PERSPECTIVE

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IRS: collecting taxes 30 years after the fact

By Robert W. Wood

How long does the Internal Revenue Service have to come after you? It often depends. The number of exceptions, special circumstances and traps is truly mind-boggling. Still, the basic answer is three years, assuming you are filing your tax returns on time and paying your taxes.

But in some cases, that three years doubles to six. For example, foreign account problems — much in the news these days, and mighty dangerous if you're not careful — generally get six years. Another six year case? Where you have omitted 25 percent or more of your income.

The IRS has steadily tried to expand the circumstances under which the three years it has to come after you becomes six. Notably, though, in 2012, the Supreme Court ruled that overstating your tax basis in an asset and thereby reporting a smaller gain on a sale is not the same as omitting income. In *United States v. Home Concrete & Supply, LLC*, No. 11-139 (Apr. 25, 2012), the high court said the IRS was limited to three years in those situations.

Then, there are statute extensions, a difficult subject. Most tax advisers will tell you that if the IRS asks you to sign a consent agreeing to extend the statute, you should do it. It happens frequently and you normally should agree. But there are exceptions and limitations on this. That's why getting advice is a good idea before you sign on the dotted line.

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Then, there is the IRS collection statute: not the time the IRS has not to audit you, but to simply *collect* taxes, penalties and interest that have been assessed. The taxes might have been self-assessed, meaning that you reported the taxes as due on your return. Or, the IRS might have issued a notice to you that becomes a tax bill.

Generally, the IRS has a long 10 years to collect in such a case. Even that 10 years can be extended in some circumstances. In fact, would you believe in one recent case, the IRS went back 30 years to collect and won? Believe it.

In *Beeler v. Commissioner*, T.C. Memo. 2013-130, the tax court held Beeler responsible for 30-year-old payroll tax penalties. That may sound crazy, but sometimes the IRS has a memory like an elephant. And the IRS can come down like an elephant on top of you, too.

Section 6672 of the tax code puts a 100 percent penalty on responsible persons who fail to withhold on employee wages, or who withhold but fail to hand the tax money over to the IRS. What's more, this penalty can be assessed against more than one responsible person. IRS can ***collect*** only once, but it can come after officers, directors and owners — and even mere employees who have check signing authority — and see who coughs up the money first.

Joel Beeler, Stuart Ross and Robert Liebmann were all officers of Equidyne Management, a company that failed to pay employment taxes way back in 1982. The company fell on hard times, and so did some of the officers. In fact, Ross filed for bankruptcy in 1983. The IRS assessed the 100 percent penalty against all responsible officers of Equidyne in 1985.

Ten years later, in 1995, there was (finally) a settlement between the IRS and creditors. The IRS collected $80,860 on Ross' behalf in that settlement. The IRS also got judgments against Beeler ($154,032), Ross ($117,484) and Liebmann ($153,985).

Tax liens normally last 10 years, giving the IRS time to collect. But in 2001, the IRS made a mistake and released its tax lien. It was years later when the IRS discovered its mistake. At that point, the IRS went after Beeler. Predictably, Beeler said the IRS was too late and filed suit.

The tax court ruled that the IRS could still collect from Beeler. The 2nd U.S. Circuit Court of Appeals agreed with the tax court's decision. However, the 2nd Circuit ordered the tax court to determine whether Ross or Liebmann *might* have paid it. After all, with three officers, and 100 percent assessed against all three, if one paid, the other two would be off the hook.

Given the IRS errors, the tax court said that the only fair thing to do was to put the burden of proof on the IRS to show that neither Liebmann nor Ross paid the outstanding amount. The IRS satisfied the tax court, so Beeler was still on the 30-year-old hook, stuck paying taxes from 1982!

Beeler's only consolation? The $80,860 the IRS collected from Ross was offset against Beeler's penalty by the tax court. The moral of this mess?

One moral is to pay your payroll taxes! If you can't handle it in-house, hire a good payroll service so you won't have any discretion about it. If you are an owner of the business, you are presumably a responsible person for tax purposes if something goes wrong.

If you aren't an owner, try to avoid check signing authority. If you can't avoid it, get a written indemnity, and make sure payroll taxes are always paid. After all, if you don't pay your income taxes, the IRS will come after you. But if you fail to pay ***payroll*** taxes, the IRS can push even harder.

Payroll taxes involve withholding tax money from employee wages. That's the government's money employers hold in trust. Employers must hand it over to the IRS. Responsible persons have ***personal*** liability even if they are employees themselves and don't own any part of the business.

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