

ACTION ON DECISION

Subject: Kaffenberger v. United States,
314 F.3d 944 (8th Cir. 2003)

Issues

1. Whether the Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return*, constitutes an informal claim for refund.
2. Whether the 2-year period of limitations, set forth in I.R.C. § 6532(a)(1), for bringing a refund suit can be extended once the 2-year period has expired.

Discussion

On April 8, 1991, the taxpayers filed a joint income tax return for 1988 that reflected an overpayment of \$26,794.00 and an election to have \$26,770.21 of the overpayment applied as a credit to their 1989 estimated taxes. On April 15, 1991, the taxpayers received a notice from the Service that they were due a refund of income taxes in the amount of \$26,770.00. Based on this notice, the taxpayers believed the Service had not applied their 1988 refund to their 1989 liability. On that same day, on a Form 4868, the taxpayers requested an extension of time for filing their 1990 joint income tax return and listed “other payments and credits you expect to show” in the amount of \$26,700.00.

On July 29, 1994, the taxpayers filed a joint income tax return for tax year 1989 that reflected an overpayment of \$38,309.30. On April 28, 1995, the Service mailed the taxpayers a notice of claim disallowance, disallowing their 1989 refund claim. On October 17, 1997, the taxpayers and the Service executed a Form 907, *Agreement to Extend the Time to Bring Suit*, to extend the period for filing a refund suit until December 31, 1998.

The taxpayers instituted a refund suit on December 31, 1998. A jury found that the taxpayers’ 1990 Form 4868 constituted a timely informal claim for refund for 1989. On appeal, the Eighth Circuit agreed with the taxpayers and held that the Service acted within its authority in executing the Form 907 even though the 2-year period had already expired prior to that date. The Eighth Circuit also found that the Form 4868 was a valid informal claim for refund.

An informal claim for refund is sufficient if it is in writing and puts the Service on notice that the taxpayer is claiming a refund. United States v. Kales, 314 U.S. 186 (1941). In applying the elements of the informal claim theory, the Eighth Circuit read the Form 4868 in light of all the surrounding facts and circumstances and determined that the Service had sufficient background information to understand the nature of the taxpayers’ refund claim. We agree with this conclusion.

Section 6532(a)(1) provides that a taxpayer cannot institute a refund action under section 7422(a) after the expiration of 2 years from the mailing date of a notice of claim disallowance. Section 6532(a)(2) provides that the 2-year period may be extended for such period as may be agreed upon in writing between the taxpayer and the Service. Form 907 is generally used to extend the 2-year period. Any extension must be executed by the taxpayer and the Service before the 2-year period has expired. Rev. Rul. 71-57, 1971-1 C.B. 405.

In concluding that the taxpayers' Form 907 was validly executed, the Eighth Circuit disagreed with Rev. Rul. 71-57. The court noted that section 6501 contains a provision similar to section 6532 that allows a taxpayer and the Service to agree to extend the assessment period beyond the 3-year period of limitations, but, unlike section 6532, section 6501(c)(4)(A) expressly requires the agreement to be made "before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title." The court found persuasive the fact that Congress did not include similar limiting language in section 6532(a)(2) even though sections 6501 and 6532 were enacted as part of the same tax act. The court concluded that, by including the limiting language in section 6501(c)(4)(A) but omitting it in section 6532(a)(2), Congress acted intentionally and did not intend that the Form 907 be executed within the 2-year period. We disagree with the Eighth Circuit's rationale. The focus of the inquiry, as articulated in Rev. Rul. 71-57, should be on the word "extended" in section 6532(a)(2), which means the continuation of an existing period of time with no intervening lapse. When the 2-year period expired in this case on April 28, 1997, there was no period left to extend.

Although we disagree with the court's refusal to follow a published ruling, we recognize the precedential effect of the decision in the Eighth Circuit and, therefore, will follow it with respect to cases within that circuit, if the opinion cannot be meaningfully distinguished. We will continue to litigate our position in other circuits.

Recommendations: Issue 1. Acquiescence
Issue 2. Nonacquiescence

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