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# Preparing Late-Filed Returns -- Better Late Than Never

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ON BEHALF OF THE

**NATIONAL ASSOCIATION OF ENROLLED AGENTS**





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# What's at Stake?

- WASHINGTON — *Refunds totaling just over \$917 million may be waiting for an estimated 984,400 taxpayers who did not file a federal income tax return for 2009, the Internal Revenue Service announced today. However, to collect the money, a return for 2009 must be filed with the IRS no later than Monday, April 15, 2013*





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# Why Don't People File Timely?

- In cases where a return is not filed, the law provides most taxpayers with a three-year window of opportunity to claim a refund.
- If no return is filed to claim the refund within three years, the money becomes property of the U.S. Treasury.





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# Late Tax Return Filing Facts

- Failure to file a return or filing late can be costly.
- Returns filed on time but not paid in full, are subject only to the failure to pay penalty. Interest is charged on taxes and penalties.
- There is no penalty for failure to file a tax return if a refund is due. But by waiting too long to file, the refund will be lost.





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# More Late Tax Return Filing Facts

- Taxpayers who are entitled to the EITC must file a return to claim the credit.
- Returns reporting self-employment income must be filed in order to receive Social Security credits.
- For returns filed more than 60 days after the due date or extended due date, the minimum penalty is the smaller of \$135 or 100 percent of the unpaid tax.





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# Facts about Filing Late Tax Returns – *if balance due...*

- The penalty for filing late:
  - normally 5 % of the unpaid taxes for each month or part of a month a tax return is late.
  - starts accruing the day after the tax filing due date & will not exceed 25 % of unpaid taxes.
- A failure-to-pay penalty
  - is 0.5% of the unpaid taxes for each month or part of a month after the due date.
  - starts accruing the day after the tax-filing due date.



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# Does IRS Send Non-filers to Prison?

- By long-standing practice, IRS has not recommended criminal prosecution of individuals for failure to file, provided
  - they file voluntarily, or make arrangements to file.
  - But this must happen before being notified of a criminal investigation.
- They also must:
  - make an honest effort to file a correct return
  - have income from legal sources.





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# Voluntary Disclosure Policy

- Let's be perfectly clear:
  - A letter from IRS concerning unfiled or unpaid taxes is not a notice that a taxpayer is under criminal investigation.
  - A letter from state tax authorities concerning unfiled or unpaid taxes is not a notice that a taxpayer is under criminal investigation.







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# Voluntary Disclosure Policy

- IRS has long-term plan to improve voluntary compliance.
- IRS goal is to get people back into the system, not to prosecute ordinary people who made a mistake.
- Flagrant cases involving criminal violations of tax laws will continue to be investigated.





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# Checklist for Working with Late Filers

- Is it apparent that the taxpayer would have possessed only legal source income?
  - Who referred the client?
  - What’s the client’s “story?”
  - If any “warning signs” pop up, discuss disclosure issues immediately.
- Information obtained for the purpose of disclosure (return preparation) is confidential but not protected.





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# Checklist for Working with Late Filers

- What has motivated the taxpayer to comply with the law now?
  - Personal conflict; desire to “make things right”
  - Contact from state or federal agency?
- Why do you want to know?
- **WARNING!** Be careful what you ask...





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# Checklist for Working with Late Filers

- STOP! Before you proceed...be clear with your client the terms and tasks they are engaging you to perform.
- Then you should get
  - an engagement agreement
  - any needed authorizations
  - And...get your fee first!





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# Checklist for Working with Late Filers

- Start thinking about what information is needed to reconstruct the taxpayer's income?
- As a general rule, nonfilers are poor recordkeepers...
- Possible resources?





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# Checklist for Working with Late Filers

- Obtain authorization and begin gathering information.
  - Form 8821 v Form 2848
- Always obtain wage & income transcripts as you begin the return prep process
- Consider including a disclosure in the filed return
  - ...you don't know what they don't tell you.





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# Checklist for Working with Late Filers

- Do a “cash T” when appropriate.
- Review for reasonable cause grounds to request non-assertion of late filing/late payment penalties.
- Consider offering the client suggestions on how to avoid similar problems in the future.





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# Checklist for Working with Late Filers

- If there is a balance due with the completed returns...
- Always inform the client of the full potential assessment, including interest and penalties--which can be substantial on late-filed, balance-due returns







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# Time Out! Want to assist with the next step in advocating for your client?



- To protect your client and intervene in the next phase, you'll need to be admitted to practice before IRS...
- ...you'll need to be an EA, CPA or attorney holding a valid Power of Attorney





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# Checklist for Working with Late Filers

- Review the taxpayer's ability to full pay the account, if needed.
- Develop a payment plan, if needed.
- Evaluate the taxpayer's other options.
- **NOTE:** This is often a separate engagement from the return preparation.





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# Checklist for Working with Late Filers

- File all returns certified, return receipt requested or send an extra copy of the front page of return to the IRS with request for date received stamp and return envelope.
- If you are working with a Revenue Officer, a few suggestions...
- After filing, plan on responding to correspondence generated by the late filings





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# How Many Years of Returns Should be Filed?

- Policy Statement P-5-133
  - provides that enforcement should not extend beyond six years,
  - but there are instances where longer or shorter periods may be enforced
- When IRS already has assessed taxes for prior years when returns were not file, you'll need to address those years, too





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