

## **An Underdog Prevails: Chaka Fattah, Jr., the IRS and Unauthorized Disclosure of Return Information.**

*Pro se* litigants face special challenges. Proper handling of litigation is complicated, even more so for someone that is unfamiliar with the process. And if the substantive law is technical and complex, the *pro se* litigant's position is even weaker.

Last week, a prominent local *pro se* litigant had a big win against a tough adversary-the federal government. Chaka Fattah, Jr., the son of the Congressman and the target of a pending federal indictment, scored a solid victory in a civil case he brought against the IRS. *Fattah v. United States*, 2014 U.S. Dist. LEXIS 120021 (E.D. Pa. Aug. 27, 2014).

The case arose out of a visit to Fattah's apartment by two IRS agents early one morning in February 2012. The agents were there to serve subpoenas on the custodian of records for two companies that Fattah ran. *Id.*, slip op. at \*3. While the IRS agents were on the premises they asked him if he had made payments towards his tax liabilities for prior years. Later that morning, another group of federal agents showed up at his office.

Subsequently, pictures of federal agents at Fattah's residence and removing evidence from his office appeared in the press. *The Philadelphia Inquirer* published a story indicating that Fattah was the subject of a federal search and quoting an IRS spokesman who indicated that IRS criminal investigators had been at Fattah's apartment. Ultimately, Fattah filed suit, proceeding *in forma pauperis* and without an attorney. Last week's decision came on the government's motion to dismiss Fattah's amended complaint, which contained three different types of tax claims.

First, Fattah had a claim for unlawful collection activity under Section 7433 of the Code, in which he asserted that the IRS had violated Section 6304's fair collection standards by coming to his home at 6:30 a.m. and by ignoring the fact that he had appointed a representative by power of attorney. The district court dismissed these claims, concluding that the mere fact that agents had questioned Fattah about his tax liabilities didn't convert an investigation into collection activity. *Fattah*, 2014 U.S. Dist. LEXIS 120021, slip op. at \*15.

Second, Fattah had a claim under Section 7431 of the Code for improper disclosure of return information in violation of Section 6103. This claim rested on the inference that someone from the government must have tipped off the press about the search warrants, as there was no other reason for press photographers to appear on his doorstep. Fattah also challenged the propriety of the statement by the IRS spokesman disclosing that IRS criminal investigators had been to visit him. The government fought hard, arguing that Fattah's claims were time-barred. The Court, however, found that Fattah's claims under 7431 were valid at least against the United States and the IRS because the allegations of his amended complaint related back to the date when he made his initial *in forma pauperis* application. *Fattah*, 2014 U.S. Dist. LEXIS 120021, slip op. at \*19-\*20. On the merits, the court concluded that disclosure that a taxpayer is involved in a criminal IRS investigation is sufficient to state a claim for improper disclosure of return information, following prior rulings from the 5th and 9th Circuits. The court also held that Fattah's allegation that reporters had been tipped off was also factually sufficient. *Id.*, slip op. at \*30-\*32.

Third, Fattah had a claim for the refund of penalties paid for prior years. The government sought summary judgment arguing that Fattah had filed suit less than six months after making an administrative claim and that no formal rejection of the claim had occurred. While this would normally suffice to trigger a dismissal for failure to exhaust administrative remedies under Section 7422 of the Code, the government nonetheless lost. Fattah asserted that he had been advised by phone that his request for a refund had been denied and that an IRS appeals official told him he could not pursue an internal appeal. *Id.*, slip op. at \*40-\*41. The court concluded that Fattah's statement, which was corroborated by his phone records, sufficed to create a fact issue, particularly in light of the failure of the government to offer countervailing evidence. *Id.*, slip op. at \*41.

Jim Malone is a tax attorney in Philadelphia; he focuses his practice on federal, state and local tax controversies. © 2014, MALONE LLC.