

You Just Filed Your Taxes With A Big Mistake, Now What?

By Robert W. Wood

If you just filed your taxes — business, personal or both — you probably feel relieved. But what if you made a huge mistake worthy of best picture at the Oscars? Perhaps you discover that you omitted some income from a Form 1099 that you misplaced. Plainly, if you did that you will owe the IRS taxes on the omitted income, probably with interest and penalties.

Alternatively, perhaps you forgot to claim a key deduction such as your state income taxes, mortgage interest, or a big contribution to charity. If it is a tax return for your business or legal practice, maybe you bought a new Xerox machine or server and forgot to write off the cost. Fixing that kind of mistake might get you a refund, or a bigger refund if you already have one coming.

In short, your error might be in your favor or the government's. Whatever the situation, if you already filed, it is technically not too early to amend your tax return. But *should* you, and what are the pitfalls?

The IRS says that math errors alone are not a reason to file an amended return. For better or worse, the IRS will correct math errors on your tax return. You normally also do not need to amend your return 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 that you *must* amend.

Surprisingly, one key consideration relates to timing, and your intent at the time when you filed your original return — even though you later discovered an error. 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 it, of course, especially if you hope to get a fat check. But you probably do not *have* to amend. Next, ask if you can correct your mistake *without* amending. You usually cannot correct a tax return without amending it. However, there is a handy exception for quick Oscars-style mistakes that you fix right away.

It is called a superseding tax return, a kind of instant do-over. 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. (The Oscars accountants should be so lucky.)

A superseding tax return in some ways is better than an amended return. Why? A superseding return can be used to make an election that cannot be made on an amended return, or to make certain other changes. Some tax elections can only be made on original returns, not amended ones. The superseding return counts as an original return for this purpose.

However, 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. (Yes, the IRS sometimes can get confused with its own rules.) 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 *should* is not the same thing as *must*. In fact, 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. Put differently, you cannot cherry-pick which things to correct.

Remember, every tax return — including an amended return — is filed under penalties of perjury. So be accurate and complete. If you are going to amend, you do it by filing a Form 1040X. It must be filed 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 can only be 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. Of course, then there are audits, which are more likely with amended returns.

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 do not include it. If the IRS thinks you owe penalties it will send you a notice, which you can either pay or contest.

Bottom line? Be careful out there. Remember the Oscars.

Robert W. Wood is a tax lawyer with www.WoodLLP.com, and the author of “*Taxation of Damage Awards & Settlement Payments*” (www.TaxInstitute.com). This is not legal advice.