

## Tax Cases Can Be Tricky.

Suing the federal government isn't easy; after all it generally enjoys sovereign immunity. And pursuing a tax case is harder due to the length and complexity of the Internal Revenue Code, which has a variety of traps that can snare even capable lawyers.

A recent case illustrates the point: the plaintiff, Ms. McGinley held a property that was subject to a federal tax lien due to liabilities of her former husband. To resolve that situation, the plaintiff negotiated an arrangement in which she paid the IRS an agreed amount out of the proceeds in exchange for a certificate of discharge of the tax lien. The plaintiff then filed an administrative appeal, but the appeals officer said he could not provide any relief and suggested the filing of a refund claim. Taking the appeals officer at his word, the plaintiff filed a refund claim with the IRS and, one year later, filed a civil action for a tax refund in the District of New Jersey. Her case was dismissed for lack of subject matter jurisdiction because of the federal government's sovereign immunity. *McGinley v. United States*, 2013 U.S. Dist. LEXIS 140167 (D.N.J. Sept. 27, 2013).

Ms. McGinley had several problems:

- Although she relied upon a Supreme Court case, *United States v. Williams*, 514 U.S. 527 (1995), to support her right to a refund, the district judge followed the weight of authority and held that a refund was no longer available because Congress had supplied an exclusive remedy for a property owner in her circumstances, the substitution of value under Section 6325(b)(4). 2013 U.S. Dist. LEXIS 140167, slip op. at \*13-\*14.
- In addition, Ms. McGinley had erred in seeking a certificate of discharge, applying under Section 6325(b)(2) of the Code (providing for a certificate of discharge in situations where the government is paid for the value of its interest in the property). As the court noted, there is no judicial review in that situation because there is no waiver of sovereign immunity; Section 7426(a) only waives sovereign immunity for a civil action when the certificate is issued under Section 6325(b)(4). 2013 U.S. Dist. LEXIS 140167, slip op. at \*17-\*18.
- While the government submitted a declaration indicating that the discharge had been pursuant to Section 6325(b)(4), which would authorize judicial review, that concession did not help: Section 7426(a) of the Code provides that a civil action must be brought within 120 days of the certificate of discharge to challenge the determination of the government's interest in the property that was subject to the tax lien. Since Ms. McGinley pursued a refund claim, her potential claim under Section 7426(a) was time-barred by the time she filed suit. 2013 U.S. Dist. LEXIS 140167, slip op. at \*19.
- Ms. McGinley was left to argue estoppel, which is always an uphill fight. The court concluded that estoppel was not established as she failed to show how any alleged misrepresentation prevented her from pursuing her statutory remedy. *Id.* at \*22-\*23. For good measure, the court also noted that there were issues about the reasonableness of her reliance. *Id.* at \*23-\*24.

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