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IRS Wins Big In Six Year Audit Push

I'll bet you think sitting on pins and needles awaiting an audit for **three years** after filing your return is bad enough. Get ready for more pins and needles: the IRS is staging a putsch for **six** long years. The good news is only some returns are affected. The bad news is the IRS is winning, and recently winning big.

As we noted [here](#), there's a hotly debated question whether the IRS can take six years to find and audit you. The normal rule is **three years after you file your return**. See [Even The IRS Has Time Limits](#). But if you omit 25% or more of your income, the IRS gets double time. The IRS argues that anything having the effect of a 25% understatement of gross income — like an inflated tax basis — triggers the extra three years.

Court cases are stacking up, with variation around the country depending on which U.S. appellate court circuit you're in:

CIRCUIT	RESULT
Seventh Beard v. Commissioner , Federal Grapevine Imports Ltd. v. United States	IRS wins and six-year statute of limitations applies
Fourth Home Concrete & Supply LLC v. United States , Fifth Burks v. United States , Ninth Bakersfield Energy Partners LP v. Commissioner	IRS loses so is limited to three-year statute
Other	We'll see

Beware. Unfortunately, the latest development is a **big win for the IRS**, causing many in the tax world to squirm. The U.S. Court of Appeals for the Federal Circuit in [*Grapevine Imports Ltd. v. United States*](#) reversed the Court of Federal Claims, ruling that an overstatement of basis gives the IRS six years.

Significantly, the court specifically declined to follow the decision in [*Salman Ranch Ltd. v. United States*](#) because that case **predated** the IRS in issuing regulations. Why? In [*Mayo Foundation for Medical Education and Research*](#), the U.S. Supreme Court had suggested that IRS Regulations were entitled to deference. See [Dispute Your Tax Bill, But Not IRS Regulations!](#) With that recent Supreme Court admonition, that's just what the Federal Circuit did: defer.

[National Taxpayer Advocate Nina Olson](#) has said the Supreme Court gave the IRS **unfettered discretion**. This may be the most convincing proof that the [*Mayo Foundation*](#) case is already having a significant impact on IRS regulations and how courts regard them.

Six vs. Three? Watch for more on this. The IRS has managed to reverse a rising tide of taxpayer victories, and six years may end up sticking nationwide. The opinion in [*Grapevine Imports Ltd. v. United States*](#) is sweeping, not only supporting deference to IRS regulations, but also giving them retroactive effect.

Bottom line: get ready for more tax disputes — including ones that reach back six long years.

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