

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5629

JACK CRAVEN d/b/a CRAVEN TRUCK CENTER,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court for the
Western District of Texas
SA 91 CV 907

(June 14, 1993)

Before JOHNSON, JOLLY, and JONES, Circuit Judges.

PER CURIAM:*

Jack Craven d/b/a Craven Truck Center appeals the district court's grant of summary judgment in favor of the government, which dismissed his suit for a refund of overpaid excise taxes. Craven claims he made an "informal" request for refund by deducting the alleged overpaid amount from his tax liability and by including a note with his return stating that the credit was for "overpayment in previous quarters." Holding that Craven did not make an

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

"informal" request for refund, the district court granted the government's motion to dismiss for lack of subject matter jurisdiction, pursuant to Internal Revenue Code section 7422. After due consideration, we affirm the judgment of the district court.

I

Jack Craven operates a retail store, Craven Truck Center, in Gonzales, Texas, at which he sells diesel fuel. The sale of diesel fuel is subject to a per gallon federal diesel excise tax, and Craven (as the taxpayer) filed quarterly federal excise tax returns on diesel sales from 1983-1987. On January 27, 1988, Craven filed an excise tax return for the last quarter of 1987. On line 6 of that form, which is labelled "[o]verpayment from previous quarter," Craven wrote the figure \$6,246.13. In an attached note, he explained that the figure stated on line 6 was a "credit taken...for overpayment in previous quarters of the Federal Excise tax on diesel fuel." He did not specify the quarters in which he overpaid the taxes. Craven offset the \$6,246.13 against his reported liability for the last quarter of 1987, \$6,077.70, and carried forward the remaining \$168.43 "credit."

On September 8, 1989, Craven filed four amended excise tax returns for the last two quarters of 1985 and the first two quarters of 1986, claiming refunds for each of those quarters. On December 14, 1989, the IRS issued a notice of disallowance to

Craven disallowing the four refund claims because they were "untimely filed."

On August 30, 1991, Craven filed the instant suit for refund.¹ He claims that he overpaid excise taxes for each quarter between January 1983 and June 1987, with the exception of the quarter ending September 30, 1986,² resulting in a total overpayment of \$6,206.44. Accordingly, Craven seeks a refund of \$6,206.44.³

The government filed a motion to dismiss the suit for lack of subject matter jurisdiction. Section 7422 of the Internal Revenue Code requires a taxpayer to file a timely claim for refund before he files a refund suit. The government argued that the amended

¹Proper Internal Revenue Code procedures state that in order to bring a claim for refund in federal district court, the taxpayer must pay the assessment in full, file a claim for refund of the amount paid, and if the claim is not acted upon within six months, he may bring a timely suit for refund in the appropriate district court or in the claims court. 26 U.S.C. §§6511, 6532, 7422; Flora v United States, 362 U. S. 145, 146 (1960). Nowhere in the record or briefs filed in this case is it stated that Craven followed these procedures and paid the assessment against him in full. We assume, however, that Craven did in fact make this payment, because if he did not, he of course would have no claim for refund.

²Craven alleges that he underpaid that quarter's excise taxes in the amount of \$37.05. His total alleged overpayment reflects a deduction of this amount.

³In his complaint, Craven sought a refund of \$6,206.44 and stated that he had entered that amount on his return for the fourth quarter of 1987. The actual figure entered on the return, however, was \$6,246.13. According to the government's brief, this discrepancy is not explained in the record. The magistrate judge stated in his order that he believed that the \$6,246.13 figure included an overpayment from the third quarter of 1987 that Craven did not include in the complaint.

excise tax returns for the last two quarters of 1985, and the first two quarters of 1986 were not filed within three years of the filing of the returns in question or within two years of the relevant payments, as is required by IRC section 6511(a). The government further argued that the excise tax return Craven filed for the last quarter of 1987, on which he claimed the "overpayment" on line 6 for \$6,246.13, did not constitute either a formal or informal refund claim with respect to any of the quarters at issue. Craven argued that the return he filed for the last quarter of 1987 constituted a refund claim, either formal or informal, for all quarters at issue, and thus he had made a timely claim.

After converting the motion to dismiss to a motion for summary judgment, the district court held that it lacked jurisdiction to hear Craven's suit. The court found that, although the amended excise tax returns constituted formal claims for refund, they were not timely filed pursuant to section 6511(a). The court further held that Craven's return for the last quarter of 1987 did not constitute either a formal or an informal refund claim for any of the quarters at issue. Accordingly, the court granted judgment in favor of the government and dismissed Craven's suit with prejudice.

Craven appeals, and he argues only that his 1987 fourth quarter excise tax return in combination with subsequent communications with the IRS constituted an informal claim for refund. Thus, he argues that the district court erred in granting summary judgment based on want of jurisdiction.

II

We review the district court's grant of summary judgment de novo. The district court granted summary judgment after finding that because Craven failed to comply with the statutory prerequisites of filing a timely claim for refund, the court was without subject matter jurisdiction.

"Taxpayer suits for refunds are governed, in part, by the principles of sovereign immunity." Mallette Bros. Const. Co., Inc. v. U.S., 695 F.2d 145, 155 (5th Cir. 1983). When the United States has not consented to suit, the court lacks jurisdiction over the subject matter of the suit and dismissal of the action is required. United States v. Dalm, 494 U.S. 596, 608, rehearing denied, 495 U.S. 941 (1990). The United States may condition its consent as it deems appropriate and may insist upon compliance with those conditions. Soriano v. United States, 352 U.S. 270, 276 (1957). This consent is strictly construed, and the burden is on the taxpayer to demonstrate compliance with the terms of the statute under which the United States consented to be sued. Hummel v. Townsend, 883 F.2d 367, 369 (5th Cir. 1989).

The United States has consented to be sued for tax refunds, but only when the taxpayer follows the conditions set forth in section 7422(a) of the Internal Revenue Code. Mallette Bros., 695 F.2d at 155. Section 7422(a) provides:

No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected,

or of any penalty claimed to have been collected without authority,...until a claim for refund or credit has been duly filed with the Secretary, according to...law...and the regulations of the Secretary established in pursuance thereof.

Correspondingly, Treasury Regulation Section 301.6402-2(b)(1) provides:

No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. The statement of grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit.

Pursuant to these provisions, it has long been established that the filing of a timely claim for refund is a jurisdictional prerequisite to the filing of suit for refund. Dalm, 494 U.S. at 602.

Section 6511(a) of the Code prescribes the general time limits for filing a claim for refund:

Claim for credit or refund of an overpayment of any tax imposed by this title...shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later....

Sections 7422 and 6511 must be strictly construed because the statutory terms of consent define the court's jurisdiction. Dalm, 494 U.S. at 608; Gustin v. U.S. I.R.S., 876 F.2d 485, 488 (5th Cir. 1989); Zernial v. U.S., 714 F.2d 431, 434 (5th Cir. 1983). Thus,

a taxpayer who files an administrative claim for refund outside the applicable time period is ordinarily barred from pursuing a refund suit in a district court regardless of the substantive merits of his claim.

The informal claim doctrine allows the commissioner to waive the requirements of the Treasury Regulations governing claims for refund. Although the doctrine allows recognition of claims that are not in technical compliance with the prescribed forms, such claims must nonetheless meet certain requirements of clarity and specificity in content. Kales, 314 U.S. at 194-97; Bauer v. U.S., 594 F.2d 44, 46 (5th Cir. 1979); Stoller v. United States, 444 F.2d 1391, 1393 (5th Cir. 1971). For the taxpayer successfully to bring a refund suit on the basis of an informal claim, there should be some evidence of a waiver by the IRS of the formal requirements set forth in the Treasury Regulations, such as evidence that the IRS accepted and treated the informal claim as a claim for refund, notwithstanding the deficiencies. Angelus Milling Co. v. Commissioner, 325 U.S. 293, 296-98 (1945), rehearing denied, 325 U.S. 895 (1945); see also Kales, 314 U.S. at 194-97; Tobin v. Tomlinson, 310 F.2d 648, 651-52 (5th Cir. 1962), cert. denied, 375 U.S. 929 (1963).

The underlying purpose of section 7422 and its corresponding regulations is to assist in the administrative handling of claims for refund and to avoid the necessity of filing a civil action on the claim. Dahlgren v. U.S., 553 F.2d 434, 441 (5th Cir. 1977);

Stoller, 444 F.2d at 1393. An informal claim must be in writing or have a written component to insure adequate notice and provide a focal point for examination of the dispute. An informal claim "should adequately apprise the Internal Revenue Service that a refund is sought and for certain years." American Radiator & Standard Sanitary Corp. v. United States, 318 F.2d 915, 920 (Ct. Cl. 1963); see also Gustin v. United States, 876 F.2d 485, 488 (5th Cir. 1989). A written claim is required because many different people may work on a particular case, and the fact that a refund has been claimed must be ascertainable from the file. Gustin, 876 F.2d at 488. "Therefore, the Internal Revenue Service need only take a written claim for a refund at face value." Gustin, 876 F.2d at 488; see also Alabama By-Products Corp. v. Patterson, 258 F.2d 892, 900 (5th Cir. 1958), cert. denied, 358 U.S. 930 (1959). It is not enough that the IRS has information from which it could decide that the taxpayer is entitled to, or might desire, a refund; a refund claim cannot be established by imputing such knowledge to the IRS. See Gustin, 876 F.2d at 488. "[T]he fact that a refund has been claimed must be ascertainable from the file." Gustin, 876 F.2d at 488.

In Stoller, this court rejected an informal claim where the taxpayers "failed to specify the nature of their claim" and "failed to allege any facts to support it." Stoller, 444 F.2d at 1393. "The Commissioner should not be left to his own devices in order to discover the precise nature of a taxpayer's claim and thus be

placed in a position of having to hazard a guess." Id. In Brown v. United States, 890 F.2d 1329 (5th Cir. 1989), this court held that "[a]bsent a waiver by the Government, a taxpayer is barred from raising in a refund suit grounds for recovery not clearly and specifically set forth in its claim for a refund." Brown, 890 F.2d at 1346.

III

On appeal, Craven's only argument is that the excise tax return he filed for the last quarter of 1987, along with an explanatory note, constitute an informal claim for refund of the overpayments of excise taxes that he alleges he made. He cites the Gustin case for the proposition that in determining whether a writing is sufficient to constitute an informal claim for refund, each case must be decided on its own particular set of facts, and that the writing should not be given a crabbed or literal meaning. Gustin, 876 F.2d at 488-489.

Unfortunately, given the authority we have cited above, Craven's excise tax return and the accompanying note in no way constitute an informal refund claim with respect to any of the quarters at issue: they simply are not sufficiently specific to apprise the commissioner that a refund is being sought.⁴ With Craven's bare-bones notations, a reviewing agent would first have

⁴The note states that it serves "to explain the credit taken in Part II, line 6 of Form 720. The credit taken is for overpayment in previous quarters of the Federal Excise tax on diesel fuel."

to determine whether the IRS had indeed previously determined that Craven was entitled to a refund, and then, after ascertaining that it had not, make an extensive inquiry to determine in what amounts and for which quarters Craven was claiming a refund, and why he thought he was entitled to one. The documents do not state the specific quarters at issue or the specific amounts at issue with respect to each quarter. Even if the writings were sufficient to put the government on notice that a refund was being claimed, a reviewing agent would have no idea of where to begin investigating whether a refund was in fact due.

Craven also asserts that he relied on the fact that the IRS treated his excise tax return as a claim for refund. He cites no evidence, however, to support this assertion. In fact, the IRS's actions indicate that it did not recognize Craven's tax return as an informal request for refund. This claim has no merit.

In sum, Craven's actions do not satisfy the statutory or jurisprudential requirements for an informal refund claim. In fact, the law in this area seems to have developed to prevent exactly the type of claim that this case presents. As we have set out above, our authorities require that a taxpayer must do more than Craven has done to successfully claim that he has informally requested a refund from the IRS.

IV

The district court was correct in dismissing Craven's claim for a refund for overpayment of excise taxes for lack of

jurisdiction. Craven did not satisfy the minimal requirements for filing a refund claim, either formal or informal, and thus did not meet the jurisdictional prerequisite to the filing of a suit for refund. Thus, the district court's judgment is

A F F I R M E D.