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Trump's Tax Returns And The IRS Statute Of Limitations

Donald Trump has redefined the normal rules of blowback. Even so, he faces growing criticism. One of the long simmering issues is his tax returns. His explanations for not releasing his tax returns still leave some voters uneasy, and the Democrats have exploited that weakness. Even the top IRS official, Commissioner John Koskinen, weighed in, saying that it would be fine for Trump to release returns during an audit. Yes, this is the same IRS Commissioner that Republicans want to impeach over the IRS targeting scandal.

Most tax advisers agree that, purely from a tax viewpoint, Trump shouldn't release the returns. Most tax advisers may agree that Trump's tax audit is a good reason to hold the returns back, even for closed years. But some voters may not be able to get past it. Pundits have asked how Trump could have so many audits, especially five years at once. In that sense, however you see Trump's stonewalling, there are useful rules from Trump's tax battle that might just help you in your next IRS audit. They might even help you avoid one.

Clock your IRS audit exposure. Tax lawyers and accountants monitor this exposure, and so should you. Watch the calendar until you are clear of audit. The IRS normally has three years to audit, which makes you wonder how Trump could have so many years under review. In some circumstances–including where you under-report your income by more than 25%–the IRS gets six years.

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 IRS more audit time. If you say "no" or ignore an IRS request, the IRS assesses extra taxes based on whatever information the IRS has. Usually that will put you at a disadvantage.

Donald Trump may be perennially under audit, but after three or six years, aren't most people completely out of the woods? Actually, in some cases, the IRS statute of limitations never runs. That includes if you don't file, don't sign your return, or 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 don't restart the three-year clock. If your amended 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. The partners or shareholders pay tax, but the return is filed by the entity. Professional advice may be needed to untangle audit issues for the entity and its partners or shareholders. For offshore accounts, you usually have six years of exposure. However, if you have an offshore company, it can trigger an IRS Form 5471. Failing to file it means 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.

Finally, beware of situations where the statute of limitations is on hold. 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 the U.S., or if you commit certain continuing violations that tie years together. So whatever happens with Trump and his tax returns, remember that with taxes, timing is everything.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.