

ACTION ON DECISION

Subject: Paul A. Bilzerian v. United States, 86 F.3d 1067 (11th Cir. 1996), rev'g 887 F. Supp. 1509 (M.D. Fla. 1995), remanded sub nom. Steffen v. United States, 952 F. Supp. 779 (M.D. Fla. 1997)

Issue:

Whether issuance of an erroneous refund following taxpayer's payment of the original assessment revives that assessment to permit enforced collection of the amount erroneously refunded.

Discussion:

In 1990, the Internal Revenue Service ("Service") assessed a deficiency against Paul Bilzerian and Terri Steffen ("plaintiffs") in connection with their joint 1985 tax liability. The plaintiffs fully paid the deficiency. As a result of a computer error, however, the Service refunded a large portion of the paid assessment back to the plaintiffs. The Service brought a suit to recover the amount refunded and filed a Notice of Federal Tax Lien in the amount of the erroneous refund against property owned solely by Steffen.

Plaintiff Steffen filed a suit under section 7432 of the Internal Revenue Code for the failure of the Service to release the lien. The parties agreed that the validity of the lien depended upon whether there was an outstanding assessment not paid. The district court concluded, however, that Steffen's 1985 liability was completely extinguished when she fully paid the deficiency and that the Service could not rely on the original assessment to collect the erroneous refund.

The Service argued that the erroneous refund at issue revived the previously paid assessment and, thus, that the lien was valid.

The Eleventh Circuit disagreed with the Service. Citing Clark v. United States, 63 F.3d 83 (1st Cir. 1995); O'Bryant v. United States, 49 F.3d 340 (7th Cir. 1995); and United States v. Wilkes, 946 F.2d 1143 (5th Cir. 1991), the court

held that once a tax liability is paid by the taxpayer, the assessment is extinguished and no erroneous refund can revive it. Thus, the Service could no longer administratively collect the original assessment.

We acquiesce to the view of the courts that an erroneous refund of an amount paid by the taxpayer in satisfaction of an assessment does not revive that assessment to the extent of the refund. A taxpayer's payment, once applied to the taxpayer's liability, satisfies that assessment to the extent of the payment. Thus, if the taxpayer pays the assessed liability in full, the assessment is satisfied and the Service may not collect on that assessment even if the Service inadvertently refunds a portion of the taxpayer's payment back to the taxpayer. In this case, the plaintiff made a payment in satisfaction of the assessment and it was properly credited. Therefore, the erroneous refund of that payment does not revive the assessment.

However, not every credit to a taxpayer's account will constitute a payment in satisfaction of an assessment. For example, where the Service inadvertently credits an account with another taxpayer's payment or misapplies money the taxpayer designated to another tax year, the assessment to which the payment was misapplied is not satisfied, and the Service can continue to collect that assessment after correction of the misapplication. Likewise, when the Service returns funds collected as a result of a levy to a third party or the taxpayer pursuant to I.R.C. § 6343, the liability to which the funds were applied is not satisfied and the Service can continue to collect that liability based on the original assessment.

Recommendation:

Acquiescence in result only.

Reviewers:

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