

Supreme Court Reaffirms That Overstated Basis Is Not An Omission of Income

The United States Supreme Court has reaffirmed its interpretation of Gross Income for purposes of determining the length of time the IRS has to assess additional tax. *United States v. Home Concrete and Supply LLC*, 566 U.S. ____ (April 25, 2012).

Generally the IRS has three years from filing to assess additional tax. IRC § 6501(a). However, under Section 6501(e)(1)(A), the IRS has six years to assess tax if the taxpayer "omits from Gross Income an amount in excess of 25 percent of the amount of Gross Income stated in the return."

In *Home Concrete*, the Supreme Court found that an overstatement of basis is not an omission of Gross Income, meaning that the statute of limitations does not increase when the taxpayer overstates an asset's basis, even though Gross Income is reduced.

In a previous case, the Supreme Court had come to the same conclusion when interpreting identical language contained in the Internal Revenue Code of 1939. *Colony Inc. v. Commissioner*, 357 U.S. 28 (1958).

The IRS took issue with Colony, Inc. and issued a Treasury Regulation that treated an overstatement of basis as an omission of Gross Income for purposes of increasing the statute of limitations on assessment. See Treas. Reg. § 301.6501(e)-1.

In *Home Concrete* the Supreme Court struck down this regulation and held that the use of the word "omit" rather than "reduce" or "understate" narrowed the application of the six year statute of limitations to those situations where gross receipts are omitted from the tax return. Merely inflating basis is not treated as an omission of gross receipts. *Home Concrete* at 3.

In its simplest terms, the *Home Concrete* decision means that, absent fraud, the three year statute of limitations applies when a taxpayer overstates the basis of an asset, even if Gross Income is significantly understated.

Application of the shorter statute of limitation may affect when taxpayers choose to make a disclosure on a tax return. For example, often a taxpayer taking an aggressive position on a tax return is wise to disclose that position on the return.

POSTED:

Apr 26, 2012

RELATED PRACTICES:

[Trusts and Estates](#)

<https://www.reinhartlaw.com/practices/trusts-and-estates>

[Tax](#)

<https://www.reinhartlaw.com/practices/tax>

RELATED PEOPLE:

[Michael G. Goller](#)

<https://www.reinhartlaw.com/people/michael-goller>



Disclosure may help in avoiding the accuracy-related penalty under Section 6662 and preparer penalties under Section 6694. Another reason for making a disclosure is that under Section 6501(e)(B)(ii) the statute of limitations does not increase from three years to six years when an omission of gross receipts is disclosed on the tax return. After *Home Concrete*, this added reason for disclosure does not exist when the item at issue is an overstatement of basis. If you have any questions about IRS practice and procedure or about handling conflicts with the IRS, please contact your Reinhart attorney or any member of the Tax or Trust and Estates Teams.

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.