



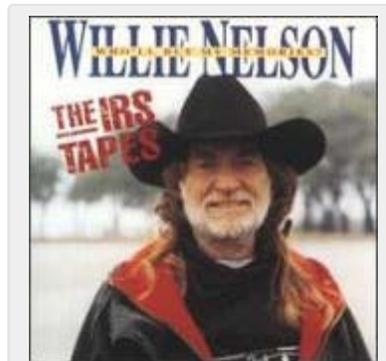
Robert W. Wood

THE TAX LAWYER

Oct. 15 2012

What If IRS Doesn't Pursue Your Whistleblower Claim?

Lately, a few disgruntled whistleblowers have been going to Tax Court to try to roust the IRS. But rousting the IRS is a tough sell. Take William Prentice Cooper III, who took on the IRS in [Cooper v. Commissioner](#). An attorney, Cooper claimed evidence that estate tax scofflaws failed to pay millions in estate tax and generation-skipping tax. Cooper claimed the IRS could grab up to \$200 million in tax.



The IRS Tapes: Who'll Buy My Memories? (Photo credit: Wikipedia)

Sounds pretty juicy, right? When the IRS denied his claims, he went to Tax Court, which dismissed his claim too. Why? The IRS examined his allegations and decided not to pursue them.

In a whistleblower case, said the Tax Court, its jurisdiction is limited to reviewing the IRS's award determination. The court can't go into the merits of the claim, nor can it decide whether the IRS **should have** gone after someone or **should have** collected. That's just not how it works.

Cooper learned of major omissions of assets from an estate resulting in up to a \$75 million underpayment in Federal estate tax. His second claim alleged that two trusts were part of a scheme to avoid tax. But the IRS

wasn't impressed and denied his claims about nine months after he filed them. The IRS didn't take action and that meant there was no revenue. That meant Cooper couldn't get a share.

That may seem harsh or arbitrary, but the Tax Court doesn't have the ability to order the IRS to go after someone, no matter how juicy the claim might sound. In a similar case involving a CPA, [Raymond Cohen](#), the accountant had his claim denied and met the same fate. Cohen learned from his wife about uncashed company checks in an estate. A searching of State filings supported his theory that the company was stashing about \$700 million worth, he claimed.

But his IRS claim was denied. In Tax Court, he claimed the denial was arbitrary and he was entitled to a legal and factual explanation. The Tax Court just said no. The IRS didn't collect—for whatever reason—and that meant there was no share for Cohen. Cohen even tried to invoke equitable relief but the court said it wasn't a court of equity.

Bottom line? Post-Birkenfeld, there will be many more disappointed whistleblowers. Make your claim as compelling as you can and cross your fingers.

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached 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.*