The Contemporary Tax Journal

Volume 13
Issue 1 *The Contemporary Tax Journal Volume 13, No. 1 – Summer 2024*

Article 6

9-12-2024

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Cheryl Cruz
*San Jose State Univerity*

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## Recommended Citation

Cruz, Cheryl (2024) "Navigating the Ins and Outs of Amended Returns," *The Contemporary Tax Journal*: Vol. 13 : Iss. 1 , Article 6.
https://scholarworks.sjsu.edu/sjsumstjournal/vol13/iss1/6

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# Navigating the Ins and Outs of Amended Returns

**By Cheryl Cruz, MST Student**

Amid the complex world of taxes and financial responsibilities, even with the utmost care, errors and omissions on filed tax returns continue to be prevalent. Approximately three million individual amended returns are filed each year.[1] Taxpayers and practitioners continue to face challenges concerning the accuracy of previously filed returns. The many explanations provided to the Internal Revenue Service (IRS) for the filing of amended returns include late received tax documents, errors from typographic mistakes, contradictory interpretation of complex tax laws and the misconstrued understanding of facts. This article introduces information to assist with the understanding of amended returns, filing deadlines, and IRS news on this topic in 2023.

## Why Amend a Tax Return?

It is crucial to recognize that amending a return can yield varying outcomes and has differing filing requirements based on the specific matters involved. An amended return might result in an increased refund if corrections lead to reducing taxable income or qualifying for additional credits. Conversely, an amendment could also mean owing more in taxes if errors result in underreported income or overstated deductions. Treas. Regs. Sections 1.451-1(a) and 1.461-1(a)(3) identify that taxpayers should amend returns upon the discovery of unreported income[2] or erroneous deductions.[3] Whether it is an overlooked deduction, an item of income, or a calculation error, amending returns allows taxpayers and preparers to meet their obligations to file a correct return and to rectify mistakes and potentially avoid future penalties and interest.

## Superseded Returns

Prior to considering the filing of an amended return, taxpayers may have the option of filing a superseded return. A superseded return is a second tax return filed by a taxpayer for the same tax period, submitted after an initial original return is filed but before the original return's due date (including extensions). This new return effectively replaces (supersedes) the original return, correcting or updating the information provided. The purpose of filing a superseded return is like amended returns in that it is used to correct errors or omissions to an original return filed. To file a superseded return, a new return is filed with all required forms and schedules and clear identification such as noting "Superseding Return" on the top of the return. The benefit of filing a superseded return is that it is treated as if it were the original return for all purposes. The benefit is that penalties and interest may be avoided in contrast to an amended return where the corrections are discovered after the original due date. Superseded returns are a valuable option if the filing deadline has not passed.

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[1] A new IRS feature allows taxpayers electronically filing 1040-X amended returns to choose direct deposit to speed refunds (;Internal Revenue Service, IR-2023-22, Feb. 9, 2023): https://www.irs.gov/newsroom/new-irs-feature-allows-taxpayers-electronically-filing-amended-returns-to-choose-direct-deposit-to-speed-refunds.

[2] Treas. Reg. §1.451-1: General rule for taxable year of inclusion.

[3] Treas. Reg. §1.461-1: General rule for taxable year of deduction.



Published by SJSU ScholarWorks, 2024

**Amended Return Identification**

An amended return will fall under one of the following categories or “terms” as defined by the Internal Revenue Manual (IRM):

- Claim for refund; Request for abatement (including audit reconsideration);
- Amended return; No tax effect; or
- Taxable amended return.[4]

A request for abatement[5] is an amended return or written request to reduce or eliminate tax liabilities, penalties or interest owed. Like a claim for refund, a request for abatement is generally filed when a taxpayer believes their assessed liability exceeds the correct amount owed. This may be due to identified errors in calculation or other reasons justifying a reduction or cancellation of a tax obligation. Unlike a claim for refund, however, a request for abatement reflects an unpaid balance in tax, potentially involving both a reduction in tax owed and a claim for refund, depending on the module balance at the time of filing. Where there is no claim for refund involved, an abatement may be filed after the statute has expired. Where there is a portion of refund involved, the request must be filed within the applicable claim for refund timeframes discussed later in this article. Because filing requirements differ significantly with one having no filing deadline and the other having a specified due date, it is relevant to properly identify the type of amended return to be filed, whether a refund is being requested, and the applicable due date.

**When to file?**

Generally, for individuals seeking a refund or to claim a credit, the deadline to file an amended return is three years from the original filing date or within two years from the date tax was paid, whichever is later.[6] Partnerships and corporations also generally have three years from the date the return was filed or within two years from the date the tax was paid, whichever is later, to file an amended return  If a claim is not filed within the three-year period, the amount of a refund or credit shall not exceed the amount of the tax paid during the two years immediately preceding the filing of the claim.[7]  The general time limits for refund claims have specific exceptions with respect to bad debts and net operating loss carryback or carryforwards. The Foreign Tax Credit (FTC), credit carrybacks, self-employment tax, income recaptured under qualified plan terminations, and uniformed services retired pay reduced as a result of disability compensation also have special rules found under Internal Revenue Code (IRC) § 6511(d).

**Bad Debts**

[4] IRM 4.10.11.1.5, Terms.

[5] IRC § 6404, Abatements

[6] IRC § 6511(a), Period of Limitation on Filing Claim

[7] IRC § 6511(b), Limitations on allowance of credits and refunds

Under IRC § 166, a bad debt deduction is allowed on a debt that becomes worthless within the year.[8] Proving that a debt became worthless in a specific year can be challenging and as a result, if the IRS should find that a debt became worthless in an earlier year, a deduction may be lost due to the statute of limitations on refund claims. To address this issue, the statute of limitations for claiming a credit or refund for bad debts and worthless securities is extended to seven years, rather than the standard three years.[9]

Furthermore, for overpayment claims due to these deductions that affect carrybacks, the time frame extends to seven years from the net operating loss year or three years after the return's due date, whichever is later.[10]

**Carryback or Carryforward of NOLs**

A Net Operating Loss (NOL) refers to the excess of a taxpayer's business deductions over their business income, with certain adjustments.[11] The practice of using losses to offset income in different years dates to the Revenue Act of 1918,[12] which had a one-year carryback and carryforward allowance. Since then, the federal income tax system has seen numerous fluctuations in the carryback and carryforward periods.

To summarize some of the more recent significant changes, the Tax Relief Act of 1997[13] introduced a two-year carryback and a 20-year carryforward period. Following the economic strain caused by the September 11, 2001, attacks, a temporary five-year carryback extension was enacted, and during the Great Recession of 2009, a carryback election of three, four, or five years was available. Effective after December 31, 2017, under the Tax Cuts and Jobs Act (TCJA),[14] significant alterations to NOLs were introduced allowing for an indefinite carryforward period but eliminating the provision for carrybacks and limiting deductions to 80% of taxable income (with limited exceptions).

In 2020, the CARES Act[15] introduced a temporary retroactive provision allowing a special 5-year carryback for taxable years starting in 2018, 2019, and 2020. NOLs arising after 2020 cannot be carried back, while carryforwards remain unlimited but limited to offsetting no more than 80% of taxable income in any carryforward year. NOL carryback periods can change for various reasons, often in response to economic conditions or policy objectives. During times of economic downturns, lawmakers may extend carryback periods to provide relief to struggling businesses by allowing them to apply losses against past profits, thus obtaining refunds for taxes paid in previous profitable years. Conversely, during periods of economic growth, governments may shorten carryback periods to boost revenue or encourage more prudent financial management by

[8] IRC § 166.
[9] IRC § 6511(a)(d)(1).
[10] IRC § 6511(d)
[11] IRC § 172(c).
[12] P.L. 65-254.
[13] P.L. 105-34.
[14] P.L. 115-97.
[15] P.L. 116-136.

businesses. Changes can also be influenced by legislative actions aimed at stimulating specific sectors of the economy or addressing challenges faced by businesses.

The amended return deadlines governing years impacted by NOLs differ from the traditional deadlines discussed earlier. Instead of the usual three-year period, if the claim for credit or refund is related to an overpayment due to an NOL carryback or a capital loss carryback, the period extends to three years after the return filing deadline for the NOL or capital loss year resulting in the carryback, or the period provided in IRC § 6511(c) for that taxable year, whichever is later[16]. The credit or refund amount may exceed the tax paid within the standard period provided in IRC § 6511 (b)(2) or (c), up to the overpayment attributable to the carryback.

Taxpayers also can file for a tentative adjustment or refund of taxes for a year affected by the carryback using Form 1045 for Individuals, or Form 1139 for corporations. Form 1045, Application for Tentative Refund, is not an amended return, but serves a similar purpose. Form 1045 is specifically used to apply for a quick refund resulting from net operating losses (NOLs), unused general business credits, and net section 1256 contracts losses that are carried back to prior tax years. The form is also used to obtain a quick tax refund due to a claim of right adjustment under section 1341(b)(1). Form 1045 allows for expedited processing time specific to these issues and is generally processed by the IRS within 90 days. Form 1045 must be filed within one year after the end of the tax year in which the NOL, unused credit, or net section 1256 contacts loss arose.

**Centralized Partnership Regime**

The centralized partnership audit regime, also referred to as Bipartisan Budget Act (BBA) of 2015[17], introduced changes to the rules governing partnership examinations and the procedures for amending returns. The BBA, generally effective for partnership tax years beginning after December 31, 2017, replaced partnership procedures previously outlined in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) along with the electing large partnership (ELP) rules. It is important to note that a partnership may opt into the centralized partnership regime for tax years beginning after November 2, 2015, and before January 1, 2018.[18] Otherwise, the BBA governs all partnerships by default unless a partnership makes a valid election to opt out for a specific tax year.[19]

A partnership needing to amend a previously filed Form 1065 must consider the modifications as impacted by the BBA. This is because BBA partnerships adhere to different procedures than partnerships that do not adhere to the centralized partnership audit regime.

For partnerships not subject to the BBA, when electronically filing amended returns, Form 1065 is submitted ensuring that the 'Amended Return' checkbox is selected. Additionally, the amended

[16] IRC § 6511(d)(2).
[17] The Bipartisan Budget Act of 2015 (Public Law No. 114-74) (BBA) was signed into law on November 2, 2015.
[18] Reg. Sec. 301.9100-22(a).
[19] IRC §6221 and §6241(1).

return should include all Schedules K-1s and all forms, schedules, and attachments that have been altered or that provide support for changes on the amended Form 1065.[20]

In contrast, BBA partnerships file Form 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR) with a revised Form 1065. Unlike TEFRA, as part of the advantages brought forth by the BBA, partnerships must now integrate the determination of adjustments including the assessment and collection of related taxes (called an imputed underpayment or IU) at the partnership level rather than at the partner-level.[21]

Once there is a determination that the changes result in an Imputed Underpayment (IU), then the partnership must either pay the adjustments resulting in an IU or distribute all adjustments to the partners for the reviewed year by electing for an AAR push out. Further, if adjustments requested in an AAR do not lead to an imputed underpayment, they too must be distributed to the reviewed-year partners for inclusion in their tax returns for the reporting year. It is important to note that the review year is the tax year for which changes are being made whereas the adjustment year is the year the AAR is filed. Unlike a non-BBA amended return, a partnership filing an AAR under BBA results in the restarting of the statute of limitations for all items with respect to that year. If opting to push out adjustments to the partners or if the AAR contains adjustments that do not result in an IU, the AAR submission must include Form 8985, Pass-Through Statement/ Transmittal/Partnership Adjustment Tracking Report, and Form 8986, Partner's Share of Adjustments(s) to Partnership-Related Items[22] that is sent to each of the reviewed year partners. For paper filed returns, file Form 1065-X, Amended Return or Administrative Adjustment Request (AAR) and include the above forms required under electronic filings.

Partners receiving Form 8986 as a result of amended return adjustments must calculate and pay any tax due. Partners use Form 8978, Partner's Additional Reporting Tax Year, for changes resulting in the partners tax for the reporting year.[23] A change resulting in a decrease in partners tax results in a nonrefundable credit that can be used to reduce the partners reporting tax year to zero.

An AAR must be submitted within three years from the later of (1) the date the partnership return was filed or (2) the deadline for filing the return (excluding extensions).[24] Generally, an AAR cannot be filed after the partnership and Partnerships Representative (PR) receive a notice of administrative proceeding for the same tax year. The AAR can only be signed by the PR (or DI, if applicable) on behalf of the partnership.

[20] See additional filing requirements at IRC §6011(e)(2) and Regs. 301.6011-3(a) and 301.6011-3(d)(4).
[21] IRC § 6221(a).
[22] IRC § 6226 and § 6227.
[23] Regs. 301.6227-3(a).
[24] IRC § 6227(c).

Like procedures for individual returns, in general, a partnership that does not fall under BBA procedures has up to three years to file an amended return after the date of filing the partnership return for that year or the last day for filing the partnership return (excluding extensions) whichever date is later.

**State Amended Returns**

It is important to remember that changes to federal returns may also impact state tax liabilities. State conformity varies. Taxpayers seeking to amend a previously filed state tax return must verify whether a particular state conforms, for example, to the BBA rules and returns such as superseding and/or amended returns.

**Amended Employment Tax Returns**

Form 941-X is available for correcting errors on previously filed employment tax returns, each corresponding to specific forms being corrected. However, there isn't a dedicated "X" form for Form 940; instead, taxpayers mark the amended return box on the Form 940 itself. To rectify errors promptly, employers should utilize the appropriate "X" forms upon discovery of an error.

In response to the COVID-19 pandemic in 2020, the lawmakers enacted the Employee Retention Credit (ERC) to incentivize employers to retain employees amidst COVID-19-related economic challenges. Eligible employers who operated a trade or business during the calendar year qualified for the credit if they faced either a complete or partial suspension of operations due to a COVID-19-related government order or experienced a substantial decline in gross receipts. The ERC offsets certain employment taxes and is refundable, allowing eligible employers to receive payment exceeding their employment tax liabilities.

The credit applied to a portion of qualified wages paid to employees during specific periods, with a maximum credit based on a percentage of up to $10,000 in qualified wages per employee per quarter. ERC amounts varied depending on the year. In 2020, the credit was 50% of qualified wages up to $10,000 per employee for the entire year. In 2021, the maximum credit increased to 70% of qualified wages up to $10,000 per employee per quarter.[25] Criteria for qualified wages differed based on employer size, with businesses with over 100 employees for 2020 (500 employees for 2021) eligible only for certain wages paid to employees not providing services impacted by effects of COVID-19, while smaller employers could claim the credit for all wages paid to an employee during eligible periods. Initially businesses receiving Paycheck Protection Program (PPP) loans were ineligible for the ERC. However, legislation changed in 2021, allowing eligible businesses to claim the ERC for wages not paid with the forgiven PPP loan proceeds retroactively back to 2020.

Employers who received the credit must offset their compensation expense by the amount of the Employee Retention Credit (ERC) claimed in the relevant tax year. This includes filing amended tax returns to reduce payroll expenses by the amount of the ERC or recording the ERC as other income on the income statement. Section 280C(a) is a provision that prevents double tax benefits

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[25] IRC §3134(a) and (b).

for certain deductions and tax credits. Specifically, it requires taxpayers to reduce their deductions for wages and salaries by the amount of tax credit claimed for those wages and salaries. This ensures that businesses do not receive a double deduction by both claiming a deduction and receiving a tax credit for the same expenses.

The deadline for filing an amended return depends on when your original 2020 and/or 2021 returns were filed. For businesses that received a credit for the 2020 tax year, the amended return must be filed by March 15 or April 15, 2024, and for credits received for the 2021 tax periods, the deadline for filing is March 15 or April 15, 2025, if original returns were filed by the applicable due dates. If an extension was filed, an amended return can be filed up to three years from the original filing date.

The Employee Retention Credit (ERC) has faced challenges due to a surge in fraudulent claims, leading the IRS to suspend processing of ERC claims. In March 2023, in response to heightened scrutiny on ERC claims, the IRS Office of Professional Responsibility issued Alert 2023-02 for tax professionals, providing guidance on how Treasury Circular 230 applies to amended tax returns related to the ERC[26]. The alert emphasizes the importance of due diligence, full disclosure to clients, and reasonable reliance on provided information when preparing original and amended tax returns. Although not specifying the exact types of federal tax returns covered, the alert indicates its relevance to amended federal income and employment tax returns. It stresses the practitioner's responsibility to understand ERC rules, verify employer eligibility, and accurately calculate the corresponding wage deduction disallowance. On September 14, 2023, IRS Commissioner Danny Werfel initiated an immediate halt on the processing of new ERC claims[27].

In conclusion, navigating the process of amended returns is crucial, especially in the current landscape of heightened scrutiny on fraudulent filings of ERC claims. Understanding the rules and procedures surrounding amended returns empowers taxpayers to correct errors and ensure compliance with tax regulations, ultimately contributing to a more transparent and trustworthy tax system for all stakeholders involved.

[26] OPR, Professional Responsibility and the Employee Retention Credit, Issue Number: 2023-02: https://www.irs.gov/pub/irs-utl/2023-02-professional-responsibility-and-the-employee-retention-credit-R2-508-compliant.pdf.
[27] IRS, IR-2023-169, Sept. 14, 2023: https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros.