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IRS Can Audit For Three Years, Six...Or Forever

In most cases, the IRS has three years to audit after you file your return. If the IRS shows up after that, they may be too late. Surprisingly, amending a return often [does not change](#) the three year limit. But many special rules can extend your audit purgatory.

The three years is doubled to six if you omitted more than 25% of your income. It's also doubled if you omitted more than \$5,000 of foreign income. Even worse, the IRS has no time limit if you never file a return. It is common to wonder whether reporting offshore accounts—or failing to—means an audit. How long must you wonder?

With foreign accounts, six years is typical, and in some cases, the IRS has no limit. An FBAR (also called FinCEN Form 114), is a disclosure form for reporting foreign accounts. FBARs have a separate audit period, generally six years. For unfiled tax returns, criminal violations or fraud, the limits can be longer. In most cases, the practical limit is six years, but for some information returns the [IRS can audit forever](#).

You might think that if you fix your tax returns or FBARs, you would reduce your audit time. However, the answer varies with IRS [disclosure options](#). The main IRS program for offshore accounts is the OVDP, and in that program, once your closing agreement is signed, you are *truly* done, with no audits thereafter. But with the IRS Streamlined programs, there is no closing agreement.



Both [Domestic](#) and [Foreign](#) Streamlined programs require three years of tax returns, six years of FBARs, and paying taxes and interest. You must certify under penalties of perjury that you were not trying to evade taxes. Overseas taxpayers can qualify for no penalty, while [domestic](#) taxpayers pay a 5% penalty.

Clearly, 5% is better than 27.5% in the OVDP, though the [percentage is not the only difference](#). The IRS can audit Streamlined submissions. How long depends on:

- Your overseas income;
- Your unreported income; and
- Whether you must file international information returns.

Each has a separate audit clock. If you have \$5,000 or more of overseas income (say, interest on an overseas account), the IRS can audit up to six years from your original filing. Likewise, if you have a “substantial understatement” of income—25% or more—the IRS gets six years. International information returns, such as Form 3520 for gifts or inheritance from foreign nationals, or Form 8938 for overseas assets, give the IRS three years from filing those Forms.

Streamlined filers can have a mix of these audit clocks. Say Albert, Betty, Clyde and Delores each timely filed 2011 returns on April 15, 2012. None filed FBARs (the 2011 FBAR was due June 30, 2012). They all honestly did not know they had to report overseas income or file FBARs.

Each has exposure on their 2011 tax return until at least April 15, 2015 (three years), and until June 30, 2018 for FBARs (six years). Suppose that each one goes into the Streamlined program (Foreign or Domestic), and submits their amended tax returns and FBARs on December 25, 2014. For simplicity, we only consider one tax year, 2011.

Albert had overseas income of \$5,000 in 2011. He didn't substantially understate his income; and he didn't owe international information returns for 2011. The last day the IRS can audit is April 16, 2018. The \$5,000 of unreported overseas income gives the IRS six years from the original filing, not three. So filing Streamlined didn't add or subtract audit time.

Betty had overseas income of \$4,999, but had a substantial understatement (25%) of income (Betty did not include a 1099 from her [independent contracting work](#)). She owed no international information returns for 2011. The last day the IRS can audit is **still** April 16, 2018, because the substantial understatement gives the IRS an extra three years. Like Albert, the Streamlined submission didn't add or subtract time.

Clyde had overseas income of \$4,999 for 2011, and no substantial understatement of income. However, a Form 8938 was due (but not filed) with his 2011 return. The last day the IRS can audit is December 25, 2017. The Form 8938 information return gives the IRS three years from filing that information return. Clyde shortened his audit period via the Streamlined program, since the statute would not have run until 3 years *after* he filed the Form 8938.

Delores had overseas Income of \$5,000 in 2011, a substantial understatement (25%) of income; and a Form 8938 was due (but not included) with her 2011 return. Delores triggered all three rules. The IRS can audit until April 16, 2018. Again, though, the statute on the Form 8938 would never run until she filed it, so she shortened the time via the Streamlined program.

The IRS pays close attention to audit deadlines. However, the Streamlined programs are still new so it is difficult to know when one is safe. The technical deadline in many cases may be six years, but in practice, the IRS is likely to audit sooner if at all. But whatever the final date, coming clean has fewer risks than staying quiet. Plainly, the OVDP is safest, making you bulletproof once it's done.

Yet despite the audit risk, the Streamlined program is viable for many for whom the OVDP may be overkill. For those who truly weren't [willful](#), the Streamlined program can clean up the past and get FBARs filed. Given the size of potential FBAR penalties—[exceeding your offshore account balance](#)--get them filed and behind you.

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