



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
December 13, 2000

OFFICE OF
CHIEF COUNSEL

Number: **200108039**
Release Date: 2/23/2001
CC:PA:APJP:Br2/BTWarren
WTA-N-117530-00
UILC: 6511.00-00; 6511.01-03; 6511.09-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL SB/SE, AUSTIN, TEXAS
CC:SB:6:AUS

FROM: Assistant Chief Counsel (Administrative Provisions and
Judicial Practice)
CC:PA:APJP

SUBJECT: Claim for the Benefit of Indian Wards

This responds to your request for Significant Advice dated September 13, 2000, in connection with a question posed by the submission processing function of the Austin Service Center.

ISSUES

1. With regard to the claim for refund of an Indian ward, is the period of limitations established by section 6511 of the Internal Revenue Code (Code) tolled until such Indian ward has the restrictions removed from his or her Indian trust lands?

2. If restricted status is removed from some, but not all, of an Indian ward's land, does the statute of limitations commence with respect to the portion of the land that has become unrestricted?

3. With regard to the claim for refund filed on behalf of a decedent Indian ward who died owning restricted Indian trust land, does the period of limitations commence upon the death of the Indian ward?

CONCLUSIONS

WTA-N-117530-00

1. Yes. The period of limitations established by section 6511 is tolled until such Indian ward has the restrictions removed from his or her Indian trust lands.

2. No. Only the removal of restrictions for the entire amount of an Indian ward's land will commence the statute of limitations in section 6511.

3. No. The period of limitations established by section 6511 does not commence upon the death of the Indian ward.

FACTS

Members of a number of Indian Tribes throughout the United States own Indian trust land. Indian trust land cannot be alienated by its Indian owners without permission of the United States. As the United States serves, in effect, as trustee for Indians who own such restricted trust land, Indians owning restricted trust land have been considered wards of the government.

In the 1920's, 1930's and 1940's, a number of Indian superintendents, acting as fiduciaries for Indian wards, executed a variety of contracts (such as oil leases, sales of timber and the like) to obtain payments for the use of these trust lands. These superintendents erroneously filed income tax returns showing tax liabilities arising for profits arising from these contracts. These profits were later determined to be exempt from taxation.

The Indian wards, or their heirs, have filed claims for refund with the Internal Revenue Service regarding these erroneous payments of tax for exempt income. These claims for refund are made decades after the underlying return was filed and the tax was erroneously paid. The question now arises again whether to pay these claims for refund.

DISCUSSION

Issue 1

Statutes and cases affecting restricted Indians are to be interpreted liberally and in favor of the restricted Indian who is potentially adversely affected. The Supreme Court has stated:

The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are wards of the nation, and dependent wholly upon its protection and good faith. This rule of construction has been recognized, without

WTA-N-117530-00

exception, for more than a hundred years, and has been applied in tax cases.

Choate v. Trapp, 224 U.S. 665, 675, 56 L. Ed. 941, 946, 32 S.Ct. 565 (1912), quoted in Daney v. United States, 247 F. Supp. 533, 536 (D. Kan. 1965), aff'd, 370 F.2d 791 (10th Cir. 1966). We are mandated to use this liberal rule of construction in considering the applicable provisions of the Code and the relevant cases.

Section 6511 provides that a claim for refund shall be filed within three years from the date the return is filed or two years from the date the tax is paid. This section further provides that the amount of any refund will be limited to the tax paid within three years of filing the claim plus any extensions if the claim is filed within three years of the date the return is filed. If the claim is filed more than three years after the return is filed, then the amount of the refund is limited to the tax that was paid within two years of the date the claim is filed.

Section 6511 does not apply to some categories of claims for refund by Indian wards. In Rev. Rul. 61-11, 1961-1 C.B. 724, the Service concluded that an Indian ward's claim may be allowed without reference to the statute of limitations where such claim for refund is filed for taxes that were paid by an Indian superintendent on tax-exempt income directly derived from allotted and restricted Indian lands. The reasoning for this decision has a long history, finding its first expression in the opinion of Attorney General, later Justice, Harlan F. Stone, who, upon ruling with respect to similar claims by Indian wards, observed that:

The governmentally appointed agent – I refer to the superintendent – having paid this money over, failed to discover the irregularity of his action within the five-year period provided by the income tax statutes as the limitation period for making claims for recovery. The Indian is not to blame for this, and, if the Government could take advantage of the mistake of its own agent in this regard, it could go just one step farther and in the interests of its revenue instruct the superintendent to allow such claims to lapse.

34 Op. Att'y Gen. 302 (1924).

In Rev. Rul. 68-172, 1968-1 C.B. 563, the Service held that claims for refund may be allowed without reference to the statute of limitations even where the Indian ward pays the tax on his or her own, so long as the superintendent files the underlying return. If an Indian both pays the tax and files the underlying return, then Rev. Rul. 68-172 provides that section 6511 will apply. This ruling is obviously consistent with the reasoning underlying Rev. Rul. 61-11, namely, that the government should not assert the statute of limitations against a taxpayer whose return was erroneously prepared by the government's own agent. However, when

WTA-N-117530-00

an Indian files his or her own return, there exists no relationship dependent on a government agent that justifies the tolling of the statute of limitations.

As in the situation where an Indian files the return, there is no basis to avoid application of section 6511 when the Indian was not restricted at the time the return was filed. It has long been held, by both the Service and the courts, that the statute of limitations applies to unrestricted Indians similarly as it applies to other citizens. G.C.M. 762, C.B. VI-1, 123 (1927), affirmed in Rev. Rul. 61-11, stated:

With respect to unrestricted Indians....[t]here is no reason for the application of a preferential rule to them, and they should be treated after removal of restrictions in the same manner as every other citizen.

Additionally, the courts that have considered the issue of the application of the statute of limitations to claims for refund by Indian wards and former Indian wards have consistently held that, while the government cannot invoke the statute of limitations against Indian wards holding restricted lands, such a preferential rule does not apply to Indians not holding restricted lands. See United States v. Richards, 27 F.2d 284, 286 (8th Cir. 1928) (no relation of guardian and ward exists, and therefore no preferential statute of limitations rule exists, where all restrictions on voluntary disposal of land are removed); Nash v. Wiseman, 227 F. Supp. 552, 556 (W.D. Okla. 1963) (restricted Indian is a ward of the Government and a refund claim can be filed at any time); Dodge v. United States, 176 Ct. Cl. 476 (1966) (accepting rule of Nash court, noting that Richards involved the claim of an unrestricted Indian); Daney v. United States, 247 F. Supp. at 535 (the running of the three-year period for the filing of refund claims did not commence until after taxpayer's noncompetence restrictions were removed).

Reiterating that we interpret these aforementioned authorities liberally and in favor of the restricted Indian who is potentially adversely affected, it follows that the period of limitations begins to run when restrictions are removed from the lands of a restricted Indian. The District Court of Kansas explicitly stated this in its ruling in Daney. The preferential status afforded Indian wards under section 6511 does not last in perpetuity, but rather ceases to exist upon the removal of the restrictions on their land.

Issue 2

We conclude that the statute of limitations does not commence with respect to situations involving an Indian ward having the restricted status removed from some, but not all, of the Indian ward's land. The authorities discussed above do not distinguish between an Indian possessing restricted lands from an Indian possessing both restricted and unrestricted lands. An Indian ward possessing any

WTA-N-117530-00

amount of restricted lands remains, as a ward of the government, in the same dependent position that mandates the favorable statute of limitations treatment.

As the Indian ward remains a restricted Indian as long as he or she possesses some restricted land, the Indian ward can continue to file a claim for refund at any time, as provided by Rev. Rul 61-11. Otherwise, the period of limitations for the underlying return would be bifurcated: some of the income reflected on the return would enjoy favorable treatment under section 6511, but other income would not. This bifurcation would be inconsistent with the principle that "one's total income tax liability for each taxable year constitutes a single, unified cause of action, regardless of the variety of contested issues and points that may bear on the final computation." Finley v. United States, 612 F.2d 166, 170 (5th Cir. 1980), cited in Statland v. United States of America, 178 F.3d 465, 472 (7th Cir. 1998).

Issue 3

The resolution of the statute of limitations issue with respect to these claims for refund has an additional aspect that was not a factor in cases such as Daney. Namely, we can expect many of these claims for refund to be made on behalf of a decedent.¹ We have considered whether the limitations period of section 6511 would commence upon the death of an Indian ward, or at the later time of the initiation of administrative probate for the decedent. This issue has not been addressed in prior cases in the context of claims for refund for income taxes paid by a decedent Indian ward. The Nash decision cited above, however, involved the favorable treatment of a claim for refund for estate taxes by heirs who were also restricted Indian wards in their own right. See Nash, 227 F. Supp. at 556.

We conclude that the period of limitations imposed by section 6511 does not commence upon the death of an Indian ward. We further conclude that the period of limitations does not commence upon the initiation of administrative probate for the decedent, provided that all of the heirs or beneficiaries of the decedent are restricted Indians in their own right.² If all the heirs or beneficiaries of the decedent

¹ Claims for refund filed on behalf of a decedent must comply with the requirements of Section 301.6402-2(e) of the Regulations on Procedure and Administration by providing proof of the representative capacity of the person making the claim for refund. We understand that you are going to submit an additional written request with respect to the application of Section 301.6402-2(e).

² Administrative probate for restricted Indians is conducted before the Department of Interior. Agency superintendents perform a function similar to executors or administrators under state law. Felix Cohen, Handbook of Federal Indian Law 636

WTA-N-117530-00

are restricted Indians in their own right, the reason for providing the favorable treatment under section 6511 remains unchanged from the situation in Rev. Rul 61-11. This is consistent with the district court's ruling in Nash, where all of the decedent's heirs were restricted Indians.³ See Nash 227 F. Supp. at 556.

The attorney assigned to this matter is Brinton T. Warren, who can be reached at (202) 622-8477.

CURTIS G. WILSON

By: _____
Judith M. Wall
Chief, Branch 2

(1982).

³ Should you encounter situations in which any heirs or beneficiaries of a decedent Indian ward are not restricted Indians, you should request case specific advice.