



Robert W. Wood

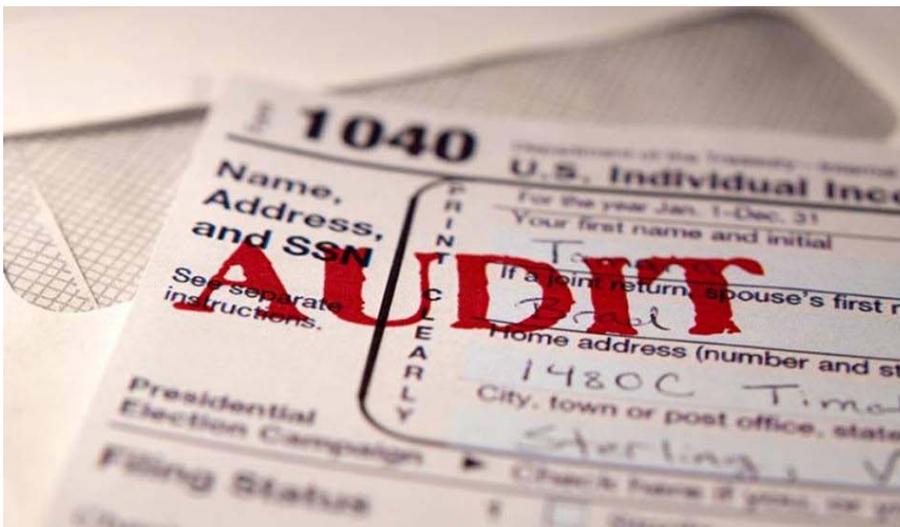
THE TAX LAWYER

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You Just Filed Your Taxes -- With An Oscar Best Picture-Size Mistake

If you just filed your taxes, you probably feel relieved. But what if you made a huge Oscar-style mistake? Perhaps you discover that you omitted the income from a Form 1099 (so you'll owe IRS more). Or maybe you forgot to claim a key deduction like your state taxes, mortgage interest, or a big contribution to charity. Fixing those mistakes might get you a refund. The error might be in your favor or the government's. Whatever the situation, if you already filed, it's not too early to amend. But *should* you?

The IRS says that math errors are not a reason to file an amended return. The IRS will correct math errors on your return. You normally also do not need to amend if you discover that you omitted a Form W-2, forgot to attach schedules, or made similar mistakes. The IRS is often able to process your return without such items. Alternatively, the IRS will request them if needed. So don't assume that a mistake means you *must* amend.



Surprisingly, one key rule relates to timing, and your intent when you filed. If you are evaluating whether to amend, ask yourself whether the return you filed was accurate to your best knowledge *when you filed it*. If it was, you are

probably not legally required to file an amendment. You might *want* to amend, but you probably do not *have* to amend. Next ask if you can correct it without amending. You usually can't correct a tax return without [amending it](#). But there's a handy exception for quick Oscars-style mistakes.

If you file a 'superseding' return before the due date of the *original* return (including extensions), it can take the place of the originally filed return. In effect, the "errors" of the first original return didn't happen. It can be used to make an election that cannot be made on an amended return, or to make certain other changes. But be careful with this unusual procedure. You might confuse the IRS and end up having a dispute about which of the "original" returns is valid, and whether an amended return actually functions as a superseding one. Apart from this odd exception, you can generally only fix mistakes by amending your return.

If you find you made a mistake, receive revised Forms 1099 or K-1, etc., the IRS says you *should* amend. But you are not actually *required* to file an amended tax return. If you do, though, you can't make only corrections that get you money back, but not those that increase your tax liability. Every tax return—including amended ones—are filed under penalties of perjury. So be accurate and complete. If you are going to amend, you do it by filing a [Form 1040X](#) within three years from the date you filed your original return, or within two years from the date you paid the tax, whichever is later.

You must use Form 1040X whether you previously filed Form 1040, 1040A or 1040EZ. Amended returns are only filed on paper, so even if you filed your original return electronically, you amend on paper. If you are amending more than one tax return, prepare a separate 1040X for each return. If you file an amended return asking for considerable money back, the IRS may review the situation even more carefully. As an alternative, you can apply all or part of your refund to your current year's tax. Normally the IRS has three years to audit a tax return.

You might assume that filing an amended tax return would restart that three-year statute of limitations. Surprisingly, it doesn't. In fact, if your amended return shows an increase in tax, and you submit the amended return within 60 days before the three-year statute runs, the IRS has only 60 days after it receives the amended return to make an assessment. This narrow window can present planning opportunities.

Some people amend a return just before the statute of limitations expires. If your amended return shows you owe more tax than on your original return,

you will owe additional interest and probably penalties too. Interest is charged on any tax not paid by the due date of the original return, without regard to extensions. The IRS will compute the interest and send you a bill if you don't include it. If the IRS thinks you owe penalties it will send you a notice, which you can either pay or contest.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.