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THE TAX LAWYER

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### HUGE Taxpayer Win: Supreme Court Tells IRS 3 Years To Audit Is PLENTY!

Even the IRS has limits. If you've **ever** been audited by the IRS, you may think going back **three years** is bad enough. The tax code generally allows the IRS to audit three years back, and six in some cases. The U.S. Supreme Court in [U.S. v. Home Concrete & Supply, LLC](#) has dramatically cut back on IRS reaches into six year territory. It's a positively stunning result.



US Supreme Court building, front elevation, steps and portico. (Photo credit: Wikipedia)

The main rule is that the IRS time to audit runs three years after filing or due date. See [Even The IRS Has Time Limits](#). However, 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 [agreed](#) to decide if the IRS can go back six years or only three. See [Home Concrete & Supply v. U.S.](#) Our highest court hears few tax cases, and this decision is huge—think [Mothra vs. Godzilla](#). The Supreme Court had good reason to resolve the scuffle given this messy split.

### **IRS won so six-year statute of limitations applied:**

- 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 lost so was limited to three years:**

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

The [Home Concrete & Supply](#) case was a tax shelter case—where sometimes the usual rules are somehow bent to try to undo something that seems beyond the pale. For that reason, some observers thought the Supreme Court might try to find a way to allow the IRS to go for six years in a tax shelter case, even though the home sale basis example above might be limited to three years. Nope, the High Court stuck to three years.

The taxpayer win in [Home Concrete & Supply](#) will have a **huge** trickle down effect too, not just impacting these cases. Robert McKenzie, tax lawyer with Chicago's [Arnstein & Lehr LLP](#) said four clients of his firm with similar issues would likely reap tax savings approaching \$40 million. Indeed, some reports say the case calls into question up to \$1 billion in tax revenues. The IRS was hoping to collect this huge amount in about 30 related cases involving “Son of Boss” tax shelters. See [Supreme Court restrains IRS in tax shelter case](#).

For taxpayers everywhere, this case just may mean a little more security.

For more, see:

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

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

[Even The IRS Has Time Limits](#)

[Capital Gain: Three-Year or Six-Year Statute of Limitations?](#)

[How the Statute of Limitations Impacts Your Taxes](#)

[Ten Ways To Audit Proof Your Tax Return](#)

[What's Your IRS Audit Risk?](#)

[Filing Taxes? Beware Sharp Increase In Audit Rates](#)

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

[Does Going On Return Filing Extension Increase IRS Audit Risk?](#)

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