



The Tax Lawyer

Ten Tips For Amending Your Tax Return

Robert W. Wood, 05.28.10, 7:25 PM ET

Journalist Lee Sheppard once remarked that a tax return is signed under penalties of perjury, and is not an opening offer!

That's true, but there are still plenty of times when you either made a mistake or discover something after filing that cries out for correction. You might receive a Form K-1 (or an amended K-1) from a partnership, LLC or S corporation after you filed your return. You might discover you omitted income, incorrectly reported your filing status, forgot to deduct all your business expenses or didn't take advantage of a credit for your new hybrid car.

Here are 10 things you need to know about amended returns.

No. 1: Amended returns are NOT mandatory.

This may surprise you, but you are not under an affirmative obligation to file an amended tax return. You must file a tax return each year with the IRS if your income is over the requisite level. In fact, you can be prosecuted for failure to file (a misdemeanor) or for filing falsely (a felony). As Wesley Snipes' misdemeanor convictions show, failing to file carries smaller penalties than filing fraudulently. But once you've filed your return, you can't be prosecuted for failing to file an amended return, even though something may happen after you file that makes it clear your original return contains mistakes. So first ask yourself whether the return you filed was accurate to your best knowledge when you filed it. If it was, you are probably safe in not filing an amendment.

Conversely, if you knew the return was inaccurate when you filed it, you should amend it to make it accurate without delay. The IRS rarely brings up an originally filed return in civil audits or in criminal prosecutions once the taxpayer has come forward and attempted to correct it by filing an amended return. But to take advantage of this rule, you need to be proactive, and you need to make the correction before the IRS finds your error.

Example: You file your original return April 15 and state you aren't subject to income taxes because they are unconstitutional and you are not a slave to the federal government. You had better file an amended tax return properly reporting your income and paying your tax before the IRS contacts you to tell you they disagree with your original return. (See ["Ten Tax Protestor Claims To Avoid."](#))

Recently the IRS issued [Notice 989](#), stating that independent contractors recharacterized as employees "must" file amended tax returns. Yet it's unclear that the IRS has the authority to change the "should" standard in its Regulations by a Notice, and in any case, this is only one setting in which the amended return dilemma can arise. For discussion, see ["Ten Things IRS Wants Workers to Consider When Contractors Become Employees," Vol. 9, No. 156, Daily Tax Report \(Aug. 17, 2009\), p. J-1.](#)

No. 2: You can't cherry-pick what you correct.

You don't have to file an amended return, but if you do, you must correct everything. This is the IRS version of "in for a penny, in for a pound." To use a different metaphor, you can't cherry-pick and make only those corrections that get you money back, but not those that increase your tax liability.

Example: You file your original return and believe it to be accurate. Six months later, after you've already received the \$3,600 refund you claimed, you discover you forgot to report a stock loss that would have netted you an additional \$1,000 refund. You also discovered that you under-reported your earnings from a partnership, because you just received an amended Form K-1 saying that instead of the \$50,000 of income you reported (from the first K-1), your share of the income was actually

\$150,000.

If you amend, you must correct both errors, not just the one in your favor. But you might be surprised to find you are not obligated to file an amended return, even though most tax advisers will tell you it's a good idea--that's because the IRS will probably send you a bill based on the revised Form K-1 the partnership sent you once its computers get around to matching that form against your Form 1040. (For more on computer matches, [click here](#).)

No. 3: Some errors don't merit an amended return.

Math errors are not a reason to file an amended return, since the IRS will correct math errors on your return. Likewise, you usually shouldn't file an amended return if you discover you omitted a Form W-2, forgot to attach schedules, or other glitches of that sort. The IRS may process your return without them, or will request them if needed.

There are certain parts of your original return that you simply can't change with an amended return. For example, you can change your filing status on an amended return from married filing separate to joint, or from qualifying widow(er) to head of household status. However, you cannot change from married filing joint to married filing separate after the due date for the original return (usually April 15) has passed.

No. 4: Timing counts.

Most people suggest you must amend within three years of your original return filing. Actually, you must file a [Form 1040X, Amended U.S. Individual Income Tax Return](#), within three years from the date you filed your original return or within two years from the date you paid the tax, whichever is later. This either/or test can give you extra time, but it is safer to amend within three years of your original return so there's no dispute.

But how soon is too soon to amend? You can file an amended tax return right on the heels of your original return if you like. However, if you are filing to claim an additional refund, you should wait until after you have received your original refund before filing Form 1040X. You may cash the first check while waiting for any additional refund.

No. 5: Only paper will do.

Amended returns are prepared on Form 1040X. You must use this form whether you previously filed Form 1040, 1040A or 1040EZ. Amended returns are only filed on paper, so even if you filed your original return electronically, you'll have to amend on paper. Label the top of the 1040X very clearly with the tax year you are amending.

No. 6: You must amend each year separately.

If you are amending more than one tax return, prepare a separate 1040X for each return. Mail each amended return in a separate envelope to the IRS "campus"--that's the IRS' new name for what used to be called "IRS Service Centers"--for the area where you live. The 1040X instructions list the addresses for these IRS campuses.

No. 7: Amended returns are more likely to be audited.

Few tax returns are actually audited, but tax lawyers must advise clients based on the assumption every tax return will be examined. Understandably, of course, taxpayers hope their returns will not be examined! However, amended returns are more likely to be examined than original returns. That should factor into your thinking.

Example: After filing your return you discover you could get another \$5,000 back by filing an amended return. Is it worth it? Are there items on the return you think might not pass muster? What if by trying to get \$5,000 back, it costs you \$100,000 more? See also point 2 above.

No. 8: Refunds can be applied to estimated taxes.

If you file an amended return asking for considerable money back, the IRS may review the situation even more carefully. As an alternative, you can apply all or part of your refund to your current year's tax.

Example: You received a large legal settlement two years ago and paid ordinary income tax (35%). Based on new advice, you want to file an amended return claiming capital gain treatment (15%), but you don't want to invite a dispute over this issue with the IRS. You also are about to make your next estimated tax payment for your current tax year. It may be wise to consider not requesting the money (or at least not all of it) back on your amended return. Instead, you can direct the IRS to apply the amount to your estimated tax payments for the current year. Every situation is different, but more thought about such issues is clearly appropriate with amended returns.

No. 9: The statute of limitations is kind to amended returns.

Normally the IRS has three years to audit a tax return. (See ["Even The IRS Has Time Limits."](#)) You might assume that filing an amended tax return would restart that three-year statute of limitations. Surprisingly, it doesn't.

In fact, if your amended return shows an increase in tax, and you submit the amended return within 60 days before the three-year statute runs, the IRS has only 60 days after it receives the amended return to make an assessment. This narrow window can present planning opportunities. Some people amend a return right before the statute expires. Plus, note that an amended return that does not report a net increase in tax does not trigger any extension of the statute of limitations.

Example: You file your 2007 return on April 15, 2008, claiming a \$2,100 refund, which you receive. On March 15, 2011, you file an amended 2007 return claiming additional deductions for charitable contributions and property taxes you forgot to claim on your original return, netting you another \$6,000 refund. One month later, April 15, 2011, the IRS' three-year statute of limitations expires. Because there was no increase in tax shown on your amended return, the IRS doesn't get more time.

No. 10: Don't forget interest and penalties.

If your amended return shows you owe more tax than you reported on (and paid with) your original return, you'll owe additional interest and probably penalties too. Even though you might be amending a return from two years ago, the due date for your original return and for payment has long passed. Interest is charged on any tax not paid by the due date of the original return, without regard to extensions. The IRS will compute the interest and send you a bill if you don't include it. If the IRS thinks you owe penalties it will send you a notice, which you can either pay or contest.

Conclusion

Amended tax returns are tricky. You should never take tax return filing obligations lightly, and your original return should always be as accurate as you can make it. But if you discover afterward that amendments are needed, make sure you think through the various ramifications of filing an amended return. As my father used to tell me when I helped in his workshop, measure twice and cut once.

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