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or its due date to review the return and assess tax.

Ken Berry • Nov. 23, 2022



Normally, the IRS has three years to assess tax on an underpayment, but the period may be extended if you agree to it. In a new case, *Evert TC Memo 2022-48, 5/29/22*, a taxpayer consented to an extension but then tried to walk it back. The decision boiled down to the IRS appeal officer's word against the taxpayer's.

First, let's quickly cover the basic rules. Generally, the IRS has three years from the later of the time your tax return was filed or its due date to review the return and assess tax. An assessment occurs when the IRS certifies that there is an unpaid amount.

However, the usual three-year period is extended to six years if there is a substantial

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Facts of the new case: The taxpayer, a licensed nurse residing in New York, was disputing the results of an IRS audit of her tax returns for 2015 and 2016. To provide more time to resolve the matter, the IRS requested that the taxpayer sign Form 872, Consent to Extend the Time to Assess Tax. According to the IRS appeals officer in the case, the form was mailed to the taxpayer, along with an explanation.

The taxpayer signed and returned the consent form, but subsequently had a change of heart after the case was docketed for the Tax Court. She then claimed that she was forced to sign the form under duress and that it was therefore invalid.

Specifically, the taxpayer said that the appeals officer advised to her to sign the consent form because it would be in her best interests to do so. She could then provide additional documentation that was required. Without the documentation, any appeal would likely fail.

The taxpayer also alleged that the IRS had failed to mail the notice of deficiency before the allowable period for assessment of tax for tax year expired.

The appeals officer, who had a lengthy and notable career at the IRS, testified before the Tax Court that no such conversation ever took place. He said that the explanation was simply mailed to the taxpayer under standard procedures. So the Tax Court had to decide which witness was more credible—the IRS appeals officer or the taxpayer. It sided with the appeals officer. Thus, the Court ruled that the consent wasn't filed under duress.

Moral of the story: You aren't likely to win a "he said, she said" type argument against a reputable IRS officer. Make sure you're on firm ground if you contest a matter in the Tax Court.

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