

Remember Penalties Of Perjury When Preparing Your Tax Returns

By Robert W. Wood

Most people don't prepare their own tax returns and look to professionals. The IRS statistics bear this out. According to IRS data, most U.S. taxpayers used paid preparers. In fact, even members of congress who debate and pass the tax laws generally do not—or cannot—prepare their own tax returns. That's hardly a surprise given how terribly complex taxes are. Despite repeated claims of simplification, the government has done an awfully poor job of simplifying anything. Year after year, with one overlay and exception after another, our system gets worse and worse.

In that sense, it might seem tempting to throw up your hands and not even try to look at your taxes. With over half our returns being prepared by someone else, it is no wonder that many taxpayers may feel tempted not even to look at their tax returns. That would be a big mistake. Even if you do not prepare your own, you should read and understand the return to the best of your ability.

After all, you must also sign it under penalties of perjury. That is important, and it can also impact how long the IRS has to audit. Tax lawyers and accountants are used to monitoring the duration of their clients' audit exposure, and so should you. Watch the calendar until you are clear of audit. In most cases, that will be either three years or six years.

But in some cases, even though you filed and *thought* everything was in order, the statute of limitations never runs. For example, if you don't sign your return, the IRS does not consider it a valid tax return. Perhaps forgetting to sign is less of an issue with electronic filing, where there's an authorization form that has to be signed before electronic filing. But if you do fail to sign as required, your normal three year audit period can never start to run.

Another big no-no is if you alter the penalties of perjury language at the bottom of the form before you sign. Don't do it. If you alter this wording, it also can mean the tax return does not count. These moves may sound like tax protester statements, but some well-meaning 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 account held by a company. If you miss one, the IRS can audit you forever.

Always review your return before filing, and alert the return preparer to any mistakes you discover. Today, with electronic filing, it is easier for taxpayers and their preparers to have almost no interaction. That can lead to mistakes. With a traditional paper filing, at least the taxpayer had to actually sign the return before mailing. That brought a certain amount of due diligence. You can claim you signed without reading, but that won't get you off the hook for penalties.

You should review the return, and the return preparer should ask the taxpayer to verify that all figures are correct, that the correct boxes are checked, and so on. With e-filing, there's no signature in the traditional "affix your John

Hancock" sense. Neither the taxpayer nor the preparer physically signs the return. The taxpayer has to sign a signature authorization form (Form 8879) that recites that the taxpayer has reviewed the electronic return, it is accurate, etc. This is just as important as signing, but this all happens before the return is submitted electronically, which makes sense.

In the old days, when there was a flurry of activity in the final days before a return was completed, at least it had to be printed out, and the taxpayer had to actually sign it. Now, there are often many last-minute changes being made. And, since the authorization form was signed days before, the final return that is submitted may be significantly different from what the client saw. The client may not be clear on exactly what is happening or what is filed. Yet the electronic filing counts as a signature for all purposes.

The tax law has been around since 1913, and the "I didn't read it" defense has been used with less than successful results. Courts have consistently ruled that taxpayers have a duty to read their returns to ensure that all income items are included. As early as 1928, courts held that even if all data is furnished to the return preparer, the taxpayer still has a duty to read the return and make sure all income items are included. *See Mackay v. Commissioner*, 11 B.T.A. 569 (1928).

The Tax Court has also stated that reliance on a preparer with complete information regarding a taxpayer's business activities does not constitute a defense to return penalties if the taxpayer's cursory review of the return would have revealed errors. *See Metra Chem Corp. v. Commissioner*, 88 T.C. 654 (1987). Be careful, review your return for accuracy, and allow time to catch mistakes. Double check to see that it is all there. After all, anything signed under penalties of perjury is serious.

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