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### Supreme Court To Rule On IRS 6 Year Audit Push

When I recently observed that the [IRS six year audit push may reach Supreme Court](#), I didn't think it would be so soon. The Supreme Court [agreed](#) to decide if the IRS can go back six years into your tax past or only three. See [Home Concrete & Supply v. U.S.](#) Why all the fuss?

If you've ever been audited, you may think three years is bad enough. Of course, the IRS wants more time. This is a big decision—think [Mothra vs. Godzilla](#)—we should all watch closely. Our highest court hears few tax cases, and since the Justices can mostly pick and choose what cases to hear, that's perhaps no surprise.

Although the Court [agreed](#) to hear it, a decision won't be immediate. The government's opening brief is due November 14, and it will likely be January or February before arguments are heard. A decision will be later still.

The tax code generally allows the IRS to audit three years back, and six in some cases. If you file your return before April 15, the statute runs three years after the due date. If you file late without an [extension](#), the statute runs three years following your actual (late) filing date. See [Even The](#)



[IRS Has Time Limits](#). The IRS gets double time for a “substantial understatement of income”—where you omit 25% or more.

The debate is over what it means to omit 25% or more of your gross income. See [IRS Pushes For 6 Years To Audit!](#) The IRS argues for six years on basis over-statements. See [IRS Wins Big In Six Year Audit Push](#).

**Example:** You sell a piece of property for \$3M, claiming that your basis (what you have invested in the property) was \$1.5M. In fact, your basis was only \$500,000. The effect of your basis overstatement was that you paid tax on \$1.5M of gain when you should have paid tax on \$2.5M. Your basis over-statement probably means a six-year statute applies.

The Supreme Court has good reason to resolve the scuffle. Here’s how the Circuit Courts have ruled so far:

**IRS wins and the six-year statute of limitations applies.**

- Seventh Circuit: [Beard v. Comm’r](#)
- Federal Circuit: [Grapevine Imports v. U.S.](#)
- Tenth Circuit: [Salman Ranch v. Comm’r](#)
- D.C. Circuit: [Intermountain Ins. Serv. of Vail LLC v. Comm’r](#)

**IRS loses so is limited to the three-year statute.**

- Fourth Circuit: [Home Concrete & Supply v. U.S.](#)
- Fifth Circuit: [Burks v. U.S.](#) and [Equipment Holding Co. LLC v. Comm’r](#) (just decided)
- Ninth Circuit: [Bakersfield Energy Partners v. Comm’r](#)

With either the IRS or the taxpayer seeking Supreme Court review in multiple cases, it’s curious that the Supreme Court took on [Home Concrete & Supply v. U.S.](#) Most people thought it was more likely that

one of the other cases would be heard, especially *Beard v. Comm'r*. See [News Analysis: Fighting for Supreme Court Review of the 6-Year Statute](#). But any of the cases puts the three vs. six year issue front and center. That's good news.

For more, see:

[IRS Strides Toward Six Year Audit Period!](#)

[Should You Grant IRS More Audit Time?](#)

[Taxpayer Wins Latest 6 Year Audit Fight](#)

[More IRS 6 Year Audit Pushback](#)

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

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

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