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9 IRS Audit Tips From The Trump Tax Flap

Donald Trump's explanations for why he is not releasing his tax returns have already prompted voluminous commentary. Amazingly, even the IRS is commenting. No less than the highest of IRS officials, Commissioner John Koskinen, is saying it would be OK to release returns during an audit. Perhaps this a welcome topic, not about erasing hard drives or the IRS budget!

Some experts say Trump is inexcusably covering up, saying things that are as inconsistent as Hillary Clinton claiming that she didn't blame the Benghazi attack on that video. Questions abound. Could Trump have had 12 years of audits, or 5 years under audit at once? He even suggested he was targeted because of his faith. It may not matter, since Trump has completely redefined the normal rules of blowback. The fact that Mitt Romney is going after Trump might help rather than hurt.

Bizarrely, Trump's tax return story may end up like so many others, just increasing his popularity. But can the rest of us learn any tax tips from this? You bet.

1. Monitor Your Audit Exposure. The IRS normally gets three years to audit. In some circumstances–including where you under-report your income by more than 25%–the IRS gets six years. Tax lawyers and accountants monitor this exposure, and so should you. Watch the calendar until you are clear of audit. The statute usually begins to run when you file your return. But if you file early (say March 1), the three years runs from the due date (April 15).

2. Statute Never Runs. In some cases, the statute of limitations never runs. If you don't sign your return, it's not considered a valid tax return. Also, if you alter the penalties of perjury language, the return doesn't count. What if the IRS never receives your return? The rule that timely mailing is timely filing doesn't apply if the return never arrives at the IRS. For that reason, you'll not only want proof you sent it but proof the IRS received it. See IRC § 7502(c).

3. Extensions. The IRS may contact you (usually about two and a half years after you file), asking you to *extend* the normal three-year statute. The IRS will send you a form asking you to sign and return it. Tax advisers say you should usually grant an extension. Some taxpayers say "no" or ignore the request. Either way, that usually leads the IRS to send a notice assessing extra taxes based on whatever information the IRS has. Usually, you should grant IRS more audit time.

4. Amendments. To amend a tax return, do it within three years of the original filing. Timing is key. If your amended return shows an increase in tax, and you submit the amended return within 60 days before the three-year statute runs, the IRS only has 60 days after it receives the amended return to make an assessment. Notably, an amended return that does not report a net increase in tax does not trigger an extension of the statute.

5. Refunds. If you pay estimated taxes or have excess withholding but fail to file a return, you generally only have *two* years (not three) to get back the extra taxes.

6. Fraud. There's no time limit on fraud. Fraud is a big IRS trump card. You might think the IRS might assert fraud simply to get unlimited time. Fortunately, the IRS has a high burden to carry to show fraud. See Section

6501(c)(2).

7. LLCs, Partnerships. Statute of limitation issues come up frequently with partnerships, LLCs and S corporations. The partners or shareholders pay tax, but the return is filed by the entity. And the entity might agree to extend the statute. Also, a tax notice may be sent to a partnership, but not to partners. Professional advice may be needed to untangle such issues.

8. Offshore Accounts. For offshore accounts, you usually have six years of exposure, but multiple forms are required. If you have an offshore company, it can trigger an IRS Form 5471. This is even more complicated. Failing to file it means penalties, generally $10,000 per form, even if no tax is due. It is a scary tax form that enables IRS to audit forever. If you fail to file a required Form 5471, your tax return remains open for audit *indefinitely*. Think of a Form 5471 like the signature on your return. Without it, it really isn't a return.

9. Suspension of Statute. Watch for situations in which the statute may be "tolled" (held in abeyance). That can occur with an IRS John Doe summons, even though you have no notice of it. For example, suppose a promoter sold you on a tax shelter. The IRS may issue the accountant a summons asking for the names of all his clients. While he fights turning those names over, the statute of limitations clock for his clients is stopped.

Timing is everything in tax matters, and that's certainly true with the statute of limitations.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.