

ACTION ON DECISION

Subject: Matter of Quezada v. IRS, 982 F.3d 931 (5th Cir. 2020), rev'g In re Quezada, 124 A.F.T.R.2d 2019-6250 (W.D. Tex. 2019) (aff'g In re Quezada, 122 A.F.T.R.2d 2018-5764 (Bankr. W.D. Tex. 2018))

Issue: Did the period of limitations on assessing a taxpayer's backup withholding liability begin to run when the taxpayer filed a Form 1040, U.S. Individual Income Tax Return, and filed information returns (Forms 1099-MISC, Miscellaneous Income) that omitted payee taxpayer identification numbers (TINs)?

Discussion: Taxpayer was required to withhold and pay over backup withholding because he failed to obtain the TIN of each laborer whom he paid as part of his business. For the tax years 2005 through 2008, taxpayer failed to file Form 945, Annual Return of Withheld Federal Income Tax, which is the return prescribed by Treasury regulation for reporting backup withholding liability. Treas. Reg. § 31.6011(a)-4(b). Because taxpayer failed to file the Forms 945, the Service asserted that the period of limitations on assessing backup withholding liability did not begin to run. "In the case of failure to file a return, the tax may be assessed . . . at any time." I.R.C. § 6501(c)(3).

The Fifth Circuit held that Quezada's Form 945 was not required to be filed to trigger the running of the limitations period for assessing his backup withholding liability. Instead, the Fifth Circuit held that the limitations period began to run upon Quezada's filing of his Form 1040 and the Form 1099-MISC information returns that omitted payee TINs. The court reached this conclusion because it held, incorrectly, that the Forms 1099-MISC contained data sufficient (1) to show that Quezada was liable for backup withholding taxes and (2) to calculate the extent of this liability.

The omission of a payee's TIN on a Form 1099-MISC does not conclusively establish the payor's liability for backup withholding. Instead, backup withholding liability arises from the failure to obtain a payee's TIN, which is not evident on the face of the Form 1099-MISC. I.R.C. § 3406(a)(1)(A); Treas. Reg. § 31.3406(a)-1(b)(1)(i). If, when he made payments, taxpayer had in his records the correct TINs for the payees, and he mistakenly omitted the information on Forms 1099-MISC, he would not have had backup withholding liability. Further, the Service could not calculate the extent of backup withholding liability simply by looking at the Forms 1099-MISC. The Service could not know from looking at the face of the Forms 1099-MISC the reason for a missing TIN: whether the TIN was omitted because the payee did not provide the TIN to the payor (in which case backup withholding is indicated), or whether the payee did provide the TIN and the TIN was omitted due to filer error or for some other reason (in which case backup withholding may not be required). Thus, the Form 1099-MISC with missing TINs by itself was not sufficient to establish the withholding tax liability.

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Additionally, Supreme Court precedent holds that the Service may require, for the period of limitations on assessment to begin to run, that a taxpayer provide tax information “with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished.” Commissioner v. Lane-Wells Co., 321 U.S. 219, 223 (1944). Under Lane-Wells, it is inappropriate to treat a payor’s Form 1099-MISC information returns reporting payments to payees, in combination with the payor’s individual income tax return, as “the return” that triggers the running of the period of limitations for assessing backup withholding liability. This is because: (1) the Forms 1040 and 1099-MISC are separate returns that neither reference nor rely upon each other for either return to be complete; (2) neither the Form 1040 nor the Form 1099-MISC requires reporting backup withholding liability; and (3) the Service has prescribed a separate Form 945 for a payor to report backup withholding liability and that is the form to which it looks in determining whether such liability exists.

Although the Service disagrees with the decision of the Fifth Circuit in Quezada, the Service recognizes the precedential effect of the decision to cases appealable to this circuit. Therefore, the Service will follow it in cases within the Fifth Circuit if the opinion cannot be meaningfully distinguished. The Service does not, however, acquiesce to the opinion and will continue to litigate its position in cases in other circuits.

Recommendation: Nonacquiescence

/s/

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