

Snatching Defeat from the Jaws of Victory: How Procedural Errors Can Trump Statutory Rights.

The importance of procedure cannot be overstated. A taxpayer's errors can result in the loss of relief to which she would be entitled as a matter of law. A recent case from the Eastern District of Pennsylvania illustrates the point nicely. *Slutter v. United States*, 2012 U.S. Dist. LEXIS 169339 (E.D. Pa. Nov. 29, 2012).

The plaintiff, Deborah Slutter, had sought to resolve back tax liabilities through an offer in compromise, and she made a deposit of \$20,000 in August of 2007. Under the Internal Revenue Code, the IRS is supposed to return that deposit if it does not accept the offer. I.R.C. § 7908(b). This requirement is confirmed by regulation as well. In Ms. Slutter's case, however, the IRS rejected her offer in November 2007 and kept the money. The Code authorizes a claim against the United States if an IRS employee, acting recklessly, intentionally, or negligently, ignores a provision of the Code or a Treasury Regulation. Since the IRS kept her deposit in violation of provisions of both the Code and the regulations, the case looked like a slam dunk. It was anything but.

First, Ms. Slutter filed a case in district court; predictably, this was dismissed for failure to exhaust administrative remedies, as a taxpayer must first make an administrative claim with the IRS before filing suit. I.R.C. § 7433(d)(1); *see also* Treas. Reg. § 301.7433-1(d). In 2010, Ms. Slutter sent an administrative claim for relief to the IRS appeals unit, which ultimately denied her claim in September 2010. Ms. Slutter then attempted to reinstate her prior action, but that request was denied.

So Ms. Slutter re-filed her case, and it was dismissed again on the basis of the statute of limitations. As the district court explained, claims under Section 7433 of the Code must be filed in district court within two years of the time that the claim accrues. *Slutter v. United States*, 2012 U.S. Dist. LEXIS 169339 at *11 (E.D. Pa. Nov. 29, 2012) (citing Treas. Reg. § 301-7433-1(g)(1)). In this context, a claim accrues "when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action." *Id.* (citing Treas. Reg. § 301-7433-1(g)(2)).

In Ms. Slutter's case, the Court held that the letter denying her offer in compromise in November 2007 started the limitations period running and that her 2010 administrative claim and subsequent district court case were both untimely. *Id.* at *12-*13. Her efforts to assert that the limitations period should be tolled by the filing of her prior action were rejected, as was her argument that equitable tolling should be applied. *Id.* at *13-*22.

The result: a case that should have been a slam dunk for the taxpayer became one for the government because of the taxpayer's missteps on procedural issues.

Jim Malone is a tax lawyer in Philadelphia. © 2012, MALONE LLC.