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# IRS Audits: 3 Years, 6 Years Or Forever, Which Applies To You?

Wouldn’t it be satisfying to say this to the IRS? “Sorry, IRS, you missed your deadline, it’s too late to audit me!” The IRS usually has three years after you file to audit you. But there are many exceptions that give the IRS six years or longer. No one wants to be audited by the IRS. Even if you think your taxes are pristine, gathering receipts is no fun, nor is explaining what you did and why. If your returns have unusual or aggressive items, it can be chilling. It pays to know how far back you can be audited. Figuring out the statute of limitations that applies to your situation—and then waiting it out—can be nerve-wracking. An audit can involve targeted questions and requests of proof of particular items, or can cover the waterfront, asking for proof of virtually every line item. Frequently, the IRS says it needs more time to audit. The IRS will ask you to sign a form extending the statute of limitations, usually for a year. If you don't sign, the IRS will send you a tax bill, usually based on unfavorable assumptions. Most tax advisers generally tell clients to agree to the extension. However, it's best to get some professional advice about your own situation. You may be able to limit the time or scope of the extension.


Regarding the normal three years, there are many exceptions that give the IRS six years or longer. The three years is doubled to six if you omitted more than 25% of your income. For years, there was a debate over what it means to *omit* income from your return. Taxpayers and some courts said "omit" means leave off, as in don't report. But the IRS said it was much broader, including reporting that has the *effect* of an omission of income. Say you sell a piece of property for $3M, claiming that your basis (what you 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 only $1.5M of gain, when you *should* have paid tax on $2.5M.

In *U.S. v. Home Concrete & Supply, LLC*, the Supreme Court slapped down the IRS, holding that overstating your basis is *not* the same as *omitting* income. The Supreme Court said 3 years was plenty for the IRS to audit. However, Congress overruled the Supreme Court, and gave the IRS six years in such a case. Six years is a long time. Filing your tax return early won't help either. The time periods can be even longer in some cases. The IRS has *no time limit* if you never file a return or file fraudulently. Another scary rule is that the IRS can audit forever if you omit certain tax forms. Plus, once a tax assessment is made, the IRS *collection* statute is typically 10 years. And, in some cases that ten years can essentially be renewed. That's one reason the IRS can sometimes go back an astounding 30 years! In *Beeler v. Commissioner*, the Tax Court held Mr. Beeler responsible for 30 year-old payroll tax penalties.

One hot button that impacts the statute of limitations involves offshore accounts. The IRS goes after offshore income and assets in a big way, and that dovetails with another IRS audit rule. The IRS also gets six years to audit if you omitted more than $5,000 of foreign income (say, interest on an overseas account). That matches the audit period for FBARs, annual offshore bank account reports that can carry civil and even criminal penalties far worse than those for tax evasion.

For all these reasons, be careful and keep good records. You should keep copies of your old tax returns forever. But after a time–many people say seven years–you *should* be able to throw out records and receipts. Yet some records such as improvements to property that go into your basis, are exceptions. If you remodel your kitchen and sell your house 20 years later, the receipts for your remodeling job are still relevant to your tax return. Here are some tips:

1. Keep good records, and keep copies of all your past tax returns;
2. Report all your income, and disclose your tax positions on your return, even if you are claiming the money isn't taxable, is taxable as capital gain, or whatever;

3. Consider having your return professionally prepared;
4. Report offshore accounts on both tax returns and FBARs, and make sure you file any other forms that could extend your statute to six years or forever;
5. Steer clear of tax shelters and things the IRS counts as 'listed transactions' that can bring trouble;
6. If you have big tax issues about a particular issue—say a lawsuit recovery, casualty loss, etc., consider getting targeted tax advice for that item, ideally a formal tax opinion; and
7. If the IRS does contact you, get professional advice, and don't ignore the IRS. Sometimes issues can be addressed easily if you do it carefully and timely.

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