IN CASE YOU MISSED IT – September/October 2026

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Almost every day, federal and state courts issue opinions that affect taxpayers. The IRS and state taxing authorities also publish guidance on myriad topics. Each month, this column will review a selection of recent court cases or guidance that tax professionals should know about when advising their clients and preparing tax returns. For more extensive detail on any of these items, please feel free to reach out to the author.

Karp

The taxpayers were a retired couple with numerous passive investments that generated income. For many years, they used the same tax-return preparer and routinely overpaid their taxes, electing to apply each overpayment to the following tax year rather than requesting a refund.

They routinely requested an extension on Form 4868 before filing Form 1040. For at least 2014, 2015, and 2016, they eventually filed their returns at least twelve months after the extended due date. For the 2016 tax year, they filed on October 15, 2020, the last day on which they could file a return and ask that the overpayment be applied to later years, measured three years from the extended due date.

The 2016 return was submitted by mail and, because of the Covid-19 backlog, apparently sat in an IRS warehouse for months before it was opened and processed. The IRS initially denied the refund claim as untimely because it marked the return as received in April 2021. The disallowance letter stated that the "received date on your return is Apr. 02, 2021" and that "[t]he last day to file a timely claim or return for tax year 2016 was Oct. 15, 2020." But the taxpayers were smart enough to preserve the mailing evidence: a certified mail receipt and green return receipt card showing that the return had been mailed on October 15, 2020, the very deadline identified in the IRS letter.

Unfortunately, the IRS ignored the proof of mailing documentation provided by the taxpayers for almost two years, forcing them to bring a refund suit in June 2023. In the refund litigation, the government attorney acknowledged that the taxpayers had mailed their return on October 15,

2020, but then challenged the validity of the taxpayers' 2016 extension request, which had been timely submitted in April 2017.

While the parties were in the midst of discovery, the IRS mailed the taxpayers a refund check for $154,720.45 and credited the remainder of the requested 2016 overpayment to the taxpayers' 2022 tax liability. The taxpayers moved to dismiss their refund claim, but the government brought a counterclaim demanding that the refund be returned and instructed the IRS to reverse the credit that had been applied to 2022.

Eventually, the parties filed cross-motions for summary judgment. No facts were in dispute. The legal issue turned solely on the validity of the extension request filed on Form 4868.

Under the Internal Revenue Code, a taxpayer must file a refund claim with the IRS before bringing a refund suit. IRC section 6511 provides that for a claim to be timely, it must be filed within three years from the date the return was filed or two years from the date the tax was paid, whichever period expires later. IRC section 6511(b)(2)(A) also limits the refundable amount to taxes paid within a lookback period equal to three years plus any valid extension of time for filing the return. The validity of the taxpayers' 2016 extension therefore mattered because it determined whether the lookback period reached back only three years to October 15, 2017, or three years and six months to April 15, 2017. The taxpayers' overpayments and estimated payments were deemed paid on April 15, 2017, so if the extension were invalid, no amounts would have been paid within the three year lookback period and the refund claim would be meaningless.

Treasury regulations allow taxpayers to receive an automatic six-month extension of time to file their income tax returns, although the extension does not extend the time to pay tax. Traditionally, an extension is requested on IRS Form 4868, which is what the taxpayers filed for 2016. The form asks taxpayers to estimate total tax liability, list total payments already made, calculate any balance due, and state the amount being paid with the extension request. The taxpayers' return preparer submitted a Form 4868 reporting estimated total tax liability of $0, total payments of $511,788, a balance due of $0, and no additional payment being made with the extension in April 2017.

The instructions provided with Form 4868, which are virtually never given to a taxpayer by a return preparer, say that taxpayers should estimate their total tax liability as accurately as possible based on the information available to the taxpayer at that time, and warn that if the IRS later finds the estimate unreasonable, the extension may be treated as null and void.

When the taxpayers finally filed their 2016 tax return on October 15, 2020, it showed a tax liability of $131,201 and a tax overpayment of $336,558 that they requested be credited to the following tax year, 2017.

The government argued that because the taxpayers listed $0 on the line for total tax liability on the Form 4868, their estimate was unreasonable and their extension was invalid since their eventually-filed Form 1040 showed a tax liability of $131,201.

The court correctly rejected this argument. Every case in this area, dating back to Irving Berlin's 1932 Berlin v. Commissioner, 59 F.2d 996 (2d Cir. 1932) case, involved a taxpayer who made an incorrect estimate of tax on the extension request and then owed additional tax when the return was eventually filed. In those cases, the taxpayers disputed whether they should be liable for late-filing penalties if the extension was held to be invalid. The government could not identify any case in which the issue was whether a taxpayer was entitled to a refund when an extension request understated estimated tax liability but full payment of tax had already been made.

The Form 4868 filed by the taxpayers in this case showed no net tax liability rather than reporting their gross tax liability, but that reflected the belief of both the taxpayers and their return preparer that prior overpayments and estimated payments would fully cover the 2016 liability. That belief was correct, as the eventually filed Form 1040 showed. Their payments as of April 15, 2017 greatly exceeded their actual gross tax liability. The court found that the mistake on Form 4868 did not result in an underpayment or delay the government's receipt of money owed. The IRS already had enough money in the taxpayers' account to cover the 2016 tax liability. The error was simply technical rather than substantive.

All of the cases relied on by the government predated changes to the regulations and to Form 4868. On earlier versions of the form, the warning about making a proper estimate appeared directly before the relevant line and was printed in large italics. By 1995, the warning that once appeared in prominent italic type on the face of Form 4868 had been relegated to tiny print on page 3 of the instructions. Older versions of Form 4868 also required the taxpayer to sign under penalties of perjury that the numbers on the one-page form were correct. In 2008, Treasury revised Treas. Reg. § 1.6081-4 to remove the signature requirement, explaining: "Because the extension is automatic, these taxpayers do not need to sign the extension request or provide an explanation of the reasons for requesting an extension. Simplifying, consolidating, and standardizing extension forms will reduce taxpayer burden."

Today, Forms 4868 are routinely prepared and submitted by tax-return preparers without taxpayers ever seeing them. There have apparently been no court cases considering this issue for tax years after the above-described changes went into effect. That absence is unlikely to mean that taxpayers have become uniformly more accurate in completing the forms; it more likely reflects the IRS's practical acceptance that substantial compliance in filing the form is sufficient. Note how in this case the IRS issued taxpayers their requested refund after timely filing was established.

In addition, after 2014, the Internal Revenue Service moved even further away from requiring strict compliance with Treas. Reg. § 1.6081-4. There are now three alternative methods to obtain an extension until October 15 to file an individual income tax return:

1) Pay online and check the box —Pay what you owe using an online payment option and check the box that you are paying as part of filing for an extension. You don't have to file a separate extension form and you'll receive a confirmation number of your extension for your records.
2) Use Free File (no income limit for extensions)—Use IRS Free File to electronically request an automatic tax-filing extension.
3) Request an extension by mail—File Form 4868, Application for Automatic Extension of Time to File US Individual Income Tax Return. You can file by mail, online with an IRS e-filing partner, or through a tax professional. Estimate how much tax you owe for the year on the extension form subtract the taxes you already paid for the filing year.

Although Form 4868 remains one method for obtaining an automatic extension, the online-payment option does not require a taxpayer to estimate annual tax liability so long as the taxpayer's liability is fully covered by payments and credits. That is exactly what happened with the taxpayers' 2016 return. The government argued that the taxpayers chose to use Form 4868 and therefore were stuck with their choice and were required to make an estimate, but that argument missed the point. Because the Internal Revenue Service permits taxpayers to obtain extensions through alternatives that do not require all of the information requested on Form 4868, the form's informational requirements must be procedural rather than essential. If the IRS considered strict compliance with Form 4868 essential, it would not invite taxpayers to obtain the same extension by simply paying online and checking a box.

Taxpayers knew they had paid far more in taxes over the prior few years than they had owed. They had paid hundreds of thousands of dollars in excess of their highest tax liability for the five years preceding 2016. They therefore knew, in every practical sense, that they would owe nothing when their 2016 return was eventually filed. Under any reading of the statute, they made a bona fide and reasonable estimate of their tax liability as zero. And even if that estimate was not reasonable, an estimate is no longer mandatory to obtain an automatic extension.

The government also argued that the taxpayers could not rely on the 2015 overpayment to support their 2016 extension request because the taxpayers' 2015 return had not yet been filed at the time the Form 4868 was submitted for 2016. The court disagreed. Once the taxpayers filed their 2015 return and elected to carry the overpayment to 2016, the payment was deemed made for 2016 as of April 15, 2017 under IRC section 6513(b)(2) even if their 2015 return was not filed until well after that date. The court found it reasonable for the taxpayers to account for that expected carryover when filing the 2016 extension request because they knew how much they had paid in for 2014 and 2015 even if they had not yet filed the tax returns for those years claiming the overpayments.

Ultimately, the court held that the taxpayers' 2016 Form 4868 was valid and therefore the October 15, 2020 return and refund claim were timely. The court granted the taxpayers' cross-motion for summary judgment and denied the government's motion for summary judgment.

Takeaway

This case emphasizes how a good faith effort overcame technical requirements, but it might be useful for tax professionals to have their clients simply use the online method to request an extension so that the reasonable estimate requirement does not even come into play.

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