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[Third Party Communication:

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From: [REDACTED]

Sent: Friday, July 1, 2022 6:14:27 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: F907 for 7509982 - advice from [REDACTED]

I have now read your multiple emails and attachments and unfortunately do not have good news for you. In order to get Appeals to sign a Form 907, there needs to be a timely claim for refund (or in this case a timely informal claim for refund). You want to advocate that the Form 4868 filed by the taxpayer on 4/15/16 reflecting an overpayment of \$ [REDACTED] was a timely informal claim for refund for the 2015 tax year, and you want to rely on Kaffenberger 314 F.3d 944 (Ct. Cl. 2003) plus the accompanying AOD.

Kaffenberger is somewhat contrary to many long-standing decisions involving the informal claim for refund theory. A valid informal claim has multiple components – 1) it must put the IRS on notice that the taxpayer is claiming a refund; 2) the claim must describe the basis for the refund; and 3) the claim must have a written component. See, e.g., Kales v. U.S., 314 U.S. 186 (1941). See also New England Electric System v. U.S., 32 Fed.Cl. 636, 641 (1995) (citation omitted). In the current case, the taxpayer's Form 4868 did not inform the IRS of the basis of the claim for refund. That is a critical component of the claim for refund theory. And I believe your situation is not analogous to the facts in Kaffenberger. Despite the lack of detail on the Form 4868 filed by the Kaffenbergers, the IRS had sufficient background information to understand the nature of the taxpayers' claim; in particular, the IRS knew at the time it received the Form 4868 that the taxpayers were entitled to a refund of \$26,770.00 and the basis of that refund, as the IRS sent the taxpayers a notice informing them that they were entitled to a refund, and then the taxpayers subsequently filed the Form 4868. In the current case, however, I see nothing to suggest that the IRS knew the basis for any overpayment claimed by the taxpayer. So the Form 4868 by itself isn't a valid informal claim for refund. I consulted with one of the informal claim for refund experts in Counsel and he concurs. And to be clear – I am not saying that a Form 4868 could never be an informal claim for refund, as it is a facts and circumstances analysis. But based on the facts and circumstances as I understand them, no valid informal claim exists.

Let me also give a little background about the AOD, as I'm sure you saw that [REDACTED]. Per CCDM 36.3.1, "[a]n AOD generally is not prepared on issues decided favorably to the Government, on issues conceded by the Government, or on insignificant issues decided adversely to the Government." The issue in Kaffenberger of whether the taxpayers had filed a valid informal claim for refund falls into the

Have a great holiday weekend. We can talk more next week if you have any questions.

[REDACTED]