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THE TAX LAWYER

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What Triggers IRS Statute Of Limitations?

This time of year, we're all thinking about tax returns, whether or not we've started preparing them. See [Make Your Tax List And Check It Twice](#). Inevitably, we want our returns to slide through fine without a fuss. See [Ten Ways To Audit Proof Your Tax Return](#). But we also want to know when we can breathe a sigh of relief that our return can no longer be audited. Usually that's [three years after filing](#), though these days the IRS is pushing for [six years](#) in some contexts.

Especially in light of the three-year vs. six-year controversy, it's even more important than usual to know when to start counting time.

Filing Early. If you file early (say March 1), the statute runs from the due date (April 15).

What's Filing? This is pedestrian, but what counts as "filing"? It matters any time you're talking about the statute of limitations, so it isn't a silly question. For many these days, filing is hitting send, filing electronically. You should keep a print of everything, including the [IRS response](#).

If you use the mail—I'm still a fan of [mailing paper returns](#) when possible—it's [timely mailing](#). Whether you send via US Mail or by a private courier service like FedEx—keep proof of mailing! See [IRC § 7502 \(f\)](#).

That means certified mail return receipt requested, or a copy of the FedEx waybill and receipt. Private postage meters? You don't have proof of mailing if you use a private postage meter in your office.

Lost Returns? What if the IRS never receives your return? The rule that timely mailing is timely filing doesn't apply if the return never arrives. For that reason, you'll not only want proof you sent it but proof the IRS **received** it. See [IRC § 7502\(c\)](#). If the IRS loses it afterward, you'll be asked to provide a copy and to show that you sent it and the IRS received it.

What's a Tax Return? This sounds like a question worthy of Albert Camus, but taxes can be surprisingly [existential](#). One of the obvious prerequisites is signing. If you forget to sign, the IRS can treat you as not having filed. See [IRC § 6061](#). Also, your return must be [verified](#) under penalties of perjury, so don't try to modify the statement to that effect printed on the form.

In fact, the US Supreme Court enunciated the critical elements of a tax return needed to start the running of the statute of limitations. See [Zellerbach Paper Co. v. Helvering](#). Perfect accuracy is not necessary, and there are a surprising number of cases on how much you can fail to address and still have it treated as a return. Clearly, though, it needs to be signed and needs to represent an honest and genuine attempt to satisfy the law.

The IRS focuses on the basics. You must satisfy the basic signature requirements of IRC §§ [6061](#) and [6065](#). The IRS says an [unsigned tax return](#) is like an unsigned check. The failure to sign a return or deleting or altering the penalty of perjury statement constitutes a failure to make a proper return. See [Rev. Rul. 2005-18](#). The taxpayer must also provide sufficient information to enable the IRS to ascertain and assess the taxpayer's tax liability.

For more, see:

[IRS Statute Of Limitations – Is Your Return Safe?](#)

[IRS Statute of Limitations, Training 4213-021](#)

[IRS Statute of Limitations Processes and Procedures](#)

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