



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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WTA-N-116448-98
KCCasey

OCT 28 1998

MEMORANDUM FOR NATIONAL TAXPAYER ADVOCATE, C:TA

FROM: ASSISTANT CHIEF COUNSEL (FIELD SERVICE)
CC:DOM:FS

[REDACTED]

This is in reply to your request of August 14, 1998, asking for our advice regarding whether the taxpayer's informal efforts to obtain the abatement and refund of the trust fund recovery penalty (TFRP) constitute a timely request/claim for refund.

ISSUE:

Whether the taxpayer's communications with the Service constitute informal refund claims.

CONCLUSION:

The taxpayer's communications in our possession do not constitute informal refund claims because there is no written component asserting a right to a refund.

FACTS:

In May of 1998, the North Carolina District Appeals Office ruled that a trust fund recovery penalty (TFRP) assessed against [REDACTED] lacked sufficient evidence to sustain the penalty. The appeals officer recommended that the penalty and related assessments be abated. However, the appeals officer further ruled that only the interest portion of the abatements was refundable to the taxpayer, [REDACTED]

PMTA : 00234

The taxpayer was informed that a claim would be timely only if filed by [REDACTED], which was two years after the last payment of taxes. The taxpayer disagrees with the determination that the statute of limitations has expired. According to the taxpayer, she has consistently requested this action before and after the payment of the penalty. The taxpayer has submitted evidence of several pieces of communication showing her efforts to obtain an abatement of the TFRP informally.

In particular, she made an inquiry dated October 18, 1995, which was received in the Problem Resolution Program. On December 18, 1995, a letter was sent to the taxpayer telling her that because the TFRP for [REDACTED] had been fully paid by another individual, the assessment was abated. She was further informed that the TFRP for [REDACTED] was reassessed, however, after her bankruptcy was discharged. The taxpayer made another inquiry to the Problem Resolution Program dated March 11, 1996. On April 25, 1996, the Taxpayer Advocate responded by referring the letter to the Wilmington District Office so that a collection's officer could provide a further explanation of the penalty. The taxpayer then made an appointment for June 14, 1996 with representatives of the Wilmington District Office. Due to the taxpayer's difficulty with voice communication, the meeting ended with a review of some very simple issues, without consideration of any of the critical issues. Subsequently, the taxpayer filed claims for refund on Forms 843 in [REDACTED] and [REDACTED], more than two years after the payment was made.

LAW AND ANALYSIS

In order to maintain a refund action, a taxpayer must comply with the statutory requirements of I.R.C. § 7422(a), which requires that the taxpayer timely file a tax refund claim with the Service. I.R.C. § 6511(a) provides that a claim for refund may be filed within three years of the date the return is filed or two years from the date the taxes were paid, whichever is later. Since no returns are filed in the case of a TFRP, only the two-year rule is relevant. See Kuznitsky v. United States, 17 F.3d 1029 (7th Cir. 1994).

Treas. Reg. § 301.6402-2 provides the components to a claim for refund. Treas. Reg. § 301.6402-2(a)(2) provides, in part, that a claim for refund, together with appropriate supporting evidence, must be filed with the service center serving the internal revenue district in which the tax was paid. Treas. Reg. § 301.6402-2(b)(1) provides, in part, that the claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis therefor. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury.

Treas. Reg. § 301.6402-3(a)(1) provides, in general, in the case of an overpayment of income taxes, a claim for credit or refund of such overpayment shall be made on the appropriate form (here Form 843). The courts have long held that failure to use the official form is not necessarily fatal and that an informal claim may suffice. Rock Island Railroad v. United States, 254 U.S. 141 (1920). In addition, courts have waived the requirement for filing in the service center and the requirement of a penalties of perjury statement on the grounds that these requirements are merely directory and not mandatory. See Kidde Industries, Inc. v. United States, 40 Fed. Cl. 42 (1997).

There are three basic components to an informal claim. New England Electric System v. United States, 32 Fed. Cl. 636, 639 (1995). First an informal claim must provide the Service with notice that the taxpayer is asserting a right to a refund. BCS Financial Corp. v. United States, 930 F Supp. 1273, 1277 (N.D. Ill. 1996). Second, the claim must describe the legal and factual basis for the refund. New England Electric System v. United States, 32 Fed. Cl. 636, 641 (1995). Finally, an informal claim must have some written component. Arch Engineering Co. v. United States, 783 F.2d 190, 192 (Fed Cir. 1986).

The determination of whether a taxpayer has satisfied the requirements for an informal claim is made on a case-by-case basis and is based on the totality of the facts. American Radiator & Standard Sanitary Corp. v. United States, 318 F.2d 915, 920 (Ct. Cl. 1963); Newton v. United States, 163 F. Supp. 614 (Ct. Cl. 1958). In Newton, the court explained that "[t]he basic underlying principle [of an informal claim] is the necessity to put the [IRS] on notice of what the taxpayer is claiming and that he is in fact making a claim for a refund." In American Radiator, the court noted that the purpose behind the requirement of an adequate informal refund claim is to prevent surprise through the giving of adequate notice of the nature of the claim as well as of its factual basis so that the Service may begin an investigation.

Once the taxpayer has put the Service on alert, in writing, that he is claiming a refund, he may later perfect his claim for refund by providing a complete statement of the grounds for the refund. Such statement or statements need not be made in writing but must be made before the expiration of the statute of limitations. Treas. Reg. § 301.6402-2(b)(1). In New England Electric System v. United States, 32 Fed. Cl. at 644, the court stated that "elements such as the sum of the refund, the years involved, and the like may be provided through oral communications and other writings." In Levitsky v. United States, 27 Fed. Cl. 235, 241 (1992), the court, referring to Davis v. United States, 21 Cl. Ct. 84, 86 (1990), stated that "[t]he inquiry into whether the I.R.S. has received appropriate notice of the grounds underlying a claim goes beyond the four corners of plaintiff's tax return. Other written communications to I.R.S. can also supply adequate notice to support litigation under I.R.C. § 7422." In American

Radiator, 318 F.2d at 921, the court found that the agent's knowledge gained in auditing the taxpayer's returns sufficed to inform the Service of the grounds underlying the claim.

In the instant case, there is no evidence of a written communication that explicitly alerts the Service that a refund of taxes is sought. The taxpayer's inquiry on October 18, 1995, was apparently oral and therefore does not qualify. The IRS response, a week later, indicates that there were two concerns. There is no hint that the taxpayer was claiming a refund. Certainly there was no clear and explicit notice alerting the Service that a refund of taxes was sought as required by the court in Missouri Pacific R.R. Co. v. United States, 558 F.2d 598 (Ct. Cl. 1977). Likewise, the taxpayer's inquiry on March 11, 1996, is insufficient because it was simply an oral inquiry.

Other than the above inquiries, we see nothing in the submission which would qualify as a claim for refund within the prescribed two-year period of limitations. The claims for refund filed on Forms 843 in March and August of 1997 were obviously outside the statute of limitations as discussed earlier. Based on the above, we conclude that the taxpayer has failed to file an informal claim for refund.

If you have any questions concerning the above, please call (202) 622-7940.

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By: 
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