Internal Revenue Service
DEPARTMENT OF THE TREASURY

LB&I Concept Unit

Unit Name	Overview of Statute of Limitations on the Assessment of Tax	
Primary UIL Code	9435	Offshore Arrangements

Library Level	**Title**
Knowledge Base	International
Shelf	Individual Outbound
Book	Offshore Arrangements
Chapter	

Document Control Number (DCN)	INT-C-115 (formerly OAR/C/013-04)
Date of Last Update	Revised: 11/6/19

Table of Contents

(View this PowerPoint in "Presentation View" to click on the links below)

Overview of Statute of Limitations on the Assessment of Tax

This Practice Unit supersedes the previously published Practice Unit with the same title published on April 12, 2018. The Practice Unit was updated to reflect the judicial dispositions with regards to IRC 6501(e).

The Internal Revenue Code (IRC) requires that the Internal Revenue Service (IRS) assess, refund, credit and collect taxes within specific time limits, known as the statute of limitations. When the statute of limitations expires, 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.

An assessment is the recording of a taxpayer's tax liability on the IRS's books. It is critical to tax administration because the IRS cannot collect a tax unless there has been an assessment.

One of the most important aspects of the IRS examiner's job is protecting the statute of limitations of the tax returns placed in the examiner's inventory. This Practice Unit provides an overview of the statute of limitations on the assessment of tax and related penalties. Its purpose is to help examiners determine the correct statute of limitations on a federal income tax return.

IRC 6501 is the main source of legal authority related to statute of limitations. Under IRC 6501(a), the government generally has three years after the return is filed to assess the tax and to begin any court proceeding without assessment for the collection of any tax. In general, the filing of a tax return is the event that triggers the running of the statute of limitations on assessments; however, the date the limitations period begins to run differs for timely and untimely filed returns. A return is considered filed on its due date if the return was filed on or before its due date.

Taxpayers and the IRS may extend the statute of limitations by signing a mutual agreement. In some circumstances, the statute of limitations does not begin to run even though the tax return has been filed. Congress has also recognized that on rare occasions the 3-year general rule does not provide the IRS with sufficient time to identify and audit some non-fraudulent returns. As a result, Congress has provided some exceptions to the general rule. See the Index of Related Practice Units for a list of Practice Units that provide a closer look at exceptions to the 3-year statute of limitations.

Relevant Key Factors

Overview of Statute of Limitations on the Assessment of Tax
Key Factors
There are several key factors to take into consideration when determining the statute of limitations. Determination of a due date of a tax return, including extensions, is the first step. Different types of entities have different filing deadlines and, under certain circumstances, two entities of the same type may have different due dates for filing their tax returns. In general, a taxpayer is not considered to have filed a tax return (which begins the period of limitations on assessment) until the taxpayer files a valid tax return. See IRM 25.6.1.6.14. In general, a return is filed on the date that it is received at the place designated for filing by the Service. While the determination of the received date is one of the most important factors, it does not necessarily establish the filing date. The filing date is established after applying the relevant IRC sections. As a general rule, tax on an income tax return must be assessed within three years of the filing of that tax return. There are, however, circumstances where the general rule does not apply, such as: ▪ No return filed - IRC 6501(c)(3) ▪ Receipt of certain amended returns - IRC 6501(c)(7) ▪ Extension of statute of limitations by agreement - IRC 6501(c)(4) ▪ Waiver of statute of limitations defense on a closing agreement - IRC 6213(d) and 7121 ▪ False or fraudulent tax return - IRC 6501(c)(1) and 6501(c)(2) ▪ Substantial omission of gross income - IRC 6501(e)(1)(A)(i) ▪ Failure to report more than $5,000 in income attributable to specified foreign financial assets - IRC 6501(e)(1)(A)(ii) ▪ Failure to furnish information regarding foreign transfers - IRC 6501(c)(8)

Relevant Key Factors (cont'd)

Overview of Statute of Limitations on the Assessment of Tax
Key Factors
▪ Suspension of statute of limitation due to John Doe summons - IRC 7609(e)(2) ▪ Petition to quash a formal document request - IRC 982(e) ▪ Extension due to changes in Foreign Tax Credit - IRC 905(c) ! **CAUTION:** These situations involve a variety of complex requirements and are summarized very briefly here for information purposes only. Review the Practice Unit(s) that cover(s) the exceptions for a more comprehensive discussion. ! **CAUTION:** A separate set of rules applies to statute of limitations under 31 USC 5321(b)(1). Discussion of these rules is beyond the scope of this Practice Unit.

Detailed Explanation of the Concept

Overview of Statute of Limitations on the Assessment of Tax
Several concepts that are described below should be considered to understand the theory behind the statute of limitations on the assessment of tax.

Analysis	Resources
Concept 1: Due Dates	
Individual, trust, estate and partnership (for tax years beginning prior to January 1, 2016) income tax returns are due on day 15 of the fourth month following the close of the tax year, typically April 15 in the case of a calendar-year taxpayer. *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (H.R. 3236) P.L. 114-41, changed the due dates for partnership returns to day 15 of the third month following the close of the fiscal year for tax years beginning after December 31, 2015.	▪ IRC 6072 ▪ *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015*
The IRS is authorized to grant a "reasonable extension of time" for filing returns. Except in the case of taxpayers who are abroad, no such extension may exceed six months. Taxpayers must generally submit a written application for the extension on or before the due date of the return.	▪ IRC 6081(a)
U.S. persons who, on the due dates of their returns, resided outside of the United States and Puerto Rico and their main place of business or post of duty was outside of the United States and Puerto Rico, or who were in the military service outside of the United States and Puerto Rico, are allowed an automatic two-month extension of their filing deadline (without filing Form 4868), which typically is day 15 of the sixth month following the close of the tax year.	▪ Treas. Reg. 1.6081-5 ▪ Form 4868 - *Application for Automatic Extension of Time To File U.S. Individual Income Tax Return*

Detailed Explanation of the Concept (cont'd)

<table>
<tr><th colspan="2">Overview of Statute of Limitations on the Assessment of Tax</th></tr>
<tr><th>Analysis</th><th>Resources</th></tr>
<tr><td><u>Concept 1: Due Dates (cont'd)</u>

Corporate income tax returns are due on or before day 15 of the third month following the close of the tax year, typically March 15 in the case of a calendar-year taxpayer for tax years beginning before December 31, 2015.</td><td></td></tr>
<tr><td>Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (H.R. 3236) P.L. 114-41, changed the due dates for C corporation returns to day 15 of the fourth month following the close of the fiscal year for tax years beginning after December 31, 2015. However, for C corporations with fiscal years ending on June 30, the new due dates will not apply until tax years beginning after December 31, 2025.</td><td>▪ Surface Transportation and Veterans Health Care Choice Improvement Act of 2015</td></tr>
<tr><td>A taxpayer filing as a nonresident alien who is not subject to income tax withholding on wages may file a return as late as day 15 of the sixth month after the close of the tax year. However, a nonresident alien who has wages subject to income tax withholding is required to file a return on or before day 15 day of the fourth month following the close of the tax year.</td><td>▪ IRC 6072(c)
▪ Treas. Reg. 1.6072-1(c)</td></tr>
<tr><td>▪ Example 1: A nonresident alien individual receives non-employee compensation for personal services performed in the United States for company A. The individual must file Form 1040NR by June 15 of the subsequent year.</td><td>▪ Form 1040NR - U.S. Nonresident Alien Income Tax Return</td></tr>
</table>

Detailed Explanation of the Concept (cont'd)

Overview of Statute of Limitations on the Assessment of Tax	
Analysis	**Resources**
Concept 1: Due Dates (cont'd)	
▪ Example 2: A nonresident alien individual performs personal services in the United States as an employee of company B. The earned income is subject to wage withholding and is reported on Form W-2. The individual must file Form 1040NR by April 15 of the subsequent year.	▪ Form 1040NR - *U.S. Nonresident Alien Income Tax Return* ▪ Form W-2 - *Wage and Tax Statement*
Generally, tax on a federal income tax return must be assessed within three years of the filing of the return.	▪ IRC 6501(a)
The limitations period for taxpayers claiming a credit or refund for overpaid taxes expires three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later.	▪ IRC 6511(a)

Overview of Statute of Limitations on the Assessment of Tax	
Analysis	**Resources**
Concept 2: Filing of a Tax Return	
If a federal income tax return is filed prior to its due date, the statute of limitations begins to run from the due date. In the case of a tax return filed after the due date, the statute of limitations begins to run from the date the delinquent return is filed.	▪ IRC 6501(b)(1)
If a return is mailed and received before the due date, the statute begins to run on the due date.	▪ IRC 6501(b)
If any return is postmarked on or before the due date and received after the due date, the postmark date is the date of delivery and the statute starts to run on the due date.	▪ IRC 7502
If a return is mailed after the due date, the statute begins to run from the date the return is received, assuming IRC 7503 does not apply to a return under extension.	▪ IRC 7503
Under IRC 7503, also known as the holiday rule, when the last day for performing any act, including the filing of a return, falls on a Saturday, a Sunday or a legal holiday in the District of Columbia, the act is considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.	

Back to Table of Contents

Detailed Explanation of the Concept (cont'd)

Overview of Statute of Limitations on the Assessment of Tax	
Analysis	**Resources**
<u>Concept 2: Filing of a Tax Return (cont'd)</u> Under IRM 25.6.1.6.15, 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. <u>Concept 3: Circumstances Where the General Rule Does Not Apply</u> Congress recognized that on rare occasions the 3-year general rule does not provide the IRS with sufficient time to identify and audit some non-fraudulent returns. As a result, Congress provided for some exceptions to the general rule. These exceptions are described in the subsequent slides. ! **CAUTION**: These exceptions involve a variety of complex requirements and are summarized very briefly here for information purposes only.	▪ IRM 25

Detailed Explanation of the Concept (cont'd)

Overview of Statute of Limitations on the Assessment of Tax	
Analysis	**Resources**
<u>Exception 1: No Return Filed</u> Under IRC 6501(c)(3), the statute of limitations does not start to run until a valid return is filed. Once filed, the statute for assessment expires in three years. If a taxpayer never files a return, there is no statute of limitations on IRS for assessing tax with respect to the unfiled year. <u>Exception 2: Receipt of Certain Amended Returns</u> Under IRC 6501(c)(7), if an amended return is filed within the 60-day time frame prior to the expiration of the assessment period of the original return, and it shows that the taxpayer owes an additional amount of tax for the tax year, the period of assessment for the additional amount is extended an additional 60 days starting on the day after the amended return is filed.	▪ IRC 6501

Detailed Explanation of the Concept (cont'd)

Overview of Statute of Limitations on the Assessment of Tax	
Analysis	**Resources**
Exception 3: Extension of Statute of Limitations by Agreement Under IRC 6501(c)(4), the taxpayer and IRS can agree to an extension of the statute of limitations on assessment by entering into a written agreement. This agreement is memorialized on Form 872 (or a similar form). The critical factor in agreements by consent is the requirement that the statute of limitations must still be open when the agreement is executed by both parties. It is an agreement to extend the statute of limitations on assessment, not an agreement to revive an expired statute of limitations.	▪ IRC 6501 ▪ Form 872 - *Consent to Extend the Time to Assess Tax* ▪ Form 10949 - *Statute Extension Check Sheet*
Exception 4: Waiver of Statute of Limitations Defense on a Closing Agreement Generally, if the statute of limitations has expired, IRS may not assess a tax liability. However, if a taxpayer knowingly and freely waives any statute of limitations defense, IRS may assess a tax even though there is no open statute of limitations.	▪ IRC 6213(d)
IRC 7121 allows a taxpayer and the IRS to enter into a closing agreement on Form 906, reflecting the terms of the settlement, including but not limited to, statute of limitations provisions. If a taxpayer waives the statute of limitations on assessment defense via a closing agreement, it is irrevocable because a closing agreement is final and conclusive absent fraud, malfeasance or misrepresentation of a material fact.	▪ IRC 7121 ▪ *Dubinsky v. Becker* - 64 F.2d 601 (8th Cir. 1933) ▪ Form 906 - *Closing Agreement On Final Determination Covering Specific Matters*

Back to Table of Contents

Detailed Explanation of the Concept (cont'd)

Overview of Statute of Limitations on the Assessment of Tax	
Analysis	**Resources**
<u>Exception 5: False or Fraudulent Tax Return</u>	
Under IRC 6501(c)(1) and (2), if a return is false or fraudulent, or is filed as part of a willful attempt to evade taxes, there is no statute of limitations on assessment of tax for that tax year. The Service has the burden of proof. Should the government fail to prove fraud, it will likely result in a barred statute of limitations on assessment. As a result, the fraud exceptions under IRC 6501(c) should be relied upon only as a last resort. If relying on IRC 6501(c) as an exception to the normal statute of limitations, examiners must follow the procedures described in IRM 25.1.10.	▪ IRC 6501 ▪ IRM 25 ▪ *Civil Fraud Penalty Guide*
This exception to the general rule means that there is no time limit on IRS starting an audit of a fraudulent tax return and, if IRS discovers fraud during an audit, there is no limit on the amount of time IRS has to fully develop all the issues on the return.	▪ *Badaracco v. Commissioner* - 464 U.S. 386, 394 (1984)
A taxpayer cannot purge fraud committed on an original tax return by filing a completely accurate and truthful amended return. Once fraud is committed by the filing of an original return, the offense is completed.	▪ *United States v. Habig* - 390 U.S. 222 (1968)
Where a taxpayer fraudulently fails to file a return, but later files a non-fraudulent return, the United States Tax Court has held that the statute of limitations runs from the date of the filing of the delinquent return.	▪ Rev. Rul. 79-178 ▪ *Bennett v. Commissioner* - 30 T.C. 114 (1958), acq. 1958-2 C.B. 3

Back to Table of Contents

Detailed Explanation of the Concept (cont'd)

Overview of Statute of Limitations on the Assessment of Tax	
Analysis	**Resources**
Exception 6: Substantial Omission of Gross Income Under IRC 6501(e)(1)(A)(i), if a taxpayer omits more than 25 percent of gross income from the tax return, the statute of limitations on assessment is six years. The computation of the percentage of the omission is the fraction: $$\frac{\text{Gross Income Omitted from the Return}}{\text{Total Gross Income Reported on the Return}}$$ Because the IRS cannot know about the income omitted from the return by merely looking at the return, it is allowed the 6-year statute of limitations to audit the return. If a taxpayer discloses the omitted income in the return or in an attachment to the return, it is not considered "omitted" for purposes of computing the percentage of the omission. The disclosure must be adequate to apprise the IRS of the nature and amount of the omitted item. If the omission of gross income is greater than 25 percent, the 6-year statute of limitations applies to the entire tax return, not just the omitted gross income.	▪ IRC 6501 ▪ IRM Exhibit 25.1.4-1 ▪ *Colestock v Commissioner* - 102 T.C. 380 (1994)

Detailed Explanation of the Concept (cont'd)

Overview of Statute of Limitations on the Assessment of Tax	
Analysis	**Resources**
Exception 6: Substantial Omission of Gross Income (cont'd) Prior to 2015, a taxpayer could omit or understate more than 25 percent of its gross income by inflating the basis of an asset disposed of during the tax year, thus significantly reducing its gain. In *United States v. Home Concrete & Supply, LLC* - 132 S. Ct. 1836 (2012), the Supreme Court of the United States held that a taxpayer's overstatement of its basis in property that it sold, with the result that its gross income from the sale was understated and its total gross income on the tax return was understated by more than 25 percent, did not constitute "omission" from gross income, for purpose of determining timeliness of the Service's assessment of the tax deficiency. However, this Supreme Court decision was superseded by the *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (H.R. 3236) P.L. 114-41, now codified in IRC 6501(e)(1)(B)(ii). ! **CAUTION**: The *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* provides that the 6-year limitations period applies where any overstatement of unrecovered cost or other basis results in a substantial omission (in excess of 25 percent) of gross income stated in the return. This legislative override of the Supreme Court's decision in *Home Concrete & Supply, LLC* is effective for all returns for which the normal assessment period remained open as of the date of enactment (July 31, 2015), and for returns filed after the date of enactment.	▪ *United States v. Home Concrete & Supply, LLC* - 132 S. Ct. 1836 (2012) ▪ *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* ▪ IRC 6501

Back to Table of Contents

Detailed Explanation of the Concept (cont'd)

<table>
<tr><th colspan="2">Overview of Statute of Limitations on the Assessment of Tax</th></tr>
<tr><th>Analysis</th><th>Resources</th></tr>
<tr><td><u>Exception 6: Substantial Omission of Gross Income (cont'd)</u>

▪ Example: The taxpayer filed his 2009 Form 1040 on or before April 15, 2010, reporting gross income in the amount of $200,000. On June 29, 2015, the taxpayer submitted to the examiner a signed Form 1040X for the 2009 tax year disclosing previously unreported interest income from a U.S. bank in the amount of $20,000. There were no foreign entities involved, no foreign unreported income and no indicators of fraud. In this case, the IRS cannot process the Form 1040X submitted to make an assessment because the statute of limitations has expired. In general, the filing of a taxable amended return does not extend the statute of limitations. The unreported income was not greater than 25 percent of the gross income stated on the original return, and did not include at least $5,000 attributable to a foreign financial account; therefore, IRC 6501(e) does not apply to extend the statute of limitations.</td><td>▪ IRC 6501
▪ Form 1040 - U.S. Individual Income Tax Return
▪ Form 1040X - Amended U.S. Individual Income Tax Return</td></tr>
<tr><td>The 25% omission of gross income rule also applies to current-year Passive Foreign Investment Company (PFIC) gains because only current-year PFIC gains are included in the taxpayer's gross income for the current year. It does not, however, apply to non-current-year PFIC gains.</td><td>▪ IRC 1291</td></tr>
<tr><td>In Toso v. Commissioner, 151 T.C. No. 4 (2018), the Court held that, because only current-year PFIC gains are included in gross income under IRC 1291, they are included in the IRC 6501(e) gross income amount. Similarly, because non-current-year PFIC gains are explicitly not included in gross income under IRC 1291 for any year, non-current-year PFIC gains are not counted in gross income for purposes of IRC 6501(e).</td><td>▪ Toso v. Commissioner - 151 T.C. No. 4 (2018)</td></tr>
</table>

Back to Table of Contents

Detailed Explanation of the Concept (cont’d)

<table>
<tr><th colspan="2">Overview of Statute of Limitations on the Assessment of Tax</th></tr>
<tr><th>Analysis</th><th>Resources</th></tr>
<tr><td><u>Exception 7: Failure to Report More Than $5,000 in Income Attributable to Specified Foreign Financial Assets</u>

Under Hiring Incentives to Restore Employment (HIRE) Act (H.R. 2847), P.L. 111-147 (enacted March 18, 2010), and specifically, a part of that act known as the Foreign Account Tax Compliance Act (FATCA), for tax years beginning after March 18, 2010, the statute of limitations on assessment may be extended in cases where foreign accounts and other specified foreign financial assets are involved. Under IRC 6501(e)(1)(A)(ii), the statute of limitations is six years in cases where a taxpayer omits more than $5,000 in gross income from a foreign financial asset with respect to which information is required to be reported under IRC 6038D, or would be required if such section were applied without regard to the dollar threshold specified under that section.

The effective date for IRC 6501(e)(1)(A)(ii) limits its application to years for which the IRC 6038D reporting requirement is effective. So, the six-year assessment statute of limitations applies to tax years beginning after March 18, 2010, for individual taxpayers (generally 2011), and to tax years beginning after December 31, 2015, for domestic entities.</td><td>▪ Hiring Incentives to Restore Employment Act
▪ IRC 6501
▪ IRC 6038D
▪ Form 8938 - Statement of Specified Foreign Financial Assets

▪ Rafizadeh v. Commissioner - 150 T.C. 1 (2018)</td></tr>
</table>

Detailed Explanation of the Concept (cont'd)

Overview of Statute of Limitations on the Assessment of Tax	
Analysis	**Resources**
Exception 7: Failure to Report More Than $5,000 in Income Attributable to Specified Foreign Financial Assets (cont'd) ▪ Example: The taxpayer filed his 2008 individual income tax return on April 15, 2009. The examiner discovered that the taxpayer failed to report $5,010 of interest income attributable to a foreign bank account, which is included in the definition of a "specified foreign financial asset" under IRC 6038D. Even though the three-year statute of limitations on assessment was open as of March 18, 2010, and the understatement related to a foreign financial asset income in excess of $5,000, IRC 6501(e)(1)(A)(ii) does not apply and will not extend the statute of limitations for the taxpayer's 2008 tax year because that tax year is before IRC 6038D became effective, as it only applies to tax years beginning after March 18, 2010.	

Detailed Explanation of the Concept (cont'd)

<table>
<tr><th colspan="2">Overview of Statute of Limitations on the Assessment of Tax</th></tr>
<tr><th>Analysis</th><th>Resources</th></tr>
<tr><td><u>Exception 8: Failure to Furnish Information Regarding Foreign Transfers</u>

The principle that a taxpayer should not benefit by withholding required information from the IRS also applies in cases where a taxpayer is required to file certain information returns.

If a taxpayer holds an interest in a foreign entity such as a controlled foreign corporation (CFC), controlled foreign partnership (CFP), or certain foreign trusts, the taxpayer is required to file information returns reflecting his foreign interests. The most common required returns are Forms 926, 5471 for foreign corporations, Forms 3520 and 3520-A for foreign trusts, and Form 8865 for foreign partnerships. For tax years beginning after March 18, 2010, Form 8938 is required for taxpayers owning specified foreign financial assets as defined in IRC 6038D(b).

Under IRC 6501(c)(8), the statute of limitations on the individual's return does not start to run until the information return is filed. Once a complete and accurate information return is filed, the statute of limitations starts and runs for three years.</td><td>▪ Form 926 - Return by a U.S. Transferor of Property to a Foreign Corporation
▪ Form 5471 - Information Return of U.S. Persons With Respect To Certain Foreign Corporations
▪ Form 3520 - Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
▪ Form 3520-A - Annual Information Return of Foreign Trust With a U.S. Owner
▪ Form 8865 - Return of U.S. Persons With Respect to Certain Foreign Partnerships
▪ Form 8938 - Statement of Specified Foreign Financial Assets
▪ IRC 6038D
▪ IRC 6501</td></tr>
</table>

Detailed Explanation of the Concept (cont'd)

<table>
<tr><th colspan="2">Overview of Statute of Limitations on the Assessment of Tax</th></tr>
<tr><th>Analysis</th><th>Resources</th></tr>
<tr><td>
<u>Exception 8: Failure to Furnish Information Regarding Foreign Transfers (cont'd)</u>

For tax returns filed after March 18, 2010, and tax returns for which the assessment statute of limitations was open on March 18, 2010, the HIRE Act amended this provision to keep the entire tax return open, unless the failure to file the information return was due to reasonable cause. If the failure to file was due to reasonable cause, the statute of limitations on assessment remains open only with respect to issues related to the unreported information.

In cases of tax returns for which the regular 3-year assessment statute of limitations expired as of March 18, 2010, the statute of limitations on assessment remains open only with respect to issues related to the undisclosed asset or entity.

Filing of the required foreign information return triggers the running of the statute of limitations of not only the income tax return but also for a penalty case resulting from the failure to file such foreign information return. Generally, the statute of limitations for assessing and collecting foreign information return penalties ends three years after a substantially complete foreign information return was filed or the information was provided to the IRS in another form.
</td><td>
▪ Hiring Incentives to Restore Employment Act
▪ Director, LB&I-IIC - Memo (9/12/2019) -Statute of Limitations on Assessment of Foreign Information Return Penalties
▪ Practice Unit - Failure to File the Form 5471 - Category 2 & 3 Filers - Monetary Penalty
▪ Practice Unit - Failure to File the Form 5471 - Category 4 and 5 Filers - Monetary Penalty
▪ Practice Unit - Failure to File the Form 926 - Return by a U.S. Transferor of Property to a Foreign Corporation - Monetary Penalty
</td></tr>
</table>

Detailed Explanation of the Concept (cont'd)

Overview of Statute of Limitations on the Assessment of Tax

Analysis	Resources
Exception 8: Failure to Furnish Information Regarding Foreign Transfers (cont'd) **CONSULTATION**: Local counsel should be consulted when attempting to calculate the statute of limitations where the foreign information necessary to prepare a foreign information return was secured by the Service, but the actual foreign information return was not filed. **CAUTION**: IRC 6501(c)(8) does not provide an exception to the 3-year period of limitations due to failure to provide information regarding gifts received from foreign persons required under IRC 6039F. Large gifts received from foreign persons are usually reported on Form 3520 Part IV. Unless other exceptions apply, failure to file Form 3520 Part IV generally does not trigger the statute exception under IRC 6501(c)(8). ▪ Example: A taxpayer filed a 2011 Form 1040 on April 3, 2012. A properly executed Form 872 was secured by the examiner that extended the statute from April 15, 2015 to April 30, 2017. In the course of the examination, the examiner determined that the taxpayer had not filed a Form 5471 and did not provide the IRS with information required to be reported on that form. Taxpayer submitted the delinquent form on December 15, 2015, and no reasonable cause argument for failure to file the Form 5471 was provided. Under IRC 6501(c)(8), the statute of limitations on the 2011 Form 1040 expires on December 15, 2018, three years after taxpayer submitted his delinquent Form 5471.	▪ Practice Unit - *Failure to File the Form 3520/3520-A* Penalties ▪ Practice Unit - *Failure to File the Form 8865 - Category 1 and 2 Filers - Monetary Penalty* ▪ IRC 6501 ▪ IRC 6039F ▪ Form 3520 - *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts* ▪ Form 1040 - *U.S. Individual Income Tax Return* ▪ Form 872 - *Consent to Extend the Time to Assess Tax* ▪ Form 5471 - *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*

Detailed Explanation of the Concept (cont'd)

Overview of Statute of Limitations on the Assessment of Tax

Analysis	Resources
<u>Exception 9: Suspension of Statute of Limitations Due to John Doe Summons</u> Under IRC 7609(e)(2), the statute of limitations on assessment in any case in which a third-party summons was served, the statute of limitations will begin to toll six months after the service of the summons if the summons remains unresolved as to "any person with respect to whose liability the summons is issued." Therefore, if the IRS issues a John Doe summons, the statute of limitations on assessing tax on any member of the John Doe class is suspended starting six months from service of the summons and ending on the date of final resolution of the summons. **CONSULTATION**: If an examiner has a taxpayer who is a member of a John Doe class, there should be a memorandum in the file from counsel calculating the statute suspension period. If such memorandum is not in the file, the examiner should contact a Technical Specialist in Offshore Compliance Initiatives to obtain the statute suspension memo.	▪ IRC 7609(e)(2) ▪ #[redacted]#

Detailed Explanation of the Concept (cont'd)

Overview of Statute of Limitations on the Assessment of Tax	
Analysis	**Resources**
Exception 10: Petition to Quash a Formal Document Request A taxpayer's petition to quash a Letter 2261(IN) *Formal Document Request* (FDR) suspends the running of the statute of limitations for the period during which the proceeding and any appeals, if applicable, is pending. ▪ Example: On May 1, 2013, an FDR was issued to taxpayer A to produce foreign records related to the taxpayer's 2010 Form 1040 with a 3-year statute of limitations set to expire on April 15, 2014. On July 1, 2013, taxpayer A filed a motion to quash the FDR under IRC 982(c)(2). The petition to quash the FDR wasn't resolved until December 20, 2013. For the 2010 calendar year, for which the regular 3-year statute would expire on April 15, 2014, the statute was suspended starting July 1, 2013, at which time the unexpired statute was 289 days. Consequently, under IRC 982(e), because the statute of limitations began to run again on December 21, 2013, 289 days will be added to the statute and the statute of limitations for assessment, absent any other exceptions, will expire on October 6, 2014.	▪ Practice Unit - *Issuing a Formal Document Request When a U.S. Taxpayer is Unresponsive to an IDR* ▪ Letter 2261(IN) - *Formal Document Request* ▪ Form 1040 - *U.S. Individual Income Tax Return* ▪ IRC 982

Detailed Explanation of the Concept (cont'd)

<table>
<tr><th colspan="2">Overview of Statute of Limitations on the Assessment of Tax</th></tr>
<tr><th>Analysis</th><th>Resources</th></tr>
<tr><td><u>Exception 11: Extension Due to Changes in Foreign Tax Credit</u>

IRC 6501(c)(5) directs the reader to IRC 905(c) for the statute of limitations when there is a change in the amount of foreign taxes claimed.

In case of adjustments to accrued taxes, when the accrued taxes are not paid within two years after the close of the tax year at issue, there is no statute of limitations on assessment. There is no statute of limitations when a foreign tax refund results in a U.S. tax liability and the taxpayer fails to notify the Service. This rule does not apply, however, to assessments of additional U.S. tax as a result of computational errors on the taxpayer's federal income tax return associated with foreign taxes (such as the use of an erroneous exchange rate).</td><td>▪ IRC 6501
▪ IRC 905(c)
▪ IRM 4.61.10.7
▪ Pacific Metals Corp. v. Commissioner - 1 T.C. 1028 (1943)
▪ Texas Co. (Caribbean) Ltd. v. Commissioner - 12 TC 925 (1949)
▪ CCA 201429026 - IRC 905(c)</td></tr>
</table>

Detailed Explanation of the Concept (cont'd)

Overview of Statute of Limitations on the Assessment of Tax	
Analysis	**Resources**
Exception 11: Extension Due to Changes in Foreign Tax Credit (cont'd)	
IRC 6511(d)(3)(A) provides a special 10-year limitation period for refunds relating to foreign tax credit (FTC). The 10-year period to file claims is without regard to any extension of time for filing the returns. The statute of limitations begins to run on the due date of the return for the tax year for which the FTC is claimed.	▪ IRC 6511 ▪ Treas. Reg. 301.6511(d)-3(a)
▪ Example: Taxpayer originally filed his 2005 Form 1040 on April 15, 2006. On June 30, 2013, he submitted a Form 1040X for the 2005 tax year claiming additional foreign tax credit related to additional foreign taxes paid to country X resulting in a U.S. income tax refund. Assuming the FTC claimed on Form 1040X is determined to be correct, the redetermination results in a U.S. tax refund because IRC 6511(d)(3)(A) allows a 10-year period to file a claim for refund. Because the original 2005 Form 1040 was filed on April 15, 2006, the 10-year statute on refunds related to the foreign tax credit expires on April 15, 2016.	▪ Form 1040X - *Amended U.S. Individual Income Tax Return* ▪ Form 1040 - *U.S. Individual Income Tax Return*
CONSULTATION: Special consideration must be given to informal claims for refund. Such claims must put IRS on actual or constructive notice that the taxpayer is currently asserting a right to a refund. Simply notifying IRS of an intent to file a claim in the future is insufficient to be considered a timely filed claim. It is suggested that examiners who encounter such situations seek advice regarding the timeliness of the claim from the local counsel.	▪ CCA 201540012 - IRC 6511(d)(3)(A)

Index of Referenced Resources

Overview of Statute of Limitations on the Assessment of Tax
IRC 905(c)
IRC 982
IRC 1291
IRC 6038D
IRC 6039F
IRC 6072
IRC 6081(a)
IRC 6213(d)
IRC 6501
IRC 6511
IRC 7121
IRC 7502
IRC 7503
IRC 7609(e)(2)
31 USC 5321
Treas. Reg. 1.6072-1(c)
Treas. Reg. 1.6081-5

Back to Table of Contents

Index of Referenced Resources (cont'd)

Overview of Statute of Limitations on the Assessment of Tax
Treas. Reg. 301.6511(d)-3(a)
Badaracco v. Commissioner - 464 U.S. 386, 394 (1984)
United States v. Habig - 390 U.S. 222 (1968)
Dubinsky v. Becker - 64 F.2d 601 (8th Cir. 1933)
United States v. Home Concrete & Supply, LLC - 132 S. Ct. 1836 (2012)
Bennett v. Commissioner - 30 T.C. 114 (1958), acq. 1958-2 C.B. 3
Colestock v. Commissioner - 102 T.C. 380 (1994)
Pacific Metals Corp. v. Commissioner - 1 T.C. 1028 (1943)
Rafizadeh v. Commissioner - 150 T.C. 1 (2018)
Texas Co. (Caribbean) Ltd. v. Commissioner - 12 T.C. 925 (1949)
Toso v. Commissioner - 151 T.C. No. 4 (2018)
Hiring Incentives to Restore Employment Act
Surface Transportation and Veterans Health Care Choice Improvement Act of 2015
Rev. Rul. 79-178
CCA 201429026 - IRC 905(c)
CCA 201540012 - IRC 6511(d)(3)(A)
IRM 4.61.10.7

Index of Referenced Resources (cont’d)

Overview of Statute of Limitations on the Assessment of Tax
IRM 25
IRM Exhibit 25.1.4-1
Form W-2 - *Wage and Tax Statement*
Form 872 - *Consent to Extend the Time to Assess Tax*
Form 906 - *Closing Agreement On Final Determination Covering Specific Matters*
Form 926 - *Return by a U.S. Transferor of Property to a Foreign Corporation*
Form 1040 - *U.S. Individual Income Tax Return*
Form 1040NR - *U.S. Nonresident Alien Income Tax Return*
Form 1040X - *Amended U.S. Individual Income Tax Return*
Form 3520 - *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*
Form 3520-A - *Annual Information Return of Foreign Trust With a U.S. Owner*
Form 4868 - *Application for Automatic Extension of Time To File U.S. Individual Income Tax Return*
Form 5471 - *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*
Form 8865 - *Return of U.S. Persons With Respect to Certain Foreign Partnerships*
Form 8938 - *Statement of Specified Foreign Financial Assets*
Form 10949 - *Statute Extension Check Sheet*
Civil Fraud Penalty Guide

Back to Table of Contents

Index of Referenced Resources (cont'd)

Overview of Statute of Limitations on the Assessment of Tax
Director, LB&I-IIC - Memo (9/12/2019) - *Statute of Limitations on Assessment of Foreign Information Return Penalties*
Letter 2261(IN) - *Formal Document Request*
#[redacted]#

Training and Additional Resources

Overview of Statute of Limitations on the Assessment of Tax	
Type of Resource	**Descriptions**
Saba Meeting Sessions	▪ *IIC - Statute of Limitations for BU Employees* - 2015 CPE Saba Meeting
Issue Toolkits	▪ Audit Tool - *Spreadsheet for 6-Year Statute of Limitations Exception Analysis* ▪ Audit Tool - *JDS Statute Suspension Calculator*
Other Training Materials	▪ *Desk Guide - Statute of Limitations*

Back to Table of Contents

Glossary of Terms and Acronyms

Term/Acronym	Definition
CCA	Chief Counsel Advice
CFC	Controlled Foreign Corporation
CFP	Controlled Foreign Partnership
FATCA	Foreign Account Tax Compliance Act
FDR	Formal Document Request
FTC	Foreign Tax Credit
HIRE Act	Hiring Incentives to Restore Employment Act
H.R.	House of Representatives
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
PFIC	Passive Foreign Investment Company
P.L.	Public Law
Rev. Rul.	Revenue Ruling
Treas. Reg.	Treasury Regulation
USC	United States Code

Back to Table of Contents

Index of Related Practice Units

Associated UILs	Related Practice Unit
9433	*Failure to File the Form 926 - Return by a U.S. Transferor of Property to a Foreign Corporation - Monetary Penalty*
9433	*Failure to File the Form 5471 - Category 2 & 3 Filers - Monetary Penalty*
9433	*Failure to File the Form 5471 - Category 4 and 5 Filers - Monetary Penalty*
9434	*Failure to File the Form 8865 - Category 1 and 2 Filers - Monetary Penalty*
9434	*Failure to File the Form 3520/3520-A Penalties*
9460	*Issuing a Formal Document Request When a U.S. Taxpayer is Unresponsive to an IDR*

Back to Table of Contents