

Informal Refund Claims: a Potential Fix for Taxpayer Errors.

Generally, a taxpayer who wants to obtain a refund from the IRS should either file an amended return or a Form 843. If the refund is not granted within six months, the taxpayer is free to file a suit in district court or the Court of Federal Claims; alternatively, the taxpayer can wait for the IRS to act on the claim and then file suit within two years of its denial. *See* I.R.C. § 6502(a)(1).

While courts strictly enforce the requirement that a taxpayer make an administrative claim, they traditionally have shown some flexibility in determining what is a sufficient refund claim. The rationale is straight forward: the Treasury cannot waive the congressional mandate that a claim be filed, but it can waive its own formal requirements over the content of the claim. *See Kikalos v. United States*, 479 F.3d 522, 525 (7th Cir. 2007) (citing *Angelus Milling Co. v. Comm’r*, 325 U.S. 293, 296 (1945)). Thus courts have shown a willingness to accept an “informal” refund claim in circumstances where “1) the IRS has sufficient knowledge of the claim, and 2) makes a determination on the merits or leads the taxpayer to believe that the IRS treated the claim as formally sufficient.” *Id.* (citations omitted). And where an informal claim is made within the relevant limitations period, a taxpayer can supplement his claim after the limitations date to provide additional details. *Id.* at 526.

This doctrine has limits, however, as illustrated by a recent case from the District of Massachusetts. In *Burlington Forty-Niners, Inc. v. United States*, 2012 U.S. Dist. LEXIS 183226 (D. Mass. Dec. 28, 2012), the taxpayer had applied for tax-exempt status as a social club in 2008, which was granted by the IRS in 2009 retroactively to its incorporation. 2012 U.S. Dist. LEXIS 183226 at *1-*2. Before applying, the taxpayer had realized a taxable gain in 2004, and its officers had discussions with IRS employees about applying for tax-exempt status. One officer also attended a meeting with IRS personnel in 2005 in which he observed an IRS employee typing notes into a computer. After it was awarded tax-exempt status in 2009, the social club filed an amended return, seeking a refund on the basis of its tax-exempt status. *Id.* at 2. The claim was disallowed, leading the social club to file suit.

The government filed a motion to dismiss the taxpayer’s complaint based upon the social club’s failure to file a timely administrative claim for a refund. In response, the taxpayer argued that it had made an informal claim, but the district court rejected that position, concluding that an informal claim had to have at least some written component and that the written component had to be generated by the taxpayer. *Id.* at *4-*6. Since the taxpayer could not meet these requirements, its refund suit was dismissed. It is worth noting, however, that there is at least some authority to support the idea that a document created by IRS personnel can satisfy the written component requirement. *See New England Elec. Sys. v. United States*, 32 Fed. Cl. 636, 643-44 (1995) (collecting cases).

At the end of the day, the informal claim doctrine is a useful tool for cases in which clients have mishandled their refund claims. Before relying upon the doctrine, however, a careful canvas of the case law is in order, and in many cases, it may be wiser to amend the client’s administrative claim.

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