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**Advocating for a Client
Who Needs to
Correct Errors on a Return or
Request an Audit Reconsideration**



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Learning Objectives

After completing this course, you will:

- Recognize the basic components of an audit reconsideration
- Recognize when an audit reconsideration is appropriate and how to request one
- Be able to file an amended return

Learning Objectives, Cont'd

After completing this course, you will:

- Understand the statutory limitations applicable to filing an amended return
- Understand some potential penalties the IRS may assess after filing an amended return



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What is an Audit Reconsideration?



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The IRS Has *Discretionary* Authority to Grant an Audit Reconsideration

- IRC 6404(a)
- Treas. Reg 301.6404-1



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When to Request an Audit Reconsideration

- You have new information to show the IRS about the audit of your income or expenses;
- You disagree with the tax the IRS says you owe;
- You never appeared for the audit appointment or sent the IRS your information; or
- You moved and never got the IRS's audit report



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Can You Still Seek Tax Court Review of a Proposed Deficiency?

- Submitting an audit reconsideration request does not toll the 90-day period for petitioning Tax Court



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How to Request an Audit Reconsideration

- No special form required
- Documentation must accompany the request
- Send your request to the office that last corresponded with you
- An audit reconsideration request can be made anytime after an examination assessment has been made and the tax remains unpaid



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The IRS Will Consider Your Audit Reconsideration If:

- New information would have resulted in a change to the assessment
- Original delinquent return(s) filed after IRS executed SFR
- IRS computational or processing error in assessing the tax



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The IRS Will Not Consider Your Audit Reconsideration If:

- The taxpayer was already given an audit reconsideration
- The taxpayer already signed a closing agreement
- The taxpayer already signed an Offer in Compromise
- Form 870-AD, *Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax*; or



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The IRS Will Not Consider Your Audit Reconsideration If: Cont'd

- A court has determined the tax is owed
- The tax has already been paid to the IRS
- The original IRS examination isn't complete
- A partnership issue has been finally determined through an IRS administrative adjustment or agreement



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Special Circumstances

- Combat Zone
- Disaster Area



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How the IRS Responds to an Audit Reconsideration Request

The IRS may:

- Accept your information and abate (remove) the tax it previously assessed;
- Accept your information in part and partially reduce the tax; or
- Find that your information didn't support your claim and the prior assessment stands



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How Can You Tell If the IRS Considered the Information You Provided?

- Review IRS response to audit reconsideration request
- Review list of submitted documents



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Amending Returns

- Form 1040X
- Paper filing required



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Correcting a Tax Return

- Differs from an amended return
- Must be filed before the return due date (including extensions)
- Becomes the taxpayer's original return for SOL purposes



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Assessment Statute Expiration Date (ASED)

Generally, three years after
the return was filed

- Exception for failure to provide
required information



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ASED, Continued

- Amended return does not restart SOL
- Fraudulent returns cannot be corrected by amending

If the Taxpayer Has a Liability

- Generally, an amended return does not affect the SOL on assessment
- IRC 6501(c)(7) exception within 60 days of ASED



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If the Taxpayer Has an Overpayment

Determine if the taxpayer can
file for refund



Refund Statute Expiration Date (RSED)

Generally three years from the Return Due Date (RDD) for payments and prepaid credits if a return was filed, or two years from the payment date for other payments whichever is later



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RSED, Continued

If requesting reconsideration related to a tax year when the IRS filed an SFR, the RSED for prepaid credits is generally three years from the due date of the return with regard to extensions



Penalty Considerations

- Treas. Reg. 1.6664-2(c)(2) and (3)
- IRC § 6662(a) – 20% penalty unless reasonable cause shown



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IRC § 6676 Erroneous Claim for Refund or Credit

- 20% of “excessive amount,” unless reasonable cause shown
- Excessive amount: Amount of claim for refund or credit that exceeds amount allowable
- Reasonable Cause Exception: Transactions lacking economic substance deemed not to be due to reasonable cause



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IRC § 6651 Failure to Pay Tax

- IRC § 6651(a)(2)
- 0.5% per month of delinquency, not to exceed 25% (i.e., 50 months)
- Based on amount shown on the return, less tax paid by beginning of the month (15th day of the month for income tax returns) and any credits against the tax shown
- Runs from the original due date of the return (w/o regard to extensions of time to file, but w/ regard to extensions of time to pay), until paid

IRC § 6651 Failure to Pay Tax, Continued

IRC § 6651(a)(3) — If there are adjustments, the taxpayer has 21 calendar days from the date of notice and demand (reduced to 10 days if the amount due is \$100,000 or greater)





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Reporting Penalties

Various code sections related to international information reporting impose:

- An initial penalty for failure to provide information or to file a required return, and
- If the failure continues for more than 90 days after the day the notice of the failure is mailed, continuation penalties for every thirty day period (or portion of that period) until the information is provided, the return is filed, or the statutory limit is reached



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Reporting Penalties, Continued

- In some cases, there is no initial penalty or continuation penalty if the taxpayer has reasonable cause
- No reasonable cause relief for the continuation penalties under IRC § 6679



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Reasonable Cause Abatement

- Based on facts and circumstances
- Includes situations such as fire, casualty, natural disaster, inability to obtain records
- Reasonable cause vs first-time abatement



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Ethical Considerations

- No affirmative obligation to file an amended return for a mistake
- Was the client's return accurate to the best of the client's knowledge at the time of filing?



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Wrap-Up Review

Today's presentation covered:

- The basic components of an audit reconsideration
- Requesting an audit reconsideration
- How to file an amended return
- The statutory limitations applicable to filing an amended return
- Some of the potential penalties the IRS may assess after filing an amended return



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Resources

- Pub 3598, *What Should You Know About the Audit Reconsideration Process*
- Pub 5, *Your Appeal Rights and How To Prepare a Protest If You Don't Agree*



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How TAS Can Help

- Determine the status of a claim and whether timeframes are being met
- Ask IRS to reconsider a denial or to review at a higher level



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- www.TaxpayerAdvocate.irs.gov
- www.youtube.com/tasnta
- www.facebook.com/YourVoiceAtIRS
- twitter.com/YourVoiceatIRS
- Call 877.777.4778
- File Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*



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