Think Before You Sue: Bad Planning Leads to Bad Results.

When taxpayers have a dispute with the federal government concerning the appropriate amount of income tax due, they have a broad array of choices. Assuming that the case involves a notice of deficiency, the taxpayer can file a petition for tax court review; alternatively, the taxpayer can pay the disputed tax and file suit for a refund in either district court or the Court of Federal Claims.

Selecting the appropriate forum should involve careful thought and planning, but cases arise where the taxpayer appears not to have thought the issue through carefully. Recently, the Court of Federal Claims addressed a refund claim brought by a taxpayer that could not make up its mind and pursued overlapping cases in tax court, district court and the Court of Federal Claims. It didn't end well for the taxpayer. *Cheesecake Factory v. United States*, 2013 U.S. Claims LEXIS 769 (Fed. Cl. July 3, 2013).

The case involved refund claims for interest and late payment penalties assessed for tax year 2005. These claims were carved out of a broader case that the taxpayer had pursued in the Central District of California and were expressly saved by the terms of the parties' settlement agreement when that district court case was resolved. Nonetheless, when the taxpayer filed suit to recoup the interest and penalties, it lost because it had previously filed a tax court petition for the 2005 tax year.

The Court of Federal Claims dismissed the taxpayer's complaint for lack of subject matter jurisdiction. The ruling was based upon a straight-forward application of Section 6512(a) of the Internal Revenue Code, which imposes strict limits on parallel actions relating to issues that are before the tax court. As the court noted, a petition filed with the tax court gives it jurisdiction over all issues relevant to the tax year at issue, including overpayments. *Cheesecake Factory*, 2013 U.S. Claims LEXIS 769, slip op. at *16-*19. The Court specifically noted that the tax court's jurisdiction is broad enough to reach failure to pay penalties and other additions to tax even if they are not subject to deficiency procedures. *Id.*, slip op. at *21 (citing *Judge v. Comm'r*, 88 T.C. 1175 (1988)). Since the tax court case was resolved through a stipulated judgment that did not address the penalties, the taxpayer was simply out of luck.

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