DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

May 24, 2004

The Honorable Ernest J. Istook, Jr.
Member, House of Representatives
120 North Robinson, Suite 100
Oklahoma City, OK 73102

Attention: Ms. Pat Paradise

Dear Congressman Istook:

I am writing in response to your inquiry on behalf of Mr. Steven Moriarty, court appointed receiver for the Hickman Agency.

As background, the Hickman Agency was an insurance agency in Oklahoma. Although it held itself out to be a non-bank trustee/custodian, the Hickman Agency was not in fact a non-bank trustee/custodian qualified to receive direct rollover transfers of retirement monies. The agency is accused of bilking investors out of large sums of money. Most of the funds were held in retirement accounts, either Individual Retirement Accounts (IRAs) or other qualified accounts, prior to the involvement of Hickman Agency.

Mr. Moriarty has classified the investors into two categories:

1. Qualified investors, those being individuals who invested retirement funds with Hickman in what they thought was a qualified direct transfer rollover-type transaction, and
2. Non-qualified investors, those being individuals who made other investments, i.e., savings accounts, life insurance policies, etc.

It is our understanding that most of the qualified investors who attempted rollover transactions were under age 59 1/2, while most of the non-qualified investors were over the age of 59 1/2.

The receiver has advised that most of the investors thought they were rolling over retirement funds from one qualified account into another qualified account. He further advised that some of the investors received Forms 1099-R upon the initial distribution of their retirement funds from the prior account to the Hickman Agency, other investors did not receive Forms 1099-R, presumably because the prior account holder/trustee viewed the transaction as a direct trustee-to-trustee transfer. The receiver states that the investors should expect a recovery of perhaps 10 cents on the dollar.

As receiver, Mr. Moriarty stated one of his goals would be that for any money lost, there would be no unjust tax obligations for the investors. In pursuit of this goal, Mr. Moriarty has several questions regarding the tax treatment of victims of the Hickman Agency. The specific questions include:

1. If someone has additional amounts of money they would like to invest into a new IRA to make themselves "whole", what would be the tax consequences on this lump sum investment? Would it make a difference when the amount was invested (i.e., when they receive their share of the $1M distribution, or at some other time)?

2. How should "non-qualified investors" originally reporting what was believed to be interest on their investment handle the situation? Should they amend these returns as it appears this money was probably a return of capital? If so, what about the years that have been barred?

3. What is the year of loss for non-qualified investors – 2003 or 2004?

4. Are individuals who:
   a. are/were under 59 ½
   b. made what they thought was a trustee to trustee transfer and
   c. never touched the money

   subject to the 10% premature distribution penalty?

5. What if a "non-qualified investor" did not report what was characterized as interest in 1998? Should amended returns be filed? Some other action taken?

The attached discussion is in response to these questions. It is not possible for the Service to provide "up front" guidance relieving any of these taxpayers from tax, penalty, and interest because, among other reasons, each set of facts is different. However, in general, taxpayers who attempted to roll over retirement monies via transfer to a non-qualified recipient would, in effect, have received a distribution from their retirement account which would be taxable to them in the year of the distribution (absent facts which would allow relief, such as the relief provided in Wood v. Commissioner, 93 T.C. 114 (1989) (which involved a bookkeeping error as to an otherwise valid IRA account). Those taxpayers could take a theft loss deduction in the year of discovery of the theft, which might be subject to carryback, and that to the extent those taxpayers receive any recovery from the receiver, they would be required to place those funds into a replacement IRA.

I hope this information is useful and if you have any questions feel free to call me at 405-297-4014; or contact me at 55 North Robinson, Stop1020 OKC, Oklahoma City, OK 73102.

Sincerely,

Mike Birdsong

Mike Birdsong
Oklahoma Governmental Liaison

Attachment

Question # 1:

If someone has additional amounts of money they would like to invest into a new IRA to make themselves "whole," what would be the tax consequences on this lump sum investment? Would it make a difference when the amount was invested (i.e., when they receive their share of the [receiver] distribution, or at some other time)?,"

If taxpayers are otherwise taxable on their distribution and now want to reestablish an IRA with other funds, they can apply for relief from the 60-day rollover requirement under I.R.C. § 408(d)(3)(I) and if that relief is granted, then the "distribution" will be eliminated to the extent of the amount rolled over.

In general, distributions from qualified employer-provided retirement plans are taxable to the recipient under the provisions of I.R.C. § 72, see § 402(a); distributions from qualified IRA accounts are also taxable to the recipient under the provisions of section 72, see § 408(d)(1). If a distribution is "early," i.e., generally, before the taxpayer is 59 ½, there is an additional tax of 10% on the amount of the early distribution. There is an exception to taxable treatment of distributions for amounts rolled over into other qualified retirement arrangements, such as an IRA. See §§ 402(c)(5) and 408(d)(3). Rollovers generally must be completed within 60 days of the distribution. See §§ 402(c)(3) and 408(d)(3)(A)(ii). Rollover treatment is not available for required minimum distribution amounts, § 408(d)(3)(E). The Secretary can waive the 60-day requirement "where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement," § 408(d)(3)(I). Provisions for applying for a waiver of the 60-day rollover period are found in Rev. Proc. 2003-16, 2003-1 C.B. 359. Waivers of the 60-day rollover period are available for distributions occurring after December 31, 2001.

In Schoof v. Commissioner, 110 T.C. 1 (1998) the Court held that if there was a defect in a fundamental element of a rollover, such that no proper rollover could have occurred, the taxpayers would be taxable on the distribution. In Schoof, as here, the defect was the lack of a qualified trustee/custodian such that no recipient IRA existed to receive the attempted rollover. The putative trustee/custodian in Schoof, Financial & Accounting Consultants, Inc. [FAC] had applied to the Service for recognition as a qualified trustee for IRA accounts, but recognition was not granted. The Court specifically stated that the "substantial compliance doctrine" was not applicable to the situation. Rather, the Court found that the defect was a failure of a fundamental element of the statutory requirements for an IRA rollover contribution, namely, the qualification of the trustee, rather than a mere procedural defect in the execution of the rollover.

The substantial compliance doctrine was recognized in Wood v. Commissioner, 93 T.C. 114 (1989). In that case, the taxpayer properly executed all required paperwork to have the funds rolled over, within the required 60-day period, but the recipient trustee, a qualified trustee/custodian (Merrill Lynch) mistakenly recorded a part of the proceeds as having been transferred to a non-IRA account. The Court found that the taxpayer had done everything reasonably expected to comply with the statutory rollover requirements, including "meeting with his IRA trustee, instructing the trustee to open an IRA; executing the documents to open the IRA, and transferring the distribution to the trustee for deposit into the IRA." In addition, the trustee had assured the taxpayer that the rollover transaction would be carried out. The Court held that the trustee's bookkeeping error did not preclude rollover treatment because the taxpayer had substantially complied with the provisions of the statute.

The situations of the taxpayers involved with the Hickman Agency are in many ways similar to the facts of Schoof, and in many other ways similar to the facts of Wood. In Schoof (a consolidated case involving twelve petitioners) the taxpayers stated that they intended to roll over their prior accounts to a qualified IRA. They executed an IRA adoption agreement authorizing FAC to invest their IRA contributions in a particular investment, with FAC creating a custodial account to collect the income generated from the investment. Each investor received a Form 56, Notice Concerning Fiduciary Relationship, with respect to their "FAC IRA," and each executed a Form 5305-A, Individual Retirement Custodial Account, assigning their IRA contribution to the custodial account. These documents certainly provide some support for the argument that the taxpayers intended to roll their funds into an IRA which then would invest in the particular investment program. On the other hand, each investor (except one) withdrew funds from a pre-existing IRA (in one case from a pre-existing employee trust), and deposited those funds into their personal checking account, but instead of writing a check to FAC, Trustee (or some variant of that), they wrote a check in the name of the unrelated company which sold the investment program (one investor had the trustee of the prior account write a cashiers check to the company which sold the investment program). These latter facts do not support the argument that the taxpayers intended to roll over the funds into a custodian account. Even if FAC had been a qualified trustee/custodian, the taxpayers in Schoof did not deposit their IRA funds into a FAC account, but rather sent them directly to the unrelated third-party.

In Wood, the taxpayers received a distribution from a qualified employee trust, consisting of "cash" (a check from the trust made out to the taxpayers) and shares of stock. They contacted a Merrill Lynch account executive and indicated they wanted to roll over the distribution. They completed all of the necessary paperwork. Merrill Lynch was a qualified trustee/custodian. They physically delivered to the executive the check, presumably endorsed over to Merrill Lynch, and the stock certificates. The check was deposited into the taxpayers' "ready asset account" and subsequently, within 60 days, into the IRA account. The proceeds of the shares of stock were deposited into the "ready asset account" but, due to an error on the part of the account executive, were not deposited into the IRA account until three months later.

If the facts of a given case call for relief under the substantial compliance doctrine, then the investor would not have a taxable distribution, and the theft of funds would have been a theft from the putative IRA. The individual would not have to report a distribution and would likewise not have a theft loss. Any recovery through the receiver would be taxable if it went directly to the individual, and not taxable if it went directly from the receiver into a "rollover IRA" established as the successor of the putative IRA established by Hickman. If the recovery went directly to the individual, they would not be able to deposit it into an IRA except in accordance with the usual contribution limits of section 219(b)(1)(A) 219(b)(5) ($3000.00 for 2004, $4000.00 for 2005 through 2007).

If the facts of a given case do not call for relief under the substantial compliance doctrine, then the individual investor would have a taxable distribution in the year of the distribution. That year might be open for assessment under the six-year statute of § 6501(e). That individual would have a theft loss deduction in the year of discovery under section 165, which after offsetting income in the year of discovery could be carried back three years, under section 172. Any recovery would be taxable to the extent of the theft loss taken by the individual. The distribution income and the theft loss deduction provide a rough equivalence for these individuals; the service should make every effort to assure that individual investors don't receive a theft loss deduction if they didn't take the distribution into income, due either to the statute of limitations on assessment or to the fact that they were not issued a 1099 or that the service did not otherwise learn of the distribution.

In order to "make themselves whole," in a situation where the initial distribution occurred after December 31, 2001, the taxpayers would need to apply for relief from the 60-day rollover requirement, under Rev. Proc. 2003-16. If they qualify for such relief, they would have 60 days from the date of the ruling letter to make the actual rollover contribution. Of course if this occurs, then an amended return should be filed for the prior distribution year, if the distribution was reported as income, as well as the year of the theft loss, since to the extent of any approved rollover, there would be no distribution, and any theft would have been from the IRA and not from the individual.

Question # 2

How should "non-qualified investors" who originally reported what was believed to be interest on their investment handle the situation? Should they amend their returns, as it appears the money was probably a return of capital? If so, what about the years that have been barred?

"Non-qualified investors" may be allowed to re-characterize payments received only if they can substantiate: (1) the existence and amount of their initial investment; (2) the amount of payments they received because of their investment; (3) that such payments were not for the use or forbearance of their invested funds, but were made to conceal the principals' fraudulent misappropriation of their invested funds, i.e., the payments were Ponzi scheme payments originating from later investors; and (4) that the investors were not in either actual or constructive receipt of their initial "investment" during the same taxable year as the receipt of the Ponzi scheme payments.

To the extent "non-qualified investors" originally reported payments from their investment as interest and can substantiate that the payments were actually a return of capital, they may file claims for refund if the claims are not barred by the statute of limitations under I.R.C. § 6511. The equitable mitigation provisions of I.R.C. §§ 1311 through 1314 may apply such that the Service may allow claims that are untimely under I.R.C. § 6511 if a "determination" was made resulting in an income item reported in a prior barred year being treated inconsistently in a later year. If no "determination" was made, a "non-qualified investor's" error, if any, in reporting interest income in a prior barred year would consist solely of his or her own overstatement of income, in which case the mitigation provisions are inapplicable.

Generally, interest received by a taxpayer constitutes taxable income. I.R.C. § 61. Interest is compensation for the use or forbearance of money, e.g., interest on savings deposits, open account, promissory notes, mortgages, corporate bonds, life insurance proceeds held under an agreement to pay interest thereon, etc. Treas. Reg. § 1.61-7(a); Deputy v. DuPont, 308 U.S. 488 (1940). On the other hand, amounts received as principal or recovery of capital are not interest. Greenberg v. Commissioner, T.C. Memo. 1996-282.

The weight of authority holds that distributions to taxpayers in Ponzi schemes (where proceeds of later investors are used to pay early investors) are taxable income. See, e.g., Estate of Campana v. Commissioner, T.C. Summary Opinion 2001-159. In all but one case, however, the taxpayers recovered their initial "investment" during the same taxable year as the Ponzi scheme distributions (in the exceptional case, the taxpayer was not a passive investor, but was an officer of the scheming corporation, and did not introduce evidence to show either the amounts he invested or received). Id.

On the other hand, in Greenberg, supra, and Taylor v. United States, 98-1 U.S.T.C. ¶ 50,354 (E.D. Tenn. 1998), it was held that the Ponzi scheme distributions were not income, but a return of invested funds, where the taxpayers had not recovered the initial investment during the same year as the distributions. The Greenberg Court, noting that the issue was purely factual, found the amount the taxpayers invested, the amount they received, and that the amount received related to

Ponzi scheme distributions. It should be noted that the Greenberg trial followed the taxpayers' successful civil suit against a principal for intentional misrepresentation, fraudulent concealment, breach of fiduciary duty, etc., and after the principal was convicted of defrauding the company's investors.

While the receivership proceeding and the state criminal information against a principal in this case indicate that evidence may exist to substantiate that payments were a return of capital, rather than interest, certain facts must nevertheless be substantiated. Specifically, for payments to be re-characterized from interest to repayment of capital, the taxpayer must substantiate: (1) the existence and amount of investors' initial investment; (2) the amount of payments they received from their investment; (3) that such payments were not for the use or forbearance of their invested funds, but were Ponzi scheme payments originating from later investors; and (4) that the investors were not in either actual or constructive receipt of their initial "investment" during the same taxable year as the receipt of the Ponzi scheme payments.

If "non-qualified investors" who originally reported the payments as interest can substantiate that the payments were in fact a return of capital, they may file claims for refund by amending their returns to the extent the claims for refund are not barred by the statute of limitations. Under I.R.C. § 6511, the statute of limitations for filing claims for credit or refund of an overpayment of tax is, generally, three years from the time the return was filed, or two years from the time the tax was paid, whichever period expires later.

Unless a claim for refund is filed within the period of limitations, no refund shall be allowed after the expiration of such period. Treas. Reg. § 301.6511(b)-1. Also, if a claim for refund is filed within three years of the filing of the return, the amount of the refund is limited to the amount of tax paid within three years preceding the filing of the claim, plus extensions. I.R.C. § 6511(b). Similarly, if a claim for refund is filed within two years of the payment of tax, the amount of the refund is limited to the amount of tax paid within two years preceding the filing of the claim. Id.

Under I.R.C. §§ 1311 through 1314, the Internal Revenue Code allows the correction of certain errors under certain circumstances when one or more provisions of law, such as the statute of limitations, would otherwise prevent such a correction. Treas. Reg. § 1.1311(a)-2. The mitigation of the statute of limitations is designed to prevent either a taxpayer or the Service from taking advantage of an error made in a closed year by asserting an inconsistent position in an open year, thereby receiving a windfall. Bolten v. Commissioner, 95 T.C. 397, 402 (1990).

The mitigation provisions contain a confusing set of rules designed to prevent such windfall. To qualify, the party seeking mitigation must show: (1) there was a "determination" (defined by I.R.C. § 1313) that some tax treatment in a prior year is erroneous; (2) on the date of the determination, correction of the error in the prior year is barred by law, e.g., statute of limitations; (3) the determination falls within one of seven circumstances of adjustments described in I.R.C. § 1312, e.g., double taxation of an income item; and (4) the party against whom mitigation is invoked maintained a position inconsistent with the challenged erroneous inclusion, exclusion, recognition, or non-recognition of income. If all requirements are met, a claim must be filed within one year of the determination. I.R.C. § 1314(b).

Under I.R.C. § 1313, a "determination" means one of four things: (1) a decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final; (2) a closing agreement under I.R.C. § 7121; (3) a disposition by the Service of a claim for refund, which, as to items with respect to which the claim was allowed, is final on the date of the allowance of the refund; and (4) an agreement meeting the requirements of the Treasury regulations under I.R.C. § 1313.

The circumstances under I.R.C. § 1312 include determinations which: (1) include an income item erroneously included in a barred year; (2) allow a deduction or credit erroneously allowed in a barred year; (3) exclude an income item erroneously excluded in a barred year; (4) disallow a deduction or credit erroneously disallowed in a barred year; (5) allow or disallow a deduction or include or exclude an item of income for an estate, trust, or corporation which was inconsistently treated in a barred year;
(6) affect the basis of property after the erroneous treatment of a prior transaction in a barred year.

The common situation in I.R.C. § 1312 is a single "item" of income or deduction which was treated inconsistently in a barred year. For example, the determination in the open year results in a double inclusion of an income item, to the disadvantage of the taxpayer, or results in a double allowance of a deduction or credit, to the disadvantage of the Service. The purpose of the mitigation provisions "is to correct tax inequities where the statute of limitations ... would serve to create a double taxation or double escape from taxation to the unjust hardship or benefit of either the taxpayer or the government." Oklahoma Gas and Electric Co. v. United States, 464 F.2d 1188, 1189 (10th Cir. 1972).

In this case, it is not known whether or not, for each particular "non-qualified investor," a "determination" was made requiring the inclusion of interest income which was included by an investor as income in a prior year. The equitable mitigation provisions may apply such that the Service may allow claims that are untimely under I.R.C. § 6511 if a "determination" resulting in an income item reported in a prior barred year being treated inconsistently in a later year. However, if an investor's error in reporting interest income in a prior year does not relate to a determination in a subsequent year to include the interest as income, but simply consists of the investor's own overstatement of income in years barred by the statute of limitations, the mitigation provisions will be inapplicable. See Curtis Gallery & Library, Inc. v. United States, 388 F.2d 358 (9th Cir. 1967).

Question # 3

What is the year of loss for "non-qualified investors" – 2003 or 2004?

If a "non-qualified investor's" funds were in fact misappropriated, a theft loss may be claimed as a deduction in the year the loss was discovered, under I.R.C. § 165, unless the investor has a reasonable prospect of recovery from the entity and/or its principals, e.g., a civil lawsuit. Thus, whether an investor's year of loss was in 2003, 2004, or in the future depends upon when the investor discovered the loss, and ascertained, or will ascertain, with reasonable certainty whether or not a recovery will be had. The claimed theft loss may be carried back three years, under I.R.C. § 172(b)(1)(F).

Under I.R.C. § 165(a), a deduction is generally allowed for any loss sustained during the taxable year and not compensated for by insurance or otherwise. Section 165(c)(3) provides for the deduction of losses of property not connected with a trade or business or a transaction entered into for profit, if such loss arises from theft. In the case of section 165(c)(3), a theft loss deduction may be allowed with respect to a loss arising from the embezzlement of a taxpayer's funds in a Ponzi scheme to the extent the taxpayer can substantiate the loss. See e.g., Berardo v. Commissioner, T.C. Memo. 1987-433.

In such case, a taxpayer may deduct a theft loss to the extent the loss from each theft exceeds $100. I.R.C. § 165(h)(1). The aggregate amount of all such losses sustained by each taxpayer for the taxable year (determined after applying the $100 floor) is allowable only to the extent the aggregate losses exceed 10% of the taxpayer's adjusted gross income. I.R.C. § 165(h)(2). To the extent a taxpayer is entitled to claim a deduction for a theft loss, such loss may be carried back three years. I.R.C. §§ 165(e), 172(b)(1)(F).

Generally, any loss arising from theft is allowable as a deduction under section 165(a) for the taxable year in which the loss is sustained. Treas. Reg. § 1.165-8(a)(1). For purposes of section 165(a), a theft loss is treated as sustained during the taxable year in which the taxpayer discovers the loss, unless there is a reasonable prospect of recovery. I.R.C. § 165(e); Treas. Reg. §§ 1.165-1(d), 1.165-8(a)(2). If in the year of discovery there exists a claim for reimbursement that has a reasonable prospect of recovery, then no portion of the loss with respect to such reimbursement is deductible until the year in which it can be ascertained with reasonable certainty whether or not such reimbursement will be received, i.e., the deductible amount of the theft loss is reduced by the expected recovery. Treas. Reg. § 1.165-1(d); Premji v. Commissioner, T.C. Memo. 1996-304.

A reasonable prospect of recovery exists when the taxpayer has bona fide claims for recoupment from third parties, and when there is a substantial possibility that such claims will be decided in his favor. Premji v. Commissioner, 98-1 U.S.T.C. ¶ 50,218 (10th Cir. 1998). Whether a reasonable prospect of recovery exists is determined based on all the facts and circumstances. Id. A taxpayer is not required to be an "incorrigible optimist," and claims with only remote or nebulous potential will not postpone the deduction. Id. The standard is objective, i.e., whether there was a "reasonable expectation" of recovery at the close of the taxable year in which the deduction was claimed. Jeppsen, 128 F.3d 1410, 1415, 1418-19 (10th Cir. 1997). A later recovery on a claim is not controlling if, at the end of the close of the taxable year in which the loss was discovered, no reasonable prospect of recovery then existed. Id. at 1415-16.

One of the relevant factors in determining whether a reasonable prospect of recovery existed is whether the taxpayer has filed a lawsuit to recoup the loss. Premji, T.C. Memo. 1996-304. Filing a lawsuit soon after the end of the taxable year in which the loss was claimed suggests that the taxpayer did not consider the loss a closed and completed transaction. Id. Unless litigation is speculative or without merit, where the taxpayer deems the chance of recovery sufficiently probable to warrant bringing a lawsuit and pursuing it with reasonable diligence to a conclusion, the taxpayer should postpone the loss deduction until the litigation is terminated. Id.

With respect to the issue of the discovery of the theft loss in this case, the receivership case began on December 17, 2003, and the facts indicate that the receivership is planning to make a distribution in late 2004 on claims filed by the investors. It is assumed that the receivership notified the "non-qualified investors" of the loss, but it is not known precisely when such notification was made. Whether the year of the loss is 2003 or 2004 depends, in part, on when each particular investor discovered the theft loss. This issue is purely factual, and must be determined on a case-by-case basis.

With respect to the issue of a reasonable prospect of recovery, it is not known when investors were actually aware, or reasonably should have been aware, of the receivership's anticipated distribution of $1 million. It is also not known whether the investors have a reasonable prospect of recovery from the entity and/or its principals outside the receivership, e.g., via civil judgment or criminal restitution, or whether the receivership proceeding will result in liquidation of virtually all of the available assets of the entity and its principals. As with the discovery of the theft loss, whether the year of the loss is 2003, 2004, or in the future depends, in part, on when each particular investor reasonably determined that there was no reasonable prospect of recovery. As above, this issue is purely factual, and must be determined on a case-by-case basis.

Question # 4:

Are individuals who were under 59 ½, who made what they thought was a trustee to trustee transfer, and who never "touched" the money subject to the 10% premature distribution penalty?

Individuals who are under age 59 ½ who receive a taxable early distribution are subject to the additional tax under section 72(t) absent some other exception or absent concession of that amount due to litigating hazards, based on the facts of the particular case.

Individuals who did not get relief under the substantial compliance doctrine, if under 59 ½ when the distribution occurred, would ordinarily be liable for the early withdrawal additional tax under section 72(t) (absent some other exception, most of which seem inapplicable here). Assessing the equities of this situation would require inquiry into what the particular taxpayers knew, or should have known, when they attempted a rollover with Hickman. For example, did Hickman promise a 20% return at a time when interest rates generally were 5%, such that a reasonably cautious individual would have questioned the plan? If so, did they question Hickman, and what were they told? All of the facts would have to be considered in order to determine whether concession would be appropriate as to particular taxpayers.

Question # 5:

What if a "non-qualified investor" did not report what was characterized as interest in 1998? Should amended returns be filed? Some other action taken?

If the payments "non-qualified investors" received constitute interest income, but were not originally reported as such on their returns, amended returns should be filed, but only to the extent the amended returns would be timely, i.e., within three years of the filing of the original returns. To the extent the statute of limitations on assessment has expired under I.R.C. § 6501, which period is generally three years after the filing of the original return, no amended returns should be filed.

If the payments "non-qualified investors" received constitute interest income, but were not originally reported as such on their 1998 returns, the question arises whether such investors should amend their returns. Generally, the statute of limitations on assessment is three years from the filing of the return. I.R.C. § 6501. An amended return does not extend the statute expiration date unless the return is an income tax return received within 60 days before such date, in which case the assessment period is extended to 60 days after the receipt of the amended return.. I.R.C. § 6501(c)(7); IRM 4.75.10. Otherwise, taxable amended returns have the same statute of limitations as the original returns. IRM 4.90.7. To the extent the statute of limitations on the assessment of tax has expired, which period is generally three years after the filing of the original return, no amended return with respect to the tax should be filed.