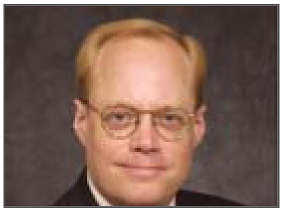
Forbes



Robert W. Wood

THE TAX LAWYER

TAXES | 7/02/2013

Thankfully, Some IRS Tax Assessments Are Too Late

How much time does the IRS have to assess taxes? This question is often put to tax advisers. Usually, three years, but in some cases, six. In fact, sometimes even more. Many fights turn on whether the IRS made a timely assessment or is too late. See What Triggers IRS Statute Of Limitations?

Sometimes the IRS tries to make an assessment but makes a mistake. The IRS might send a notice to an old address or to the wrong taxpayer. Recently the Tax Court and the Eleventh Circuit came to different conclusions in one such case.

In *Shockley v. Commissioner*, the IRS sent two notices to a company. One was correct and the other was not. The IRS also sent a third notice, this time to the correct address of the ***former*** shareholders, the Shockleys. To be safe, they filed a protective petition in Tax Court.

The Shockleys claimed the notice was improper, and besides, said no tax was owed. The Tax Court ruled what the Shockleys did was proper. The court said the IRS was out of time to assess the taxes. The notice sent to the Shockleys was invalid, said the court, since they were no longer shareholders.

Sure, they had filed a Tax Court petition, but that didn't keep the statute of limitations open, ruled the Tax Court. However, the Eleventh Circuit disagreed. It held the Shockleys' Tax Court petition ***did*** toll the statute to benefit the IRS. See *Shockley v. Commissioner*, 686 F.3d 1229 (11th Cir. 2012).

The appeals court said the Tax Court's decision gave the IRS an unfair choice. If the IRS made an assessment ***after*** the Tax Court petition was filed, it might have violated the law. The court held that the statute was tolled–in effect suspended–as long as the Tax Court proceeding continued.

It is hard to read the case without wondering whether perhaps the Shockleys should not have filed a petition. Still, filing a protective petition was probably the right move. Besides, if the IRS had not provided ***any*** valid notice to the corporation, the appeals court should have ruled differently.

Whether the statute is tolled by a petition can depend on whether the IRS has issued a valid notice. In *Greve v. Commissioner*, a petition filed after an ***invalid*** notice ***did not*** toll the statute. There, the notice error was the IRS's own fault, and, most importantly, the IRS was aware of the error. The IRS had multiple opportunities to correct its error but didn't.

Another key factor is whether the statute has ***already*** expired. In *Shockley*, the Tax Court petition was filed just before the statute expired. Where the petition is filed before the statute expired, the limitations period may be extended. However, a petition can only extend the statute if the statute is still open.

Does a petition after an ***invalid*** notice allow the IRS additional time? Perhaps it depends. What really matters is whether the IRS has sent a ***valid*** notice to the proper taxpayer and whether the statute has ***already*** expired. If the IRS's notice is not valid, and the IRS knows it isn't or at least has reason to know, a petition after the notice should surely ***not*** toll the statute.

The same goes for cases where the statute has already expired. As these examples show, deciding when and how to respond to tax notices can be tricky. Get some advice and be careful out there. You can't unring the bell.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.