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STATUTES OF LIMITATIONS 101

By Victor Sy, CPA, MBA

How long do you need to keep tax records? How long can the IRS audit your tax returns? How long can the government collect unpaid taxes? Here are a few basics on statute of limitations.

1. Statutes of limitations provide final dates after which neither the IRS nor you can be disturbed by the other. From an IRS perspective, the agency can no longer audit your tax return or collect what you owe. From your perspective, you can no longer claim a refund on an overpaid tax.
2. The general statute to audit you is three years after the return is filed.
3. The statute is extended to six years if you omit 25% of your gross income.
4. The statute to collect what has been established to be your tax liability is 10 years.
5. A personal tax return that is filed earlier than the deadline of April 15 is considered filed on that deadline. For example, a 2011 return filed on February 15, 2012, is considered filed on **April 17, 2012** with a statute expiration of **April 15, 2015**.
6. A personal tax return that was extended and filed on **October 15, 2012** is considered filed on that date with statute expiring on **October 15, 2015**. (TIP: If you have some sensitive issues that you don't want disturbed, file on time so as not to give the IRS and extra six months to snoop around).
7. There is no protection from the statute if the IRS does not receive your tax return. There is no protection even if you filed a return but the IRS did not receive or claims not to have received your return!
8. Of course not, but this how the law is written. (TIP: Mail via certified or register mail especially if your return contains some critical income or deductions).
9. There is no statute if you do not file a return. They can audit you anytime - even after three or six years after filing deadline. The three years starts only after a timely filing.
10. There is no statute for false or fraudulent returns. *Nada*.
11. If you want statutes to protect you but are not ready to file, file anyway. File a processable return that bears your signature. Provide sufficient data for the IRS to ascertain and assess your tax liability. Remember that your return does not need to have perfect accuracy. Just show an honest and genuine attempt to comply with the law. This is my message to non-filers who have not filed because of incomplete records.
12. If the IRS identifies you as a non-filer and you do not file after their demands, they can file a substitute return for you. Believe me, that return will be estimated on the high side, pardon me, on the very high side, resulting on a tax due approaching 200% of what you actually owe. Add penalties and interests and, Houston, you have a problem.
13. Filing a gift tax return is advisable even if not required. It starts the running of the statute of limitations.
14. An estate or decedent's estate may also request for a prompt assessment within 18 months.
15. The executor of an estate can also request for discharge from personal liability within nine months after the request is filed. It does not shorten the three-year statute but relieves the executor of personal liability.
16. What if you are under examination and the agent wants you to extend the statute? Should you extend or not? Well, if you do, you are just giving the IRS more time to get you. If you don't, they will bypass appeals (by not issuing a 30-day letter) and go straight to Tax Court with a notice of deficiency. This could get expensive. Here is my recommendation: Unless there are unusual circumstances, agree to the extension especially if you have good chance at settling in appeals. You will be asked to sign either Form 872 or Form 872-A. Go with **Form 872 that expires at a specific future date**. **Avoid 872-A which is open-ended and has no expiration period**.

This concludes our Statute of Limitations Course 101. Good day ☺