

In the United States Court of Federal Claims

No. 05-767 T
(Filed July 25, 2005)

MIRIAM CAJUSTE,
Plaintiff,
v.
THE UNITED STATES,
Defendant.

ORDER

On May 31, 2005, plaintiff filed a petition with the United States Tax Court to contest a determination of deficiency by the Internal Revenue Service ("IRS"), dated February 28, 2005, for the tax year ended 2002. On July 19, 2005, plaintiff filed a complaint in this court requesting review of her deficiency matter. This court has jurisdiction over tax refund claims pursuant to 28 U.S.C. § 1491 (2000). Hinck v. United States, 64 Fed. Cl. 71, 74-75 (2005). However, in order to establish entitlement to relief with respect to a tax controversy in this court, a taxpayer must first fully pay the amount at issue and then file a refund claim with the IRS. Flora v. United States, 362 U.S. 145, 155 (1960). Unless the taxpayer pays the tax and files a refund claim this court has no jurisdiction to hear the case. Id. Plaintiff does not plead that she has paid the deficiency and filed the requisite refund claim with the IRS, as required by 26 U.S.C. § 7422(a).

In addition, if the taxpayer files a refund claim with the IRS, the taxpayer must wait until 6 months have elapsed or until a decision has been rendered on her claim, whichever is sooner, before filing a refund suit in this court. 26 U.S.C. § 6532(a)(1); Hamzik v. United States, 64 Fed. Cl. 766, 768 (2005). Plaintiff has not pleaded that either event has occurred in this case.

Furthermore, the Tax Court docket indicates that plaintiff's petition is still pending before that court. To the extent that the Tax Court possesses jurisdiction over the same deficiency matter, this court is deprived of jurisdiction. 26 U.S.C. § 7422(e).

Accordingly, for the reasons stated above, it is hereby ORDERED that the complaint be DISMISSED, without prejudice, for failure to state a claim within this court's jurisdiction.

James F. Merow
Senior Judge