



Robert W. Wood

THE TAX LAWYER

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13 IRS Tax Rules Trump Tax Plan Won't Change

With Republican control of the House and Senate, President-elect Trump and Congress might tell the tax code, “*you’re fired!*” And as *big* as the coming tax changes might be, it’s worth noting what is highly *unlikely* to change. Keeping track of these 13 key tax rules could put dollars in your pocket and ease your interactions with the tax system.

1. Everything is income. The IRS taxes all income from any source, whether in cash or in kind. Lottery? Taxed. Gambling? Taxed. You name it, it’s taxed. If you find a diamond ring, you pay tax on its fair market value even if you don’t sell it.

2. Pay taxes later. Most tax planning involves timing. You want to accelerate tax deductions and defer tax payments, subject to constraints such as the constructive receipt doctrine. If you have a legal right to money but say “pay me later,” it’s taxed now. But you can *condition* payment, such as refusing to sell your house or settle a lawsuit *unless* you are paid next year.



3. Forms 1099 really count. Those little tax forms you get in January are keyed to your Social Security number. The IRS *always* gets a copy. Pay attention to them—the IRS sure does. These [IRS Forms 1099 are critical, and due soon](#).

4. Beware foreign accounts. Foreign bank accounts may generate income, but you won't receive a Form 1099. Still, reporting them is key. If balances exceed \$10,000 in the aggregate any time during the year, you also must file an [FBAR](#). With FATCA, IRS scrutiny is high, and how you transition from failures to report in the past to present compliance can be delicate. Beware, so far, the [IRS has collected \\$10 billion](#) from offshore compliance.

5. Pay small tax bills. If you get a small tax bill, pay it *even if the IRS is wrong*. What's "small" varies, but don't risk an audit or dispute escalating by fighting over small dollars.

6. Reply to every IRS letter, unless it says not to. This is common sense. Often, fighting the IRS is about attrition.

7. Don't talk to the IRS if they visit, and never lie. If the IRS comes to your home or business, decline to speak and tell them your lawyer will call. Take their card and be polite but firm. If you say anything to the IRS, don't lie.

8. The IRS can audit 3 years, but keep records for 7, and tax returns forever. The usual IRS statute of limitations is 3 years after you file your return. If you understate your income by 25% or more, the IRS gets 6 years. To be safe, keep tax records for 7 years. And keep copies of your tax returns themselves forever.

9. Avoid amending returns, but if you do amend, don't cherry-pick. Don't take amending tax returns lightly. Amended returns have a high audit rate, especially if they request a refund. The IRS says you "should" amend your return if you discover a mistake after it's filed. But there's no legal obligation. The only time you really *must* amend is if you knew *at the time you filed the original return* that it was false. If you decide to amend, you can't cherry-pick which items to fix. The amended return must correct everything, not just the items in your favor.

10. File returns even if you can't pay. Many taxpayers don't file on time because they don't have the tax money. They would be much better off if they filed on time. Payment can come later, and might be the subject of an IRS installment agreement. Penalties too will likely be smaller if you file on time.

11. Don't explain or attach too much. Tax returns should be concise. If an explanation or disclosure is needed, keep it succinct. Attachments to tax returns should be limited to tax forms and, where required, plain sheets of paper listing additional deductions, income, etc. Don't attach other documents. If the IRS wants documents, it will ask.

12. **Be careful with big refunds.** Getting a refund? Consider applying it to next year's tax payments rather than asking for the cash, especially if it is large. If you are [getting a tax refund](#), not asking for the money back can lower your profile with an initial or amended return.

13. **Get professional advice.** Handling a tax case by yourself is usually a mistake. You can prepare your own returns with software if you like, but if you have an audit or dispute, hire an accountant or lawyer to handle it. Even simple audits can come off the rails or extend into other areas if you aren't careful. Whether you need practical procedural advice or technical help on particular issues, find someone with experience in your issue. And don't wait until the last minute.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.