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More IRS 6 Year Audit Pushback

Most tax advisers know the IRS has been pushing hard to double its usual three year audit period for tax returns to six years. Beyond advisers, quite a large segment of the taxpaying public is watching this debate too. See [IRS Pushes For 6 Years To Audit!](#)

It's good to monitor your [audit exposure](#) and calendar when a particular tax year is in the clear if you've taken controversial or aggressive tax positions. You may want to maintain a cash reserve to fund a tax controversy or pay additional taxes if the IRS comes along. But sometimes the IRS can take up to six years to audit.

Six Year Risk. In fairness to the IRS, they only want this *sometimes*, but when has become controversial. The IRS gets six years if your return includes a "substantial understatement of income." If you've omitted 25% or more of your gross income, the IRS clearly gets the six years.

Controversially, the IRS argues that anything that has the *effect* of a 25% understatement of gross income triggers the extra three years. The IRS has pushed especially hard for six years to go after basis over-statements, but often has lost in court.

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

The biggest win for the IRS is also the most recent. The U.S. Court of Appeals for the Federal Circuit in [*Grapevine Imports Ltd. v. United States*](#) ruled that a basis overstatement gives the IRS its coveted six years. The IRS was able to leapfrog ahead on the shoulders of [*Mayo Foundation for Medical Education and Research*](#).

There, the U.S. Supreme Court gave wide deference to IRS Regulations, making it much more likely that whatever the IRS says in Regulations is likely to be upheld. See [*Dispute Your Tax Bill, But Not IRS Regulations!*](#) Even retroactive regulations are OK, according to the way the Federal Circuit read the Supreme Court's teachings.

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 in favor of IRS powers. It not only supports deference to IRS regulations, but also giving them retroactive effect.

Still, not everyone is giving up on this, and the possibility of a U.S. Supreme Court case specifically on this issue, is possible. In the Seventh Circuit case, [*Beard v. Commissioner*](#), the taxpayer has petitioned for a rehearing of the case by the entire court. See more [here](#).

For more, see:

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

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

[Even The IRS Has Time Limits](#)

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