

IRS Time Limits And Donald Trump's Returns

By Robert W. Wood

Is Donald Trump's reluctance to release his tax returns about an IRS audit or something else? Most people undergoing an IRS audit would not want a host of would-be detectives scouring their tax returns for errors and aggressive positions. All of those amateur auditors might — and probably would — discover things that the IRS has not noticed, regardless of the intensity or duration of the audit.

From that perspective, Trump's tax advisers are surely right that releasing his very big returns would cause even worse blowback than he has already. Most tax advisers agree that Trump's tax audit is a good reason to hold the returns back, even for closed years. Of course, some voters may not be able to get past it no matter what the tax lawyers say.

A tour through the IRS statutes of limitation may help to explain. Pundits have asked how Trump could have so many audits, especially five years at once! Everyone — even Trump — should try to clock your IRS audit exposure. Tax lawyers and accountants monitor it, and so should you.

The IRS normally has three years to audit, which makes you wonder how Trump could have so many years under review. In some cases — including where you under-report your income by more than 25 percent — the IRS gets six years to audit. That was probably not Trump's issue, which means he probably *consented* to extending the IRS's three years.

Why would *anyone* give the IRS more time? The IRS often asks, and usually you should grant the IRS more audit time. If you say no or ignore an IRS request, the IRS almost invariably will assess extra taxes based on whatever information the IRS has. The IRS can be aggressive when it faces a statute deadline like this.

Usually that will put you at a disadvantage. In fact, if the IRS is up against a deadline, it usually issues a Notice of Deficiency. The only way you can respond to that kind of notice is to file in Tax Court. Thus, that tends to escalate the dispute.

Donald Trump may be perennially under audit, but after three or six years, aren't most people completely out of the woods? That depends, too. In some cases, the IRS statute of limitations *never* runs. That includes if you don't file tax returns at all, if don't sign your return, or if you alter its penalties of perjury language.

There's also no time limit on fraud. Another set of rules governs amended tax returns, although they normally do not restart the three-year clock. If your amended tax 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. An amended tax return that does not report a net increase in tax does not trigger an extension of the statute of limitations.

Statute of limitation issues come up frequently with partnerships, LLCs and S corporations. Trump has many entities, so these issues are probably present in his large and protracted audit. With partnerships, LLCs and S corporations, the partners or shareholders pay taxes, but the entity's tax return is filed by the entity.

The interaction between tax notices to the entity and its members, and the application of IRS statutes of limitation, can be complex. Professional advice may be needed to untangle audit issues for the entity and its partners or shareholders. There are other specialized statutes of limitation too.

For example, if you have an offshore account, you usually have at least six years of exposure. If you have an offshore company, even a shell company, it can trigger an IRS Form 5471. Failing to file that form can mean penalties, generally \$10,000 per form, even if no tax is due. Plus, omitting this scary tax form allows the IRS to audit you forever.

Also beware of situations in which the IRS statute of limitations is effectively on hold. By on hold, I mean that the clock stops, so your three-year or six-year statute of limitations is simply not running. Certain types of IRS summonses can stop the three or six years from running, even if you have no notice of it.

The statute of limitations can also be on hold when you are outside of the U.S., or if you commit certain continuing violations that tie years together. Finally, as you think about timing, remember that there is another big statute of limitations for the IRS. That is on *collecting* money.

As a general rule, there is a 10-year statute of limitations on IRS collections. The IRS does not like to let debts go uncollected, but it happens. In some cases, you can expect the IRS to push a little harder as the 10 years is about to elapse. The 10-year period begins to run on the date of the assessment.

There can be confusion about this, but it is usually a written notice that you owe a particular amount for a particular year. You can start counting your 10 years then.

Often, the IRS gets more than 10 years, which can be downright confusing. The running of the 10 years can be suspended, and that will extend the time, sometimes for years.

One common reason for this kind of extension is in cases of bankruptcy. The bankruptcy court may issue an automatic stay that prevents the IRS from taking collection action. When that stay is eventually lifted, the lost time doesn't count against the IRS. In fact, the IRS gets an extra six months.

There are other more surprising ways the 10 years can grow. The count on the 10 years is suspended while the IRS is considering any requests you make for an installment agreement, an offer in compromise, or a request for innocent spouse relief. Requests for installments or offers in compromise are very common, and sometimes requested more than once. They can be very good to make, but they do give the IRS more time to collect.

Another suspension of the IRS 10 years occurs while you are living outside the U.S. continuously for at least six months. Finally, some people agree to give the IRS more time. A prime example is an IRS installment agreement. If the IRS agrees to a payment schedule, it may condition the deal on an extension of the 10-year collection statute.

Donald Trump probably doesn't have to worry about a lot of these things. But most of the rest of us do.



Robert W. Wood is a tax lawyer with www.WoodLLP.com, and the author of "Taxation of Damage Awards & Settlement Payments" (www.TaxInstitute.com). This is not legal advice.