In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 05-1143T
Filed: July 19, 2006

KATHLEEN C. BARKER,	)
Plaintiff,	)
v.	)
THE UNITED STATES,	)
Defendant.	)

ORDER

GRANTING MOTION TO DISMISS

Plaintiff, a pro se litigant, is suing here to recover an overpayment of her individual federal income taxes for tax year 1994 that the Internal Revenue Service ("IRS") applied as a credit against an outstanding joint income tax liability arising under a 1991 tax return she had filed with her former spouse. Defendant has moved to dismiss the complaint for lack of jurisdiction or, in the alternative, for summary judgment. For the reasons set forth below, defendant's motion to dismiss is granted.

I.

Plaintiff and her former husband, Emory Barker, filed their joint income tax return for the 1991 tax year on February 24, 1992, reporting a tax liability of $208 and claiming a refund of $1,885. The IRS initially allowed the refund but later determined that additional taxes were owing. Accordingly, on December 19, 1994, the Barkers were assessed additional taxes of $426 together with interest in the

amount of $162.18. A statutory notice advising the Barkers of this assessment and of the balance due on their account was issued on the same date.

In early 1995, plaintiff, now divorced, filed her 1994 individual income tax return showing an overpayment of $802 and claiming a refund of that amount. The IRS, however, did not issue the claimed refund. Instead, on February 27, 1995, the IRS, in accordance with the authority granted under I.R.C. § 6402(a), applied the overpayment as a credit against the Barkers' outstanding tax liability for 1991. In her complaint, plaintiff states that she contacted the IRS in 1995 to inquire about the refund claimed in her 1994 tax return and learned at that time that the IRS had applied the overpayment as a credit against the additional taxes assessed for 1991 as a result of her former husband's failure to report the unemployment income he collected in that year. The complaint goes on to say that at that time plaintiff also inquired about the procedures she might pursue to obtain her refund but was offered no assistance by the IRS.

Plaintiff did not pursue the matter further until October 22, 2004. On that date, she filed with the IRS a Form 8379 ("Injured Spouse Claim and Allocation") seeking recovery of her 1994 overpayment. The IRS, however, disallowed her claim on November 29, 2004. On appeal, the IRS affirmed its earlier decision on the ground that plaintiff had offered no basis for allowing her claim. In addition, the appeals officer noted that plaintiff's claim "cannot even be considered since the statute of limitations for filing a claim has expired."

On October 24, 2005, plaintiff filed suit in this court. In her complaint, plaintiff alleges that she has no knowledge of having signed a joint tax return for 1991, that she was unaware that Mr. Barker had received unemployment compensation during 1991, and that she never shared in the use and enjoyment of that income. The complaint further alleges that the Barkers separated in July 1991 and divorced in August 2002. On the basis of these allegations, plaintiff claims that she is entitled to relief as an "injured spouse." Specifically, she seeks an abatement of the 1991 tax liability and a refund of her 1994 tax overpayment.

II.

We begin our discussion by noting that although plaintiff's complaint seeks a refund of 1994 taxes, her grievance, at bottom, concerns the 1991 joint tax liability to which her 1994 tax overpayment was applied. Plaintiff claims that she had no knowledge of her former husband's failure to report his 1991 unemployment income and that she therefore should not be held accountable for the additional taxes

attributable to that income. In essence, then, plaintiff claims that she is entitled to relief as an innocent spouse.[1]

During the relevant time period, innocent spouse claims were governed by 26 U.S.C. § 6013(e) (1994), which provided that a spouse could be relieved of a tax liability if he or she proved, inter alia, that (i) the joint return contained a substantial understatement of tax that was attributable to grossly erroneous items of the other spouse; (ii) in signing the return, he or she did not know, and had no reason to know, of the understatement; and (iii) taking into account all of the facts and circumstances, it would be inequitable to hold him or her liable for the deficiency.[2]

The difficulty plaintiff faces in seeking to invoke the relief afforded by section 6013(e) is the lack of timeliness of her claim. I.R.C. § 6511(a) requires that a claim for credit or refund of an overpayment "be filed . . . within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later." I.R.C. § 6511(b) further states that "[n]o credit or refund

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[1] Pursuant to I.R.C. § 6013(d)(3), when a husband and wife file a joint return, their tax for that year is based on their aggregate income and their liability for that tax is joint and several. The innocent spouse provisions of I.R.C. § 6015 (discussed in more detail below) offer a mechanism for relief from this joint liability in certain circumstances. In her complaint, plaintiff incorrectly describes the relief she is seeking as falling under the injured spouse provisions of the tax law. Those provisions (Treas. Reg. § 301.6402-6(i)), however, have no relevance here. Injured spouse relief pertains to situations where the IRS attempts to use an overpayment due under a joint return of a husband and wife to offset a separate and independent liability owed to the government by one of the spouses. An injured spouse claim allows the non-indebted spouse to receive his or her share of the overpayment before the offset is made.

[2] Subsection (e) of section 6013 was repealed in 1998 at the same time I.R.C. § 6015 was enacted. I.R.C. § 6015 governs innocent spouse claims and provides three alternative avenues to obtain relief from joint liability: subsection (b), which is essentially identical to former section 6013(e); subsection (c), which allows a taxpayer who has divorced or separated to elect to have his or her tax liability calculated as if separate returns had been filed; and subsection (f), which provides relief when the "facts and circumstances" would make it inequitable to hold the spouse jointly liable. Plaintiff's claim would be governed by former section 6013(e) because the 1998 amendment applies only to liabilities arising on or after its effective date of July 22, 1998, or remaining unpaid as of that date. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3201(g)(1), 112 Stat. 685, 740 (1998). The liability here in question arose during 1991 and was fully paid by March 18, 1996.

shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) . . . unless a claim for credit or refund is filed by the taxpayer within such period." These restrictions apply to all refund claims, including claims based on the innocent spouse provisions. Yuen v. United States, 825 F.2d 244, 245 (9th Cir. 1987); Choate v. United States, 218 F.R.D. 677, 678–79 (S.D. Cal. 2003). Their application here bars relief.

Specifically, the facts of this case show that plaintiff's 1994 overpayment was applied as a credit against the Barkers' 1991 joint tax liability on February 27, 1995. The facts also show that on March 18, 1996, the IRS applied an overpayment credit from another tax year to the Barkers' 1991 tax liability. Pursuant to I.R.C. § 7422(d), each of these overpayment credits against the 1991 tax liability is deemed "to be a payment in respect of such tax liability at the time such credit is allowed." Accordingly, plaintiff had until March 18, 1998 (two years from the date of the last payment), to file a claim for refund.[3] Since plaintiff did not file her claim with the IRS until October 22, 2004, it clearly was out of time.

Plaintiff cannot overcome this lack of timeliness by pointing to the fact (alleged in her complaint) that she first contacted the IRS in 1995 to inquire about the refund of her 1994 overpayment. Although the case law recognizes that a claim for refund may be informal, i.e., the refund claim need not meet all of the requisites specified by regulation in order to be considered legally sufficient, at a minimum the taxpayer must demonstrate that through his or her dealings with the IRS, the agency was put on notice, either actually or constructively, that a refund was being sought and the grounds therefor. Mobil Corp. v. United States, 67 Fed. Cl. 708, 716 (2005). In addition, an informal claim for refund must have a documentary component—some form of writing that is probative of the intention to pursue a refund. Arch Eng'g Co. v. United States, 783 F.2d 190, 192 (Fed. Cir. 1986). Assessed against these requirements, plaintiff's alleged contact with the IRS in 1995 is insufficient to qualify as an informal claim for refund. Yuen, 825 F.2d at 245 (holding that plaintiff's verbal notice to the local IRS office that she was claiming innocent spouse relief did not constitute a valid refund claim).

Finally, we add that the time limitations imposed by I.R.C. § 6511 and plaintiff's failure to meet those limitations leave this court without jurisdiction to

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[3] Where a tax is paid after the time a return was filed (which is the case here), I.R.C. § 6511(b)(2) limits the amount of the credit or refund to the portion of the tax paid during the two years immediately preceding the filing of the claim. Thus, if plaintiff had not filed a refund claim until March 18, 1998, she would not have been able to recover the full amount of her 1994 overpayment. To recover the full amount of her 1994 overpayment, plaintiff would have had to file a refund claim by February 27, 1997 (two years from the date the initial credit was applied).

hear her refund suit. I.R.C. § 7422(a) provides that "[n]o suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or allegedly assessed or collected . . . until a claim for refund or credit has been duly filed with the Secretary . . . ." Plaintiff has not "duly filed" a claim for refund. Her suit, therefore, cannot be heard in this court. United States v. Dalm, 494 U.S. 596, 602 (1990) ("unless a claim for refund of a tax has been filed within the time limits imposed by § 6511(a), a suit for refund . . . may not be maintained in any court").

III.

For the reasons set forth above, defendant's motion to dismiss the complaint for lack of jurisdiction is granted and the Clerk is directed to enter judgment accordingly. No costs.

s/John P. Wiese
John P. Wiese
Judge