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What are the Time Limits for Assessing Additional Federal Tax and Filing a Refund Claim?

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The Internal Revenue Service (IRS) must follow the “statute of limitations” as stated in Internal Revenue Code (IRC) Section 6501 to “assess” additional federal tax. Likewise, taxpayers must seek a tax overpayment or refund within the statutory period stated in IRC Section 6511. In this article, we’ll answer some of the most common questions regarding when the IRS can assess additional federal tax and when taxpayers must file a refund claim.

WHEN DOES THE STATUTE OF LIMITATIONS FOR ASSESSING ADDITIONAL TAXES START?

Typically, the period during which the IRS can seek additional tax starts when the taxpayer files their tax return. A taxpayer “self-assesses” when the amount of tax is stated on the return, but tax assessment can also occur when the IRS creates a “substitute for return” under IRC Section 6020. (For example, when the taxpayer fails to timely file a return.) Assessment merely means that the IRS records the tax liability on its official ledger for each taxpayer. An assessment is significant because it is legally considered a debt of the taxpayer for which the IRS can commence collection activities, like placing a lien and levy on property.

> *Self-Assessment Example: The taxpayer reports on a timely filed return a tax liability of $10,000 and submits payment of $5,000. The $10,000 tax is automatically assessed and constitutes a tax debt of the taxpayer, despite only a partial payment. In this case, the IRS would seek to collect the balance due ($5,000) from the taxpayer under the collection rules.*

WHAT IS A TAX ASSESSMENT?

The IRS assesses tax by recording the amount owed in its official records. The assessment establishes the fact and amount of the tax liability that’s due to the IRS and starts the period during which the IRS can collect the amounts due and owing. Generally, the IRS may not lien or levy a taxpayer’s property until after an assessment is made.

There are three primary types of assessments:

1. A “summary assessment” occurs automatically when the taxpayer reports an amount of tax on a return.

2. A “jeopardy assessment” occurs when the IRS determines that the taxpayer may abscond with property that the IRS may need to lien and/or levy to satisfy a tax deficiency.

3. A “tax deficiency assessment” occurs after the IRS determines the amount owed by the taxpayer and follows its procedures to permit the taxpayer to challenge its determination (usually after an audit).

STATUTORY NOTICE OF DEFICIENCY (THE 90-DAY LETTER)

If the IRS audits a return and determines that the taxpayer owes additional tax, it generally cannot assess the tax before sending the taxpayer a statutory notice of deficiency, or the so-called “90 day letter.” The letter must be sent by certified or registered mail to the last known address of the taxpayer (which is usually the address listed on the last return filed with the IRS). If the taxpayer does not file a timely petition with the US Tax Court in response to the 90-day letter, the IRS may then assess the tax. If the taxpayer does file a timely petition, the IRS may not assess any tax until after there is a final decision by the Tax Court. As noted below, the filing of a petition with the Tax Court tolls the statute of limitations on assessment.

WHAT ARE THE TIME LIMITS IN WHICH THE IRS CAN ASSESS ADDITIONAL TAX?

Generally, the IRS must assess tax within three years from the later of the due date of the tax return or the date it was filed. There are numerous exceptions to the three-year rule, including periods during which the statute of limitations is suspended. Some examples include:

- The IRS can assess additional tax at any time if it can prove the taxpayer filed a fraudulent return or failed to file a return at all.

- If the taxpayer omits from their gross income an amount that should have been included in the return, which is more than 25% of the amount of gross income stated in the return, then the three-year period is extended to six years after the return was filed.

- The 90-day letter suspends the statute of limitations from the date on the letter for 90 days (the period is 150 days if the taxpayer has a foreign address).

- If the taxpayer files a petition in the Tax Court to contest the determination made by the IRS in the 90-day letter, then the statute of limitations is paused until the conclusion of the case plus 60 days after the final decision is made.

- The statute of limitations is paused while the IRS processes certain requests for tax relief, like an “Offer In Compromise” or an “Installment Agreement.”

A more detailed discussion of exceptions to the standard three-year rule, including international exceptions, can be found in our International Law Journal article, *Seeking Closure on Tax Positions: A Look at Tax Statutes of Limitation*.

EXTENDING THE STATUE OF LIMITATIONS

A taxpayer and the IRS can agree to extend the statute of limitations on assessment. An extension is voluntary on both parties and can be to a specific date or indefinite. An extension is obtained when the taxpayer and the IRS execute the applicable Form 872.

COLLECTION OF TAXES BY THE IRS

The IRS generally has 10 years after the date of assessment to collect tax, penalties and interest. However, this collection period may be extended in certain situations. For example, the period may be paused while the IRS considers installment agreements, offers in compromise and innocent spouse relief.

CLAIM FOR REFUND

To obtain a refund of a tax overpayment or tax credit, the taxpayer must file a “claim for refund.” A claim for refund typically takes the form of an amended return. Generally, the claim for refund must be filed within: (1) three years after the return is filed or (2) two years from the date a tax is paid. Unless the taxpayer files a refund claim within one of these periods, the IRS is not permitted to refund the tax. The extension of the statute of limitations on assessment generally extends the period in which the taxpayer can file a claim for refund. There are numerous exceptions to these general rules for items like foreign tax credits, bad debts and worthless securities.

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