Six Year Statute of Limitations Does Not Apply to Overstated Basis

The U.S. Supreme Court recently held, in *United States v. Home Concrete & Supply, LLC*, that an overstatement of basis does not constitute an omission from gross income that results in application of the extended six year statute of limitations. In general, the IRS must assess a deficiency against a taxpayer within three years after a tax return is filed. The three-year period is extended to six years when the taxpayer omits an amount from gross income that exceeds 25 percent of the gross income amount stated on the return.

Home Concrete invalidated the Treasury regulation promulgated during the course of the case, which provided that an understated amount of gross income resulting from an overstatement of unrecovered cost or other basis constitutes an omission from gross income. The Supreme Court found that its earlier decision in *Colony, Inc. v. Comr.*, 357 U.S. 28 (1958) governed. The relevant statute had not changed in any meaningful way. The Court explained that the key phrase in the statute, "omits … an amount," limits the statute's scope to instances in which the taxpayer leaves specific receipts or accruals of income out of the computation of gross income. While the Court noted that the statute was not unambiguous, the legislative history indicates Congress's intent that the extended statute of limitations only apply to situations in which a taxpayer fails to report an item of income and not where the taxpayer only overstates deductions or offsets. Only then is the government at the special disadvantage which the longer period sought to remedy - where the tax return provides no clue of the existence of the omitted item.

The Supreme Court also rejected the IRS's argument that the Court should give deference to the Treasury regulation under the *Chevron* and *Mayo Foundation* rules. Once *Colony* interpreted the statute, the Treasury was no longer free to adopt a different construction.

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