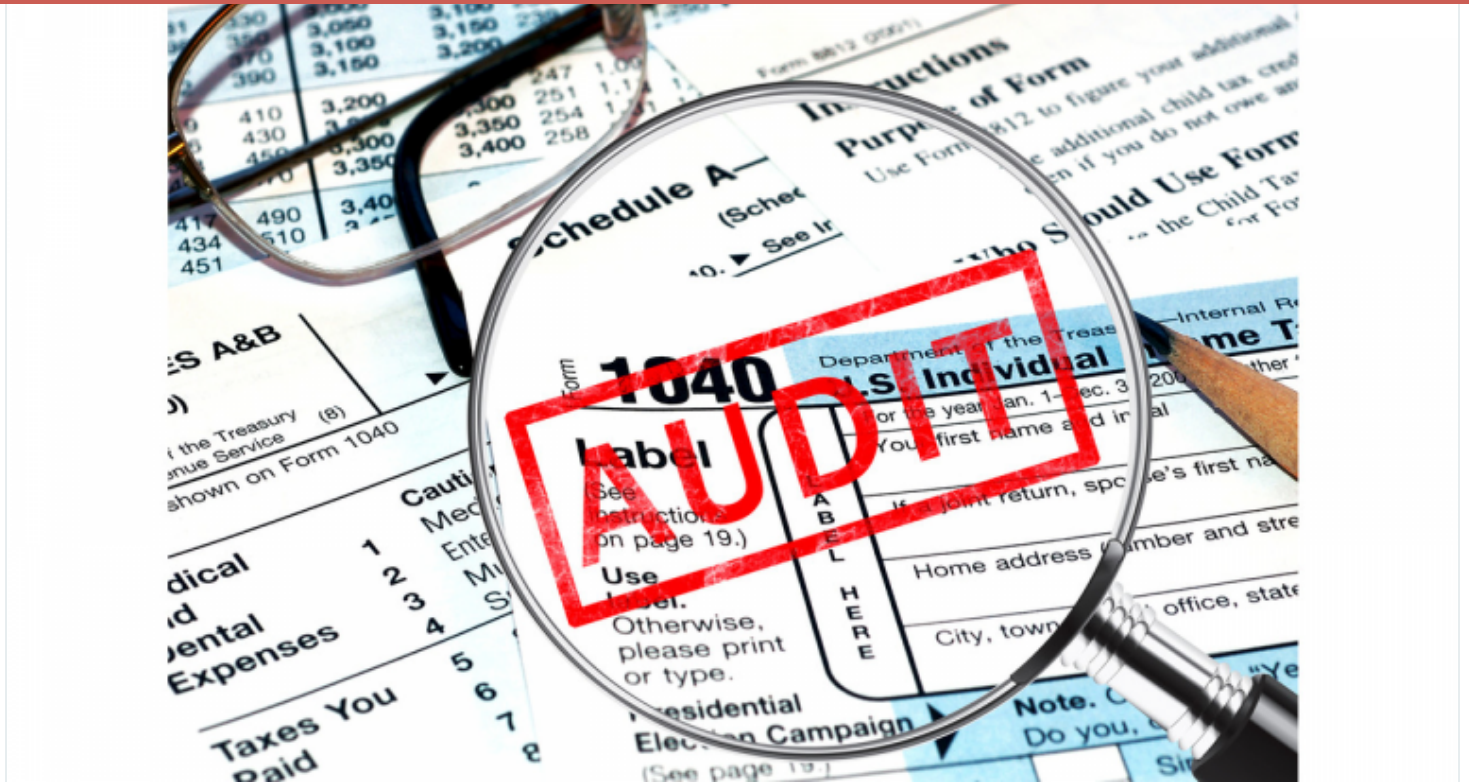


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The statute of limitations period for IRS collection enforcement is generally ten years from the date the tax is assessed.^[1] Tax Practitioners who are new to IRS collection representation may not be fully aware of the impact the statute of limitations (SOL) can have on a case and dismiss its relevance because the statute of limitations date is years into the future. However, in some cases, this assumption can be a costly mistake. Many taxpayers who have a balance due on their return and cannot afford to pay in full will consult a tax practitioner or the IRS website to review their payment options. However, an equal number of people will avoid addressing the tax due until their situation turns dire, and their bank checking account is levied or their employer receives an IRS wage garnishment order regarding the employee's outstanding tax liability. This is one example where understanding the statute of limitation history on the account can be a great benefit.

How the Statute of Limitations is Determined

For the IRS to begin collection proceedings, tax must be assessed. The date of

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the date the taxpayer files the return. The three-year collection statute may be extended under certain circumstances. For example, the SOL on assessment can be extended to six years when there is an understatement of gross income due to an overstatement of basis on a filed return or when the taxpayer understates their gross income by 25% or more.

The Internal Revenue Manual (IRM) refers to the date that ends the period in which collections may be enforced as the *Collection Statute Expiration Date* or CSED. There can be more than one assessment date and CSED for a tax year. If a return is audited or a taxpayer files an amended return and additional tax is owed, the date the added tax is assessed will start the ten-year collection statute on taxes assessed in the audit or amended return. Many penalties carry their own CSED transaction codes on IRS account transcripts. The CSED for a penalty can be the same as the underlying tax, but this is not always the case. Examples of penalties that carry their own CSED date are the Estimated Tax Penalty, Deposit Penalty, Delinquency Penalty, various Civil Penalties, Fraud Penalty, and Negligence Penalty.^[3]

It is important to understand that *assessed* and *filed* are two different actions. *Filed* refers to the process of submitting a return to the IRS. For e-filed returns, the IRS generally considers the filing date as the date the return is electronically submitted to the IRS. For paper-filed returns that are mailed, the filing date is generally the postmark date. The filing date for a return that is submitted in-person at an IRS service center is the date the return is physically delivered.

Generally, if a taxpayer timely files their return by the original due date, the assessment date will be a few weeks *after* the return is filed. Once a return is filed, it takes the IRS five to six weeks to process it. The same holds true for returns that are filed by the extended due date or later. For an individual income tax return filed on or before April 15, the assessment date for any unpaid tax will typically be sometime during the last week of May or first week in June.

Example: Katarina submitted her 2015 federal income tax return on October 15, 2016.

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enforcement actions. When enough income is reported to the IRS that a taxpayer meets the filing requirements but does not file a return, the IRS may prepare the return on their behalf. An income tax return prepared by the IRS is called a *Substitute for Return* or *SFR*. The collection statute of limitations begins on the date the IRS assesses the tax on the SFR. It is important to understand that the statute of limitations on assessment does not begin with the preparation of the SFR.^[4] Only a taxpayer-filed return has a date of assessment. Even if the taxpayer agrees with the completed SFR, the SOL on assessment will not begin. *If a taxpayer files a return for a year for which the IRS already prepared a substitute for return, the SOL on assessment will begin, but the collections statute of limitations will not restart with the submission of the return filed by or on behalf of the taxpayer.* However, any additional tax assessed on the taxpayer's submitted return will have a new collection assessment date.

For those taxpayers who file a false or fraudulent return, the statutes of limitations on assessment and collections do not begin. In other words, tax may be assessed, and the court may begin collection proceedings at any time without regard to the ten-year limitation.^[5] Keep in mind that the burden of proof rests with the IRS in situations of fraud.^[6]

Suspension of the Statute of Limitations

The collection statute of limitations may be suspended or extended due to various taxpayer actions. The IRS is prohibited from continuing collection enforcement actions while these actions are in progress. There can be instances where more than one taxpayer action that suspends or extends the CSED are occurring at the same time. Below are common taxpayer actions that suspend the CSED.

- **Filing for Bankruptcy:** Generally, the statute is suspended during the automatic stay period of the bankruptcy proceedings, plus six months after the bankruptcy

discharge date. It is important to remember that the SOL will be suspended even if

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equal ninety days. If the taxpayer withdraws their CDP hearing request, the SOL will continue as of the date of withdrawal. Note that the SOL is not suspended when a taxpayer files for an equivalency hearing.

- **Filing an Offer in Compromise:** The SOL is suspended while an Offer in Compromise is pending. It is also suspended during the Appeals process if the IRS rejects the offer, and the taxpayer files a timely appeal. If the IRS rejects an offer, the SOL is suspended for an additional 30 days thereafter. This provides the taxpayer enough time to file an appeal.
- **Filing an Innocent Spouse Request:** Generally, the SOL is suspended for the spouse that files for an innocent spouse relief request until the *earlier* of the date that the waiver is filed, or until the 90-day period for petitioning Tax Court has passed. If the taxpayer filing innocent spouse relief files a timely Tax Court petition, the CSED is suspended until the decision is final, plus 60 days after the finalization.
- **Installment Agreement:** The SOL is suspended while a proposed installment agreement is pending, and during the appeals process if the proposed agreement was rejected and a timely appeal was submitted. If a proposed installment agreement is rejected or terminated, the SOL suspension is extended for an additional thirty days. For CSED suspension purposes, an installment agreement is considered terminated sixty days after the date listed on CP523, *IMF Installment Agreement Default Notice*, or Letter 2975, *Notice of Defaulted Installment Agreement Under I.R.C. §6159(b)*. However, if a taxpayer timely requests a Collections Appeal Program (CAP) hearing challenging the termination of an installment agreement within 30 days after the date on the termination notice, the taxpayer's CSED will continue to be suspended.
- **Taxpayer Living Outside the U.S.:** When a taxpayer leaves the U.S. for at least six continuous months, any collections statute of limitations currently running on the taxpayer's account will be suspended. Upon return to the U.S., the IRS will

have six months to pursue collection action against the taxpayer, even if the

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servicemember or while in military service and ending on the date on which the servicemember is released from military service or dies while in military service. Collection actions will be suspended on any income tax due that was generated before or during service. *However, this suspension of collection action may only take place if the taxpayer is "materially affected" by the military service.*

Typically, "materially affected" means the taxpayer's monthly income is less than it was before reporting to active duty. If the military service person and their spouse file a joint return, the IRS will also suspend collection action on the spouse. Interest and failure to pay penalties will not accrue during the time collection is deferred for military servicemembers. Interest will begin to accrue after the conclusion of the period of deferment, and any interest that accrued before the taxpayer entered the military will remain. The interest exception does not apply to the servicemember's share of Social Security or Medicare taxes owed. If the servicemember's request for collection military deferment is denied, the lesser of the applicable interest rate or a 6% interest rate will accrue on any unpaid tax due while the taxpayer is serving in the military.

- **Combat Zone or Contingency Operations:** When a soldier or a civilian offering direct support of military operations serves in a designated combat zone, a contingency operation designated by the Department of Defense, or a qualified hazardous duty area defined by Congress, collection actions on their federal tax liability is suspended. The suspension period includes the entire time the taxpayer is serving in a combat zone or contingency operation, plus one hundred eighty days *after* the last day of service in the combat zone. The collection suspension is further extended by the number of days the taxpayer served in a combat zone during the tax filing season. For this purpose, the tax filing season is from January 1 to April 15, or up to one hundred five days (one hundred six days if it is a leap year). This suspension of collection actions also extends to the spouse of the servicemember serving in a combat zone.

- Taxpayer Submits Form 911, *Request for Taxpayer Advocate Service (TAS)*

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or an assessment of penalties after the original return is assessed, the taxpayer may end up having multiple CSED on their account. Furthermore, if the taxpayer serves in the military, files an installment agreement, or requests assistance with the Taxpayer Advocate, the CSED may be suspended, affecting which collection resolution strategy may be in the best interest of the taxpayer.

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[1] IRC §6502(a)(1)

[2] *Commissioner of Internal Revenue, v. Lane-Wells Company and Technicraft Engineering Corporation*, Supreme Court of the United States, No. 115, October Term, 1943, 321 US 219, 64 SCt 511, February 14, 1944

[3] IRM 5.1.19.2.1 (06-04-2009)

[4] IRM 25.6.1.9.4.5 (10-05-2016)

[5] IRC §6501(c)

[6] IRC §7454(a)

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Arnold van Dyk is a licensed California attorney and currently serves as the Director of Tax Services at [TaxAudit](#), the largest tax representation service in the country offering both audit representation and tax debt relief services. In this role, he oversees more than 150 tax professionals, and assists taxpayers with IRS representation and assesses the complexities of the tax law and regulations to determine the best strategies for audit and tax debt resolutions. Arnold also operates

his own law practice, Law Offices of Arnold van Dyk, focusing on tax and estate

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