

## **Fraud Is Not Enough: Intent to Evade Required to Extend Assessment Limitation Period for Partnership Items.**

Generally, the IRS has three years to assess additional taxes after a return is filed under Section 6501 of the Internal Revenue Code. The Code provides an exception in the case of fraudulent return or where the taxpayer willfully attempts to evade tax liability. I.R.C. § 6501(c)(1), (2). For partnerships, there is a similar provision in Section 6229, which provides for an extension of the assessment period where “any partner has, with the intent to evade tax, signed or participated directly or indirectly in the preparation of a partnership return which includes a false or fraudulent item.” I.R.C. § 6229(c).

The Court of Federal Claims recently addressed the assessment limitation in an interesting context: an apparently innocent taxpayer who got mixed up in a bogus tax shelter structured by Jenkins & Gilchrist. While the return included false or fraudulent items, the government acknowledged that it could not demonstrate that the one of the partners signed the return with the requisite intent. *BASR Partnership v. United States*, 2013 U.S. Claims LEXIS 1452 (Fed. Cl. Sept. 30, 2013).

The court ruled for the taxpayer. First, it concluded that the fraudulent return exception of Section 6501(c)(1) only would apply to a taxpayer’s return, not a partnership return, since Section 6501(a) provides that the term return “does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit.” See *BASR Partnership v. United States*, 2013 U.S. Claims LEXIS 1452, slip op. at \*33-\*34. Consequently, the court concluded that the government either had to show that the taxpayers had an intent to evade under Section 6501(c)(2) or that the exception under Section 6229(c) applied. The court then noted that it was the taxpayer’s intent that controlled under Section 6501(c) and concluded that the same standard should be applied under Section 6229(c), which used the same language. *Id.* slip op. at \*38-\*39.

As a consequence, even though there was “no question that BASR’s partnership return included false or fraudulent items,” *id.*, slip op. at \*34, the Court of Federal Claims ruled for the taxpayers, holding that the assessment limitation had expired. Significantly, the court rejected authority from the Second Circuit that would have sustained the government’s position.

Jim Malone is a tax lawyer in Philadelphia. © 2013, MALONE LLC.