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THE TAX LAWYER

May. 5 2011 – 8:31 am

Beware IRS Refund Time Limits

Most people don't intentionally overpay their taxes. See [How To Get A Tax Refund](#). But if you do overpay, you can ask the IRS for a refund or apply the excess to other tax obligations. In fact, the latter may have a lower profile. See [Ten Tips For Amending Your Tax Return](#).

It can sometimes be a smart tactical move to have the IRS apply the refund to your other (such as current year) taxes rather than send the money back. The IRS can grant a refund only to thereafter audit and demand the money back. See [Getting A Tax Refund? Ten Things To Know](#).

Normally, the time limit for amending is 3 years after filing your original return. See [Even The IRS Has Time Limits](#). But there's also a 2 year limit, one requiring you to file suit if the IRS denies your refund claim. If you miss it, it can mean money you sent the IRS can't be applied or refunded. You're just out of luck.

[Kevin Brady](#) learned this the hard way. Brady didn't file his 2005 tax return, so in 2007, the IRS prepared one (often called a "substitute" return) and issued a [Notice of Deficiency](#) for \$18,455.65. Brady didn't file a Tax Court petition, so this tax bill became final on March 3, 2008. See [Choose Your Ground In Tax Disputes](#).

The IRS thereafter sent Brady a Final Notice of Intent to Levy ([Letter 1058](#)) trying to collect. In early 2009, Brady finally filed his 2005 tax return and most of the tax previously assessed was abated. Seeking to offset some years with others, Brady claimed he had losses from 2001

and 2002 that should be carried back to 1999 and 2000. This would free up overpayments, he argued.

Predictably, the IRS said no, and Brady lost in court. The IRS sent Brady a levy notice on April 22, 2009, and Brady filed a petition for redetermination with the Tax Court on May 11, 2009. Again, Brady lost.

You Lose. Agreeing with the IRS, the Tax Court held Brady's overpayment claims were time-barred. Brady had received the IRS's disallowance of his claim more than 2 years before, so the 2-year period for filing a refund action had already elapsed. When he filed his Tax Court petition in 2008 regarding his 2005 liabilities, any refund suit was already barred.

Amended returns and refund claims often require professional help. See [Beware Amending Tax Returns](#). And tax refund suits almost certainly do. If your refund request is not granted, you can sue for a refund in [federal district court](#) or the [U.S. Claims Court](#). The 2 year limitation on refund actions is in Internal Revenue Code Section [6532](#). Make sure you get help early enough that you still have remedies.

For more, see:

[10 Things To Know About Fighting An IRS Bill](#)

[Ten Tax Protester Claims To Avoid](#)

[Can You Fix The Tax Return You Just Filed?](#)

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