In the United States Court of Federal Claims

NOT FOR PUBLICATION
No. 04-1790T
(Filed July 25, 2006)

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*
AARON L. KATZ and *
JUDITH L. MILLER, *
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Plaintiffs, *
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v. *
*
THE UNITED STATES, *
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Defendant. *
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MEMORANDUM OPINION AND ORDER

Plaintiffs Aaron Katz and Judith Miller, a married couple acting *pro se*, have filed a claim seeking a tax refund of $10,378 for the 1999 tax year. The government has moved to dismiss the case for failure to state a claim upon which relief can be granted, under Rule 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC). The basis for the motion is that 26 U.S.C. § 6511(b)(2)(A) limits the amount of any refund to the taxes paid within a certain period of time prior to the taxpayers' filing of a request for a refund, and that the 1999 tax year payments of the plaintiffs were made earlier than this look-back window and thus cannot be refunded. The plaintiffs have countered this motion with an argument that the government should be equitably estopped from asserting this limitations period. But because the Supreme Court has clearly held that the very tax code provision in question is not subject to equitable tolling, the government's motion must be granted.

I. BACKGROUND

In April, 2000, the plaintiffs requested and received a four-month extension of time in which to file their 1999 tax return -- making the return due date August 17, 2000.[1] *See* Def.'s App. B at 4; Pls.' Opp. at 1. Plaintiffs' 1999 tax return was ultimately filed on October 30, 2000

[1] August 15 fell on a Saturday that year.

-- seventy-four days beyond the extension -- and reported a tax liability of $10,378.[2] Plaintiffs paid these taxes by applying $8,543 that had been withheld from Miller's 1999 paychecks, $5,000 that had been submitted with the extension request, and a total of $1,667 in estimated tax credits from an earlier period.[3] *See* Compl. ¶ 5; *see also* Def.'s App. B at 4, 6.

Plaintiffs allege that on or about July 9, 2003, they discovered that they may be entitled to a refund of their 1999 taxes. Compl. ¶ 10. They claim to have called the IRS help line on that date, and to have been told by an IRS employee that they must file an amended return by December 18, 2003, to be eligible for a refund of their 1999 taxes. *Id.* Plaintiffs allege that they relied upon this representation in preparing and submitting their amended return. Compl. ¶¶ 12-16.

On October 17, 2003, the IRS received and filed an amended Form 1040X in which the plaintiffs' reported taxable income for 1999 was negative $288,463. Def.'s App. B at 10. The adjustment in their income was due to the application of a net operating loss deduction omitted from the prior return.[4] Plaintiffs sought a refund of $10,378. Compl. ¶ 6; *see also* Def.'s App. B at 10 (amended return). On October 18, 2003, plaintiffs filed a refund claim with the Commissioner of the IRS. Compl. ¶ 18. The IRS denied the claim on October 30, 2003. The IRS determined that the claim was time-barred since the plaintiffs' 1999 taxes had been paid more than three years (plus the extension period) earlier than the date the claim was filed. *See* Compl. Ex. A. On December 20, 2004, plaintiffs filed a complaint in our Court, seeking a refund of their 1999 taxes. The government has moved to dismiss the complaint, under RCFC 12(b)(6), on the ground that the 1999 taxes were paid more than three years and four months prior to the filing of the amended return, and are thus no longer eligible to be refunded under 26 U.S.C. § 6511(b)(2)(A).

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[2] Plaintiffs allege that the return was filed on October 18, 2000. Compl. ¶ 4. The government, however, produced a copy of the return that bears the plaintiffs' signatures and is dated October 26, 2000. Def.'s App. B at 7. The Government also produced an IRS record showing that the return was filed by the IRS on October 30, 2000. Although the parties differ on this point, it is not material to the outcome of this matter.

[3] The combined total of these payments is $15,210, resulting in an overpayment of $4,832, which plaintiffs requested that the IRS apply to their year 2000 estimated tax. Def. Mot. at 3; Def.'s App. B at 4. The instant suit seeks a refund of the $10,378 paid for 1999.

[4] In their Complaint, plaintiffs characterize this as "a net operating loss carry back deduction pursuant to 26 U.S.C. § 172." Compl. ¶ 8. The amended return states that it was a "net operating loss carryforward." Def.'s App. B at 11.

II. DISCUSSION

A. Statute of Limitations

26 U.S.C § 6511(a) establishes the time limits for filing a tax refund claim:

> Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer *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, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

26 U.S.C. § 6511(a) (2000) (emphasis added). Since their initial return for 1999 was filed with the IRS on October 30, 2000, *see* Def.'s App. B at 4, plaintiffs have satisfied this aspect of the limitations period, having filed their amended return with thirteen days to spare. *See id.* at 10 (return stamped received on Oct. 17, 2003); *see also* Compl. Ex. A (denial of refund stating that claim was received Oct. 17, 2003).

The problem with plaintiffs' claim is the "look-back" provision of § 6511(b)(2)(A), which states in relevant part that "the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return." Thus, the plaintiffs could only recover for taxes paid during the three years, four months and two days (three years plus the time of the extension, including the automatic extension when April 15 falls on a weekend, *see* 26 U.S.C. § 7503) before they filed their refund claim, making the relevant look-back period from October 17, 2003 to June 15, 2000. In *Baral v. United States*, 528 U.S. 431 (2000), the Supreme Court interpreted 26 U.S.C. § 6513(b)(1)-(2) as requiring that taxes previously collected (via withholding or estimated tax payments) for a particular tax year are deemed paid on April 15 of the following year, when the tax return is due -- and not at a later date, such as when the return is actually filed and the taxes actually assessed. *Id.* at 435-39. Thus, plaintiffs' taxes were considered "paid" on April 15, 2000, even though they did not file their 1999 return until October 30, 2000 -- as the tax payments consisted of Miller's withholding payments and the estimated tax credits, deemed paid on April 15, 2000, and the $5,000 that plaintiffs submitted with their extension request, also on (or about) April 15, 2000. *See* Compl. ¶ 5. Plaintiffs made no payments during the look-back period, and therefore section 6511 does not allow a refund.

B. Equitable Estoppel

The section 6511 look-back period is, in effect, a window that slides forward in time until a taxpayer files his refund claim. If a taxpayer received a four-month extension, then the period is the three years and four months immediately preceding the refund claim. This window will include payments deemed made on April 15, 2000, when a refund claim is filed by August 15, 2003. A refund claim filed one month later, though, will only look back to May 15, 2000, for tax payments that are eligible to be refunded. Plaintiffs concede that by the date they filed their

refund claim, the look-back period of three years, four months (and two days) no longer contained any tax payments for the 1999 tax year. Pls.' Opp. at 2. They would have had to have filed a refund claim on or by August 17, 2003, in order for the look-back window to contain their 1999 tax payments. *Id.*

Plaintiffs assert, however, that they filed when they did in reliance upon advice from the IRS help line, which they called on July 9, 2003 -- well in advance of the August 17, 2003 effective deadline. *See* Compl. ¶¶ 10-16. Plaintiffs argue that had they been given accurate advice regarding the proper look-back period, they would have filed in time and received a refund. *Id.* They conclude that because the government allegedly gave them this incorrect advice, it should be estopped from asserting a statute of limitations defense. *Id*. at ¶ 17; *see also* Pls.' Opp. at 3-10.

Plaintiffs' claim for equitable relief relies upon *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89 (1991). In *Irwin*, the Court took the "opportunity to adopt a more general rule to govern the applicability of equitable tolling in suits against the Government." *Id*. at 95. The Supreme Court held that "the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States. *Congress, of course, may provide otherwise if it wishes to do so*." *Id*. at 95-96 (emphasis added). The Court explained that "[f]ederal courts have typically extended equitable relief only sparingly," *id*. at 96, and recognized two circumstances in which tolling is allowed: "where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." *Irwin*, 498 U.S. at 96.

Here, the plaintiffs argue that the second circumstance applies -- the inaccurate information that was allegedly provided to them by the IRS help line operator tricked them into missing the refund filing deadline. *See* Pls.' Opp. at 10-22. But even assuming that the allegations made by plaintiffs are true[5] -- that it was reasonable for plaintiffs to rely on the oral statements of an IRS employee concerning their refund filing deadline, and that the employee who gave them the wrong deadline was engaged in affirmative misconduct[6] -- the plaintiffs' claim for a refund of 1999 taxes would still be time-barred. As was mentioned above, in

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[5] When considering a motion brought under RCFC 12(b)(6), the Court accepts as true all factual allegations made by the plaintiffs and draws all reasonable inferences in a light most favorable to them. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Perez v. United States*, 156 F.3d 1366, 1370 (Fed. Cir. 1998).

[6] Although plaintiffs do not allege misconduct in their complaint, *see* Compl. ¶ 13, they argue in their opposition paper that the provision of false information amounts to misconduct, *see* Pls.' Opp. at 20-22. Given the plaintiffs' *pro se* status, the Court will treat the complaint as if misconduct were alleged. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

recognizing that equitable tolling could extend to cases brought against the government, the Supreme Court pointedly observed that Congress has the power to exempt any limitations periods from such equitable concerns. *Irwin*, 498 U.S. at 96. The Supreme Court subsequently held that in enacting section 6511, Congress did exactly that.

In *United States v. Brockamp*, 519 U.S. 347 (1997), the Supreme Court directly addressed the applicability of equitable remedies to section 6511, and unanimously determined that the statutory time limit cannot be tolled because section 6511 does not contain an implied equitable tolling provision. *Brockamp*, 519 U.S. at 348 ("Can courts toll, for nonstatutory equitable reasons, the statutory time (and related amount) limitations for filing tax refund claims set forth in § 6511 of the Internal Revenue Code of 1986? We hold that they cannot."). The Supreme Court's view of the application of equitable principles to section 6511 is clear:

> Section 6511's detail, its technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of exceptions, taken together, indicate to us that *Congress did not intend courts to read other unmentioned, open-ended, "equitable" exceptions into the statute that it wrote*. There are no counterindications. Tax law, after all, is not normally characterized by case-specific exceptions reflecting individualized equities.

Id. at 352 (emphasis added). The "substantive forms" of limitations the Supreme Court mentioned specifically included subsection (b)(2)(A). *See id.* at 351.

The plaintiff in *Brockamp* sought relief from section 6511's limitations period due to a mental disability. *Id*. at 348. The Supreme Court denied his claim, but Congress later amended the statute to specifically allow the statutory period to be tolled when a "taxpayer is unable to manage financial affairs due to disability." 26 U.S.C. § 6511(h) (2000). Plaintiffs have made no claim of disability, and while they assert that Congress's amendment of the statute helps them by demonstrating that "Congress has now incorporated a basis for equitable tolling," Pls.' Opp. at 15, the result is quite the opposite. Congress did not invite equitable tolling by adding section 6511(h); instead, it created a mechanism for statutory tolling. A court need not resort to principles of equity jurisprudence to grant relief to those who are financially disabled as defined in § 6511(h) -- such taxpayers can use the statutory text itself. *See Doe v. KPMG, LLP*, 398 F.3d 686, 689 (5th Cir. 2005) ("Because Congress prefers to provide explicit tolling exceptions to the limitations periods contained in federal tax law, by implication, it does not intend courts to invoke equitable tolling to alter the plain text of the statutes at issue.").

Rather than helping the plaintiffs, Congress' decision to amend the statute after *Brockamp* significantly weakens their argument. By amending section 6511, Congress provided for one specific set of circumstances that would toll the statute of limitations. Congress considered the issue and chose to create this -- and only this -- exception. Congress could have used more general language, but it chose not to. By using technical language and listing specific exceptions -- such as the one contained in § 6511(h) -- Congress precluded the existence of unenumerated equitable exceptions. *Brockamp*, 519 U.S. at 352.

Plaintiffs attempt to distinguish *Brockamp* by arguing that the decision involved equitable tolling, whereas they are raising an issue of equitable estoppel. Pls.' Opp. at 10-14. But the plaintiffs are asking this Court to equitably estop the Government from asserting a statute of limitations defense -- regardless of the label they place on the request, it amounts to equitably tolling a statute of limitations. The Federal Circuit has already definitively addressed this issue in *RHI Holdings, Inc. v. United States*, 142 F.3d 1459, 1462 (Fed. Cir. 1998) (explaining that "if there is no implied equitable exception in the statute of limitations, then regardless of the facts presented, there can be no equitable tolling or estoppel"). The Circuit rejected any distinctions between estoppel and tolling, "since *Irwin* described one instance of allowing equitable tolling as 'where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass.'" *Id.* at 1461 (quoting *Irwin*, 498 U.S. at 96).

Because the Supreme Court in *Brockamp* explicitly held that section 6511 does not permit equitable tolling, it is not necessary to determine the validity of plaintiffs' argument that they reasonably relied upon the advice of the IRS help line. *RHI Holdings, Inc.*, 142 F.3d at 1463 ("[S]ince there clearly is no equitable exception in the statute, it is not necessary to decide if equitable estoppel would be enforced against the United States if an equitable exception were found in a tax refund statute of limitations."). Even if plaintiffs did rely to their detriment on advice from the IRS help line, and even if such reliance were reasonable, the statute simply does not allow this Court to grant the equitable relief plaintiffs seek. *See Brockamp*, 519 U.S. at 348.

III. CONCLUSION

In order to obtain a refund of their 1999 taxes, plaintiffs needed to file their refund claim by August 17, 2003. They missed this deadline by two months, and thus their 1999 tax payments fell outside the look-back window created by 26 U.S.C. § 6511(b)(2)(A). Because their claim is barred by the statute of limitations, they have failed to state a claim upon which relief can be granted. For the foregoing reasons, defendant's motion to dismiss is hereby **GRANTED**. The Clerk is directed to enter judgment in favor of the United States.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Judge