



Robert W. Wood

THE TAX LAWYER

TAXES 11/04/2015

If Clinton Foundation Fails To Amend Its Taxes, 'What Difference Does It Make?'

Earlier this year, the Clinton Foundation said it needed to amend its taxes. There just *may* have been millions of donations omitted, so Foundation operatives wanted to make it right. Despite the connection and all the speech income, the Foundation is distinct from the Clinton family. There was no suggestion that these monies would be taxed to the Clinton Foundation or to Mr. or Ms. Clinton. Even so, it was still an embarrassing error.

Now, the Foundation may not be fixing it after all, or at least some parts of what used to be the Foundation. There are reports that the [Clinton Foundation spinoff won't refile its tax returns](#). The Republican National Committee has even asked the [IRS to audit the charity's finances](#) over failing to amend and failing to report donations from foreign governments. It's a little confusing, like having multiple email devices.



Starting in 2010, the Foundation reported on three consecutive IRS tax returns that it received *no donations from foreign government sources*. It wasn't as if they didn't know *how* to report them. In prior years, the Foundation reported *tens of millions of dollars* in such donations. But things changed. Upon becoming Secretary of State, Mrs. Clinton promised that the Foundation would stop accepting donations from foreign governments. It turns out there were exceptions, and that the Foundation's tax filings with the IRS were less than transparent.

When the kerfuffle came to light, in early 2015, the Foundation's acting CEO [posted a statement](#) acknowledging the mistakes, and noting that the Foundation would amend its tax returns. Yet the Clinton Foundation spin-off now may not after all. The Clinton Health Access Initiative was separated from the Foundation in 2010. Whether its filings errors were bigger or smaller than those of the more prominent Clinton Foundation itself can be debated. But now it appears at this this branch will not amend. The rest of the Foundation is presumably still on track?

Of course, even if the Clinton Foundation follows through with its commitment to make corrective filings, it is worth asking if that cleanses the errors. It presumably wouldn't impact the ethics issues facing Ms. Clinton. As to the tax impact of an amendment, that depends too. Timing is often a big issue with amendments, and who discovers the error can be too.

In general, and subject to timing constraints, one can correct tax mistakes by filing amended returns. However, sometimes the IRS views amended tax returns as too little too late. Suppose that the IRS has started an investigation of a tax return. Suppose that the taxpayer gets nervous and then hurriedly files an amended tax return. The IRS may claim that the amended return was too little, too late. It can look like putting a fence around a backyard swimming pool after a child wanders into the pool and drowns.

The IRS says if you discover errors after you file, you *should* amend. One dividing line is what you knew when you filed your original return. If you knew the return was wrong when you filed it, you'd better fix it right away. On the other hand, if the errors were inadvertent and you discovered them only later, it is probably not as serious. In that case, you are generally not under an affirmative obligation to amend, but you still may want to. If you do, you can't cherry-pick and make only those corrections that get you money back, but not those that increase your tax liability. Most people suggest you must amend within three years of your original return filing.

To amend a personal tax return, you file a [Form 1040X, Amended U.S. Individual Income Tax Return](#), within the later of three years from the date you filed your original return, or within two years from the date you paid the tax. Amended tax returns are only filed on paper, so even if you filed your original return electronically, you'll have to amend on paper. If you are amending more than one tax return, prepare a separate 1040X for each return.

Does [amending your tax return](#) fix everything? Not always. Sometimes the IRS can still audit and even prosecute you based on the initial filing. For example, if the IRS catches you before you correct your mistake, an amendment may not fix it.

For alerts to future tax articles, follow me at [Forbes.com](#). Email me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.