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THE TAX LAWYER

Amending IRS Tax Returns Has Extra Opportunities, Extra Risks

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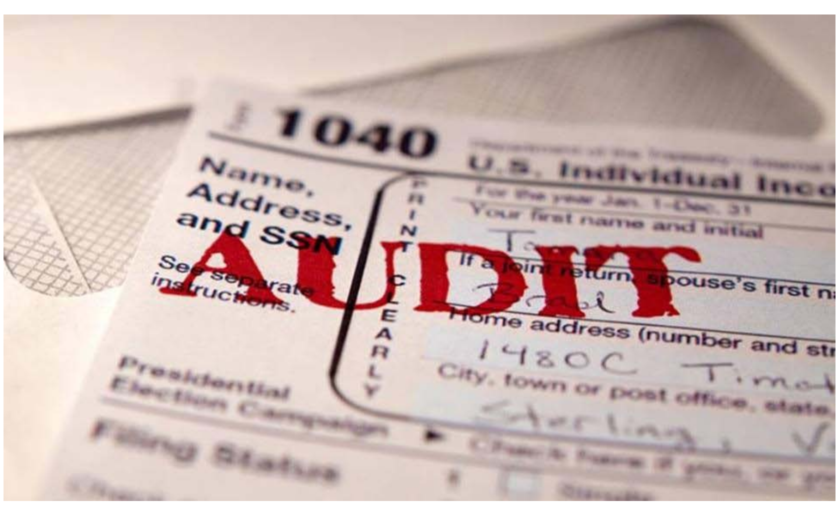
It is not too early to amend your taxes if you forgot something or made a mistake, but should you? It depends. You must file a tax return each year with the IRS if your income is over the requisite level. In fact, you can be prosecuted for failure to file (a misdemeanor) or for filing falsely (a felony). First, ask yourself whether the return you filed was accurate to your best knowledge when you filed it. If not, you should probably amend. If so, you are probably safe in not filing an amendment.

Of course, you may *want* to amend. Perhaps you realized you made a careless mistake, forgot your check or W-2, or left off the income from a Form 1099 you found in the bottom of a drawer. Math errors are not a reason to file an amended return, since the IRS will correct math errors on your return. Similarly, you usually shouldn't file an amended return if you discover you omitted a Form W-2, forgot to attach schedules, or other glitches of that sort. The IRS may process your return without them, or will request them if needed.



Correct vs. Amend? You usually can't correct a tax return without amending it. However, there is an exception, provided that you act quickly. 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 wary about this. The IRS can become confused if you try this unusual procedure. You may end up having a dispute (or at least correspondence or discussions) about which of the “original” returns is valid, and whether an amended return actually functions as a superseding one. Timing and proof of when you filed each one is important.

Beyond this exception, though, you can fix mistakes only by amending your return. If you later find that you made a mistake or you receive a revised 1099 or K-1, the IRS says you *should* amend. You are not under an affirmative obligation to file an amended tax return. 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. Actually, you must file 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. Amended returns are prepared on 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’ll have to 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 right before the statute expires. Plus, note that an amended return that does not report a net increase in tax does not trigger any extension of the statute of limitations.

If your amended return shows you owe more tax than you reported on (and paid with) your original return, you will owe additional interest and probably penalties too. Even though you might be amending a return from two years ago, the due date for your original return and for payment has long passed. 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.