I Haven’t Filed Taxes In Three Years And I Am Worried?

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Dear “Ask the Attorney”:

I know that April 15th is right around the corner and my 2011 income tax return is due. However, I don’t know what to do since I haven’t filed a return for 2009 and 2010. It seems to have simply gotten away from me. What do I do?

J.D.

Our guest blogger is Gary R. Botwinick, Esq. Mr. Botwinick is a partner with Einhorn, Barbarito, Frost & Botwinick, PC and the chair of the Trusts & Estates/Taxation department of the firm.

Dear J.D.

You might be surprised how often this issue comes up. People get a bit delinquent and then become concerned that if they file the delinquent return the IRS will catch up with them and then they will have a major problem including the possibility of a criminal investigation. So they do the exact opposite of what they should do — they become even more delinquent.

While criminal investigations and prosecutions sometimes do occur when individuals fail to file returns for several years, in most cases a civil resolution is possible. In fact, in the case of most wage earners (employees), the individual who fails to file is only hurting himself. Wage earners typically have taxes withheld from their regular paychecks. These withheld amounts are, in a sense, a deposit on the taxes that an individual will ordinarily owe. Most wage earners, especially in this geographic area, pay more in withholding than is actually due for the year. This means that at the end of the year, they are entitled to refunds, but only if a return is filed.

However, you only have three years to collect any refund that may be due. If a return is filed more than three years late, the claim for the refund will be denied as the statute of limitations will have expired.

If you fail to file a return and pay a tax that is owed, there are many options available to you. The first thing to do is sit down with a CPA or a tax attorney to determine the extent of any liability. In many cases, you can simply file the delinquent returns, pay the taxes and a small penalty and interest. If you cannot pay the delinquent taxes, you may be able to enter into a payment plan with the IRS. If you are out of work and cannot enter into a payment plan, you may be eligible for an "offer in compromise." An offer in compromise is a negotiated settlement with the IRS for individuals who cannot pay the taxes that they owe, which can sometimes result in the payment of less than the delinquent amounts.

An attorney or a CPA can advise you regarding any criminal or civil liability exposure you might have with respect to unfiled tax returns. These professionals can also help you with an application for either a payment plan or an offer in compromise. While there are a number of companies advertising on the web and on television, which offer assistance or promise results in reducing tax liabilities, you should be careful as there have been several cases where these companies made false promises, collected steep fees, and failed to deliver results.

"Ask the Attorney" is a new blog in which answers to your legal questions submitted to asktheattorney@einhornlawyers.com may be answered. The answers to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case is different, therefore you should seek competent legal representation.