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How Far Back Can IRS Claim Tax Evasion?

If you are hiding income from the taxman, consider how long you are at risk. Three years, six, more? Even if you did your best with your taxes, you might be worried as taxes are horribly complex. The line between aggressive tax planning and tax evasion is sometimes less clear than you might think. In fact, even innocent activities can sometimes be interpreted as suspect.

It can help your peace of mind to know how far back you can be asked to prove your income, expenses, bank deposits and more. For all of these reasons, it's good to know about the normal IRS statute of limitations, and how a tax evasion or fraud claim from the IRS can turbo-charge a case. Start with the basic rule that the IRS usually has three years after you file to audit you.



If you omit more than 25% of your income, the IRS gets double that time, six years. But statutes are often extended, sometimes voluntarily. Frequently, the IRS says it needs more time to audit and asks you to sign a form extending the statute, usually for a year. Most tax advisers generally advise clients to agree.

However, get some professional advice about your own situation. You may be able to limit the time or scope of the extension.

But what if you file a false return under-reporting income or willfully fail to file? The rules for how long you must worry—and the stakes—go up materially, including potential criminal charges and prison. Section 6531(2) of the tax code says the statute is six years commencing once the return is filed, or from the time you willfully failed to file a return.

In a case of alleged criminal tax evasion, that means the statute hasn't run if the taxpayer is indicted within six years after "willfully attempting in any manner to evade or defeat any tax or the payment thereof." In some cases, though, the statute is "tolled"—so stops running. For example, the statute stops running if the target is outside the U.S. or is a fugitive.

What's more, even when the alleged tax crime is committed can be hard to pinpoint. Does filing a false return start the six year clock? What about failing to file by the due date? How about covering it up later, hiding money, or lying about it?

All are potential problems that might occur many years after the tax return was filed or should have been filed. That means you may have to worry for many years beyond six. The issue is especially important if any later act keeps the statute open. Some courts have concluded that the six year statute doesn't even start to run until the last act of tax evasion.

For example, in *United States v. Irby*, the court held the six year statute began to run on the last act of evasion. Mr. Irby used nominee trusts to conceal his assets many years after he failed to file. He may have *thought* he only had to worry for six years, but his use of nominee accounts delayed when his six years commenced. That meant he could still be indicted, prosecuted and convicted.

Finally, you often hear people say that the statute of limitations *never* runs on fraud. For civil tax fraud, that's true. The IRS can come after you any time. But it's still rare for the IRS to go back too far. Problems of proof are too great, and the IRS bears a high burden of proof in fraud cases, even civil fraud.

Timing may not be everything, but it's terribly important in tax cases. No one wants to be in the position of lying low and worrying about being caught. Fortunately, sometimes these issues can be resolved in less painful and less expensive ways than you might think. Within the protection of attorney client privilege, it can pay dividends to get some professional advice.

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