of cases	87		87	

+ $p < .10$  \* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$

<sup>6</sup> Even though research audits conducted by the IRS's Taxpayer Compliance Measurement Program show physicians to be a high-noncompliance group, IRS auditors interviewed by the first author in the 1980s frequently explained doctors' noncompliance in terms of how busy they are, not in terms of motivations to lower taxes. Their attributions regarding truck drivers were less benign.

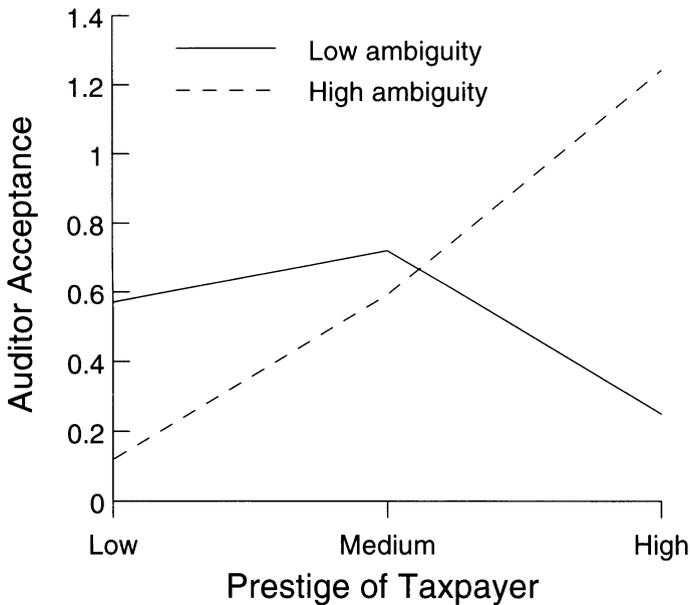


Fig. 1. Accepts oral testimony, by prestige and task ambiguity

fect, occupational prestige is the only variable significantly predicting auditor acceptance of oral testimony. The interaction term in equation (2), as expected, is positive and significant.

Figure 1 provides a visual picture of the observed interaction effect, using raw means of the six combinations of prestige and task ambiguity. The picture shows a strong linear effect of prestige on auditor acceptance of oral testimony under conditions of high task ambiguity, but not under conditions of low ambiguity. Using the results of the multivariate interaction analysis to calculate the slopes of the lines yields an unstandardized prestige coefficient of 1.08 under conditions of high task ambiguity compared with  $-.26$  under conditions of low ambiguity.

Moreover, acceptance of oral testimony mediates the effects of prestige on auditor decisions on individual issues for the subsample of audits involving high task ambiguity. For this group, when oral testimony is not in the equation, the unstandardized coefficient for prestige is  $-.67$  ( $p < .01$ ). Once oral testimony is included in the equation, the coefficient for prestige drops to  $-.34$  and becomes nonsignificant ( $p = .26$ ).

These results indicate considerable support for the burden of proof hypothesis, but only under conditions of task ambiguity. It is worth noting, though, that more than half of the audits in the sample evidenced task ambiguity, indicating that the advantages of "haves" in ambiguous conditions is not an isolated phenomenon.

*Representation and Audit Outcomes*

Prior research also suggests potential interactions between prestige and use of representation. In a qualitative study of Chicago tax practitioners, Kinsey (1987) found that the involvement of a tax practitioner changes interpersonal nature of interaction between taxpayers and auditors. Most practitioners prefer that taxpayers not attend meetings with the auditor. If the taxpayer does attend, practitioners instruct them to sit still and not volunteer any information or express any feelings. The practitioner seeks a situation in which communication occurs mainly between the practitioner and auditor, with the client playing a passive role.

This finding suggests that the involvement of a tax practitioner will dampen the effects of normative status-based expectancies that confer advantages to high-status taxpayers. Figures 2 and 3 take an initial look at this possibility, using raw scores to map out the mean outcomes for the six possible combinations of taxpayer prestige and use of representation. Both figures show relatively flat lines across the three levels of prestige in the outcomes of taxpayers who employed a tax practitioner to represent them during the audit. In contrast, a downward slope is observed for both types of audit outcomes among taxpayers who represent themselves. Figure 2 shows that auditors are especially likely to decide tax issues against lower-prestige taxpayers who represent themselves. Figure 3 shows that group with the lowest additional tax liabilities are high-prestige taxpayers who represent themselves.

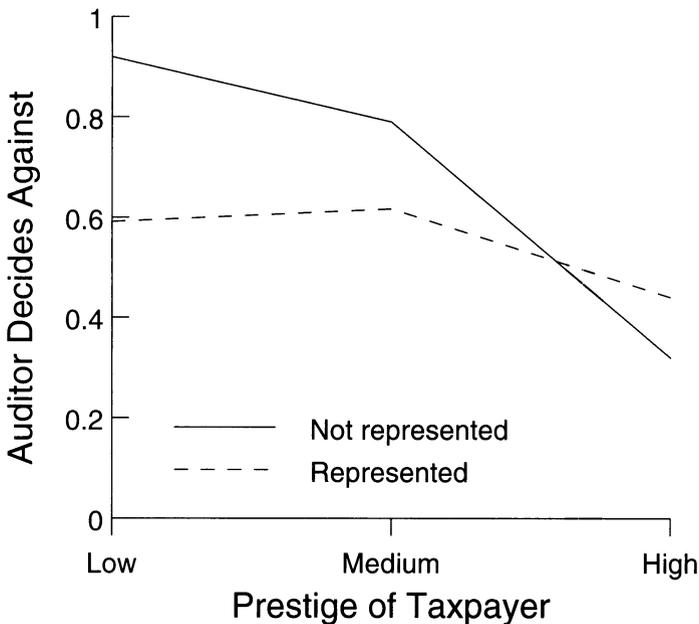


Fig. 2. Decides against taxpayer, by prestige and representation

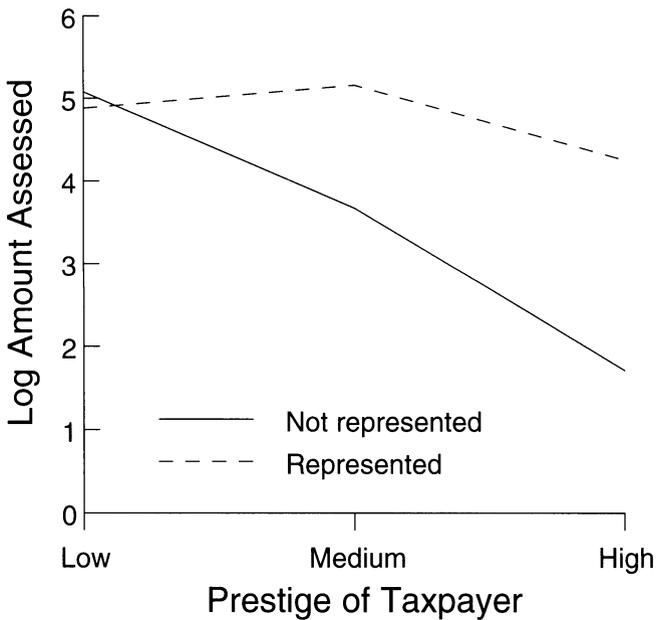


Fig. 3. Log amount assessed, by prestige and representation

Are these results significant? This issue was tested by entering a term for the interaction between prestige and representation to the basic model described in equation (2). The interaction term reached significance for both auditor decisions on specific tax issues ( $B = 1.62, p < .001$ ) and the log amount of additional taxes assessed ( $B = 2.77, p < .05$ ). Using the results of the multivariate analyses, predicted means were calculated and plotted for each of the six combinations of prestige and representation. The resulting plots are quite similar to the plots of the raw scores depicted in Figures 2 and 3.

#### Does Compliance Explain the Observed Cultural Capital Advantage?

The analysis so far supports the hypothesis that normative status-based expectancies create an advantage for high-prestige taxpayers that leads to more favorable outcomes than those for other taxpayers. When taxpayers represent themselves, higher-prestige taxpayers are more likely to influence auditors' decision-making and to experience lower standards of proof when making influence attempts than taxpayers in less prestigious occupations. An alternative explanation, though, is that high-status taxpayers who represent themselves are simply more compliant with the law in the first place. Because they know that their tax returns are accurate, they have positive expectations about the audit and thus do not feel any need to hire a representative. In this explanation, it is the compliance with the law, not the status of the individual, that explains both the greater self-confidence and bet-

ter outcomes of high-prestige taxpayers who represent themselves.

It is not possible to test this alternative interpretation directly. What pieces of evidence that do exist, however, fail to support the compliance hypothesis. To begin, high-prestige taxpayers, including those who represent themselves, are not noticeably more compliance-oriented than lower-prestige individuals. Two questions in the survey tapped into attitudes toward compliance. No prestige differences were observed in responses to the statement, "People should comply with tax laws even when they think the laws are wrong." Occupational prestige did affect responses to the other question, but in a direction *opposite* to the compliance hypothesis. Low-prestige taxpayers showed a stronger compliance orientation: 86% disagreed that "A person should comply only with those tax laws that seem reasonable," compared with 75% of middle-prestige taxpayers and 59% of the high-prestige taxpayers (chi square = 6.45,  $df = 2$ ,  $p < .05$ ). This pattern is consistent with other research, which finds greater willingness to question authority among higher-status persons (Kohn 1977).

Moreover, one would expect that highly compliant taxpayers would keep excellent documentation. Yet there are no significant differences, either main effects or interaction effects, on auditor ratings of the quality of taxpayer documentation by occupational prestige or use of representation. Visual inspection of a plot of the means shows that what trends exist run in a direction opposite to the compliance hypothesis. That is, auditors give the highest ratings on document quality to low-prestige taxpayers who represent themselves (mean = 2.36,  $SD = .74$ ), whereas high-prestige taxpayers who represent themselves are given the second-lowest rating (mean = 1.89,  $SD = .76$ ) among the six groups.

Insufficient documentation is also more likely to be an audit issue among high-prestige taxpayers who represent themselves than among other taxpayers. Over three-fourths (76%) of this group's audits involved documentation of deductions, compared with 29% to 58% for all other types of taxpayers. This group is also the most likely to have oral testimony accepted (77% of cases versus 16% to 50% for the other groups). Although these apparent interaction effects do not reach significance in multivariate analyses, the trends are all in directions that contradict the compliance hypothesis. If high-prestige taxpayers who represent themselves are more compliant than other taxpayers, then they would be going into the audit with impeccable documentation and would not need to have their word taken for it that their deductions and expenses are legitimate.

At the same time, the most convincing evidence for testing the compliance hypothesis is to examine the influence of prestige and representation on an independent, objective measure of compliance. Some researchers, including a National Academy of

Science panel on tax compliance research, have argued that the decisions of tax enforcers themselves constitute the most objective measure available (Roth et al. 1989; reviewed by Long & Swingen 1991). We think it is premature, though, to conclude that high-prestige taxpayers who represent themselves are more compliant than others simply because they receive favorable audit outcomes without some prior evidence regarding the reliability and validity of auditor decisions. Only one study, in the Netherlands, has examined this issue, and it found generally low levels of both reliability and validity (kappas in the .30 range). More specifically, an expert team disagreed with 48% of the decisions of frontline auditors, with most of the disagreements (39% of all cases) being in the direction of believing the auditor had been too lenient (Elffers et al. 1989). Our results also point to considerable leniency in the behavior of auditors. Moreover, the findings indicate that leniency is structured by normative status-based processes of social deference and influence that have distributional implications.

### Legal Complexity and Adversarialism in Tax Audits

The results so far suggest that auditors are especially lenient toward high-prestige taxpayers who represent themselves. Why don't they show the same leniency toward high-prestige taxpayers with representation? As noted earlier, one possible explanation is that tax practitioners disrupt the operation of normative status-based expectancies that lead lower-ranking government officials to show deference toward the high-status individuals with whom they interact. Auditors may find it hard *not* to accept oral testimony in face-to-face encounters with high-prestige taxpayers if refusing to do implies that they think a "respectable" person is lying. The tendency of practitioners to interpose themselves between the taxpayer and the auditor, however, may make it socially less awkward to deny claims made without proof.

Another possibility is greater adversarialism in audits involving high-prestige taxpayers with representation during the audit. The audits of this group of taxpayers are especially distinctive in terms of the legal complexity of audit issues and the potential for legal conflict. More than three-fourths (86%) of such cases involve at least one complex issue, compared with 14% to 41% of cases in the other five combinations of prestige and representation in the sample. This interaction between high prestige and representation on the complexity of audit issues is statistically significant ( $B = 1.01, p < .03$ ).<sup>7</sup>

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<sup>7</sup> The equation testing the interaction effect omits the compliance issues variable due to a methodological artifact resulting from its being constructed from the same pool of issues as the dependent variable. Because each is expressed as a percentage of total issues, they are by definition negatively correlated. Due to the nature of their construction, it does not make sense to analyze one as "causing" the other.

If audits involving high-prestige taxpayers who are represented are more likely to involve legal conflict over the meaning and application of complex tax laws, then one might also expect greater interpersonal tension in these audits due to normal social psychological processes of conflict polarization. Such appears to be the case: auditors give the lowest rating of interpersonal rapport (mean = 3.52,  $SD = .60$ ) to this category of taxpayers. In contrast, their highest rating of interpersonal rapport goes to high-prestige taxpayers who represent themselves (mean = 4.14,  $SD = .90$ ). In a multivariate analysis, the interaction between prestige and representation reaches statistical significance ( $B = -.16$ ,  $p < .04$ , one-tailed test). These results suggest that any interpersonal status advantages of represented high-prestige taxpayers are offset by greater adversarialism arising from their involvement in the gray areas of tax law.

## Discussion and Conclusion

Elite tax practitioners often characterize tax audits as arenas of reverse class conflict in which government bureaucrats—“have nots” with power—exact their revenge on the “haves” of society (Kinsey forthcoming). Do the “haves” come out ahead, or are they victims of overzealous tax enforcers? Our data indicate that some of them do come out ahead in tax audits and shed light on the processes by which that occurs.

Although prior research on status differences in legal settings has focused on the greater ability of people with resources to mobilize legally, we found little evidence of any positive effect of legal mobilization on the outcomes of frontline tax audits. Indeed, the biggest “winners” of tax audits were high-status taxpayers who showed few signs of legal mobilization. Neither use of representation nor involvement in the gray areas of tax law diminished the chances of owing more money.

The negative findings regarding legal mobilization, however, must be put in context: taxpayers active in legal tax avoidance do come out ahead if their tax returns are never selected for an audit in the first place. In fact, the odds are that any given tax return will not be audited; in 1985, for example, the percent of returns reporting more than a \$50,000 income audited by the IRS was 3.5%. Even if audited and assessed new taxes, cases involving gray issues have a greater chance of being reversed on appeal due to the necessity of considering the costs of litigation and the likelihood of winning in court at that stage of the enforcement process (Long & Swingen 1991).

Our findings point instead to cultural capital, not legal mobilization, as key predictors of taxpayer success in obtaining favorable audit outcomes. The results for occupational prestige

point to normative status-based expectancies as a key factor shaping the outcomes of frontline tax audits. Cultural capital for high-prestige taxpayers takes the form of greater poise and, depending on the circumstances, greater credibility by virtue of their position in social hierarchies. Our data analysis, however, provides little leverage for understanding the specific mechanisms underlying the results for “mom and pop” businesses. Their greater success in obtaining lower tax assessments cannot be attributed to a higher position in normative hierarchies of power and control, but instead may be based on more general sentiments about family businesses.

Regarding the effects for occupational prestige, evidence was found for both the self-fulfilling prophecy and burden of proof variants of interpersonal status processes, albeit in different circumstances and for different audit outcome variables. In general, high-prestige individuals enter the audit with the twin advantages of being used to exercising influence over others and being believed when they make claims without verification.

A tax audit, though, is an anomalous situation for a high-prestige person. It is one of the few settings in modern society where high-prestige persons have to account, sometimes in great detail, for past decisions to a person who typically has a lower occupational prestige than themselves. It is one in which lower-status person can say, “You have to prove it” and declare, “You got it wrong.” The unusual status configuration probably accounts for the diminished sense of control expressed by higher-status taxpayers after the audit was over. Despite their greater success in obtaining favorable audit outcomes, high-prestige taxpayers who represented themselves were no more likely than the other taxpayer groups to report that they had actually influenced the auditor’s decisionmaking. They left the audit feeling more powerless than before (see Kinsey forthcoming).

Research on regulatory law enforcement deals with similar status configurations, with corporate officials and business owners being subject to the authority of government inspectors. Much of the regulatory research advocates flexible approaches to enforcement that focus more on educating and securing cooperation than a top-down, legalistic “going by the book” style of enforcement (Bardach & Kagan 1982; Braithwaite 1985; Smith & Kinsey 1985). We suspect that it is precisely because of the status configuration of the regulatory enforcement situation that top down enforcement does not work well in regulatory settings. Strict adherence to the “letter of the law” by government officials would only exacerbate what is already a tension-producing violation of “normal” status arrangements.

The risk of more flexible forms of law enforcement, though, is the potential for distributional inequities to develop. The greater self-confidence of higher-prestige individuals gives them

an important advantage, and their credibility is rarely questioned when they represent themselves or in cases involving some degree of task ambiguity. Although we seriously doubt that tax auditors are consciously biased in favor of high-prestige people, congruent with other research on interpersonal status processes conducted in other settings, they automatically tend to grant more deference to people with high prestige than to others.

The introduction of a tax practitioner into the audit changes things. In contradiction to arguments that practitioners increase inequities in the tax system, our results indicate that they serve to level the playing field. In contrast to the strong prestige effects found among taxpayers who represented themselves, taxpayer prestige had no effect on auditor assertions of change or amounts owed for the clients of tax practitioners.

Why does the involvement of a tax practitioner have a leveling effect? First, practitioners often try to minimize interaction between taxpayers and auditors, thus disrupting normal social processes of influence and deference. Second, and perhaps more important, tax practitioners themselves are repeat players in the tax system. As Galanter (1974) argued, considering and setting precedents are a major concern of repeat players in the legal system. Auditor acceptance of aggressive legal positions might encourage practitioners to persuade their other clients to lower taxes by taking the same position. Similarly, accepting oral testimony on one case could create expectations of future leniency for other clients of the same practitioner. In addition, practitioners might not put as much effort into their procompliance function of training clients to keep good records if they believe that tax auditors will readily waive documentation requirements. For the auditor, giving an unrepresented taxpayer a break here and there does not have the same potential of undermining the overall enforcement of tax laws as being lenient with the clients of practitioners. Auditor motivation to be lenient is further diminished when taxpayers and their representatives stake out aggressive positions in the gray areas of tax law.

The findings of prestige differences among self-represented taxpayers point to a dilemma of tax law enforcement. According to the regulatory literature, shifting to a more legalistic mode of enforcement may antagonize high-prestige taxpayers. Tax auditors may be accepting oral testimony as part of an informal policy of trying to educate the high-prestige taxpayer and secure future cooperation, rather than adopting a punitive approach that would exacerbate status tensions and alienate the taxpayer. If so, then the findings reported here reveal a fundamental conflict between values of organizational effectiveness and the achievement of equity in tax law enforcement.

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