

# Four Things You Need To Know If You Have Unfiled Tax Returns



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## **Four Things You Need To Know If You Have Unfiled Tax Returns**

By Steven A Leahy

Many of my IRS clients are “Nonfilers,” they have unfiled tax returns. Some of my clients have not filed for multiple years – some, for many prior years. Sometimes, they take action because they (or a friend) heard my radio show or commercial. Most, however, wait until the IRS sends a Notice of Intent to Levy, or worse, Notice of Levy to their employer or bank. If you have unfiled tax returns there are four things you need to know.

First, you need to know that not filing your tax returns is a crime, punishable by up to one year in prison for each year of unfiled tax return. Fortunately, the IRS doesn’t put a lot of taxpayers in jail for not filing tax returns. But, they do put some in jail. For example, Wesley Snipes was recently released after serving 3 years for failure to file. There is a statute of limitations for unfiled tax returns. The IRS will not be able to bring criminal charges after 6 years from the date the taxes are due. So, 2007 taxes that came due on April 15, 2008 are now beyond the statute, and the IRS can’t bring criminal action against you for unfiled tax returns 2007 and before. But, they still can collect any tax due.

Second, you should know that the IRS may complete your tax returns for you if you fail to file your tax return (it’s a penalty not a service). These are known as Substitute for Returns (SFR). When the IRS prepares your SFR, they will not include any deductions or exemptions. The result will be an inflated tax obligation. Penalties and interest are calculated based on the tax obligation. So, if the tax obligation is greatly inflated, so too will the penalties and interest. Don’t forget, the interest is calculated from the date the tax was due. So, the penalties and interest can add up to amount greater than the inflated tax obligation.

Third, the IRS will only allow you to recover any tax refund for 3 years. So, if you have any refund older than 3 years, the IRS will not refund OR credit your tax obligation for those years. For example, suppose a taxpayer hasn’t filed a return for years 2009 – 2014. Further, suppose, once the returns are complete, the taxpayer is due a refund for the years 2009 – 2011, but incurs an obligation for the most recent years 2012 – 2014. The refunds from the first three years will not be used to set off the tax obligations of the past three years. Those refunds are gone.

Finally, you need to know that, should the IRS levy your bank account or garnish your wages, it will be difficult to stop the levy before real damage is done. This is true because, generally, in order to stop a levy, the taxpayer must be in compliance. Compliance requires the taxpayer to have previous tax returns filed BEFORE the IRS will agree to stop taking your assets. If there are years of unfiled tax returns, it will take some time to get into compliance. Finding the records to prepare older returns can be a real problem.

There is some good news. Because the statute of limitations is six years, a taxpayer may not have to file all of their unfiled tax returns. In fact, it may be the worst thing you can do, because you may be creating a greater tax obligation than necessary. Remember, these are the older returns, so if a tax obligation is created, they will bring along a large penalty and interest burden as well.

More good news – if the IRS filed your tax returns for you (SFR) you can file the proper return to decrease your tax obligation. I have helped clients with more than \$100,000.00 in tax obligations that disappeared when the corrected tax returns were filed and the SFR's nullified.

So, if you have unfiled tax returns – Take action today! You should work with a local law firm. Call Opem Tax Resolutions & The Law Office of Steven A. Leahy, PC (312) 664-6649. Call NOW to set up your FREE Consultation. (312) 664-6649.

## **Transcript:**

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Steve:

Welcome Back. I am your host attorney Steven Leahy and this is the IRS Radio Hour on AM 560 The Answer.

Jim:

Well Steve we are in our second segment and this always is the part where you have your blog, what is your weekly blog about?

Steve:

Well the weekly blog is about unfiled tax returns and the four things you should know if you have unfiled tax returns. A number of my clients just this last week came in and most had unfiled tax returns. It seems to be a common problem.

Jim:

That's why they come to you.

Steve:

Not always. Some times it is because they owe money to the IRS and they have filed their tax returns on time, they just owe money. So, we help them come up with some plan to pay the IRS or at least protect them from the IRS. But, sometimes - this is one of the things - we are going to get into that. There are four things you should know if you owe - That's the name of the blog post - Four Things You Should Know if You Have Unfiled Tax Returns - And the first thing you should know is:

Jim:

Number One.

Steve:

It is a crime. OK. It's criminal. You can go to jail for one year for every year you haven't filed tax returns. Now, the good news is, the IRS doesn't put a lot of people in jail for not filing their tax returns, it has to be intentional. But, talk to Wesley Snipes, rights. Wesley Snipes just got out of prison.

Jim:  
Don't bet on black.

Steve:  
Exactly.

Jim:  
Or, bet on black.

Steve:  
He spent three years in prison.

Jim:  
He bet on black and he lost.

Steve:  
Now, he had other issues, because he was what is called a tax protester. He protested and said "I don't think the IRS has the authority to tax me. So, I'm not going to pay them.

Jim:  
He said prove it. And they did.

Steve:  
That's right. They did prove it. But, he actually was convicted of three years of intentionally not filing his tax returns, for three years. He went to jail for three years. Again, not everyone goes to jail. But, it is a crime and they can use it against you should they decide to. The IRS is starting to use criminal allegations in order to get their attention. Right. We are going to talk about this more in the next segment. But the IRS has had some problems with their budget and one of the ways - Now, this is good for some of my clients. They are accepting a lot of offers in compromise that they didn't before, because it is easier for them. But, again it is easier for them also to allege a crime. If they do that, you are more likely to pay more quickly to stay out of jail. Rightfully so. That make sense.

The second thing you need to know if you have completed your tax returns is the IRS will file them for you. And I have been told by the IRS that this is a penalty. It is NOT a service. They are not helping you by filing your tax returns for you.

Jim:  
No. It happened to me once. Let me tell you.

Steve:  
These are called SFRs, or Substitute for Returns. What they do is they look at your income and they impose a tax based on that income. But, they don't give you any deductions, they don't give you any exemptions, so the number they come up with is

Jim:  
Very, very high.

Steve:  
That's right. And also remember, penalties and interest are based on what they say you owe. So, those numbers are also exaggerated and very very high. So you get caught all of the sudden with this large amount of money that they say you owe. People say "I didn't even make that much. How can I owe them that much?"

Jim:  
We don't like to hear that.

Steve:  
That's what happens a lot. That's why you have to be careful. There are things that you can do - we will talk about that at the end of this segment. What you can do if you have SFRs filed against you.

And the Third thing you can do - I mean the third thing you should know if you haven't filed your tax returns is that you can only collect - if you have a refund due - you can only collect it for the last three years. So, there is a ten year statute about how long -

Jim:  
But you have to pay it for how many years?

Steve:  
Ten years.

Jim:  
But they only have to pay you back

Steve:  
For three years.

Jim:  
That doesn't seem fair.

Steve:  
It doesn't seem fair, does it. But it is the way it is. Lot of things in this world is not fair, Jim.

Jim:  
You are right about that.

Steve:  
So, for instance. For six years I haven't filed my tax returns. The first three years, they filed for me and they say I owe. The last three years they say I do owe them money. So,

I can go back and redo my taxes. Now I have a refund due. But I don't get that refund. They are not going to give it to me. And they are not going to use it to offset the tax that I do owe. So, that's more money I am giving the IRS that they - now it's a tax. Even though I don't really have that tax.

Jim:

That just doesn't seem right to me.

Steve:

It doesn't seem right . But that is what it is. Again, a lot of people who come to see me ask why are they giving me penalties?

Jim:

It seems like a game show. Sorry. Oh, you could have had that money. It's too late. Oh, jeeze.

Steve:

That's right. We caught you. And now it's too late.

The final thing you have to know - if you haven't filed your tax returns, then you are not in compliance. We talk a lot about compliance on this show.

Jim:

That's a big word.

Steve:

It's very glib.

Jim:

Sorry.

Steve:

So, again compliance is a big part of the IRS - They want you to be in compliance. And say they do file SFRs against you and they start to collecting, they have a levy against your wages or they freeze your bank account. Now you panic - this has happened a couple of times this last week.

Jim:

The levy breaks and you got no place to stay.

Steve:

That's right. A couple of people this past week who came to see me had a levy placed against them. So they come to see me about the levy, but they have unfiled tax returns. Well you can't really stop the levy until you get your tax returns filed. And if it has been a number of years before you have filed your tax returns it may be difficult to come up with the documents to support a new tax return is going to be very difficult. Now, we can

pull a lot of things from the IRS - they have transcripts, but if you are trying to get some deductions you will have to come up with the receipts to support them.

And if it were six or eight years ago it is going to be hard to do. And that is going to put you behind the eight ball and they are going to go ahead with this levy until you get in compliance. And, again, that's a big thing. You have to get into compliance. It makes it hard. You can't stop that levy until you get into compliance. And again, compliance is the biggest thing - you have to stop the levy. A lot of people are living pay check to pay check - if they lose one pay check

Jim:  
You are out.

Steve:  
That's right. If you are renting. I have had many clients where if they miss their rent - their landlord is going to throw me out. What am I going to do? So, again, if you have a hardship they will stop the levy. But they won't stop the levy with a hardship unless I am in compliance.

Jim:  
I'm in compliance.

Steve:  
Now, I should say there was a tax court decision some years ago that says even if I am not in compliance, if I can prove a hardship they are supposed to stop the levy. But, in my experience they don't always do that. While you can go to the court - by the time you go to court, it's too late.

Jim:  
Can they do that? "We can do whatever we want, we are the IRS."

Steve:  
Absolutely true. So, there is some good news though. Because there is a six year statute of limitations on how far they can go back criminally against you for your tax return. So, if I haven't filed in twelve years or fourteen years and they haven't filed an SFR for me in those years - I shouldn't go back and file. People will do is say "I'm going to get into compliance with the IRS." So, they go back and file all twelve years and it turns out they owe money for years that if they didn't file they wouldn't owe the money.

So that's why Always get help, Always. Don't take this upon yourself. Because you don't understand what the rules are - that's why we hire attorneys to help us. They help us get a strategy to get it done right. So, you can be hurting yourself by filing tax returns that do not otherwise have to be filed.



Jim:

That's right. You don't fix your own water heater most of the time. Do you? No. You call a plumber.

Steve:

You try not to. That's right. More good news, is that when they file something for you - remember it is a penalty, not a service. The SFR. You can go back and you can file the correct tax returns. So, you can redo them to lower your obligation.

Jim:

Let me ask you a question - If they filed an SFR on me but it was four years ago can I still go back and get that money?

Steve:

No. You can't get the money. Because if they do the SFR, you are going to owe them money. You aren't going to get a refund. And if you go back and do it and now you are to get a refund, you still don't get that money. It's more than three years ago. A lot of my cases, that's exactly what happens. They do SFRs, it looks like my clients owe money, We redo those tax returns, and it turns out they have a refund coming. But they don't get the money. So, it's just more tax that your going to have to pay.

So, if you are having this problem - If you have unfiled tax returns, CALL ME! 312-664-6649 - you can visit us on the web at [chicago-tax-team.com](http://chicago-tax-team.com). If you want a copy of this report - The Four Things You Should Know If You Have Unfiled Tax Returns - Give us a call 312-664-6649.

Jim:

Is that a report, or is that your blog?

Steve:

It's a report, but it's a blog. We are putting it in report form.

Jim:

OK. Well don't go anywhere. We will be right back