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THE TAX LAWYER

May. 25 2011 – 11:09 am

Taxpayer Wins Latest 6 Year Audit Fight

The IRS normally gets three years after you file your tax return to audit you. See [Even The IRS Has Time Limits](#). But the IRS really, really wants [six years](#) and has been litigating hard to get it. In fairness, the IRS **already** gets six years in limited circumstances. The problem is that the IRS wants these circumstances expanded.

The [tax code section](#) is clear that the IRS gets its time doubled—yielding the coveted six years—if you omit more than 25% of your income. For decades now, tax lawyers assumed you must “**omit**” the income from your return to trigger the six years. Omit means omit. That means inflated deductions, basis or other items shouldn’t count.

But the IRS thinks otherwise and is pushing its basis theory big time. It’s a two pronged attack, including many cases in court and some controversial IRS Regulations. See [IRS Temporary Regs. T.D. 9466](#). After losing many cases, the IRS had a big victory in [Grapevine Imports Ltd. v. United States](#). There, the U.S. Court of Appeals for the Federal Circuit ruled that a basis overstatement gives the IRS six years.

This IRS victory came on the heels of [Mayo Foundation for Medical Education and Research](#), where the U.S. Supreme Court gave wide deference to IRS Regulations. That makes it much more likely that IRS Regulations will be upheld. Even retroactive regulations are OK, according to the Federal Circuit’s reading of [Mayo Foundation for Medical Education and Reserach](#). See [Dispute Your Tax Bill, But Not IRS Regulations!](#)

Since the big IRS victory in [Grapevine Imports Ltd.](#), though, the plucky Tax Court has **again** said an emphatic “**no**” to the IRS. In [Carpenter Family Investments LLC v. Commissioner](#), the Tax Court again said that the IRS’s controversial Regulations are **invalid**.

CIRCUIT	RESULT
Seventh: Beard v. Comm’r Federal: Grapevine Imports Ltd. v. U.S.	IRS wins and six-year statute of limitations applies
Fourth: Home Concrete & Supply LLC v. U.S. Fifth: Burks v. U.S. Ninth: Bakersfield Energy Partners LP v. Comm’r	IRS loses so is limited to three-year statute

The [Carpenter Family Investments LLC](#) case will surely go to the Ninth Circuit, but that court may stick to its guns based on [Bakersfield Energy Partners LP v. Commissioner](#). My own prediction? The Supreme Court will eventually get this messy debate.

For more, see:

[IRS Pushes For 6 Years To Audit!](#)

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

[IRS Statute Of Limitations ? Is Your Return Safe?](#)

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

[Even The IRS Has Time Limits](#)

[IRS Statute of Limitations, Training 4213-021](#)

[IRS Statute of Limitations Processes and Procedures](#)

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