

## So You Missed The Filing Deadline: How To Get Back On Track

You missed the tax filing deadline. Your return is incomplete, not even started, or you have a return that you cannot send in because it is inaccurate. What should you do?

### 1A. Do Not Start A Pattern.

Tax authorities and criminal investigators look for patterns of non-compliance before starting an inquiry. Audits are more productive when several years with a common issue or issues can be packaged together; criminal investigators look for a pattern of typically at least three years before recommending criminal prosecution. Do not let this year be the first year of a pattern.

Avoid any tendency to put a missed tax deadline on the “back-burner.” Ignoring your overdue tax returns will not make your tax obligations go away. “[Late Filing Syndrome](#)” is not a recognized psychiatric condition and the tax authorities will not hesitate to administer a curative regimen of penalties and interest.

Take the initiative now to get your tax problem(s) addressed before the tax authorities get onto you.

### 1B. If This Is Not the First Year You Have Missed, Take This Opportunity to Break The Pattern And Get On Track.

You may be beyond or even far beyond missing one return.

The consequences for tax non-compliance are growing greater, and, due to improved data-sorting abilities and information sharing, the ability of the tax authorities to identify non-compliant taxpayers is greater than ever. Information returns are placing more non-compliant taxpayers on the radar screen, and sharing between state and federal tax authorities can be highly productive. In Hawaii, federal Schedule C and E returns are believed to be used by the Department of Taxation to identify General Excise and Transient Accommodations Tax non-filers: depending on income level, non-filers are then referred to civil audit or for criminal investigation. Hawaii [recently changed transient accommodation tax laws](#) to increase the ability to identify owners of Hawaii vacation rentals.

Professionals, including tax professionals, face potential loss of livelihood through professional discipline in addition to the inherent consequences of a criminal investigation or thorough civil audit. The Internal Revenue Service has proposed changes to Circular 230 to prohibit non-compliant tax practitioners from practice before the IRS. See, [IRB 2012-40](#); [Article on Proposed Changes to Circular 230](#).

In our world of Google searches, adverse publicity is likely to have consequences for businesses and professionals far beyond that of ten or twenty years ago. A criminal investigation and/or prosecution for failure to file taxes can change life as you know it. Many targets of tax investigations and prosecutions would never have failed to prepare and submit their tax returns if they had known of the consequences of their inaction.

Failure to file is the easiest of the tax crimes to investigate and prove, and this can be especially true for state-level taxes collected by retailers and other businesses.

If you are behind on your taxes, and have concerns about how to get back into compliance without drawing undue attention to yourself, you should seek professional guidance.

## **2. Identify The Reasons For Non-Compliance And Take Action.**

If there are specific reasons you missed the deadline, take immediate action to address those reasons. The tax authorities will consider your reason(s) for late filing when considering the imposition of, or relief from, penalties. There can be a difference between filing a few days or weeks late, and filing months or years late, when trying to establish “reasonable cause” for relief from penalties. While you have already missed a deadline or deadline(s) that does not mean that your actions today, tomorrow and this month will not potentially matter later.

If you are missing information essential to your tax return, make a meaningful attempt to obtain the information: write a letter or send an email to the appropriate person(s). Follow up on obtaining the information. Discuss with your return preparer or tax advisor whether you can obtain the same information in another manner, or prepare your return without that particular documentation, possibly with a disclosure. Keep a log of your efforts and your follow-ups.

If you have a difficult or unusual situation, consult a tax professional immediately. You should seek competent professional advice if you have put off filing because of complicated situations such as:

- income from illegal or unlicensed activities;
- offshore financial accounts or interests;
- receipt of income on behalf of someone else;
- presence of large cash receipts or expenditures;
- a close business associate under audit or investigation; or,
- an unusual one-time event such as a trust distribution or large gambling winnings.

Be careful about telling your tax preparer about material (large or important) inaccuracies in your return or previously filed returns. Tax preparers, including even attorneys that prepare returns, may not have privilege to refuse to discuss your returns if compelled to testify by tax authorities. Consult with an independent attorney on how to handle serious omissions or discrepancies.

## **3. Do Not Become Preoccupied With The Inability To Pay And Allow That Preoccupation To Distract You From Filing An Accurate Tax Return.**

Concern about the payment of the taxes due is a common reason for not filing tax returns. Virtually every tax preparer will have stories of clients with a collection of unfiled returns sitting in a drawer, unfiled. The tax authorities typically do not publicize the fact that you can file your return without payment.

No one likes to send in their own bill, especially when they will not be able to promptly pay the balance.

Recognize that filing and payment are separate issues. There are penalties for failing to file/ late filing, and there are penalties for failing to pay/ late payment. By filing your tax return, you are limiting or eliminating the penalties for failure to file, and this can save you substantially down the line. As noted above, it can also save you from a criminal investigation and possible prosecution.

The tax authorities are well aware that we are in difficult financial times, and have taken a relatively generous approach (by their standards) to resolving past-due balances. The IRS has a [liberalized "streamlined" payment program](#), and many states have similar programs. Do not allow concerns about inability to pay to interfere with filing.

If you cannot pay last year's tax bill, your first consideration should be whether you are on target to pay this year's tax bill. You should adjust your withholding or estimated payments to adopt a "pay-as-you-go" approach. This is the most productive use of your available resources because you avoid failure to pay penalties and interest on the current year. You will also be eligible for a payment plan for prior taxes only upon a showing that you are "current" on this year's taxes. (in most scenarios...the tax authorities are not always scrupulous in this regard.)

Do not let your inability to pay last year's taxes delay the filing of last year's tax return.

#### **4. Realize The Hidden Dangers Of Non-Compliance.**

One of the most unfortunate consequences of late filing is the loss of refunds. In general, for income tax returns, a refund for overpayment is available within three years of the return due date or within two years of payment. Most return preparers and tax professionals will have seen many scenarios where several years were not filed yet one or more of those years would have been a refund that would have offset the balances due on other years.

A second problem with non-compliance is when the tax returns are required for another purpose. Tax returns are frequently required for security clearances and background checks. Avoid the embarrassment of not having your tax returns on file. Financial aid applications are another area where returns are required and explaining to family members that you have not filed your return(s) on time may be embarrassing and potential preclude them from an award.

#### **5. Conclusion**

There are a number of good reasons to address any late or unfiled tax returns. While the filing deadline has passed, you should take measures to get your past due returns accurately prepared and filed.

Late returns can result in consequences greater than penalties and interest, but can result in criminal investigation, prosecution, and possibly diminished earning power.

**Richard Paul McClellan III**  
**820 Mililani Street #701**  
**Honolulu, Hawaii 96813**  
**(808)523-0449**

[www.taxsolutionslawyer.com](http://www.taxsolutionslawyer.com)