



Robert W. Wood

THE TAX LAWYER

TAXES 05/09/19

Trump's Billion In Tax Losses And IRS Statute Of Limitations

New reports suggest that President Trump claimed a whopping \$1.17 billion in tax losses between 1985 and 1994. The New York Times says much of the data for this finding came from IRS transcripts. IRS transcripts list certain key reporting data under a taxpayer's taxpayer identification number. Even so, it is hard to see how transcripts could reveal the kind of sweeping picture being painted. Yet the President has not exactly disputed the accusations, instead suggesting [in Twitter posts](#) that these were just real estate techniques for tax purposes and that the Times report was fake news. Meanwhile, of course, Democrats are using this latest reveal about the President's taxes, deal acumen and wealth to once again call for an urgent look-see at Trump's elusive tax returns. Representative Bill Pascrell Jr., D-NJ, said this about the latest revelations about President Trump:

Trump was perhaps the worst businessman in the world. His entire campaign was a lie. He didn't pay taxes for years and lost over \$1 billion — how is that possible? How did he keep getting more money and where on earth was it all going? We need to know now.

It seems unlikely that President Trump or his administration will hand over the returns anytime soon, whether or not the President's storied audit has finally been completed. Yet it does make one wonder just how many tax returns could be examined, and how far back is fair game in an audit. If the New York Times reports are accurate, could the IRS go back to audit those 1985 through 1994 tax years? It is hard to see how. IRS audit exposure is usually finite, and tax lawyers and accountants routinely monitor it. They watch the calendar until the returns are clear of audit. The IRS normally

has three years to audit, which may make you wonder how President Trump could have so many years under review. In some circumstances--including where you under-report your income by more than 25%--the IRS is allowed to go back six years.



Omitting more than 25% of his income was probably not the President's problem, which means he probably *consented* to extending the IRS's normal 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. President Trump may be perennially under audit as he has suggested. But after three or six years, aren't most people completely out of the woods? Maybe, but in some cases, the IRS statute of limitations never runs. Examples are where you don't file a return, don't *sign* your return, or alter its normal 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, and Trump probably has many such entities. The partners or shareholders pay tax, but the return is filed by the entity. Untangling audit issues for an entity and its partners or shareholders can be complex. For offshore accounts, you also usually have six years of exposure to IRS audits. 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. And if you omit this [tax form, it allows the IRS to audit you forever](#).

Finally, there are also 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 IRS 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. Some of the President Trump's critics might suggest that there is some way the IRS could go back to 1985, or even 1994. But as a practical matter, it is very hard to imagine the IRS making such an argument, or winning if it did.

This is not legal advice. For tax alerts or tax advice, email me at Wood@WoodLLP.com.