TAX TIP$

by Michael A. Lampert

Where is my income tax refund?

Around this time of year, people begin to clamor for their income tax refund. It is not uncommon for an elder client, both during lifetime and after death, to be due an income tax refund. While some clients regularly have a refund due to too much withholding or estimated tax payments, others typically do not have a refund, but due to the current year's circumstances, they do. Some reasons for receiving a refund include having made estimated payments based on pension income that stopped due to death, larger than normal medical expenses resulting in less tax due, and application of various refundable credits, to name a few. In addition, the so-called Tax Cuts and Jobs Act increased and decreased various credits and deductions, and may increase (or decrease) a client's income tax refund.

Reminder: Remember that the Tax Cuts and Jobs Act caused many clients' withholding to be reduced, increased standard deductions, suspended personal exemptions, increased the child tax credit, added a new credit for other dependents, and limited or discontinued certain other deductions.

Practice tip: The IRS website has a withholding calculator to perform a check to see if withholding should be adjusted or if additional estimated or other tax payments should be made.

What sometimes happens is that the income tax refund is late in coming or is never received. For many clients, this is simply a nuisance. In some cases, however, the client's receipt of the income tax refund is desperately needed to avoid eviction or utility shutoffs. This article will provide a practical overview of "Where is my (client's) tax refund," with some practical tips.

Last known address

Refund checks are mailed to your client's last known address. If the Postal Service did not forward the check and if the IRS is not notified of the change of address, the refund check may be returned to the IRS.

Practice tip: IRS Form 8822 notifies the IRS of a new address. While a subsequently filed income tax return also notifies the IRS of the address change (if it has the new address), the later year's return is usually too late for the IRS to correctly mail the prior year's income tax refund. It is also not uncommon for a tax preparer to not update the client's address on the income tax return.

If your client was expecting an income tax refund and did not receive it, now what?

Most refunds are issued within 21 calendar days; however, various factors can delay refunds. Some reasons include incomplete returns, errors in the returns, identity theft or fraud indicators, and being selected for further review. In addition, if the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC) is on the return, refunds will not be issued until at least mid-February. This procedure is in place to reduce tax fraud.

But the client is anxious; can we just call the IRS?

The short answer is yes; however, generally you must wait at least 21 days after a tax return is filed electronically and six weeks if the tax return was mailed. The IRS website has a "Where's My Refund?" section. You (your client) will need to enter the Social Security number, filing status, and the exact whole dollar amount of the expected refund. If there is an address change, you may be prompted to change the address online. Interestingly, you can check on the status of a refund for an electronically filed return 24 hours after filing, and after four weeks if filed by mail.

Practice tip: A refund is generally issued faster as a result of an e-filed return compared to a paper filed return.

Practice tip: There is often a long wait while on hold to speak with a phone representative. The online system can generally provide the refund information faster.

Practice tip: Calling does not speed up the refund process.

Practice tip: If calling the IRS or otherwise taking action for a client when the client is not physically present, obtain Form 2848 (Power of Attorney and Declaration of Representative) or Form 8821 (Taxpayer Information Authorization). Form 8821 authorizes the party designated to "inspect and/or review confidential information" from the IRS regarding the type of tax and the years or periods listed on the form. Form 2848 not only authorizes receipt of confidential information, but it also authorizes representation before the IRS.

Practice tip: When obtaining information from the IRS on behalf of the client (or for any filing with the IRS), obtain a copy of the client's government-issued photo ID. It is important that you know your client really is who he or she claims to be, especially because you are representing that you are authorized by that client to deal in some capacity with the IRS. Do not inadvertently assist in identity theft fraud.

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Why did direct deposit of the refund into the client's bank account not happen?

There could be multiple reasons. Sometimes the financial institution rejects the direct deposit. Sometimes the information given to the IRS for the direct deposit is wrong. In an effort to reduce identity theft and other types of fraud, the IRS will not deposit more than three electronic refunds into a single financial account. In addition, electronic deposits can only go into an account in the taxpayer's name, the taxpayer's spouse's name, or into their joint account.

Why might the refund amount differ from the amount shown on the income tax return?

It is not uncommon for the client to have refund offsets for debts such as federal income tax, state income tax, child support, student loans, etc. If that happens, follow up with the agency that caused the offset. Sometimes the IRS corrects clerical errors that can change the refund amount. Of course, if you believe the IRS is incorrect, this should be addressed.

What about refunds from amended income tax returns?

The IRS website has a section "Where's My Amended Return?" Remember that amended returns are also subject to review and even audit.

Unfiled returns

The author sometimes has clients whose income is below the income tax return filing requirement threshold. When looking at their paperwork, however, withholding or other payments are shown as being made by or on behalf of the client. In some cases, the client may be entitled to the Earned Income Tax or other credit where the client may even be refunded more than was paid in. In these cases, an income tax return needs to be filed, or after two years, the refund may be lost. The same applies to non-U.S. citizens who have had tax withholding of income. To claim a refund, an income tax return must be filed.

Practice tip: Some clients who are non-U.S. persons have an Individual Taxpayer Identification Number (ITIN) rather than a Social Security number. Any ITIN not used on a federal (not state) tax return in the past three tax years expired on Dec. 31, 2018. ITINs with middle digits of 73, 74, 75, 76, 77, 81, or 82 also expired at the end of 2018. To renew, a Form W-7 will need to be filed. It can typically take seven weeks to receive an ITIN, longer during the heart of tax filing season.

What if the client is truly financially desperate for the refund?

Sometimes the client is in imminent danger of significant harm without receipt of the refund. Examples include final utility shutoff notices, eviction notices, and the like. If this is the case, organize the information such as a copy of the income tax return, proof of return filing, efforts (if any) to obtain the refund, and backup regarding the significant actual or imminent harm.

Your client, or you with a Form 2848 IRS Power of Attorney, may contact the Taxpayer Advocate's Service. The local offices are listed on the IRS website. The Taxpayer Advocate Service has specifically stated that these types of cases should be brought to them so they can try to expedite an otherwise delayed refund.

Practice tip: The Taxpayer Advocate Service generally makes "first contact" very quickly after a request for assistance is made. Be ready.

Practice tip: In a non-emergency situation, if the refund has been delayed beyond the time periods listed above, plus an additional 30 days, a request for Taxpayer Advocate Service assistance can also be made.

Practice tip: The Taxpayer Advocate Service is overworked and understaffed. They truly want to help, but absent an emergency, *please* use normal IRS resolution channels first.

Deducting business meals

What is commonly referred to as the Tax Cuts and Jobs Act (TCJA) changed the law by disallowing deductions for entertainment, amusement, or recreation expenses. This left many wondering "what about business meals?"

While there are no regulations yet, the IRS recently issued Notice 2018-76 to address the issue. The notice provides that taxpayers generally may still deduct 50% of the expenditure for food and beverages associated with their trade or business. More specifically:

1. the expenses should be ordinary and necessary under IRC Sec. 162;
2. the expenses cannot be lavish or extravagant;
3. the taxpayer, or an employee of the taxpayer, is present when food or beverages are provided;
4. food or beverages are provided to a current or potential business customer, client, consultant, or similar business contact; and
5. food or beverages are purchased separately from entertainment (or stated separately on one or more bills, invoices, or receipts).

Practice tip: The substantiation requirements have not changed. Keep adequate receipts and, ideally, contemporaneous lists showing who the meal was with and the purpose. Remember that it is still necessary to have adequate backup to support the income tax deduction.

Michael A. Lampert, Esq.*, is a board certified tax lawyer and past chair of The Florida Bar Tax Section. He regularly handles federal and state tax controversy matters, as well as exempt organizations and estate planning and administration.*