

# IRS Statute Of Limitations Presentation

Learn about the three statutes of limitations and the strategies to best serve your clients.



Roger Nemeth, EA

- Started managing tax franchises in 2006.
- Developed Audit Detective in 2010.
- Qualified as an N.T.P.I. Fellow in 2015.
- Worked as a programmer for the largest Tax Resolution Company integrating automated transcript systems into workflow programs.
- Assisted in the downloading and research of over 30 million transcripts.
- To date our software has been used to download just under one-fifth of a billion transcripts.



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## **Presentation Overview**

This presentation will cover the IRS Statutes of Limitations. The three Statutes are Assessment (ASED), Refund (RSED), and Collection (CSED).

The Statutes are very clearly defined, but certain events can extend them. These events are referred to as tolling events and can complicate the Statute Calculations.

The presentation will cover calculating Statutes and contesting them with the IRS.

The focus of this presentation is on the individual account, but some business rules will be covered as well.

# Disclaimer

I have never put a disclaimer like this on any of my presentations before, but in this case I believe it is warranted. There are conflicting statements between the IRM and Revenue Rulings and some unclear verbiage in the code as well. My advice is to always make a claim for refund or file a return before the Due Date or Timely Filed Date when possible. Please do not interpret this presentation or presented examples as an excuse to skirt the rules as you may cost your client significant money.....

# Disclaimer cont'd

BUT. Thanks to Murphy's Law I have personally observed on multiple occasions where a taxpayer comes in that grey area time frame between the due date and the extended due date from a look back event. In those cases if you choose to appeal a denial this presentation will help you with your position.

## Handout Overview

- Several IRS Revenue Rulings that have specific examples of RSED scenarios.
- Power Point Summary.

## The Next Webinar

- My next webinar will cover how to identify and contest incorrectly reported IRS tolling events.
- LG Brooks will be the co-presenter.
- The tentative date for that presentation is: June 13, 2019

# What Is “Statute Of Limitations”

IRS IRM 25.6.1.2 (10-01-2001)

## What is a Statute of Limitation

1. A statute of limitation is a time period established by law to review, analyze and resolve taxpayer and/or IRS tax related issues.
2. The Internal Revenue Code (IRC) requires that the Internal Revenue Service (IRS) will assess, refund, credit, and collect taxes within specific time limits. These limits are known as the **Statutes of Limitations**. When they expire, the IRS can no longer assess additional tax, allow a claim for refund by the taxpayer, or take collection action. The determination of Statute expiration differs for **Assessment, Refund, and Collection**.

## Layman's Definition

The Statutes are deadlines, defined by law, that affect the taxpayers debits and credits on their IRS Accounts known as Modules or Periods.

## What Was The Due Date in 2018?

In 2018 we had an unusual situation:

- From IRS.gov IR-2018-01, Jan. 04, 2018
  - In 2018, April 15 falls on a Sunday, and this would usually move the filing deadline to the following Monday – April 16. However, Emancipation Day – a legal holiday in the District of Columbia – will be observed on that Monday, which pushes the nation’s filing deadline to Tuesday, April 17, 2018. Under the tax law, legal holidays in the District of Columbia affect the filing deadline across the nation.
- On Tuesday April 17, 2018 the IRS computer’s crashed and the IRS extended the filing deadline to Wednesday April 18, 2018 (IR-2018-100, April 17, 2018).

**Presentation Note:** The author has not found any authority in the IRM or IRC that gives the IRS the ability to extend the filing deadline due to a “computer glitch”. This scenario does not seem to be addressed under the SSLH Rule either.

## Due Date Definition

For individuals:

26 U.S. Code § 6072. Time for filing income tax returns

(a) General rule

In the case of returns under section 6012, 6013, or 6017 (relating to income tax under subtitle A), returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the 15th day of the fourth month following the close of the fiscal year, except as otherwise provided in the following subsections of this section.

25.6.1.6.4 (10-01-2018)

Statute of Limitations Chart for Tax Returns

1. 1040. 1040A, 1040EZ – Due Date - 3-1/2 Months after end of taxable year (calendar year April 15th)

## Due Date Versus Filing Deadline

- The Due Date is the statutory date the return is due.
- The Filing Deadline (aka Timely Filed Date) is the final date a return can be filed and still be considered timely.
- The Due Date is a Statutorily Defined Term and does not change.
- The IRS can extend the date which the return is considered timely, but it can not “extend” the due date.

**Presentation Note:** There will be additional information in this presentation as well as specific examples.

## Substitute For Return (SFR)

**IRS IRM 4.4.9.6.1 (05-08-2012)**

### **Statutes**

The posting of the SFR does not set the ASER, RSED, or collection statute expiration date (CSED) Master File date.

- This statement in the IRM leads to confusion about how an SFR affects the Statutes.
- The SFR will be discussed in each assessment section.

## **Importance Of The Return Filed Date**

**The ASED and RSED rely on when and if the  
original return filed date is.**

**The CSED relies on the Assessment Date.**

## **When Is A Return Considered Filed**

**IRS IRM 25.6.1.6.15 (10-01-2018)**

**When a Document Is Treated As Filed Under the IRC**

1. In general, a document is filed on the date that it is received at the place designated for filing by the Service.



## Easiest Way To Determine The Return Filed Date

On the Account Transcript presence of a 150 Tax return filed transaction and then look at the return due date or return received date whichever is later

CODE	EXPLANATION OF TRANSACTION
150	Tax return filed

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER)	Apr. 15, 2013
PROCESSING DATE	Apr. 01, 2013

**NOTE:** The processing date is often confused with the filing date. The processing date has to do with the movement of money such as the refund or applying payments to the Department of the Treasury.

## Exception To IRS System Statutes

In October 2018 the IRS updated IRM section 25.6.1.6.14 Criteria for Establishing a Statute of Limitations Period. This change is significant in that it allows the IRS to override the return received date in their system. The following two points highlight the changes:

1. The IRS now applies the Beard Test (See *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), aff'd 793 F.2d 139 (6th Cir, 1986)) to determine if the return constitutes a tax return.
2. If there is a tax return determined to be an ID Theft return (A return not filed by the individual or business whose TIN it is).

**Presentation Note:** The author believes the IRS was using this criteria as a point of policy prior to the IRM change. The update better defines what is a return by citing the Beard Test from case law and how the IRS addresses ID Theft cases.

# Exception To IRS System Statutes

## 25.6.1.6.14 (10-01-2018)

### Criteria for Establishing a Statute of Limitations Period

1. The Received Date does not necessarily establish the filing date. The filing date is established after applying IRC rules. IRM 25.6.1.6.15, When a Document Is Treated As Filed Under the IRC, for rules which may override the Received Date. If a return is received by the Service with insufficient information, the Service might determine it does not constitute a valid return. The criteria for determining whether a return is valid are as follows:

- There must be sufficient data to calculate the tax liability shown on the return (supporting schedules and/or forms)
- The document must claim to be a return (name, address, TIN)
- An honest and reasonable attempt is made to satisfy requirements of the tax law
- Must be executed under penalties of perjury
- See *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), aff'd 793 F.2d 139 (6th Cir, 1986)

# Exception To IRS System Statutes (Cont'd)

## 25.6.1.6.14

2. The taxpayer must sign the return under penalties of perjury. If a return is received unsigned, the Statute of Limitations on Assessment (ASED) does not start until a signed return is received.

Note:

Unsigned income tax returns will not be accepted for original processing. An unsigned tax return is not a valid tax return. The unsigned tax return will be returned to the taxpayer requesting that the taxpayer sign the return and resubmit for processing. This decision is reflected in Policy Statement P-3-5 (Approved 07-26-2011), in IRM 1.2.12.1.16.

## Exception To IRS System Statutes (Cont'd)

### 25.6.1.6.14

3. There are two main types of Identity Theft:

- a. Employment Related Identity (ID) Theft- Is when the taxpayer used someone else's SSN and possibly other personal information for employment. The taxpayer should file a return under an IRS Individual Taxpayer Identification Number (ITIN). If the taxpayer files a return reporting income from a verifiable income source and the return meets "the valid return " criteria stated above in paragraph (1), the ASER for this type of return is still valid as to that taxpayer even if the taxpayer files the tax return under someone else's SSN. If the statute of limitation for assessment is about to expire or is expired for the reprocessing of the ID theft tax return, you should reprocess the ID theft tax return using the procedures stated in IRM 21.5.2.4.23.4, Statute Imminent Documents.
- b. Tax Related Identity (ID) Theft - Is when the bad taxpayer files a tax return under someone else's identity reporting false income from an unverifiable source in order to get a false refund. The income tax return in question does not meet the "valid return" criteria stated above in paragraph (1). The ASER shown on that tax return is not valid. The Statute of Limitations on Assessment (ASER) does not apply on this type of ID theft case. The procedures stated in IRM 25.25.4.8, Identity Theft CAT 7-ID Theft Return Posted/ Good Return Posted- Lost Refund Process, must be used when you have both good and bad taxpayers returns or just the bad taxpayer's return that needs correcting. Also, you must disregard any instructions for EFDS STARS or IRS Number used in reprocessing a tax return that is stated in these procedures.

Note:

Do not forward any Unsubstantiated Income Identity (ID) Theft cases to the statute team.

## Easiest Way To Determine The Return Filed Date (SFR)

If you see the transaction 150 Substitute tax return prepared by IRS the best way to find out if an original return was filed and the date of filing is to call the IRS. Some tips to determine if an original was filed after an SFR:

- If the number of exemptions is greater than 1.
- If the filing status is not Single or Married Filing Separately.
- If you see the transaction on the account transcript: Prior tax abated.

Even if you can determine if an original return was also filed you will need to call the IRS to determine the file date.

## Early Filed Return Rule

**25.6.1.6.15 (10-01-2018)**

### **When a Document Is Treated As Filed Under the IRC**

1. In general, a document is filed on the date that it is received at the place designated for filing by the Service. See below for exceptions to this general rule.
  - a. Early-filed Tax return. A tax return that is filed before the due date (determined without regard to any extension of time for filing) is considered filed on the due date.
  - b. Extended Due Date. An extended due date is not treated like the regular due date. The filing is not considered early when the taxpayer does not use the full extension period. A timely return received before the end of the extension period (including postponement for disaster relief and combat zone) is considered filed on the received date, not on the extended due date.

Important!!!! For purposes of RSED the extension date is considered the original return filed date if the return was filed on or before this date.

## Early Filed Return Rule Examples

**Example 1:** If the due date is April 15, 2015 and the taxpayer files on March 1, 2015 the return filed date is considered April 15, 2015.

**Example 2:** If the taxpayer files an extension until October 15, 2015 and taxpayer files on March 1<sup>st</sup>, 2015 the return filed date is considered April 15, 2015.

**Example 3:** If the taxpayer files an extension until October 15, 2015 and taxpayer files on June 1<sup>st</sup>, 2015 the return filed date is considered June 1, 2015.

## Timely Mailing Rule

**25.6.1.6.15 (10-01-2018)**

**When a Document Is Treated As Filed Under the IRC**

2. Timely Mailing Rule:

- a. In general, an original tax return or a claim for refund that is received after a due date (including an extended due date), but that is postmarked (or that is marked by a designated Private Delivery Service (PDS)) on or before the due date is deemed to be filed on the date of the postmark (or designated PDS mark). A document filed with an authorized electronic return transmitter is deemed to be filed on the date of the electronic postmark given by the electronic return transmitter per Treas. Reg § 301.7502-1(d).

## Saturday, Sunday, Legal Holiday Rule (SSLH)

**25.6.1.6.15 (10-01-2018)**

**When a Document Is Treated As Filed Under the IRC**

3. Saturday, Sunday, or Legal Holiday (SSLH) Rule.

- a. In general, when the last day for filing falls on a Saturday, Sunday or legal holiday and the taxpayer actually filed by the next succeeding day which is not a Saturday, Sunday, or legal holiday, the tax return or claim is considered to be timely filed on day received. For example, when the April 15 falls on a Sunday, section 7503 extends the due date of income tax returns to Tuesday April 17, because Monday April 16, is a legal holiday. Section 7503 does not deem a different filing date when a filing is actually received by the next succeeding day. For example, a Form 1040 received on Tuesday, April 17 is considered filed on Tuesday April 17. See Rev. Rul. 81-269, 1981-2 C.B. 243 (at Situation 2).

# Legal Holidays Affecting Statute Dates

**25.6.1.6.18 (10-05-2017)**

## **List of Legal Holidays**

- a. The term "legal holiday" means a legal holiday in the District of Columbia and in the case of any return, statement, or other document required to be filed or any act required under authority of the law to be performed at any office of the U.S. or agency located outside the District of Columbia, the term "legal holiday" also means a statewide legal holiday in the state where such office is located. See IRC § 7503 for more information on this issue.

## List Of Legal Holidays

January 1-New Year's Day  
 3rd Monday in January—Martin Luther King Jr. Day  
 January 20-Inauguration Day (every 4th year)  
 3rd Monday in February—Washington's Birthday  
 April 16 - Emancipation Day in Washington D.C.  
 Last Monday in May—Memorial Day  
 July 4-Independence Day  
 First Monday in September—Labor Day  
 Second Monday in October—Columbus Day  
 November 11-Veterans Day  
 4th Thursday in November—Thanksgiving Day  
 December 25-Christmas Day

## SSLH Rule Examples

**Example 1:** If the filing deadline is April 18, 2017 and the taxpayer files on April 14, 2017 the return filed date is considered April 15, 2017.

**Example 2:** If the filing deadline is April 18, 2017 and the taxpayer files on April 18, 2017 the return filed date is considered April 15, 2017 (this is what will show on the transcript). However for purposes of the ASSED and RSED, the Return Filed Date is April 18, 2017.

**Note:** Unless you filed the return or the taxpayer knows they filed during the SSLH rule you will not know. Always treat the return filed date on the transcript and then research it only if it matters.

## Assessment Statute Expiration Date (ASED)

- The ASED defines how long the IRS has to assess tax for a specific module/period.
- In most cases the ASED is calculated as 3 years after the original return received date (not postmark date unless it arrives after the due date and was postmarked on or before the due date) or return filed date whichever is later.
- The ASED does not start until an original return is received.
- An SFR is not considered an original return (Rare exception is if the taxpayer signs the response and returns it to the IRS).

## Common ASED Tolling Events

- Filing amended Return within 60 days of ASED.
- Voluntary extension of ASED.
- Joint return after filing MFS.
- Fraudulent Return.
- Under reporting of tax.
- Statutory Notice of Deficiency (90 Day Letter)

## Uncommon ASED Tolling

There are uncommon tolling events and ASED extensions listed under this IRM sections, but do not apply to normal cases or are obscure an rarely used. This presentation will only cover the common tolling extensions previously listed.

- 25.6.1.9.5 (11-01-2004)  
Special Assessment Periods- Related to Return or Item On Return
- 25.6.1.9.6 (11-01-2004)  
Assessments Period - Taxpayers in Special Situations
- 25.6.1.9.7 (11-01-2004)  
Assessment Period- Special Types of Taxpayer Status

Examples: Presidentially Declared Disaster Area & Combat Zone



## Amended Return Summary

- If an amended return, with an assessment, is received by the IRS within 60 days of the ASED, the ASED is extended for 60 days after the received date.
- The IRS defines the received date as the date received, not the postmark date (no exception).
- Example: If the ASED is 4/15/2017 and an amended return, with a new assessment, is received on 4/1/2017 then the adjusted ASED would be 5/31/2017 (4/1/17 plus 60 days).

**Presentation Note:** When filing an amended return near an ASED date determine if you should wait (if tax is owed) to lessen the chance of the amended return being reviewed.

## Amended Return Tolling

**IRS IRM 25.6.1.9.4.2 (05-11-2016)**

### **Amended Return**

In general, the filing of an amended return by a taxpayer does not extend the statute of limitations on assessment. It is the timely received date of the amended return not the postmark date that determines if the additional tax on an amended return can be assessed per the account posted Assessment Statute Expiration Date (ASED). If an amended income tax return is received within 60 days from when the Assessment Statute Expiration Date would otherwise expire, a period of 60 days from the received date is allowed for the assessment of the additional amount of tax on that return imposed by Subtitle A (income tax). IRC Section 6501(c)(7) amended income tax returns are from Form 1040, 1041, 1120 and 990-T. The 60-day period does not apply to employment taxes, excise taxes, gift or estate taxes. For example, if an amended income tax return for the 2011 tax year was received on April 9, 2015, you would have 60 days from that date to assess the additional amount of tax on that income tax return.

# Voluntary Extension of ASED

**IRS IRM 25.6.1.9.5.1 (10-01-2012)**

## **Form 872 Waiver**

1. A Form 872, (Consent to extend the ASED) signed by the taxpayer and an IRS representative prior to the expiration of the normal ASED, extends the ASED to the date agreed to by both parties. See IRM 25.6.22, *Extension of Assessment Statute of Limitations by Consent*.

### **Note:**

A period extended by a waiver does not necessarily extend an assessment date for all situations. The agreement between the Service and the taxpayer may restrict adjustments to certain items.

**Presentation Note:** On the transcript this appears as: 560 IRS can assess tax until (date) Usually an examiner threatens to just assess everything if the Taxpayer does not agree to this. Remember, the scope can be limited. The 872 Waiver also extends RSED.

# Joint Return After MFS

**IRS IRM 25.6.1.9.4.4 (10-01-2007)**

## **Joint Return After Separate Return**

1. For ASED purposes, the filing date of the joint return depends on what returns were filed before the election (IRC Section 6013(b)(3)(A)(i)-(iii)).
  1. The joint return is deemed filed on the filing date of the last separate return (but not earlier than the due date) where both spouses filed separate returns.
  2. The joint return is deemed filed on the filing date of the separate return (but not earlier than the due date) where only one spouse filed a separate return and the other spouse had gross income of less than the exemption amount for the year.
  3. The joint return is deemed filed on actual filing date of the joint return where only one spouse filed a separate return and the other spouse had gross income of the exemption amount or more for the year.
  4. The Service has three years from the deemed filing date of the joint return to make an assessment. In no event, however, will the Service have less than one year from the actual filing date of the joint return to make an assessment. IRC Section 6013(b)(4).

# Fraud is Forever

## IRS IRM 25.6.1.9.5.2 (10-01-2010)

### Fraudulent Return

1. There is no period of limitations on assessment for a false or fraudulent return with intent to evade tax.
2. An amended non-fraudulent return submitted after a fraudulent return does not begin the period of limitations. See *Badaracco v. Commissioner*, 464 U.S. 386 (1984).
3. ...(not shown for presentation)
4. Fraud is not defined in the Code or regulations, but several indicators of fraud are provided in IRM 25.1.2.3, *Indicators of Fraud*. There are two terms used in the fraud development process: Indicators of Fraud and Affirmative Acts (Firm Indications) of Fraud.

**Presentation Note:** The fraud does not need to be committed by the taxpayer. Fraud done by the tax preparer without the taxpayers knowledge qualifies.

# Under Reporting Tax

## IRS IRM 25.6.1.9.5.3 (09-20-2016)

### 25% Omission

1. The tax may be assessed within six years after the original return was filed (IRC Section 6501(e)), if the taxpayer omits:
  1. More than 25% of the gross income reported on original Form 1040, 1041, 1042, 1120, 990-C, 990-T or 990-PF (IRC Section 6501(e)(1)(A)(i))
  2. More than \$5,000 in income attributable to foreign financial assets required to be reported on Form 8938 (disregarding the dollar reporting threshold), regardless of whether or not the specified foreign financial assets are reported on Form 8938 or another IRS form per IRC Section 6501(e)(1)(A)(ii) (the Form 8938, *Statement of Foreign Financial Assets* reporting requirement applies only to tax years beginning after March 18, 2010)

## Statutory Notice Of Deficiency (90 Day Letter) Summary

- The Statutory Notice of Deficiency tolls the ASED for a total of 150 days.
  - 90 days from the time the letter was mailed (not received).
  - Plus an additional 60 days.
- The Statutory Notice of Deficiency does not always show up on the transcript. Sometimes the ASED shows up as a TC 560 IRS can assess tax until (date)

## Statutory Notice Of Deficiency (90 Day Letter)

**25.6.1.9.6.2 (09-29-2015)**

### **Statutory Notice of Deficiency (90 Day Letter)**

1. A statutory notice of deficiency may be issued by Examination, Collection, Appeals, Deferred Adverse Tax Consequence (DATC/ASTA) and the Document Matching functions. Except for certain limited exceptions, a statutory notice of deficiency must be issued to assess and collect an income tax, estate tax, gift tax, and certain excise and employment tax deficiencies.
2. The period of limitations on assessment is suspended during the 90 days (150 days if the notice of deficiency is addressed to a person outside the U.S.) which the taxpayer is given to petition the Tax Court from the deficiency notice and the time during which the Service is prohibited from making the assessment plus 60 days thereafter. The suspension period begins on the day after the mailing of the notice (and not on the day the taxpayer receives the notice).

## Strategy For Delinquent Returns

- If an original return is never filed for a tax module/period the ASED never starts and the IRS can theoretically go back forever.
- Should a delinquent return be filed if it has been several years since it was due??
  - Yes. Always start an ASED to limit future liabilities.
  - No, Let sleeping dogs lie.

Remember the decision should be made by your client and be wary of your obligations under Circular 230 when rendering tax advice.

## Amendment Filed After ASED With Payment

**IRM 25.6.1.10.2.5.6.2 (04-04-2016)**

### **Claim for an Amount Paid After the ASED**

1. If an amended return is filed after the expiration of the period of limitations on assessment, any amount paid with that return must be refunded to the taxpayer. The taxpayer does not need to file a claim for refund in order to receive a refund of the payment made with the late filed amended return for additional tax assessment.

## Refund Statute Expiration Date (RSED)

- The RSED defines how long the taxpayer has to file a claim for refund for a specific module/period.
- The RSED has two components and is the later of the 2 dates:
  - 3 Year Look Back – 3 years since the received date of the original return.
  - 2 Year Look Back – Any payment made within the past 2 years.

**Presentation Note:** There is a lot of confusion about the 3 year look back due to the wording of the IRM. This will be addressed later in this presentation.

## Extension of RSED

**IRS IRM 25.6.1.10.2.7.3 (04-01-2007)**

### **Extension of Time by Agreement**

1. The period of limitations for claiming a credit or refund may be extended by agreement only by the execution of a consent to extend the period of limitations on assessment (e.g., the Service and the taxpayer sign a Form 872, Consent to Extend the Time to Assess Tax) on or before the ASER.
2. **The period for claiming a credit or refund is extended until 6 months after the expiration of the consent.** The limitation on the amount that may be claimed (the lookback rule) is applied by allowing the recovery of any amount paid after the execution of the consent (and before the filing of the claim or the making of the credit or refund), as well as the amount that could be claimed, looking back two years or three years as stated above, from the date of the execution of the consent. See IRC § 6511(c).

## RSED Extension Example

Example:

1. The Original Return Filed Date is April 15, 2012.
2. The ASED and RSED are the same date April 15, 2015.
3. On April 1, 2015 the IRS and taxpayer agree to an extension by signing a Form 872 through January 1, 2016.
4. The RSED is July 1, 2016. 6 months after January 1, 2016.

## RSED Three Year Period

### **25.6.1.10.2.7 (04-28-2017)**

#### **Claims for Credit or Refund – General Time Period for Submitting a Claim**

1. The period for filing a claim for credit or refund has two prongs:
  - First, a date by which a claim must be filed with the Service, and
  - Second, a limitation on the amount that may be claimed that is determined by "looking back" from the date of the claim to an earlier payment date.

### **25.6.1.10.2.7.1 (05-17-2004)**

#### **Filing With the Service (First Prong)**

1. A claim for credit or refund described above, must be filed by the later of two periods:
  - Three years from the filing of the original tax return, or
  - Two years from the payment of tax.

## RSED Three Year Period Examples

**IRS IRM 25.6.1.10.2.7.1.4 (10-01-2009)**

### **Examples for the Three-year Period**

1. A 2005 individual income tax return received on April 18, 2006, but postmarked on April 14, is deemed filed on April 15, 2006. A claim for refund filed on Monday, April 18, 2009, is timely.
2. A 2005 individual income tax return received on Friday, April 14, 2006, is an early filed return that is treated as filed on April 15, 2006. A claim for refund filed on Thursday, April 16, 2009, is not timely filed. The SSLH rule that applied to some 2005 returns, does not apply because the taxpayer's return was not filed on the next succeeding day (i.e., Monday, April 17, 2006). See Rev. Rul. 2003-41, 2003-1 C.B. 814.
3. A claim filed on a delinquent original income tax return that is postmarked on the last day of the three-year period, is deemed to be filed on the postmark date. See *Weisbart v. United States*, 222 F.3d 93 (2d Cir. 2000), acq. 2000-2 C.B. xiii, 2000-09 (Nov. 13, 2000).

## 3 Year Period vs 3-Year Rule

- The 3-Year Period is the 3-Years following the filing of the original return.
- The 3-Year Rule applies when an amended return is filed within the 3-Year Period.
  - If the amended return is filed during the 3-Year Period all taxes paid 3-years prior to the claim for refund (3 1/2 -years if an extension was filed)
  - If the amended return is filed after the 3-Year Period then the 2-Year Rule applies.
- The "Rules" determine how much can be refunded. The 3-Year Period determines which "Rule" to apply for amended returns.
- An original delinquent return always uses the 3-Year Rule.



# RSED Three Year Rule

IRS IRM 25.6.1.10.2.7.2.1 (10-01-2013)

## Three-year Rule

1. The amount to be credited or refunded is limited to the tax paid (which includes tax, penalties, and interest) during the three year period prior to the filing of the claim, **plus the period of any extension of time to file.**

# Timely Mailing Rule

CAUTION: According to IRS Revenue Ruling 200021010 (5/26/2000) If a claim for refund is Postmarked before the three years from the original return filed date, but is received after is not considered timely filed for the claim for refund.

It is always best to have the claim for refund delivered to the IRS prior to the 3 years from original filed date when possible. My recommendation is to hand deliver the amended to the IRS and get a stamped copy as a receipt as proof to avoid having to appeal a decision).

## Simpler Example 2017

According to Revenue Ruling 2003-41

**Example 1:** If the taxpayer files an extension until October 15, 2017 and files on Sunday October 15, 2017 they have until Thursday October 15, 2020 to file a claim for refund on their withholding and advanced payments.

**Example 2:** If the taxpayer files an extension until October 15, 2017 and files on Monday October 16, 2017 (SSLH Rule) they have until Friday October 16, 2020 to file a claim for refund on their withholding and advanced payments. Example 1 cannot file on Friday October 16<sup>th</sup>, 2020.

## Discuss The IRS Memo Reference 3 Year Rule

The IRS Released a memo on 5/24/2013 that addresses the 3 year rule as it affects the 3 year rule and extensions. This is a quote from the memo (Refer To Handout):

***“The section 6511 rules are so complicated that the system cannot currently be programmed to figure out every situation.”***

In reviewing the memo I believe the IRS is getting the 3-Year Period and the 3-Year Rule confused believing they are the same. Due to this they struggle to properly calculate the RSED.

## IRS Memo Reference 3 Year Rule Example

*2009 tax year, return due 4/15/2010.*

*Withholding of \$1,000, deemed paid on 4/15/2010*

*Taxpayer gets extension to 10/15/2010*

*Sends \$500 with extension.*

*TP files return on 9/30/2011;*

*Pays another \$600 with return. He still owes \$1,800.*

*On 1/5/2012, he pays \$350*

*On 3/5/2012, he pays \$350*

*On 6/5/2013 he pays the remaining \$1,100*

*TP files amended return on 7/20/2014, requesting the entire \$3,900 back, arguing that he mistakenly reported an inheritance that he was not required to pay tax on.*

*IRS agrees that he should not have paid that tax, but we have to look at § 6511 to see whether he is entitled to refund.*

*Under § 6511(a), tp has until 9/30/2014 to claim a refund, so his 7/20/2014 claim is timely.*

*Under 6511(b)(1), he can get no refund after the expiration of time under 6511(a), but, as we know now, the 6511(a) period has not expired.*

*Under 6511(b)(2), the amount of the credit or refund can't exceed the portion of tax paid between the date he filed his claim (7/20/2014) and going back 3 years (to 7/20/2011), plus the period of any extension of time for filing (he had a 6-month extension, so we are now at 1/20/2011).*

*He can get no tax back if he paid it before 1/20/2011, so he gets back \$2,400:*

*\$600 tax paid on 9/30/11.*

*\$350 paid on 1/5/2012;*

*\$350 paid on 3/5/2012;*

*\$1,100 paid on 6/5/2013*

*He cannot get back the \$1,000*

## IRS Memo Reference 3-Year Rule Example

Due Date	4/15/2010		
Extension Date:	10/15/2010		
Original Return Filed Date:	9/30/2011	9/30/2014	3-Year Period
Amended Return:	7/20/2014	1/20/2011	3-Year Rule
	Date	Amount	
Withholding:	4/15/2010	\$1,000	
Extension Payment:	4/15/2010	\$500	
Return Payment:	9/30/2011	\$600	
Payment	1/5/2012	\$350	
Payment	3/5/2012	\$350	
Payment	6/5/2013	\$1,100	
Total Payments:		\$3,900	

In the memo example only the payments made prior to 1/20/2014 are able to be refunded. The withholding and extension payment do not qualify. Refund = \$2,400

# RSED Two Year Rule

**25.6.1.10.2.7.2.2 (11-16-2015)**

## **Two-year Rule**

1. If the claim for credit or refund is not filed within the three-year period for filing a claim, the amount is limited to the portion of tax paid (the payment of tax could be for tax, penalty, or interest) within the two year period immediately preceding the filing of the claim.

**Presentation Note:** The Two Year Rule comes into play if the amended return was filed after the 3-Year Period (including 6 months for a valid extension).

# RSED Two Year Rule Example

For tax year 2000:

- Taxpayer files a tax return and pays \$5,500 of individual income tax on April 15, 2001.
- On March 1, 2004, Taxpayer pays \$1,500 as a result of examination adjustments increasing rental income.
- The Assessment Statute Expiration Date (ASED) was not extended and expires on April 15, 2004.
- On May 1, 2004 (3 years and 15 days after Original Return Timely Filed), Taxpayer files a refund claim for \$2,000 to dispute the examination adjustment and to decrease rental income below the amount shown on the tax return. Taxpayer may receive only a \$1,500 refund (which is the amount of your tax decrease) under the two-year rule.

## Uncommon RSED Tolling

- There are uncommon tolling events and RSED extensions listed under this IRM sections, but do not apply to normal cases or are obscure an rarely used. This presentation will only cover the common tolling extensions previously listed.
- 25.6.1.10.2.8 (05-17-2004)  
Claims for Credit or Refund - Special Items of Income, Deduction, Loss or Credit
- 25.6.1.10.2.9 (05-17-2004)  
Claims for Credit or Refund – Taxpayers in Special Situations

Examples: Presidentially Declared Disaster Area & Combat Zone

## Collection Statute Expiration Date (CSED)

- The CSED defines how long the IRS has to collect tax for a specific assessment.
- The CSED is calculated as 10 years after the assessment date.
- Each assessment carries it's own CSED.
- The CSED can be extended by tolling events.

## CSED Section

### IRS IRM 25.6.1.9.4.5 (10-05-2016)

#### Substitute for Return (SFR)

1. Under authority of IRC Section 6020(b), the Service has authority to prepare and process a tax return when a person fails to file a required return or files a false or fraudulent return. If the Service processes a tax return prepared under the authority of IRC Section 6020(b), assessing the tax accordingly, **the assessment date will start the period for the statute of limitations for collection per IRC Section 6502(a)(1), but does not start the period of limitations for assessment per IRC Section 6501(b)(3).**

## 40% Of IRS CSED's With Tolling Are Inaccurate

According to the TIGTA Report: Recalculations of the Collection Statute Expiration Date Were Not Always Accurate from September 16, 2013 Reference Number: 2013-30-098

"Test results of a statistical sample of 75 tax modules from a population of 1,085 with manually recalculated CSEDs showed that 29 (39 percent) of the 75 tax modules contained errors. Twenty-one had inaccurate CSEDs and eight were missing the required documentation to support the CSEDs. Based on the results of our case review from a population of 1,085 tax modules that were manually recalculated between July 1, 2011, and June 30, 2012, we estimate that CSEDs for 260 tax modules were extended longer than they should have been, 43 tax modules were not extended as long as they should have been, and 116 tax modules were unverifiable.

Most errors were made by employees. These employees generally request CSED recalculations through the Integrated Collection System, and the request is systemically sent to the requesting employee's manager for approval. Managerial approval is required when CSEDs are extended or updated for any reason. However, the current internal controls requiring managerial approval are not effectively ensuring the accuracy of manually recalculated CSEDs.

An IRS computer system recalculates most CSEDs systemically. Random samples from eight separate activities that trigger systemic CSED recalculations showed that all CSEDs were accurate for six of the eight activities. However, the CSED recalculations were not always accurate for modules involving bankruptcies or estates.

TIGTA also identified nine taxpayers who received an annual balance due reminder notice after the CSED expired."

## CSED Tolling Events

- TC 480 Offer in Compromise Pending (suspends CSED)
- TC 488 Installment and/or Manual Billing (extends CSED)
- TC 500 Military Deferment (suspends CSED)
- TC 520 Tax Court or IRS Instituted Litigation (suspends CSED)
- TC 520 Bankruptcy (suspends CSEDs)
- TC 520 Collection Due Process (suspends CSED)
- TC 550 Waiver Extension of Date Collection Statute Expires (extends the CSED to date input)
- TC 971 Pending Installment Agreement
- TC 971 Terminated Installment Agreement
- TC 971 Innocent Spouse

## 550 Manually Adjusted Tolling Events

- Form 900
- Assets in Custody of the Court
- Bankruptcy (incorrect CSED computation)
- Judgment
- Taxpayer Assistance Order (TAO)
- Military Deferment
- Offer in Compromise (incorrect CSED computation)
- Wrongful Seizures
- Taxpayer Living Outside the U.S.
- Innocent Spouse
- Other (Collection Due Process)

# Form 911 TAO Exception

**IRS IRM 5.1.19.3.13 (04-26-2018)**

## **Taxpayer Assistance Order (TAO)**

1. IRC 7811(d) and the accompanying regulations provide that if a taxpayer submits a Form 911 Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), the statute of limitations on collection and/or assessment will be suspended beginning on the "Taxpayer Advocate Received Date and ending on the TAS decision date. See IRM 13.1.14.3.1, Period(s) Suspended.
2. Due to systemic programming limitations, the Commissioner decided in November 2003, that Taxpayer Advocate Service (TAS) does not have to input the appropriate IDRS codes to reflect the suspension of the statute of limitations under IRC 7811(d). The program limitations are still in effect. Therefore, IDRS codes are not input to show the correct suspension periods for IRC 7811(d) at this time. See IRM 13.1.14.1, Introduction to Suspension of the Statutes of Limitation Under IRC§ 7811(d).

## What The Form 911 Exception Is

**IRS IRM 5.1.19.3.13.2** states "Taxpayer Advocate Service (TAS) *does not have to input* the appropriate IDRS codes to reflect the suspension of the statute of limitations under IRC 7811(d)."

This means the IRS does not have to enter the Form 911 tolling event, but they still can. If the IRS enters the tolling event for the 911 and you would like to appeal the best avenue is with the Tax Payer Advocate. It is rare that this tolling even is applied so your position should be claim under the Tax Payer Bill of Rights #10 The Right To A Fair And Just Tax System. Why was my client singled out?



## Equivalency Hearing As A Tool

Although the IRS tolls for a CDP Hearing if the 30 days after notice expires the taxpayer still has a year (or a year and 5 days if it is a lien notice) to file for an equivalency hearing.

The equivalency hearing does not toll. For the most part the IRS does treat the equivalency hearing like the CDP and does not take collection action, but they are not prevented.

## Currently Not Collectible (CNC) Does Not Toll The CSED

Having your client placed in currently not collectible is a great strategy for reaching the CSED without active collections taking place. The IRS is not barred from collections so the CSED does not toll, but they do not enforce collections during this period.

The IRS usually requires a taxpayer to re confirm their CNC status every two years. May not be the best solution if the CSED is greater than two years.

## Pending IA's That Are Not Accepted Or Rejected Do Not Toll

Pending IA's are a challenge. In my experience if the Pending IA is not closed it does not toll. Often times someone at the IRS places the Pending IA on the account, but nobody ever follows up. It is never accepted or rejected and it just hangs. I have seen CSED's expire with open Pending IA's on them.

## What Makes A Pending Installment Agreement A Tolling Event

### IRS IRM 5.14.1.3 (01-01-2016) Identifying Pending, Approved and Rejected Installment Agreement Proposals on IDRS

4. Taxpayers need to provide specific information for installment agreement requests to be processed. Also, if the information in (a) through (d) below is provided, but it is determined that the agreement request was made to delay collection action, accounts should *not* be identified as being in pending installment agreement status. (See IRM 5.14.3.2.) To identify accounts as "pending" installment agreements, taxpayers must:

1. Provide information sufficient to identify the taxpayer: generally, the taxpayer's name and taxpayer identification number (TIN). If a taxpayer furnishes a name, but no TIN, and the taxpayer's identity can be determined, then pending status should be identified;
2. **Identify the tax liability to be covered by the agreement;**
3. **Propose a monthly or other periodic payment of a *specific amount*;**
4. **Be in compliance with filing requirements. (See IRM 5.14.1.4.1.)**

### Examples From IRS IRM 5.14.1.3.10 (01-01-2016)

#### SITUATIONS THAT DO RESULT IN IDENTIFICATION OF PENDING INSTALLMENT AGREEMENTS

**Example:**

(1) A taxpayer calls the IRS, provides her name, social security number (SSN), identifies the outstanding liability (or balances due), is in compliance with all filing requirements, fits streamlined installment agreement criteria and states she wants to pay \$500 per month. If the \$500 proposed payment meets the minimum payment required under the Streamlined Criteria and the installment agreement can be immediately closed, do not request a TC 971 AC 043. If the payment does not meet the minimum required payment, the taxpayer can't make the minimum payment required for Streamlined criteria, and additional information will need to be secured, input the TC 971 AC 043.

**Example:**

(2) A revenue officer (RO) and taxpayer discuss the taxpayer's financial statement (which includes the taxpayer's name and SSN) on the phone. The taxpayer is in compliance with all filing requirements. The balances due are specifically identified. The RO says the taxpayer needs to pay \$1500 per month. The taxpayer says he will think about it. The revenue officer mails the taxpayer a 433D. TP changes the amount on 433D and mails it back.

**Note:**

Though in pending status, the agreement (and payment amount) must be approved by the manager, unless it is a Streamlined, Guaranteed or In-Business Trust Fund *Express* agreement. (See IRM 5.14.5.)

**Example:**

(3) A taxpayer wants to make payments. RO completes Collection Information Statement (CIS) including the taxpayer's name and SSN and tells the taxpayer \$500 per month is appropriate. The taxpayer is in compliance with filing requirements. The taxpayer verbally agrees to the payment amount.

### Examples From IRS IRM 5.14.1.3.10 (01-01-2016)

#### SITUATIONS THAT DO NOT RESULT IN IDENTIFICATION OF PENDING INSTALLMENT AGREEMENTS

**Example:**

(1) A revenue officer evaluates a taxpayer's CIS. The taxpayer's name, social security number and balances due are all known and/or identified. The revenue officer informs the taxpayer that a \$1500 per month installment agreement is appropriate. There is no response from the taxpayer.

**Example:**

(2) A revenue officer mails a 433D (with the taxpayer's name, SSN and balances due listed) to a taxpayer. The 433D provides a payment amount based on an analysis of the taxpayer's CIS. No response is received by phone, FAX, e-mail or other means of communication from the taxpayer.

**Example:**

(3) A taxpayer who knows he owes taxes tells his employer to send \$500 per month of his paycheck to the IRS. The taxpayer does not communicate with the IRS. The taxpayer's employer sends \$500 per month referencing the taxpayer's SSN. (Note: if \$500 per month is being received, contact should be attempted prior to taking collection action.)

**Example:**

(4) A revenue officer begins a trust fund recovery penalty (TFRP) investigation. Meanwhile, an officer of the corporation states he wants an installment agreement, identifies the trust fund portion of the corporation's liability (as the balance due account to be paid) and provides a specific payment amount (to be paid from his own funds and applied to the corporate liability – trust fund only.) However, no liability has been recommended for assessment and/or the officer has not signed Form 2751, indicating responsibility for the trust fund portion of the liability (i.e., there is no balance due account for payment application.) Therefore, the potentially responsible officer is informed that there is no pending installment agreement and payments made are considered voluntary. Information about designating these payments to the trust fund portion of a liability is provided in IRM 5.7.4.4. (Also see IRM 5.14.7.4.1 and IRM 5.14.7.5.)

**Example:**

(5) A taxpayer wants to make payments on an installment agreement. The RO completes a CIS including the taxpayer's name and SSN. RO tells the taxpayer \$500 per month appears to be an appropriate amount for an installment agreement, but the taxpayer is not in compliance with filing his Forms 1040 for the last two years. The taxpayer states that his accountant is away, and that the returns, which are complicated, will take some time to prepare. The revenue officer requests that the taxpayer submit original, signed returns within 60 days, along with a \$500 payment (based on the financial statement received). In addition, the revenue officer requests that a payment of \$500 be received within 30 days. These requests are made in accordance with the procedures provided in IRM 5.14.3.1 and IRM 5.1.10.

## How To Confirm A Pending IA Met Criteria

Complete a FOIA request for the Pending IA in question. Ask for all documentation in regards to the Pending IA to include all notes in the IRS system as well as any written documentation or forms submitted by the taxpayer.

If the pending IA was initiated by Examinations they are required to send a form 3177 *Notice of Action for Entry on Master File* to Collections. Apparently, Exams is unable able to input the Transaction Codes necessary. The Form 3177 should have enough information to establish the Pending IA as valid.

Verify from the FOIA information that the IRS documented the requirements as specified in IRM 5.14.1.3 specifically the proposed payment amount and that the taxpayer was compliant at the time of the request for IA. If the requirements are not met try to get Practitioner Line to assist. A practitioner can also file an OIC Doubt to liability after the modified CSED passes.

## IRS Personnel Abusing Pending IA's

I participated in a case recently where a revenue officer denied a Pending IA that was on the transcript for 4 years. This extended a CSED that was about to expire by four years. The Notice of Intent to Levy was delivered 2 weeks after the Pending IA input on the transcript. The client was also levied.

The tax pro filed with Tax Payer Advocate and advised the client wanted their levied funds back or remove the pending IA Tolling Event and let the remainder of the assessed amount to drop off. They opted for writing off the balance due to the CSED.

In the time since I first gave this webinar two years ago I have personally observed over a dozen instances of this type of abuse.

## Calculating CSED Tolling Events

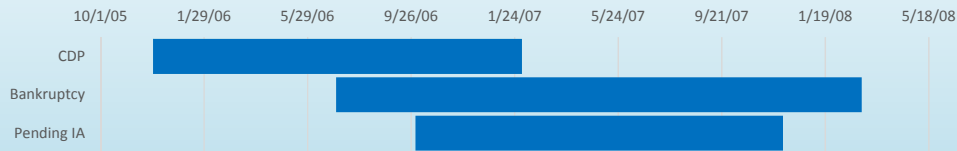
ASED & RSED tolling events are extensions of time. CSED tolling events have start and end dates followed by additional tolling days to account for denial of appeals.

**Example:** If an offer in compromise is submitted on January 1, 2012 and rejected on June 1, 2012 the tolling event tolls the CSED for 152 days plus another 30 days for the appeal for a total of 182 days.

## Tolling Event Overlaps

If two or more tolling events overlap the days in the overlap are only tolled one time.

# Tolling Event Calculations



Tolling Event	Start Date	Duration	End Date	Duration In Days	Days Tolloed
CDP	12/1/2005	427	2/1/07	427	427
Bankruptcy	7/1/2006	609	3/1/2008	609	394
Pending IA	10/1/2006	426	12/1/07	426	0

The CDP tolls from the start date until the end date.

The Bankruptcy only tolls from the end of the CDP until the end date.

The Pending IA does not toll because it overlaps completely with the previous events.

## Challenge Calculating CSED's From Account Transcripts

- Tax Court, Bankruptcy and CDP all are indicated on the transcript with the transaction "520 Bankruptcy or other legal action filed".
  - CDP will have "971 Collection due process request received timely"
  - It is usually impossible to distinguish between a bankruptcy and tax court from the transcript alone. Occasionally a bankruptcy payment will be listed but only occasionally.

## **Challenge Calculating CSED's From Account Transcripts**

- Pending IA's are extremely challenging to determine accurate tolling.
  - The IRS does not have a transaction code for "Rejected Installment Agreement".
  - I have reviewed multiple Mod A's and have trouble finding the rejected date in there as well.
  - Often times the IRS Pending IA's should never have been applied because they do not meet the rules.

## **Common Avenues To Appeal A CSED**

1. Call the practitioner line and bring it to their attention.
2. File a 911 for the Tax Payer Advocate's assistance.
3. File an OIC Doubt To Liability, but only after your CSED has passed (and even then wait at least 90 days if possible just to make sure).

## **SPECIAL OFFER**

### **Good Until Midnight Tonight 5/7/2019**

Purchase at: [taxhelpsoftware.com/ASTPS.html](http://taxhelpsoftware.com/ASTPS.html)

Try the fully loaded Tax Help Software Executive Product for six months for only \$250. Get the only product on the market that calculates accurate CSED's (More accurate than the IRS calculations).



This product can also detect IRS Audits and CP2000s six months in advance of the letter.

## **How To Obtain Unmasked IRS Transcripts**

From the IRS:

"Starting January 7, 2019, tax practitioners who need an unmasked Wage and Income Transcript may call the Practitioner Priority Service line. Practitioners with proper authorization and with active e-Services accounts may request that an unmasked Wage and Income Transcript be sent to the Secure Object Repository mailbox. See Fact Sheet 2018-20 for details on the secure mailbox option. The mailbox is an e-Services tool. Practitioners must have an e-Services account. Tax professionals without an e-Services account may request that an unmasked Wage and Income Transcript be sent to the client's address of record."<sup>1</sup>

Note: Unmasked and un-redacted have the same definition in this presentation.

<sup>1</sup> IRS Fact Sheet FS-2018-20, December 2018 (Updated January 2019) Steps for tax professionals to obtain wage and income transcripts needed for tax preparation



## How To Obtain Unmasked IRS Transcripts

Tax practitioners must first go to the e-Services' Transcript Delivery System to obtain a masked Wage and Income Transcript to see if it meets their needs. If employer information is still needed for tax preparation, tax practitioners may order an unmasked Wage and Income Transcript if the client does not have the employment information. The practitioner must:

Have a Centralized Authorization File (CAF) number in good standing;

Have an e-Services account and access to the SOR, the e-Services secure mailbox.

Tax practitioners who meet those requirements should take the following steps:

1. Call the Practitioner Priority Service line
2. Authenticate identity with CAF number, name, Social Security Number and Date of Birth
3. Fax a completed authorization form 2848/8821 (if needed)
4. Request an unmasked Wage and Income Transcript
5. Access e-Services secure mailbox to receive the unmasked Wage and Income Transcript

## There Is A Tremendous Upside To The IRS No Faxing & Masked Transcripts

As a result of the no faxing and the transcript masking the IRS figured out they could deliver transcripts electronically to the Secure Object Repository (SOR) also known as the E-Service Mailbox.

This feature has been available since e-Services launched, but the IRS refused to utilize it and continued to fax transcripts for fifteen years.

## **Best Practice Getting Transcripts The Same Day As 2848/8821**

On February 4<sup>th</sup>, 2019 the IRS updated IRM 21.2.3.5.3 & 21.2.3.5.4 to include BMF and masked IMF transcripts to be requested through PPS (with a valid 2848/8821) and placed in the SOR Mailbox.<sup>1</sup>

This now allows tax practitioners to call PPS, fax a freshly signed 2848/8821, and request transcripts be sent to the SOR Mailbox immediately.

1 IRM Procedural Update Number: wi-21-0219-0109 Subject: e-Services Secure Mailbox for Authorized Representatives and Customer File Number Programming Fix 2/4/2019

# **QUESTIONS?**

Additional Free Information Can be found at:  
[TaxHelpSoftware.com](http://TaxHelpSoftware.com)  
and  
[AuditDetective.com](http://AuditDetective.com)