

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

HELEN BLOM,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 05-2383
	:	
UNITED STATES OF AMERICA,	:	
Defendant.	:	

MEMORANDUM AND ORDER

Stengel, J.

November 16, 2006

This case involves a tax dispute between plaintiff Helene Blom, the executrix of an estate, and defendant United States (“IRS”). The plaintiff remitted \$140,000 to the IRS as estimated estate taxes in 1996. Ultimately, no estate taxes were due and the plaintiff was forced to file this suit to recover the remittance. On May 31, 2006, this court denied the IRS’s motion for summary judgment and held that the Blom’s remittance was a “deposit as a matter of law.” Now before the court is the defendant’s Motion for Entry of Judgment. The IRS has requested the court to enter judgment in favor of the plaintiff in the amount of \$140,000, *without* interest. The plaintiff responded to the IRS’s motion by requesting the court to enter judgment in favor of the plaintiff in the amount of \$140,000, *with* interest. With no factual disputes remaining and only the pure legal issue of whether the plaintiff is entitled to interest left to decide, this court will take up the defendant’s motion. In so doing, I will grant the defendant’s motion and award the plaintiff \$140,000, *without* interest.

I. BACKGROUND¹

Helen Walbridge died on March 1, 1996, and her niece Helene Blom was named executrix of the estate. A dispute eventually arose between Walbridge's estate and a trust that contained Walbridge's late husband's assets. As a result, the parties became embroiled in litigation over disbursement of the trust.

Prior to the institution of litigation with the trust, Blom filed a Form 4768 Application for Extension of Time to File a Return on behalf of the estate with the IRS. With the Form 4768, Blom also submitted two checks in the amount of \$140,000. The IRS approved the requested extension, granting the Walbridge estate until June 1, 1997 to file its Form 706 estate tax return. Blom did not comply with the new deadline and failed to file the estate tax return until September 9, 2002. When Walbridge's estate's Form 706 was filed, it reflected no estate taxes due. As a result, the IRS treated the Form 706 as a request for a refund of the \$140,000 paid in 1996, but declined to issue a refund because the request was barred by the statute of limitations. Blom filed suit to recover the \$140,000 for the estate.

IRS filed a motion for summary judgment in January of this year. It argued that this court did not have jurisdiction over Blom's case because the refund claim was not timely filed. The resolution of the IRS's summary judgment motion centered on whether the

¹A more detailed summary of the events surrounding this case can be found in this court's Memorandum and Order issued on May 31, 2006, denying the defendant's motion for summary judgment. See Blom v. United States, No. 05-2383, 2006 U.S. Dist. LEXIS 34861 (E.D. Pa. May 31, 2006).

\$140,000 was a “payment” or a “deposit in the nature of a cash bond.” See Blom, 2006 U.S. Dist. LEXIS 34861, at *6. See also Rosenman v. United States, 323 U.S. 658 (1945). If the remittance was deemed a payment the IRS’s argument would have succeeded and the statute of limitations would have disallowed Blom’s claim. This court ruled, however, that “the remittance on the Walbridge estate tax was a deposit as a matter of law.” Blom, 2006 U.S. Dist. LEXIS 34861, at *9. Therefore, the statute of limitations did not apply and the defendant’s motion for summary judgment was denied on May 31, 2006 (“May 31st Order”). The IRS’s motion for reconsideration of the May 31st Order was also denied.

On September 27, 2006, the IRS filed a motion for entry of judgment. The IRS requested that the court enter judgment in favor of the plaintiff, and against the IRS, in order that there be a final judgment to appeal or to pay. The IRS requested a judgment in Blom’s favor for the amount of \$140,000, without interest. On October 26, 2006, Blom responded to the IRS’s motion. She requested the court to enter judgment in her favor in the amount of \$140,000, plus interest running from the date of the filing of the estate tax return.

II. DISCUSSION

The only legal issue left to resolve in this matter is whether Blom is entitled to recover interest for the money she deposited with the IRS in 1996. The award of interest turns on whether the \$140,000 remittance was an “overpayment.” The classification of the

remittance as a “deposit,” and not a “payment,” in the May 31st Order is determinative.

Under Section 6611(a) of the Internal Revenue Code (“IRC”), “[i]nterest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the overpayment rate established under section 6621.” In order for a remittance from a taxpayer to be considered an overpayment under I.R.C. § 6611(a), “the payment [must] be made either (1) on account of the tax shown to be payable by the taxpayer’s verified return, or (2) in response to an assessment by the Commissioner.” Murphy v. United States, 78 F. Supp. 236, 240 (S.D. Cal. 1948) (citing I.R.C. § 3771(a) (currently at I.R.C. § 6611(a) and Rosenman, 323 U.S. 658). See also Mitchell v. Westover, 90 F. Supp. 278, 279 (S.D. Cal. 1950).

In the same context, a taxpayer is not entitled to receive statutory interest on a tax “deposit,” whereas she is entitled to receive statutory interest on a tax “payment.” See Danoff v. United States, 324 F. Supp. 2d 1086, 1097 (C.D. Cal. 2004). See also Boyd v. United States, 439 F. Supp. 907, 908 (E.D. Pa. 1977) (“[T]he Government is required to pay interest on overpayments but not on deposits.”). The rationale of this rule makes sense once one notes the distinction between a ‘deposit’ and a ‘payment’ of taxes. “Whereas a ‘deposit’ represents a remittance to the IRS for a contingent, future liability which may or may not become due, a ‘payment’ of taxes represents a remittance ‘in response to an assessment or to discharge all or part of an existing tax liability.’” Danoff, 324 F. Supp. 2d at 1097 (quoting Blatt v. United States, 34 F.3d 252, 254-55 (4th Cir. 1994)). A

deposit is remitted to the IRS to be held in escrow and a payment is paid to discharge an existing obligation. See Rosenman, 323 U.S. at 662-63. If voluntary remittances to the IRS were deemed overpayments and thus interest bearing, it would invite citizens to deposit money with the government to accrue interest at favorable rates. See Rosenman, 323 U.S. at 662-63; Busser v. United States, 130 F.2d 537 (3d Cir. 1942). In other words, if interest could accrue on deposits, taxpayers would use the IRS as a bank — submitting moneys when no tax is due, collecting interest payments, and withdrawing funds at their pleasure.

In addition, the Internal Revenue Procedures clearly state, several times, that no interest shall be paid on any deposit returned to a taxpayer. See Rev. Proc. 84-58, 1984-2 C.B. 501, §§ 4, 5 (July 1984) (superseded by Rev. Proc. 2005-18, 2005-1 C.B. 798 (March 28, 2005)) (“No interest will be allowed or paid on a deposit, or any portion of a deposit, returned to a taxpayer before or after assessment.”). The Internal Revenue Procedures also state that a deposit is not subject to a “refund as an overpayment.” Id. § 4.02, ¶ 1.

The IRS claims that based on this court’s holding that the remittance was a deposit, Blom is not entitled to interest. Blom asserts that the remittance was a deposit when first paid to the IRS, but it turned into an overpayment once the estate tax return was filed. She cites to I.R.C. §§ 6611, 6621 to support her position that interest began to accrue once the deposit became an overpayment. She also points to the fact that the United States accepted the estate tax return and agreed no taxes were owed.

As noted above, it is a well established legal principle that a taxpayer is not entitled to collect interest for any deposit she makes with the IRS. Blom points to no IRC provision, Internal Revenue Procedure, or case law to support her position that a deposit transforms into a payment once a tax return is filed. In addition, this court could find no support for the plaintiff's argument. Directing the court to I.R.C. §§ 6611, 6621 is not helpful. Section 6611 states interest shall be paid on overpayments, but does not define the term overpayment. Section 6621 spells out the appropriate interest rate to apply to overpayments.

It appears that Blom is trying to have the best of both worlds, i.e., the deposit world and the payment world. She has argued successfully that the \$140,000 remittance was a deposit and as a result the statute of limitations period of I.R.C. §§ 6511 did not apply. Now, she wants to proceed under the premise that that same remittance was a payment in order to collect interest. Blom's argument must fail. See Rosenman, 323 U.S. at 662-63 (holding that the Government cannot "treat the same transaction as payment and not as payment, whichever favors the Government" with respect to interest payments and the statute of limitations).

Nothing changed regarding the circumstances of Blom's initial submission of the money to the IRS. When she deposited the \$140,000 with the IRS it was not in response to an IRS assessment and the estate did not owe any taxes based on a verified return. It, therefore, could not be an overpayment. Blom may have eventually filed a tax return, but

the money remained a deposit with the IRS, which Blom had the right to request the IRS to return. See Rev. Proc. 84-58, 1984-2 C.B. 501, § 4.02 (July 1984) (superseded by Rev. Proc. 2005-18, 2005-1 C.B. 798 (March 28, 2005)) (“The taxpayer may request the return of all or part of the deposit at any time before the Service is entitled to assess the tax.”). Although Blom requested the return on September 9, 2002, and will not receive the \$140,000 until she executes on the attached order over four years later, Blom has presented no statutory authority to hold that the litigation of a refund of a deposit entitles a taxpayer to interest.

Accordingly, as this court held in its May 31st Order, Blom’s remittance of \$140,000 to the IRS was a deposit. As a deposit, the IRS holds that amount in escrow for the taxpayer and interest is not paid upon that deposit. I will grant the IRS’s motion for judgment and order the return of the deposit to the plaintiff in the amount of \$140,000, *without* interest. An appropriate Order follows.

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	:	
UNITED STATES OF AMERICA,	:	
Defendant.	:	

ORDER

AND NOW, this 16th day of November, 2006, upon consideration of Defendant's Motion for Judgment (Docket No. 29), and the response thereto, it is hereby **ORDERED** that the motion is **GRANTED**. Judgment is entered in favor of the Plaintiff in the amount of \$140,000, without interest.

The Clerk of Court shall mark this case as **CLOSED** for statistical purposes.

BY THE COURT:

/s/ Lawrence F. Stengel _____
LAWRENCE F. STENGEL, J.