

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ERIC J. TALLEY : CIVIL ACTION
: :
v. : :
: :
UNITED STATES OF AMERICA : :
INTERNAL REVENUE SERVICE : NO. 99-6244

MEMORANDUM ORDER

This is a tax refund case. In plaintiff's words, "taxpayer makes this claim for 1977 taxes overpaid." The complaint was filed on December 8, 1999. It has never been served.

Presently before the court is plaintiff's "Motion to Reopen" which was filed in response to the court's notice to show cause why this suit should not be dismissed for failure to make timely service pursuant to Fed. R. Civ. P. 4(m). In the motion, plaintiff attempts to excuse this failure on the grounds that "the attorney who had originally handled the case is no longer with the Law Office of Benjamin L. Winderman" and the case file "until recently could not be located."

The complaint is signed by Benjamin Winderman. The deadline to effect service was April 7, 2000. Between April 19, 2000 and July 10, 2001, when the notice to show cause was issued, the deputy court clerk telephoned Mr. Winderman seven times. She spoke with Mr. Winderman three times and his secretary four times. On each occasion, the deputy clerk advised that service of process had not been effected and the case was thus subject to

dismissal. On each occasion the deputy clerk spoke with the secretary, she stated she would relate the message to Mr. Winderman. On each occasion the deputy clerk spoke to Mr. Winderman, he stated either that he "will look into it" or he "will check into it" and "get back" to her. He never did "get back" to the deputy clerk.

Mr. Winderman signed the complaint and caused it to be filed. It was his obligation to ensure that timely service was made whether or not the actual task had been assigned to a subordinate. Inadvertence or negligence of counsel does not constitute good cause for a failure timely to serve a complaint. See Lovelace v. Acme Markets, Inc., 820 F.2d 81, 84 (3d Cir.), cert. denied, 484 U.S. 965 (1987). A good faith effort to comply and a reasonable basis for noncompliance are necessary to justify a finding of good cause. See MCI Telecommunications Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1097 (3d Cir. 1995), cert. denied, 519 U.S. 815 (1996). See also Mused v. U.S. Department of Agriculture, 169 F.R.D. 28, 32 (W.D.N.Y. 1996) (good cause generally found only where exceptional circumstances beyond plaintiff's control prevent timely service); T & S Rentals v. U.S., 164 F.R.D. 422, 425 (N.D.W.Va. 1996).

This also is not a case that warrants a discretionary extension. There has been no showing of any effort at service for over nineteen months, no request for an extension during the

