

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

ANGELO N. GRANDELLI :
and JO E. GRANDELLI, : CIVIL ACTION
 : NO. 04-4512
 Plaintiffs, :
 :
 v. :
 :
 DEPARTMENT OF TREASURY :
(INTERNAL REVENUE SERVICE), :
 :
 Defendant. :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

November 15, 2006

I. INTRODUCTION

Plaintiffs Angelo and Jo Grandelli, proceeding pro se, brought this suit after being informed by the Internal Revenue Service ("IRS") in 2002 that they owed taxes, penalties and interest for the tax year 1997. The events leading up to the suit are as follows. According to plaintiffs, in 1997, they filed their tax return for 1996, and an amended return a few months thereafter. The amended return would have provided plaintiffs with a refund credit that could be carried over and applied to their tax liability for the 1997 tax year. The IRS claims, however, that it has no record of plaintiffs ever filing such an amended 1996 return. The result was that the IRS

assessed a tax deficiency to tax year 1997, and informed plaintiffs in 2002 that they owed taxes, penalties and interest for the 1997 tax year. Plaintiffs, steadfastly arguing that they did indeed file the amended return, contend they are owed a refund for tax year 1996 and an abatement of the interest that has since accrued on the penalties for the 1997 tax deficiency.

When plaintiffs requested the refund from the IRS, the request was denied as untimely. After the IRS denied plaintiffs' subsequent appeal of the refund request, plaintiffs filed suit in this Court, requesting 1) a refund for the 1996 tax year, and 2) an abatement of interest for the 1997 tax year. Defendant IRS has moved to dismiss both claims for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).

The IRS's denial of plaintiffs' abatement request is currently before the United States Tax Court (Doc. No. 011445-04). The Court, therefore, declines to address that claim; this memorandum will focus solely on plaintiffs' refund request and the IRS's motion to dismiss with respect to that claim.

II. DISCUSSION

A. Legal Standard

The plaintiff bears the burden of persuasion when subject matter jurisdiction is challenged under Federal Rule of

Civil Procedure 12(b)(1). Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991), cert. denied, 501 U.S. 1222 (1991). When a Rule 12(b)(1) motion attacks the complaint on its face - that is when the defendant asserts that the undisputed facts are insufficient to establish the existence of jurisdiction - a court must consider the uncontroverted allegations of the complaint as true and accurate and resolve all ambiguity in favor of the plaintiff. Mortensen v. First Federal Savings and Loan Assn., 549 F.2d 884, 891 (3d Cir. 1977). While the district courts have original jurisdiction over civil actions against the United States for the recovery of any erroneously assessed or collected taxes,¹ with respect to filing tax refund suits, "[ilt is well-settled that a taxpayer's failure to file a timely claim for refund with the IRS deprives a federal court of subject matter jurisdiction". PPG Industries, Inc. v. United States, 1994 WL 742277 *2 (W.D. Pa. Oct. 20, 1994). See also 26 U.S.C. § 7422(a); United States v. Felt and Tarrant Mfg. Co., 283 U.S.

¹ Title 28 U.S.C. § 1346(a)(1) provides:

The district court shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

- (1) any civil action against the United States for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

269, 272 (1931); Martin v. United States, 833 F.2d 655, 658-59 (7th Cir. 1989); Yuen v. United States, 825 F.2d 244, 245 (9th Cir. 1987).

B. Statutes of Limitations Applicable to Plaintiffs'
Refund Request

Two statute of limitations are at issue with respect to plaintiffs' refund request. The first, 26 U.S.C. § 6511(a), affords the taxpayer three years from the date of the original tax filing to file a refund claim. Whether or not the plaintiffs refund claim is barred by this statute of limitations depends upon when the plaintiffs filed their 1996 tax return and amended return. The plaintiffs insist that they mailed their original 1996 tax return on August 15, 1997 and an amended return on September 18, 1997, well within the statutory period. For purposes of the motion to dismiss, the Court will resolve this ambiguity in favor of the plaintiffs and this statute of limitations will not operate to bar the plaintiffs' refund claim at this stage of the proceedings.

The second applicable statute of limitations, however, proves to be fatal to plaintiffs. It is embodied in 26 U.S.C. § 6532 and states that refund suits must be brought within two years of the IRS's notice of disallowance of the refund claim. Because the IRS notified the plaintiffs of the disallowance of

the refund claim on June 27, 2002 and plaintiffs did not file this suit until September 24, 2004, there is no dispute that plaintiffs did not file the present suit within the two year period prescribed by § 6532.

Plaintiffs, however, claim that they were orally advised by IRS General Counsel Jack Anagnostis that plaintiffs had until September 2004 in which to file their refund suit. This raises the issue of whether the IRS can be estopped from arguing that the statute of limitations bars the plaintiffs' refund claim.

"Estoppel is an equitable doctrine invoked to avoid injustice in particular cases." Heckler v. Community Health Services of Crawford County, Inc., 467 U.S. 51, 59 (1984).

"Parties attempting to estop another private party must establish that they relied to their detriment on their adversary's misrepresentation and that such reliance was reasonable because they neither knew nor should have known the adversary's conduct was misleading." Fredericks v. Commissioner of Internal Revenue Service, 126 F.3d 433, 438 (3d Cir. 1997) (citing Heckler, 467 U.S. at 59, and U.S. v. Asmar, 827 F.2d 907, 912 (1987)).

The Third Circuit is among the majority of circuits that recognizes the possibility of asserting estoppel against the government, however, it imposes additional an additional burden on claimants to establish some "affirmative misconduct on the

part of the government officials." Id. (citing U.S. v. Asmar, 827 F.2d 907, 911 n.4 (1987)).

The plaintiffs are unable to invoke the doctrine of estoppel in this case as they have failed to show that any reliance they placed on the alleged advice given by Mr. Anagnostis was reasonable. As a factual matter, in both the IRS's letter to plaintiffs in which it denied plaintiffs' appeal of their tax refund request for the 1996 tax year and in a second letter denying plaintiffs' request for a second appeal of their refund request, the IRS clearly notified plaintiffs of the date by which plaintiffs could file suit.² In addition, in both

² Specifically, in a letter dated March 12, 2004, the IRS stated:

You may pursue this matter further by filing suit in either the United States District Court or the United States Court of Federal Claims. If you decide to do this, you must file the suit within two-years from the date on the letter denying your claim, which the Philadelphia IRS Campus mailed to you on June 27, 2002.

Gov. Ex. 4 (Ltr. from Judith Hornstein to Plfs., Mar. 12, 2003).

The letter went on to warn "Please note: Your two-year period has NOT been shortened or extended by our reconsideration of your claim." Id.

Then, in a letter dated February 25, 2004, the IRS denied the tax refund refusal a second time. Again, it very clearly warned the plaintiffs of the pending statute of limitations. The letter reads, in pertinent part, as follows:

You may pursue this matter further by filing suit in either the UNITED STATES DISTRICT COURT or the UNITED STATES COURT of FEDERAL [sic] CLAIMS. If you decide to do this, you must file suit within two-years from the date on the letter denying your claim, which the

letters, the IRS warned the plaintiffs in clear and unambiguous terms that any appeal did not operate to extend the statute of limitations.

The Supreme Court's rationale in Heckler v. Community Health Services of Crawford County, Inc., 467 U.S. at 65, is illustrative on the question of whether a party's reliance on a government employee's oral advice is reasonable. There, the United States was not estopped from recovering overpayment of medicare reimbursements for salaries of employees who provided services to medicare patients notwithstanding the fact that the health care provider relied on the fiscal intermediary's oral advice that the salaries were reimbursable. Id. Although noting that the burden is heavy when a party is asserting estoppel against the Government, the Supreme Court did not address the question of whether the government's conduct in that case constituted "affirmative misconduct" because the petitioner failed to show reasonable reliance to satisfy even the traditional elements of estoppel against a private party. The Court concluded that the alleged reliance was not reasonable because the health services provider received only oral advice,

Philadelphia IRS Campus mailed to you on June 27, 2002. Please note that since you have appealed Ms. Hornstein's decision the two-year period is not extended.

Gov. Ex. 6 (Ltr. from Anthony R. Santoro, Feb. 25, 2004).

unconfirmed or evidenced by a written instrument. Id. (never reaching affirmative misconduct issue where there was no written evidence of any misrepresentation).

In the case at hand, not only was the oral advice allegedly given by IRS General Counsel unconfirmed by a written instrument, but as previously stated, it was actually controverted by the two letters the IRS sent to plaintiffs denying their refund request and advising them of the statute of limitations. Therefore, because plaintiffs' reliance on any advice allegedly given by IRS General Counsel Jack Anagnostis was not reasonable, they have failed to establish even the traditional elements necessary to invoke the doctrine of estoppel against private party. The Court therefore, like the Supreme Court in Heckler, does not reach the issue of whether plaintiffs have satisfied the additional heavy burden of establishing "affirmative misconduct" on the part of the IRS.

IV. CONCLUSION

The plaintiffs have failed to show that even the traditional elements of estoppel, namely reasonable reliance, are present in this case. Therefore, the plaintiffs are not released from the confines of the statute of limitations by virtue of any advice allegedly given to them by IRS General Counsel. Accordingly, because plaintiffs did not file their refund suit

within the two year statutory period prescribed by § 6532, this Court lacks subject matter jurisdiction over the claim. Thus, the IRS's motion to dismiss is granted.

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|-----------------------------|---|--------------|
| ANGELO N. GRANDELLI | : | |
| and JO E. GRANDELLI, | : | CIVIL ACTION |
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| Plaintiffs, | : | |
| | : | |
| v. | : | |
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| DEPARTMENT OF TREASURY | : | |
| (INTERNAL REVENUE SERVICE), | : | |
| | : | |
| Defendant. | : | |

ORDER

AND NOW, this **15th** day of **November, 2006**, upon consideration of defendant IRS's Motion to Dismiss for Lack of Jurisdiction (doc. no. 10) and plaintiffs' response thereto, and after a hearing at which plaintiff and counsel for defendant participated, it is hereby **ORDERED** that defendant IRS's Motion to Dismiss is **GRANTED** as follows:

1. Plaintiffs' claim for a tax refund for the 1996 tax year is **DISMISSED with prejudice**;
2. Plaintiffs' claim for abatement of interest for the 1997 tax year is **DISMISSED without prejudice**.³

IT IS FURTHER ORDERED that the case shall be marked **CLOSED** for statistical purposes.

AND IT IS SO ORDERED.

S/Eduardo C. Robreno

EDUARDO C. ROBRENO, J.

³ Plaintiffs' claim for abatement of interest is currently before the United States Tax Court (doc. no. 011445-04).