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THE TAX LAWYER

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R.I.P. IRS? Not Hardly

It is tax filing season and whether you've started or not, it isn't pleasant. No one likes taxes, but they're a fact of life. And while tax collectors throughout history have never been popular, they do an important job. Despite all the terrible problems at the IRS, they mostly do an even-handed job.

That doesn't mean you should invite them in if they come calling or that you have to knuckle under to changes they propose to your tax bill. It also doesn't mean you should take undue liberties. In fact, if recent scandals teach you anything, it might be about the enormous power the IRS has. Anyone who is hiding income or assets from the taxman should consider how long they need to be looking over their shoulder.

Even if you aren't actively hiding anything and truly did your best, you might be worried. Taxes are complex, and the line between creative tax planning and tax evasion can be less clear than you might think. The IRS usually has three years after you file to audit you. But there are many exceptions. If you omit more than 25% of your income and in some other situations, the IRS gets double that time, six years.



(Photo credit: saturnism)

The time on civil tax fraud is longer—no limit. And there are other no-time-limit cases too. But most criminal tax situations, say involving a false return under-reporting income or willfully fail to file, linger for six years. That’s six years from filing or from the time you willfully failed to file.

In some cases, the statute is “tolled”—so stops running. For example, the statute stops running if the target is outside the U.S. or is a fugitive. Even when the alleged tax crime is committed can be hard to pinpoint. For example, does filing a false return start the six year clock?

What about failing to file by the due date? How about covering it up later, hiding money, or lying about it? Watch out for this, for it might occur many years after the tax return was (or should have been) filed. Thus, you might have to worry for well beyond six years. Some courts have concluded that the six year statute doesn’t even *start* to run until the last act of tax evasion.

So if you want to sleep well, don’t get too creative or too aggressive. The U.S. taxes all income wherever you earn it. So forget arguing that only foreign-source income is taxable. A variation of this bogus theory is what got Wesley

Snipes in trouble. In 2008, Mr. Snipes was [convicted of three misdemeanor counts](#) of failing to file tax returns, and spent several years in prison. Failing to file carries smaller penalties than filing fraudulently.

When possible, file once accurately and truthfully. Once you've filed your return, you can't be prosecuted for failing to file an *amended* return, even though something may happen *after* you file that makes it clear that your original return contained mistakes. On the other hand, if you *knew* the return was inaccurate when you filed it, watch out. You should amend it to make it accurate without delay.

The IRS rarely brings up an originally filed return in audits or criminal prosecutions once the taxpayer comes forward and attempts to correct it by filing an amended return. But to take advantage of this rule you need to be proactive. You need to make the correction *before* the IRS finds your error.

You can reach 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.