JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**2:15-CV-06004-RGK-AGR**	Date	December 2, 2016
Title	***Howard L. Baldwin and Karen Baldwin v. United States***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Sharon L. Williams	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Opinion & Order re Bench Trial**

I. INTRODUCTION

On August 7, 2015, Howard and Karen Baldwin ("Plaintiffs") filed an action against the United States of America ("the Government" or "Defendant"). The Complaint seeks the refund of income taxes wrongfully denied to Plaintiffs by the Internal Revenue Service ("IRS").

This case was tried to the Court without a jury on November 11, 2016. Oral testimony and documentary exhibits were introduced, and after arguments the Court took the case under submission. For the following reasons **the Court enters judgment in favor of Plaintiffs**.

II. JUDICIAL STANDARD

"In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately." Fed. R. Civ. P. 52.

"In tax-refund suits generally, the taxpayer bears the burden of establishing the right to a refund." *Heger v. United States*, 103 Fed. Cl. 261, 265 (2012) (internal quotation marks omitted). "Th[e] burden is a burden of persuasion; it requires [Plaintiff] to show the merits of his claim by at least a preponderance of the evidence." *Rockwell v. C. I. R.*, 512 F.2d 882, 885 (9th Cir. 1975).

III. FINDINGS OF FACT

The Court finds the following facts were proven at trial by a preponderance of the evidence:

On October 24, 2006, the IRS received Plaintiffs' individual income tax return form and payment of the full $170,951 in liability for the tax year 2005 ("2005 Return"). For tax year 2007, Plaintiffs requested and were granted an extension of time to file their return until October 15, 2008. On November 1, 2010, the IRS received Plaintiffs' individual income tax return form for tax year 2007

("2007 Return"), indicating a net operating loss for that year. Plaintiffs then prepared an amended individual income tax return ("Amended Return") on a Form 1040X, claiming the 2007 net operating loss ("NOL") as a carry back deduction for the tax year 2005 and a refund in the amount of $167,663.

Plaintiffs had sufficient losses from Baldwin Entertainment Group LTD included on their 2007 Return to entitle them to a refund in the amount of $167,663 when carried back to tax year 2005. Plaintiffs also had sufficient tax basis in Baldwin Entertainment Group LTD to deduct losses on their 2007 Return that would allow for a refund in the amount of $167,663 when carried back to tax year 2005.

On June 21, 2011, Plaintiffs' assistant, Ryan Wuerfel, mailed the Amended Return to the IRS via regular mail at the Hartford post office. The Amended Return was mailed in a green and white envelope, which was addressed to the IRS service center in Andover, MA. The Amended Return would have arrived at the IRS service center in the ordinary course well before the October 15, 2011 deadline. While the IRS Form 1040X instructions indicated that the Amended Return should have been sent to the service center in Kansas City, MO, the Andover service center would have forwarded the Amended Return to Kansas City in the ordinary course of operations. IRS records do not reflect that the Amended Return was ever received by either service center, but the IRS offers no affirmative evidence calling into question that the Amended Return was mailed by Plaintiffs on June 21, 2011. Plaintiffs' evidence that the Amended Return was indeed mailed on that date was credible.

When Plaintiffs later inquired about the status of their refund claim, the IRS looked into the matter. The IRS never asked Plaintiffs for documentation to support their claim for refund during the administrative consideration of their claim, and at no time during the process did the IRS challenge the validity of the claim for refund. The IRS ultimately denied Plaintiffs' refund claim on August 12, 2013, however, because they contended that the claim had not been timely filed.

IV. CONCLUSIONS OF LAW

Based on the findings of fact above, the Court makes the following conclusions of law:

A. Subject Matter Jurisdiction

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1346(a)(1) because, as discussed below, Plaintiffs (a) fully paid the tax before filing suit for refund, (b) timely filed an administrative claim for refund with the IRS, and (c) filed this suit for refund less than two years from the date the IRS denied their administrative claim.

B. The Mailbox Rule Applies and Plaintiffs Are Entitled To a Presumption of Delivery

The Ninth Circuit has held that Congress' enactment of a statutory mailbox rule in the tax context at 26 U.S.C. § 7502(c) "did not displace the common law presumption of delivery" associated with the common law mailbox rule. *Anderson v. United States*, 966 F.2d 487, 491 (9th Cir. 1992). When Congress enacted § 7502(c), it intended to alleviate the hardship of postal service malfunctions by giving taxpayers a means to *conclusively* establish the IRS' receipt of a return with proof of certified or registered mail. While the statute made the proof of certified or registered mail sufficient evidence to *conclusively* establish receipt of the return, there is no indication that it intended to foreclose other evidentiary means that might assist in establishing a presumption of delivery. Therefore, the Court concludes that the common law mailbox rule is still operative in this context.

The common law mailbox rule states that "proper and timely mailing of a document raises a rebuttable presumption that it is received by the addressee." *Id.* citing *Rosenthal v. Walker*, 111 U.S.

185, 193–94 (1884).

The Ninth Circuit in *Anderson* held that an individual was entitled to a presumption of delivery when "she actually saw the postal clerk stamp her document." The Court finds that Plaintiffs are similarly entitled to a presumption of delivery because Plaintiffs' assistant Ryan Wuerfel mailed the Amended Return at the Hartford post office on June 21, 2011. The Government failed to rebut this presumption, and the Court finds Plaintiffs' evidence that the Amended Return was mailed to be credible. *See Anderson*, 966 F.2d at 491 ("The district court's conclusion that the government failed to rebut the presumption of delivery was, in essence, a credibility determination.").

C. That The Amended Return Was Initially Mailed To The Andover, MA Service Center Is Not Fatal To Plaintiffs' Claims

The Internal Revenue Code "provides that no suit for a refund may be maintained in any court until a claim for a refund has been filed with the Secretary of the Treasury in accordance with Treasury Regulations. *Quarty v. United States*, 170 F.3d 961, 972 (9th Cir. 1999). Treasury Regulation § 301.6402-2(a)(2) currently provides that a claim for refund must be made in accordance with IRS Form 1040X's instructions. Between 2005 and 2010, however, Form 1040X's instructions changed regarding where an amended return should be mailed. The 2010 version of the 1040X—in effect at the time Plaintiffs mailed their amended return—instructed Plaintiffs to "mail Form 1040X and attachments to" the IRS service center in Kansas City, MO. As the Court noted above, however, Plaintiffs mailed their Form 1040X to the service center in Andover, MA, where they had filed their original 2005 and 2007 returns.

The Government contends that this technical defect is fatal to their claim for refund. The Court concludes, however, that Form 1040X's instructions regarding where to mail refund requests were not written as strict requirements. The 1040X instructions do not use "must" or "shall" when indicating the service center where the refund claim should be mailed. Rather, the instructions simply indicate the service center where such claims will be processed. The fact that the IRS routinely forwards incorrectly addressed refund claims as a matter of course also suggests that the IRS does not consider an address problem to be fatal to a refund claim.

Further, Treasury regulations in effect at the time Plaintiffs filed their Amended Return conflicted with the operative 1040X instructions regarding where to send refund claims. At the time, Treasury Regulation § 301.6402-2(a)(2) indicated that "a claim for credit or refund must be filed with the service center serving the internal revenue district in which the tax was paid." (Background to T.D. 9727, 26 C.F.R. Part 301, Pl.'s Request for Judicial Notice, Ex. A.) In Plaintiffs' case, that would have been the service center in Andover, MA.

The Court concludes that by mailing their Amended Return to the service center in Andover, MA, where it would have been forwarded as a matter of course to the service center in Kansas City, MO, Plaintiffs properly made a claim for refund in accordance with the operative Treasury regulations and Form 1040X's instructions. The Court holds that the 2010 Form 1040X instructions, coupled with the Treasury regulations then in effect, simply required that a taxpayer mail his amended return in such a way that it would, as a matter of course, be delivered to the proper service center to handle the claim within the statutory period.

The Court therefore finds that Plaintiffs have met the requirements of 28 U.S.C. § 1346, and have further demonstrated that they are entitled to a tax refund of $167,663.

V. EVIDENTIARY OBJECTIONS

To the extent the parties object to any evidence upon which the Court relied, the Court overrules those objections.

VI. CONCLUSION

In light of the foregoing, the Court finds that **Howard and Karen Baldwin are the prevailing parties** in this action.

The Court **ORDERS** Plaintiffs to submit to the Court a proposed judgment consistent with this Order within 2 days of the filing of this Order.

IT IS SO ORDERED.

_____ : _____

Initials of Preparer _____