

In the United States Court of Federal Claims

No. 10-381T

(Filed August 7, 2012)

NOT FOR PUBLICATION

**LUCY HAMRICK POWELL and
JAMES CLEMENT POWELL,**

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

ORDER

Following the Court’s previous order, *see* Order (June 6, 2012) at 2-3, the government, in its supplemental brief, conceded that 26 U.S.C. § 7422(d) applies in determining whether tax payments were made during the two-year look-back period of 26 U.S.C. § 6511(b)(2)(B). Def.’s Supp’l Br. at 2-3. The defendant has accordingly modified its motion for a partial dismissal, and now contends that the maximum amount of any tax refund that the plaintiffs may seek concerning the 2004 tax year is \$20,952.43. *Id.* at 4-5.

The plaintiffs were given until July 3, 2012 to file a reply to the supplemental brief. On June 28, 2012, Chambers received from the plaintiffs a document styled an “Agreement to Accept Settlement Offer,” as the *pro se* plaintiffs apparently misunderstood the supplemental brief to be an offer to settle the case for the amount that the government identified as the outer bound of plaintiffs’ potential recovery for the 2004 tax year. The government was not offering to settle for that amount, however. *See* Def’s Supp’l Br. at 4 (“[P]laintiffs’ recovery for the 2004 tax year (if any) is limited to . . . \$20,952.43.”). Despite the plaintiffs’ confusion, to maintain a full record in this case the Clerk shall file the document received June 28, 2012 as a status report from the plaintiffs.

Since the plaintiffs have not demonstrated that they made any tax payments for tax year 2004 within the two years prior to the filing of their refund claim, other than the credits totaling \$20,952.43 that were identified in the government’s supplemental brief, the government’s

motion for partial dismissal is **GRANTED** as modified. The Court rules accordingly that the maximum amount of tax overpayments that may be refunded for that tax year is \$20,952.43.[†]

Plaintiffs have again moved for summary judgment, this time seeking judgment regarding their 2004 tax refund claim based on nothing more than their assertion that they overpaid taxes. *See* Pls.' Mot. for Sum. J. at 1 (ECF No. 23). Plaintiffs have not provided sufficient evidence to support entitlement to a refund and therefore their motion for summary judgment is **DENIED**.

The parties shall file a joint status report proposing a schedule for further proceedings in this case **on or by September 7, 2012**.

IT IS SO ORDERED.

s/ Victor J. Wolski

VICTOR J. WOLSKI

Judge

[†] The Court notes that there still appears to be a discrepancy between the amount the Internal Revenue Service claimed the Powells owed for tax year 2004 as of July 5, 2006, *see* Sched. 8 to Pls.' Opp'n (\$22,223.71), and the amount of subsequent overpayment credits. *See* Def.'s Ex. 2 at 3 (\$20,952.43). Since the former exceeds the latter, and taking into account the plaintiffs' *pro se* status and their check dated October 28, 2006, *see* Attach. 3 to Compl., this ruling could be revisited if the evidence ultimately shows that more than \$20,952.43 in payments were in fact made for the 2004 tax year after August 26, 2006.