

REFUND LITIGATION: THINK BEFORE YOU SUE...YOUR CHOICE OF FORUM MATTERS

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[Pfizer, Inc. v. United States](#)



District courts and the Court of Federal Claims have concurrent jurisdiction over tax refund actions. Specifically, their jurisdiction reaches the following types of claims:

- A civil action to recover “any internal-revenue tax alleged to have been erroneously or illegally assessed or collected”;
- A civil action to recover “any penalty claimed to have been collected without authority”; or
- A civil action to recover “any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.”

28 U.S.C. § 1346(a)(1). Section 1346(a)(1) also serves as a waiver of sovereign immunity by the United States.

On May 12, 2017, the United States District Court for the Southern District of New York issued an opinion dismissing a refund action brought by Pfizer, Inc. which was seeking to recover overpayment interest. [Pfizer, Inc. v. United States](#), No. 16-civ-1870 (LGS), 2017 U.S. Dist. LEXIS 72999 (S.D.N.Y. May 12, 2017) (“*Pfizer II*”). Previously, the court had denied a motion to dismiss the case. [Pfizer, Inc. v. United States](#), No. 16-civ-1870 (LGS), 2016 U.S. Dist. LEXIS 153241 (S.D.N.Y. Oct. 31, 2016) (“*Pfizer I*”).

The taxpayer filed a timely consolidated tax return for the 2008 tax year on September 15, 2009; the return reflected an overpayment of \$769,665,651. *Pfizer I*, 2016 U.S. Dist. LEXIS 153241 at *2. Pfizer requested that \$269,665,651 be applied to its 2009 estimated tax liability and that the balance be refunded. *Id.* Although refund checks were to be issued, the taxpayer never received them. Then on March 19, 2010, the IRS made a direct deposit of \$499,528,499 to Pfizer’s bank account; the payment was made without any interest. *Id.* at *3.

On March 13, 2013, Pfizer made a claim for refund, requesting allowable interest on its tax refund under section 6611 of the Internal Revenue Code, which the IRS denied. *Id.* When Pfizer subsequently filed suit, the United States moved to dismiss for lack of subject matter jurisdiction. In response, Pfizer argued that the district court had jurisdiction over its overpayment income because the interest it sought to recover fell within the court’s jurisdiction over an action seeking to recover “any sum alleged to have been excessive

or in any manner wrongfully collected under the internal-revenue laws.” 28 U.S.C. § 1346(a)(1). The district court was persuaded, and it denied the government’s motion to dismiss. *Pfizer I*, 2016 U.S. Dist. LEXIS 153241 at *4-*9.

The United States then filed a second motion to dismiss for lack of subject matter jurisdiction, this time arguing that Pfizer had failed to file within the applicable statute of limitations. *Pfizer II*, 2017 U.S. Dist. LEXIS 72999 at *1. Turning Pfizer’s argument that the overpayment interest fell within the court’s jurisdiction against it, the government asserted that Pfizer’s claim for overpayment interest was subject to the normal refund statute of limitations under section 6532(a)(1) of the Code, which requires that any refund action be filed within two years of the denial of the claim.

The district court agreed. It noted that Pfizer’s argument that the court had jurisdiction over its claim for overpayment interest as a “sum alleged to have been excessive or in any manner wrongfully collected” was now the law of the case. *Id.* at *4. The court next observed that refund actions must meet two statutory requirements: First, the taxpayer must make an administrative claim under section 7422(a) of the Code, and, second, the taxpayer must file suit within two years of the denial of the claim, as required by section 6532(a)(1). *Id.* at *4-*5. Since Pfizer’s administrative claim was denied on May 10, 2013, its complaint, filed on March 11, 2016, was time-barred. *Id.* at *5-*6. Pfizer sought to argue that its claim for overpayment interest was subject to a six-year limitations period, but the district court was unpersuaded as the cases cited by Pfizer “were not commenced in a district court pursuant to § 1346(a)(1).” *Id.* at *6.

Having argued that the district court had jurisdiction under 28 U.S.C. § 1346(a)(1), Pfizer was bound to comply with the limitations period associated with refund actions in district court. This result appears sound and was a predictable outcome given the court’s denial of the initial motion in *Pfizer I*. In contrast, if Pfizer had filed suit in the Court of Federal Claims under the Tucker Act, 28 U.S.C. § 1491(a)(1), its claim would have been subject to a six-year statute of limitations. See *Four Star Oil & Gas Co. v United States*, 49 Fed. Cl. 755, 760 (Fed. Cl. 2001).



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