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Five Ways The IRS Can Get Even More Time To Audit You



Tax returns are annual, and getting them filed also means starting the clock started on how long the IRS has to audit you. Once you file your return, when might you be in the clear? Your audit exposure is at least three years from when you file your return, but you might be at risk for years more. In fact, the time periods can be very long in some cases.

Tax lawyers and accountants are used to monitoring the duration of their clients' audit exposure, and so should you. If you want to watch the calendar until you are clear of audit, in most cases, that will be either three years. If you file *early*, do you shorten the audit period? Normally no, the IRS audit clock starts running on the *later* of your actual filing or the due date. If you file in January and your return is due April 15th, the audit clock starts to tick on April 15th. Here are some other rules.

If You Fail To File A Tax Return, or File Fraudulently

The IRS statute of limitations never starts to run if you do not file a tax return. There is nothing to start the time limit on audits to start to run, so the IRS can come after you with unlimited time. The same is true if you file fraudulently. For unfiled tax returns, criminal violations or fraud, the IRS can take its time. Even so, in most criminal or civil tax cases, though, the *practical* limit is usually six years.

If You Omit More Than 25% of Your Income

If you are thinking you only need to look over your shoulder for three years, that isn't always so. The usual three years is doubled, so [IRS can audit six tax years](#), if you omitted more than 25% of your income. If you overstate your cost basis on something you sell, that counts in the 25% calculation. If it has

the *effect* of understating your income by more than 25%, the IRS gets six years.

If You Forget Foreign Reporting Forms

The three years is *also* doubled if you omitted more than \$5,000 of foreign income (say, interest on an overseas account), even if you disclosed the account. Also, don't omit [Form 3520](#) for gifts or inheritance from foreign nationals, or [Form 8938](#) for overseas assets. If you skip one of these forms, the IRS clock *never even starts* to run. What other tax forms allow the [IRS to audit forever](#)? If you own part of a foreign corporation, it can trigger reporting, including filing an IRS [Form 5471](#). It is an understatement to say this form is important. Failing to file it means penalties, generally \$10,000 per form.

A separate penalty can apply to each Form 5471 filed late, incomplete or inaccurate. This penalty can apply even if no tax is due on the return. That is harsh, but the rule about the statute of limitations is even harsher. If you fail to file a required Form 5471, *your entire tax return remains open for audit indefinitely*. This override of the normal IRS statute of limitations is sweeping. The IRS not only has an indefinite period to examine and assess taxes on items relating to the missing Form 5471.

In fact, the IRS can make any adjustments to the *entire* tax return with no expiration until the required Form 5471 is filed. Think of a Form 5471 like the signature on your return. Without it, it really isn't a return. Forms 5471 are not only required of U.S. shareholders in controlled foreign corporations. They are also required when a U.S. shareholder acquires stock resulting in 10% ownership in any foreign company. The harsh statute of limitation rule for Form 5471 was enacted in 2010, part of the same law that brought us FATCA, the Foreign Account Tax Compliance Act.

If You Forget Your Signature or Alter Penalty of Perjury Language

The possibility that the IRS can audit forever is chilling. The potential for large civil penalties and perhaps even criminal liability can be real. Consider your audit exposure before you file. For example, if you don't sign your return, the IRS does not consider it a valid tax return. That means the three years can never start to run.

Another big no-no is if you alter the penalties of perjury language at the bottom before you sign. If you do that, it also can mean the tax return does not count. Some taxpayers forget to sign, or unwittingly change the penalties of perjury wording. Some other taxpayers just miss a form to end up in audit purgatory. An example of the latter can arise if you have an offshore accounts held by a company.

If You Give the IRS More Time To Audit You

Some people voluntarily give the IRS more time to audit. Why would anyone do that? It works like this. The IRS contacts you during an audit, or out of the blue, asking you to extend the statute. Most tax advisers say you should usually agree. If you say "no" or ignore the request, the IRS will assess extra taxes, usually based on an incomplete and quite unfavorable picture.

You might think that you drag your heels and fail to say yes or no, and that the IRS might forget about you. But this is something the IRS is very careful about. The IRS rarely misses issuing a Notice of Deficiency, and you usually will be worse off than if you agreed to the extension. There are exceptions to this rule, but relatively few. Get a professional to help you weigh your facts. Usually, failing to give the IRS more time will make your case tougher and the

result less favorable. There are many rules, and these are just [some of key IRS statute of limitation rules](#). Be careful out there.