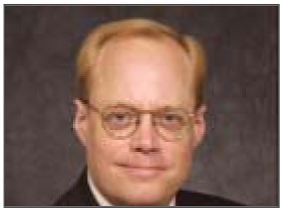
Forbes



Robert W. Wood
THE TAX LAWYER

Jun. 2 2011 — 9:36 am

What If Your CPA Altered Your Tax Return Without Telling You?

Happily, this doesn't happen often. But if it does, what should you do? It may depend on what the change is, how big it is, and whether you feel it was authorized. But it might surprise you to know that the IRS has considered the impact such a change can have on your tax filing.

The IRS says tax returns altered by a CPA without the client's knowledge are ***not valid***. That can cause no end of problems. In IRS Program Manager Technical Advice 2011-013 the IRS considered a CPA who had prepared about 700 returns, 450 of them being filed electronically.

As a way of (illegally) increasing client refunds, the CPA inflated the size of the charitable contributions claimed on the returns without the taxpayers' knowledge. The CPA also set up a refund anticipation loan account at a bank, so he could issue checks right away to clients, and could take part of it himself for return preparation.

When the IRS discovered this mess it had to address:

Is it a Return? Was each return on which the CPA claimed inflated charitable contributions without the taxpayer's knowledge a "tax return" or a nullity?

If Not, What About the Cash? If it didn't qualify as a return but the taxpayer got cash from the loan for the correct amount of his refund (less preparation fees), should the taxpayer receive ***another*** refund when the true return is filed?

Amend or New Return? Should taxpayers file a new or an amended return?

Not a Return! To constitute a valid tax return, your filing must:

- contain sufficient data to calculate tax liability;
- purport to be a return;
- represent an honest and reasonable attempt to satisfy the requirements of the tax law; and
- be executed under penalty of perjury. See *Beard v. Commissioner*.

Since the CPA increased the charitable deduction without the taxpayer's knowledge, the return signed by the taxpayer was not the document sent to IRS. That made the whole return a nullity—it wasn't signed under penalties of perjury.

These taxpayers were treated as simply not having filed ***any*** return. That meant they must file an accurate Form 1040, ***not*** an amended return on Form 1040X. What to do about the cash was another matter.

Some taxpayers got their refund anticipation loans. Then the IRS froze their refunds, so the financial institution demanded they repay the refund amounts. If the taxpayer received the loan in the correct amount, there was no overpayment. That meant no refund when the taxpayer's "true" return is filed.

However, where the refund was frozen by IRS and the taxpayer sent the refund to the financial institution, the taxpayer had overpaid his taxes. In that case, the IRS should send the correct amount of the refund directly to the taxpayer.

Bottom Line. Plainly, the CPA here was in major (criminal) trouble. But the innocent taxpayers had major problems too. Be careful in selecting your return preparer. Plus, remember the four requirements you must satisfy to have a valid return.

For more, see:

Should You Do Your Own Tax Return?

Taxpayer Advocate Service: Choosing A Return Preparer

Can You Fix The Tax Return You Just Filed?

Paper of E-File Your IRS Return?

Robert W. Wood practices law with Wood & Porter, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009, Tax Institute), he can be reached at wood@woodporter.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.