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### IRS Six Year Audit Push May Reach Supreme Court

Should the IRS get to go back six years into your tax past or only three? If you've ever been audited, you may think three years is bad enough. But if the IRS has anything to say about it, it soon could be six. The tax code generally allows the IRS to audit three years back, and six in some cases.

The good news is that most of the time the IRS only gets three years. See [Even The IRS Has Time Limits](#). With your tax return due April 15, the statute of limitations normally runs three years later. If you file early, the statute runs three years after the due date. If you file late without an extension, the statute runs three years following your actual (late) filing date.

But the IRS gets double time for a “substantial understatement of income”—where you omit 25% or more. The IRS argues that anything having the *effect* of omitting 25%— like an inflated tax basis — triggers three extra years. It pays to monitor when the statute expires so you know when a particular year is in the clear.

**Six Year Risk.** Exactly what it means to omit 25% or more of your gross income is the subject of bitter litigation. See [IRS Pushes For 6](#)



[Years To Audit!](#) The IRS argues for six years on basis over-statements. See [IRS Wins Big In Six Year Audit Push](#).

**Example:** You sell a piece of property for \$3 million, claiming that your basis (what you have invested in the property) was \$1.5 million. In fact, your basis was only \$500,000. The effect of your basis overstatement was that you paid tax on \$1.5 million of gain when you should have paid tax on \$2.5 million. Your basis over-statement probably means a six-year statute applies.

There are numerous cases now, and here's how the Circuit Courts around the country stack up:

- **IRS wins and six-year statute of limitations applies.**
  - Seventh Circuit: [Beard v. Comm'r](#)
  - Federal Circuit: [Grapevine Imports v. U.S.](#)
  - Tenth Circuit: [Salman Ranch v. Comm'r](#)
  - D.C. Circuit: [Intermountain Ins. Service of Vail LLC v. Comm'r](#)
  
- **IRS loses so is limited to three-year statute.**
  - Fourth Circuit: [Home Concrete & Supply v. U.S.](#)
  - Fifth Circuit: [Burks v. U.S.](#); also [Equipment Holding Co. LLC v. Comm'r](#) (just decided)
  - Ninth Circuit: [Bakersfield Energy Partners v. Comm'r](#)

Will the U.S. Supreme Court resolve this mess? Historically, a split in the Circuit Courts around the country is supposed to mean the Supreme Court will step in. Several of the cases noted above are Supreme Court hopefuls.

That's especially true with [Beard v. Comm'r](#), decided by the Seventh Circuit. The IRS isn't even trying to prevent the Supreme Court from taking it, so that's a good sign. Meanwhile, the IRS has also sought Supreme Court review of the same issue in cases that the IRS lost.

Thus, Supreme Court review is being sought in [\*Home Concrete & Supply v. U.S.\*](#), and in [\*Burks v. U.S.\*](#) Some say the High Court may not rush to grant Certiorari in any of these cases. But the safe money expects the Supreme Court to take on this issue in at least one of these cases.

For more, see:

[IRS Strides Toward Six Year Audit Period!](#)

[Should You Grant IRS More Audit Time?](#)

[Taxpayer Wins Latest 6 Year Audit Fight](#)

[More IRS 6 Year Audit Pushback](#)

[What Triggers IRS Statute Of Limitations?](#)

[IRS Wins Big In Six Year Audit Push](#)

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