



IRS Tax Audits: Assessment of Tax/Collection

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IRS Tax Audits: Assessment of Tax/Collection

Under IRC 6501(a), the amount of tax imposed shall be assessed within 3 years after the tax return was filed (or 3 years after the date on which any part of such tax was paid). Effectively, the IRS has 3 years to audit a filed tax return (tax paid) "assess" additional tax due, and seek collection of additional tax due. The 3-year basic assessment statute of limitations rule has two primary exceptions:

- 1) 6 years after the tax return is filed for an omission of 25% or more of gross income;
- 2) "Forever" in the case of civil tax fraud and/or failure to file tax returns.

The general rule of 3 years to assess tax is subject to the following exceptions under IRC 6501 (c):

- 1) False tax return (fraudulent tax return): tax may be assessed at any time (IRC 6501 (c) (1));
- 2) Willful Attempt to Evade Tax: tax may be assessed at any time (IRC 6501 (c) (2));
- 3) No tax return filed: tax may be assessed at any time (IRC 6501 (c) (3));

4) Extension by agreement: if the secretary of the treasury and the taxpayer consent in writing to extend the period for assessment the tax may be assessed at any time prior to the expiration of the period agreed upon (IRC 6501 (c) (4));

5) Under IRC 6501 (c) (7) there is a special rule for amended tax returns as follows: "Where within the 60 day period, ending on the day in which the time prescribed for the assessment of tax would otherwise expire "the Secy. of Treasury" receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period of assessment of such additional amount shall not expire before 60 days after the Secy. receives the amended tax return";

6) Under IRC 6501 (c) (8)(A), failure to notify the Secy. of Treasury, the time for assessment of any tax with respect to any tax return shall not expire before the date which is 3 years after the date on which the Secy. is furnished the information required to be reported. If the failure to furnish information is due to reasonable cause and not willful neglect, (8) (A) shall apply only to the items related to willful neglect (IRC 6501 (c) (8) (B));

7) Under IRC 6501 (c) (9), gift tax, if a gift is not shown on a filed gift tax return, the tax may be assessed at any time;

8) Under IRC 6501 (c) (10), if listed transactions not included on tax return (required under IRC 6011), tax may be assessed 1 year after the earlier of: the date the on which the Secy. is furnished the information required (10 (A)); the date that a material advisor meets the requirement of IRC 6112;

9) Under IRC 6501 (e), if taxpayer omits from gross income an amount properly includible in income and either: such amount in excess of 25% of the amount of gross income stated in the return or such amount is attributable to one or more assets required to be reported under IRC 6038 (D) (foreign financial assets, Form 8938) and is in excess of \$5000, the tax may be assessed within 6 years after the tax return was filed ((e)(1(A)(i)).

