Tricky Rules For Amending Tax Returns

Tax Section

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Amending returns can cause clients and practitioners needless anxiety if they do not fully understand the applicable rules. This short article describes those rules regardless of whether the amended return provides an addition to tax or requests a refund.

The first concern is the statute of limitations. Section 6501(a) generally provides a three-year statute for the IRS to assess additional tax. Therefore, the IRS generally has three years to initiate and conclude an audit. Although certain circumstances (substantial omissions of income and fraud) can increase this limitations period to six years or indefinitely, for simplicity this article assumes the statute is three years. The three-year period runs from either the due date (generally April 15th of the year following the tax year in question) or the date actually filed (if filed after the due date). Returns filed after the due date include returns filed on extension. One might think filing an amended return automatically starts over the three-year period, but that is not the case. Instead, the IRS is still generally bound by the original three-year period based on the filing of the original return.

There is a minor exception in Section 6501(c)(7). If an amended return is filed within the sixty-day period ending on the day on which the three-year statute expires, and the amended return shows the taxpayer owes additional tax, the period does not expire until sixty days after the receipt of the amended return. The statute specifically states the exception applies only where "the taxpayer owes additional tax." If the amended return provides for a refund rather than additional tax, the sixty-day rule does not apply.

If the amended return requests a refund, there are different rules. The deadline to file the refund claim is the same as the audit period—three years from the time the return is filed. Filing an amended return does not affect the statute of limitations where a refund is requested, and the filing of an amended return is treated automatically as a refund request. Once the IRS receives the amended return requesting the refund, it will decide whether to allow the request. Upon receipt of a disallowance of refund or the expiration of six months from the date on which the request is filed (if the IRS never responds), the taxpayer has a right to contest the refund disallowance via an appeal.

Although filing an amended return that requests a refund does not give the IRS any additional time to audit the return, the IRS does have one way to avoid paying the refund: offsets. The IRS, regardless of the statute of limitations, can examine the return for which the refund is requested to show the taxpayer owes additional tax that can offset the refund. This final IRS defense is limited to the amount of the refund requested. Thus, the taxpayer has nothing to lose by requesting the refund so long as the amended return is filed close to the expiration of the period of limitations. The most the IRS can do in such a situation is deny the refund by reason of offset. That would leave the taxpayer where it was to begin with, but now with a right to appeal the decision to the Tax Court.

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