

# EDA fallout leaves V.I. residents susceptible to arbitrary IRS audits

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While taxpayers on the mainland who filed their returns correctly can be audited only for their last three years of taxes, many Virgin Islanders — still suffering the hang-over of abuses to the Economic Development Commission tax incentive program in the early part of the last decade — can have audits stretching as far back as the Internal Revenue Service sees fit.

In an opinion issued to the U.S. Congress in December, IRS's National Taxpayer Advocate Nina Olson said the IRS's policies are unfair and urged lawmakers to take action.

"Taxpayers who have filed non-fraudulent returns cannot reasonably be expected to defend tax positions long after memories of witnesses have faded or evidence is lost," the

opinion states.

But it is the fraudulent taxpayers the IRS is worried about. When the federal government cracked down on people and businesses suspected of abusing the territory's EDC program in 2004, the IRS began aggressively auditing taxpayers in the territory. During the next few years, the IRS reversed course on the statute of limitations for Virgin Islands taxpayers three times.

As of the last change, in March, 2007, anyone who filed taxes in the Virgin Islands and makes more than \$75,000 is susceptible to being audited for as many previous years as the IRS sees fit. The law applies as much to families filing their taxes as it does to EDC beneficiaries, and both are being audited.

As of Sept. 30, the IRS was investigating 231 individuals and 140 related entities who filed taxes in the Virgin Islands, according to Olson's

report. More than 90 percent of those involved tax years before 2004.

Attorney Marjorie Roberts, who has represented several embattled V.I. taxpayers, said she has one client that the IRS was asking for paperwork on items shipped to the territory in 1983.

"The whole reason for a statute is people's memories fade, they lose documents," Roberts said.

The March 2007 IRS ruling does give Virgin Islanders some statute of limitations protections, however. Although no limits exists for previous years, the IRS decided that from 2006 forward, the three-year limitation would again apply. That means that a V.I. taxpayer who made more than \$75,000 in 2005 and filed on April 15, 2006, could be audited for all tax years except for 2006, since the statute of limitations for that year will have expired.

Roberts asserted that the IRS's changes to its V.I. tax policy have been arbitrary and have made some businesses looking to relocate to the territory wary.

"A statute should be something set in law, not something based on a notice," Roberts said.

V.I. Delegate to Congress Donna Christensen has struggled to do just that. Christensen lobbied for legislation introduced by Rep. Charles Rangel, D-N.Y., in 2007 that would reinstate three-year statute of limitations in the Virgin Islands. That legislation ultimately failed. Christensen said that when she last testified about the issue, before the Ways and Means Committee of the 110th Congress, she was met with a lackluster response. Since then, Health Care Reform and protecting rum excise tax revenues have taken precedence, and the tax issue has been on the back burner.

Christensen said that she is now pursuing the executive branch on the issue. Calls to the White House Office of Intergovernmental Affairs have been met with a "favorable response," she said.

"It's not only companies, this affects," Christensen said. "It affects individuals and families that may move back and forth that are not EDC beneficiaries."

Gov. John deJongh Jr. said letters he wrote to Treasury secretaries Henry Paulson and Timothy Geithner on the statute of limitations issue resulted in no progress. When those failed, he reached out to Olson. DeJongh said he hopes the opinion will help the measure gain traction in Congress.

"I think a congressional approach is probably the best way," deJongh said.

The IRS declined to comment for this story.