

*Oklahoma Society of Enrolled Agents*

OCTOBER 2018

STATUTE OF LIMITATIONS  
"Analyze This"

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## **I. INTRODUCTION**

Statutes of Limitations are provisions of law that generally restrict a taxpayer's right to various beneficial and/or protective type tax claims, for example, "the right to claim a refund or the right to file suit in court". However, the restrictions of "Statutes of Limitations" are not dissimilar to the effects of a "pendulum." The restrictions affect and apply to both taxpayers and Government employees, thereby preventing "actions" from being initiated by either party. Additionally, the provisions of the statute of limitations must generally be "invoked" by an action and/or inaction. For example, the filing of a basic 1040 tax return invokes the "assessment statute" of limitations. On the other hand, the non-filing of a tax return does not "invoke" the assessment statute, but keeps it open indefinitely.

Although, this text is not intended to be a "thorough" review of the statute of limitations (covering all known and/or existing statutes) we will discuss, review and calculate the most commonly addressed "statutes" the practitioner encounters in their day-to-day practice.

## **II. THE ASSESSMENT STATUTE**

There are two civil statutes of limitations, which are generally regarded as the most prevalent. The first is the statute regarding assessments. The Internal Revenue Service (IRS) is required to assess tax within 3 (three) years after the filing of a return.<sup>1</sup> This three year period includes the assessment of not only tax, but penalty and interest as well. Therefore, any type of relative assessment is required to be made within the mandatory three-year period. This statute is commonly referred to as the **ASED** (*Assessment Statute Expiration Date*).

### **A. A Typical Tax Return Filing**

- Assessment Officer signs **Form 23-C** (Assessment Certificate)
- Summary Record of assessment is created<sup>2</sup> and should include the following concerning the taxpayer:
  - a) Name
  - b) Tax identification number
  - c) Tax period involved
  - d) Type of tax involved
  - e) The amount of the tax

### **B. Three-Year Rule**

Generally, within three years after the filing of a federal tax return<sup>3</sup> the IRS must either assess the tax or initiate a suit against the taxpayer to legally enforce and collect the tax. Again, this three-year period includes any additional assessments of penalty and interest.<sup>4</sup>

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<sup>1</sup> See IRC §6501(a) and Treas. Reg. §301.6501(a)-1(a).

<sup>2</sup> See Treas. Reg. §301.6203-1.

<sup>3</sup> See IRC §6501(a).

<sup>4</sup> See IRC §6665(a).

## **Basic Rule**

- a) The Form 1040 return is due the fifteenth day of the fourth month after the close of a calendar or fiscal year. Thus, a Form 1040 for a calendar year ending December 31, 2004, is due April 15, 2005. The statute of limitations date is April 15, 2008.<sup>5</sup> An assessment must be made within three years after the return was filed or the due date of the return, whichever is later.
- b) Where the taxpayer is a fiscal year, e.g., September 30, 2005, the return is due January 15, 2006. The assessment statute of limitations date is January 15, 2010.

## **2) Early Filed Return**

When a return is filed early, the statute of limitations is computed from the due date of the return. Thus, if a Form 1040 for a calendar year ending December 31, 2004, is filed on March 14, 2005, the due date is April 15, 2005. The assessment statute of limitations date is April 15, 2008.<sup>6</sup>

## **3) Late Filed Return**

If a return is filed after the due date, determined without regard to any extension of time for filing, the statute of limitations is computed from the date the return is filed<sup>7</sup>. If a return is due on April 15, 2005 (calendar year 12/31/2004), and is filed on May 17, 2005, the assessment statute of limitations date is three years from May 17, 2005, or May 17, 2008.

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<sup>5</sup> See IRC §6072(a).

<sup>6</sup> See IRC §6501(b)(1).

<sup>7</sup> See IRC §6501(a).

#### 4) **Timely Mailing Rule**

- a) A return shall be considered filed on the date of delivery or date of payment determined by the date of the United States postmark stamped on the mailing cover of the return or payment.<sup>8</sup>
- b) On an original return, the Service should use the earliest date stamped on the face of the return by either the district director or the service center. Where the Service does not have an original return, the date filed may be determined from the transcript of account.
- c) If a return was timely mailed but untimely received, the statute of limitations date is determined from the postmark or mailing date<sup>9</sup>. It is crucial that the Records Clerk check the postmark or mailing date to determine if the return was timely mailed.
- d) An extension of the statute of limitations is valid if executed and received within three years of the date the return was filed. Again, it is critical to check the date a return is filed in computing the statute date.<sup>10</sup>

#### C. **Statute Computation**

Regarding assessment, the statute of limitations begins to run the day after the taxpayer's return is considered as filed.<sup>11</sup> Therefore, the day of filing (if timely filed) should be excluded from the three-year period computation. See the computation examples later in this text.

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<sup>8</sup> See IRC §7502.

<sup>9</sup> See *Hotel Equities Corporation*, CA-7, 77-1, USTC 9102.

<sup>10</sup> See *First Charter Financial Corporation*, 82-1, USTC 9222.

<sup>11</sup> See *Burnet v. Willingham Loan & Trust Co.*, 282 U.S. 437, 2 USTC 655, 9AFTR 957.

**D. Double that Order! The Six-Year Statutes**

**1) Substantial Omissions**

There are exceptions to the general or basic three-year rule. An extended “six-year” statute of limitations applies when a taxpayer makes a substantial omission or understatement of gross income. The omission or understatement must be greater than 25% of gross income, which was actually reported on the tax return.<sup>12</sup> The increased or “doubled” statute provides the Government with additional time to make a determination, assess and eventually collect understated and underreported tax liabilities. Additionally, the “burden of proof” shifts to the IRS in cases involving substantial understatement or omission of 25% or more of gross income<sup>13</sup>. This is a prime example where the Government cannot rely on the “presumption of accuracy” regarding the issuance of a “Notice of Deficiency.

**Presentation Discussion Point:**

Per *Chief Counsel Advice (CCA) 201333008*, the IRS indicated that an estimated amount of flow-through S Corporation K-1 income (reported via the taxpayer’s Form 1040) did not constitute proper disclosure per IRC §6501(e) and therefore the taxpayers tax return (since the S Corp was actually filed 4 years later) was subject to an extended “six-year” statute of limitation due to a “substantial omission of income”. Additionally, in determining what constitutes a “substantial omission” from gross income for purposes of IRC §6501(e)(1), Treas. Reg. §1.1366-1(c)(2) states that a shareholder’s gross income includes the shareholder’s proportionate share of S Corp gross income.

<sup>12</sup> See IRC §6501(e)(1)(A).

<sup>13</sup> See Guy G. Price, TC Memo 1978-196.

## 2) **Criminal Statute of Limitations**

Typically, the IRS has three years to begin criminal prosecution of an alleged tax crime. Therefore, the general statute of limitations concerning tax crimes is three years.<sup>14</sup> However, in the following situations the statute is extended to six years:

- a) Offenses involving the defrauding or attempting to defraud the United States or any agency thereof;
- b) The offense of willfully attempting to evade or defeat any tax or the payment thereof;
- c) The offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation, under the Internal Revenue laws, of a false or fraudulent return, affidavit, claim, or document;
- d) The offense of willfully failing to pay any tax return at the time or times required by law or regulations;
- e) Offenses described in IRC §7206(1) and IRC §7207 (relating to false statements and fraudulent documents); and
- f) The offense described in IRC §7212(a) (relating to intimidation of officers and employees of the United States).

### E. **Situations of “No Statute of Limitations”**

Pursuant to the Code<sup>15</sup>, under certain statutes, the IRS is allowed to assess tax or bring a suit to collect tax (even non-assessed tax) at any time. Several of these situations are considered exceptions and are noted as follows:

- The taxpayer files a false or fraudulent return with the intent to evade tax.
- The taxpayer attempts to willfully defeat or evade the tax, or
- The taxpayer fails to file a return.

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<sup>14</sup> See IRC §6531.

<sup>15</sup> See IRC §6501(c).



In any of the above situations, the statute of limitations remains open indefinitely and has no legal expiration.

### **Substitute Tax Returns**

In addition to the above, any “Substitute for Return”<sup>16</sup> (**SFR**) prepared by the IRS under the authority of the Code,<sup>17</sup> also prevents the initiation or start of the running of the statute of limitations.

### **Validation of a Return**

To invoke the statute of limitations regarding the filing of a tax return, a valid return must be filed. The Supreme Court defined the basic elements of a return that starts the running of the assessment statute of limitations. These elements are as follows:

- a) Sufficient data must exist to calculate the tax liability;
- b) The document must purport to be a tax return;
- c) A honest and reasonable attempt to satisfy the requirements of the tax laws must be made;
- d) The return must contain or be verified by a written declaration made under the penalty of perjury; and
- e) The return should be made on the proper form.

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<sup>16</sup> See IRC §6501(b)(3).

<sup>17</sup> See IRC §6020(b).

### III. COLLECTIONS – STATUTE OF LIMITATIONS

Generally, the IRS has 10 years to collect an assessed tax<sup>18</sup>. This 10-year period for collection is calculated from *the day after the tax is assessed*. The actual date of assessment of the tax is excluded from the beginning of the 10-year statute calculation. This statute is commonly referred to as the **CSED** (*Collection Statute Expiration Date*).

However, if the case concerns returns assessed prior to November 5, 1990, the practitioner should consider reviewing the provisions of the prior statute of limitations on collections, *which was only six years* not 10. Transitional rules exist for taxes assessed prior to November 6, 1990, if the prior six-year statute of limitations period had not expired as of November 5, 1990.

#### **Presentation Discussion Point:**

Mrs. Jones filed her tax year **2013** tax return on April 3, 2014. On review of your client's account, via a transcript, you noted that the tax was assessed **June 10, 2014**. Mrs. Jones asks you to determine the proper **CSED**. You respond by stating:

### IV. REFUND CLAIM – TAXPAYER LIMITATIONS

A taxpayer may file a claim for a refund or an overpayment of any tax within 3 (three) years from the time the return was filed or 2 (two) years from the time the tax was paid, whichever period is the last to expire. If no return was filed, the claim may be made within 2 years from the date that the tax was paid.<sup>19</sup>

A taxpayer may file a claim *within 7 (seven) years* if the return pertains to a bad debt pursuant to *IRC §166* or *IRC §832(c)*, or in connection with a loss from a worthless security.<sup>20</sup>

<sup>18</sup> See IRC §6502(a)(1) and Treas. Reg. §301.6502-1.

<sup>19</sup> See IRC §6511(a).

<sup>20</sup> See IRC §165(g).

## V. EXTENSIONS OF THE STATUTE OF LIMITATIONS

Periodically, additional time is needed to adequately pursue the positions of a tax case. The additional time may be desired by the taxpayer and/or the IRS representative. Congress recognized that additional time may be required at times to fairly resolve tax situations. Therefore, the Service provided for extending the statutory period by written agreement between the taxpayer and the Service. These written agreements are called “consents.”<sup>21</sup> Tax periods previously extended by consent may be re-extended by subsequent agreements or “consents” made prior to the expiration of any periods previously agreed upon.

Although certain conditions warrant the extending of the statute, the IRS is required to notify the taxpayer of his or her right to refuse to extend the period of limitations.<sup>22</sup>

### Restricted Consents

By utilizing consent agreements, the taxpayer may also limit the examination or appeal function to specific tax issues, in addition to extending the limitations period. The IRS will not agree to a “restrictive consent” unless all of the following conditions exist:<sup>23</sup>

- 1) The number of unresolved issues that must be covered by the restricted consent does not make it impractical to do so.
- 2) The scope of the restrictions must be clearly and accurately described for all the unresolved issues.
- 3) The issues not covered by the restricted consent are agreed and provision is made for assessing any deficiency or, under certain circumstances, scheduling any over-assessment (refund or credit) for the agreed issues.
- 4) The appropriate Service official approves the use of a restricted consent.
- 5) The terms and language in the restricted consent are approved by IRS Counsel prior to the consent of being signed by the parties.

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<sup>21</sup> See IRC §6501(c)(4)(A).

<sup>22</sup> See IRC §6501(c)(4)(B).

<sup>23</sup> See **Publication 1035**-“Extending the Tax Assessment Period”.

### **Common (and not so Common \*) “Consent” Forms**

**a. Form 872**

Consent to Extend the Time to Assess Tax.

**b. Form 872-A**

Special Consent to Extend the Time to Assess Tax.

**c. Form 872-B**

Consent to Extend the Time to Assess Miscellaneous Excise Taxes.

**d. Form 872-C**

Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code

**e. Form 872-D\***

Consent to Extend the Time on Assessment of Tax Return Preparer Penalty.

**f. Form 872-F\***

Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership or S Corporation That Have Converted Under § 6231 (b)

**g. Form 872-I\***

Consent to Extend the Time to Assess Tax as well as Tax Attributable to Items of a Partnership

**h. Form 872-IA\***

Special Consent to Extend the Time to Assess Tax and Tax Attributable to Items of a Partnership

**i. Form 872-N**

Notice of Termination of Special Consent to Extend the Time to Assess Tax Attributable to Items of Partnership.

**j. Form 872-O**

Special Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership.

**k. Form 872-P**

Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership.

**l. Form 872-Q**

Notice of Termination of Special Consent to Extend the Time to Assess Tax Attributable to Items of an S Corporation.

**m. Form 872-R**

Special Consent to Extend the Time to Assess Tax Attributable to Items of an S. Corporation.

**n. Form 872-S**

Consent to Extend the Time to Assess Tax Attributable to Items of an S Corporation.

**o. Form 872-T**

Notice of Termination of Special Consent to Extend the Time to Assess Tax.

**p. Form 872-U\***

Change of IRS Address to Submit Notice of Termination of Special Consent to Extend the Time to Assess Tax.

**q. Form 900**

Tax Collection Waiver.

**r. Form 911**

Application for Taxpayer Assistance Order (ATAO)

(1) A Form 911 can be filed by or on behalf of a taxpayer who feels that he/she will suffer a significant hardship due to the manner in which the Internal Revenue laws are administered.

(2) The statute of limitations is suspended from the date of the Taxpayer Advocate's receipt of the signed Form 911 until the date of the final decision on what action is warranted.

**s. Form 921-P**

Consent Fixing Pending of Limitation on Assessment of Income and Profits Tax.

**t. Form 977**

Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary.

u. **Form 2750**

Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty.

v. **Form SS-10**

Consent to Extend the Time to Assess Employment Taxes.

w. **Form 9247\***

Agreement to Extend the Time to File a Petition for Adjustment by Notice Partner (Shareholder) with Respect to Partnership or Subchapter S Items.

x. **Form 9248\***

Agreement to Extend the Time to File a Petition for Adjustment by the Tax Matters Partner (Person) with Respect to Partnership or Subchapter S Items.

**The Statute of Limitation & Amended Tax Returns:**

Does the filing of an amended tax return affect the “statute of limitation”? Actually, when a taxpayer files an amended tax return which reports additional tax within 60 days prior to the expiration of the ASED, IRC §6501(c)(7) stipulates that the period within which the IRS is allowed to assess the additional tax “does not expire before the 60<sup>th</sup> day” after the day on which it receives the amended return.

**Presentation Discussion Point:**

Per **Chief Counsel Advice (CCA) 201052003**, the IRS takes the position that the “mailbox rule” (stipulated via **IRC §7502**) does not apply to an amended return reporting additional tax that is mailed on or before the last day of the limitation period but received after that date. The IRS’s reasoning is that **IRC §7502** only applies to tax returns that are “required to be filed”, while an amended returns that show additional tax due are not required to be filed pursuant to any internal revenue laws. However, **IRC §7502** (and the mailbox rule) does apply for an amended return that claims a refund or credit and actually meets the provisions of Treas. Reg. §301.7502-1(b)(2).

## **VI. EMPLOYMENT RELATED TAXES**

Employment taxes must be assessed within three years of the April 15<sup>th</sup> following the year during which the liability was created. However, if the employment return is filed subsequent to the April 15<sup>th</sup> following the year the liability was due, then the statutory period for assessment is three years from the date of filing.

### **Presentation Discussion Point:**

XYZ Corporation timely filed all four quarters of Form 941 for the **2004** tax year. Therefore, the statute expires on **April 15, 2008** for all for tax periods, which is three years after April 15, 2005.

## **VII. THE TRUST FUND RECOVERY PENALTY (TFRP)<sup>24</sup>**

The Trust Fund Recovery Penalty is also an employment related assessment and must also be assessed within three years of the April 15<sup>th</sup> following the year, which the liability was created. However, prior to actual assessment, a 60-day preliminary notice, “Letter 1153 (DO)” must be mailed to the potentially responsible person’s last known address or, after July 22, 1998, delivered in person to the potentially responsible person<sup>25</sup>. Once this occurs, the IRS must wait 60 days after issuance of Letter 1153 (DO) before issuing notice and demand for payment. Therefore, if the 60-day notice was properly mailed (or delivered in person) prior to the expiration of the assessment limitation period for the TFRP, the statute of limitations is then tolled and will not expire before the latter of<sup>26</sup>:

- The date 90 days after the date on which the 60-day notice was mailed (or delivered in person), or
- 30 days after Appeals “final administrative determination: if the potentially responsible person files a timely protest.

<sup>24</sup> See IRC §6672.

<sup>25</sup> See The Taxpayer Bill of Rights II (TBOR-II).

<sup>26</sup> See IRM 5.7.3.6.2.

**Presentation Discussion Point:**

ABC, Inc. filed all **2011** tax-year Forms 941 in a timely manner, but neglected to pay the tax liabilities. The IRS issued a “Letter 1153” on March 28, 2015 by certified mail to ABC’s last known address. When does the statute expire if ABC neglects to file an Appeal of the TFRP? \_\_\_\_\_.

**VIII. SUSPENSION OF THE STATUTE OF LIMITATIONS**

Certain actions or initiation of proceedings will act to suspend or toll the running of the statute of limitations for assessment and/or collection. The following is a list of some of the actions that may toll the statute and should not be considered a comprehensive list of all actions:

**A. Absence from the Country**

The taxpayer leaves the country for a continuous period of at least six (6) months.<sup>27</sup>

**B. Application for a Taxpayer Assistance Order (Form 911)**

If a taxpayer applies for a Taxpayer Assistance Order, the statute of limitation for collections will be extended while the application is under consideration.<sup>28</sup>

**C. Bankruptcy**

A bankruptcy of a taxpayer will extend the statute of limitations for collections on non-dischargeable taxes from the filing of the bankruptcy petition until discharge plus six (6) months.<sup>29</sup>

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<sup>27</sup> See IRC §6503(c).

<sup>28</sup> See **Form 911**-Instructions, Section I, Item 16 & 18.

<sup>29</sup> See IRC §6503(b).



**D. Collection Due Process Hearing Request (CDP)**

If the taxpayer files an appeal of the filing of a lien or a proposed levy, the statute of limitations for collections is suspended from the filing of the appeal until resolution including subsequent litigation.<sup>30</sup>

**E. Offer-in-Compromise (OIC)**

The filing of an Offer in Compromise extends the statute of limitations for collections for the period the offer is pending or any installments remain unpaid plus thirty (30)<sup>31</sup> days. This rule applies even if the taxpayer withdraws the offer or IRS rejects the offer.

**F. Tax Collection Waiver (Form 900)**

The *IRS Restructuring & Reform Act of 1998* (RRA 98') eliminates the provision that allows the statute of limitations to be extended by agreement of the taxpayer and IRS, except that the statute may be extended only in connection with an installment agreement. The extension is only for the period for which the installment agreement extends beyond the end of the ten-year period plus ninety days.

**G. Appeal of a Trust Fund Recovery Penalty**

Should a taxpayer decide to actually appeal the proposed assessment of a Trust Fund Recovery Penalty, the statute of limitations is “tolled” (or stopped) during the 60 day preliminary notice period and for an additional 30 days after Appeals’ “final administrative determination”; again assuming a **timely** appeal was actually filed.

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<sup>30</sup> See IRC §6320 and IRC §6330.

<sup>31</sup> Changed from “1 year” to “30 days” effective January 2000.

The practitioner must be aware of the effect of any “extension” of the statute that may return to “haunt” the representative should the taxpayer not prevail on the merits of the issues regarding the proposed assessment. Generally, Appeals has significant discretion regarding the management of their case inventories based upon resources available and the demands of Appeals management concerning National directives (mandates from Washington).

#### **H. Issuance of a Statutory Notice of Deficiency**

Issuance of a Statutory Notice of Deficiency (also known as a 90-Day Letter) has serious implications not only concerning the “tolling” of the statute of limitations, but the issuance of a “90-Day Letter” may also weigh in heavily concerning whether the underlying liability may be challenged later in another venue, such as a Collection Due Process (CDP) Hearing. This topic is covered more thoroughly in Section IX of this text.

#### **I. Suspension of the Statute of Limitations Due to Disability**

The IRS Restructuring & Reform Act of 1998 allows for an equitable tolling of the statute of limitations for refund claims of an individual taxpayer during any period of the individuals’ life in which he/she is unable to manage his/her financial affairs by reason of a medically determinable physical or mental impairment that can be expected to result in death or that lasts for a continuous period of not less than twelve (12) months.<sup>32</sup> Tolling does not apply during periods in which the taxpayer’s spouse or another person is authorized to act on the taxpayer’s behalf in financial matters.

The provision applies to periods of disability before, on or after the date of July 22, 1998 of enactment but does not apply to claims for refund, which is barred by the statute of limitations as of the date of enactment.

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<sup>32</sup> See Rev. Proc. 99-21 and RRA 98’.

## **IX. NOTICE OF DEFICIENCY**

The issuance of a Statutory Notice of Deficiency (commonly referred to as a “Stat Notice” or “90-Day Notice”) extends the period for making an assessment. The notice of deficiency allows the taxpayer 90 days to file a petition with the U.S. Tax Court (or the Court of proper jurisdiction) for a re-determination of the tax. This 90-day period is extended to 150 days when the notice is mailed to a taxpayer outside the United States.<sup>33</sup>

The issuance of a notice of deficiency begins a period in which the Commissioner is prohibited from making an assessment.<sup>34</sup> **IRC §6503** suspends the running of the period for making an assessment for 90 days and adds 60 days to make an assessment whenever a notice of deficiency is issued. This 90 day period is added to the end of the “normal” statute date, plus an additional 60 days. Thus, every day for which the assessment is prohibited, another day is added to the regular statute date, plus 60 additional days.

Additional time or days added to the “normal statute” is commonly referred to as “*tack-on-time*”. “Tack-on-time” is defined as the number of days remaining on the statute of limitations as of the date that a statutory notice of deficiency is issued. For example, if a “Stat Notice” were issued on April 2, 2005 for a timely filed Form 1040 for calendar year 2001, the tack-on-time would be 13 days. An alternative is to add the “tack-on-time” plus 60 days under **IRC §6503** to the date that the suspension period ends.

Based upon the preceding scenario, if the taxpayer defaults, the statute of limitations may be computed as follows:

	<u>Days</u>
Suspension period	90
Tack-on-time	13
IRC §6503	<u>60</u>
Total	<u>163</u>

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<sup>33</sup> See IRC §6503.

<sup>34</sup> See IRC §6213(a).

The above days are added to the statutory notice date, namely April 2, 2005, to compute a statute of limitations date of September 12, 2005 as follow:

	<u>Days</u>
April	28
May	31
June	30
July	31
August	31
September	<u>12</u>
Total	<u>163</u>

Utilizing the above common calculation, the statute of limitations date for individual income taxes, after issuance of a timely statutory notice, is always **September 12<sup>th</sup>** of the year that the “normal statute” expires assuming that: (a) the return had been filed on or before the due date (without extensions), **and** (b) the statute of limitations had not been previously extended (for example via Form 872).

#### **“Superseding Tax Returns”-An SOL Issue:**

As discussed earlier in the text, a return filed prior to the return deadline is deemed filed on the actual due date. Also, a return filed on “extension” is deemed filed on the day the IRS actually receives the tax return, assuming that it is received on or before the extended due date. Additionally, if the tax return is received after that date, the return is deemed filed on the “postmark” date. However, if a second return is filed before the return due date that modifies any information reported via the “original return” is commonly referred to as a “superseding tax return”.

#### **Presentation Discussion Point:**

The IRS concluded, pursuant to Chief Counsel Advice (CCA) 200645019 that a taxpayer’s “superseding tax return” filed on the extended due date **is the return that starts the ASED**, not the original tax return.

## **Other Statute of Limitation Concerns**

### 1. **Innocent Spouse Issues**

Pursuant to a reviewed “tax court decision”, the Tax Court (Court) recently (April 2010) held that Treas. Reg. §1.6015-5(b)(1) was inconsistent with and was an invalid interpretation of IRC 6015(f). Treas. Reg. §1.6015-5(b)(1) imposed a two-year limitation period regarding request for equitable relief from joint income tax liabilities (taxpayers were required to file an innocent spouse request within two years of a collection activity related to the liability). The Court decided that the regulation was “contrary to the intent of Congress”.

### 2. **AJAC**

Recently the IRS issued the “Memorandum for Appeals Employees” which modified numerous appeal related guidelines, policies & procedures. A major area of concern is how the issuance of this memorandum has affected the “Statute of Limitations” with respect to all federal tax issues. More specifically, IRM 8.2.1.4 has been modified to indicate that Appeals is now required to “*Determine the statute date and ensure there are at least **365 days** remaining on the statute when the case is received by Appeals before accepting the case*”. Previously, only “6 months” (or 180 days) were required to be remaining on the SOL for “un-agreed cases” and 4 months (or 120 days) for agreed cases per IRM 25.6.23.8.1. Has this IRM provision been effectively superseded? Discussion: \_\_\_\_\_

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### 3. **Court case reviews:**

**(a) Silverman v. Commissioner**

**(b) Fredericks v. Commissioner**