

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 31 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TERESA PALOMARES, AKA Teresa
Garcia,

Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent-Appellee.

No. 15-70659

Tax Ct. No. 2301-13

MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Argued and Submitted May 19, 2017
Seattle, Washington

Before: HAWKINS, GOULD, and PAEZ, Circuit Judges.

Teresa Palomares appeals the U.S. Tax Court’s decision sustaining the Commissioner of Internal Revenue’s (the “Commissioner”) determination that Palomares was entitled to only partial relief from the Commissioner’s application of overpayments to her joint and several tax liability from her 1996 return. We have jurisdiction under 26 U.S.C. § 7482(a)(1). We reverse.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Palomares seeks innocent-spouse relief from her joint and several liability for an unpaid 1996 joint return filed by her then-husband. In July 2008, a volunteer attorney helped Palomares file a Form 8379—which requests injured-spouse relief—rather than a Form 8857—which requests innocent-spouse relief. This was a mistake. By the time Palomares corrected this mistake years later by filing a Form 8857, the statute of limitations to request refunds for her 2006 and 2007 overpayments had expired. *See* 26 U.S.C. § 6511(a). Palomares nonetheless argues that her Form 8379 was an “informal claim” for innocent-spouse relief and, as a result, the time between her filing the Form 8379 and Form 8857 should be tolled. We agree.

The informal claim doctrine permits a taxpayer to avoid the limitations of Section 6511(a) if the taxpayer filed a written refund request that was “sufficient to apprise the Service that a refund is being claimed,” and “specifies the tax and the year or years for which the refund is being sought sufficiently so that the Service can investigate the claim.” Michael I. Saltzman, *IRS Prac. & Proc.* ¶ 11.08(2); *see United States v. Kales*, 314 U.S. 186, 194 (1941). We conclude that Palomares’s Form 8379 fairly apprised the Commissioner that Palomares was seeking innocent-spouse relief from her 1996 liability for two reasons. First, the Commissioner had been crediting Palomares’s tax overpayments—which were associated with returns she filed separately—to liability on the 1996 return that she filed jointly. The only

form of relief that made any sense under these circumstances was innocent-spouse relief. Second, in responding to Palomares's Form 8379, the Commissioner informed Palomares that to request innocent-spouse relief, she should file a Form 8857, not a Form 8379.

Based on the evidence presented to the Tax Court, the equities clearly weigh in favor of granting Palomares relief under the informal claim doctrine. Palomares spoke little to no English during the relevant period. She was the subject of domestic abuse. She was not responsible for the deficient 1996 payment. And her improper filing of the Form 8379 was the result of incorrect advice from a volunteer attorney. Because Palomares's Form 8379 sufficiently gave notice to the Commissioner that Palomares was seeking a refund on the ground that she was an innocent spouse, and the equities clearly weigh in her favor, the Tax Court should have granted Palomares relief by letting her Form 8379 toll the limitations period until the Form 8857 was filed.

The Commissioner notes that Palomares's Form 8379 indicated that she was seeking a refund on her 2007 overpayment but was silent as to her 2006 return. Nonetheless, whether Palomares put the IRS on notice as to her 2006 return is a "highly fact intensive" inquiry that lacks "hard and fast rules," and should focus on "all the surrounding circumstances" and the "claim as a whole." *See Kaffenberger v. United States*, 314 F.3d 944, 955 (8th Cir. 2003) (internal quotation marks and

citations omitted). Here, once the IRS received Palomares's Form 8379 and proceeded to review her 2007 request, it was on notice that Palomares's liability stemmed from the 1996 underpayment, and that the IRS had been crediting her overpayments against this liability since 2006. There can be no serious question that the IRS was on notice of her 2006 overpayment as well.

On remand, the Tax Court shall order the Commissioner to grant Palomares a refund for her 2006 and 2007 tax year overpayments.

REVERSED

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:

<http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf>.

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

v. 9th Cir. No.

The Clerk is requested to tax the following costs against:

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED <i>(Each Column Must Be Completed)</i>				ALLOWED <i>(To Be Completed by the Clerk)</i>				
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	
Excerpt of Record	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
Opening Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
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Other**	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
TOTAL:				\$ <input type="text"/>	TOTAL:				\$ <input type="text"/>

* *Costs per page:* May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other:* Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page

Form 10. Bill of Costs - Continued

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By: , Deputy Clerk