For Whom Is the Statute Tolled? May the Doctrine of Equitable Tolling Be Applied to Income Tax Refund Cases?

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Case at a Glance

What happens when a taxpayer pays income tax while mentally incapacitated and the time limit for filing a refund claim also expires while the taxpayer is incapacitated? In this case, the Supreme Court is asked to determine if a taxpayer's mental incompetence suspends the running of the statute of limitations for filing a refund claim.

For Whom Is the Statute Tolled? May the Doctrine of Equitable Tolling Be Applied to Income Tax Refund Cases?

by Jay E. Grenig

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Statutes of limitations require those claiming injuries redressable under the law to file their claims within a given period of time or lose the right to redress. The obvious purpose of statutes of limitations is to prevent stale claims and to prevent prejudice to defendants who, solely through the passage of time, may be unable to establish otherwise valid defenses.

What happens, however, when an injured person is unable to assert legal rights for reasons beyond his or her control? Addressing that possibility, the law has fashioned the doctrine of equitable tolling through which certain circumstances such as an individual's mental or physical incapacity or other good reason may toll — that is, suspend — the running of a limitation period. The doctrine focuses on the personal inability of an injured individual to exercise the rights involved, rather than on another's conduct that allegedly prevented the individual from exercising those rights.

At issue in this case is whether the doctrine of equitable tolling applies to suspend the statutory period for filing a claim for an income tax refund. Without equitable tolling, the applicable limitation period for income-tax refund claims is three years from the date the return was filed or two years from the date the tax was paid, whichever is later. If no return was filed, the limitation period is two years from the date the tax was paid. 26 U.S.C. § 6511(a) (1994).

Issue

Does the doctrine of equitable tolling apply to claims for income tax refunds?

Facts

This case consolidates two cases from the Ninth Circuit — *Brockamp v. United States*, 67 F.3d 260 (9th Cir. 1995), and *Scott v. United States*, 70 F.3d 120 (9th Cir. 1995) (table disposition). In each case, a taxpayer made income tax payments to the Internal Revenue Service (the "IRS") while incapaci-

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tated, and the statute of limitations for filing a refund claim expired while the taxpayer was still incapacitated.

In the *Brockamp* case, Marian Brockamp is the administrator and sole beneficiary of the estate of her father, Stanley McGill. In 1984 Stanley McGill, who was 93 years old at the time and manifesting classic symptoms of senile dementia, mailed a check to the IRS for $7,000 along with an application for an automatic extension of time to file his 1983 income tax return. No return was ever filed. (According to Marian Brockamp, her father routinely wrote checks for amounts far in excess of the bill being paid. For example, a bill for $100 was paid with a check for $1,000.)

Stanley McGill died in 1988 at the age of 98. During the administration of his estate, Brockamp discovered the $7,000 payment and requested a refund. In a letter to the IRS, she characterized her father as senile and stated that he had mistakenly sent the IRS a check for $7,000, rather than $700. On March 27, 1991, Brockamp filed a tax return for her father's 1983 tax liability. The IRS assessed $427 in taxes for that year but refused the refund request on the ground that the time period for filing a refund claim had expired.

Two years later, Brockamp filed suit against the United States in federal district court seeking the return of the money paid by her father. She argued that the check was not subject to the time limitation of Section 6511(a) because it was a deposit, not a tax payment. Brockamp also argued that even if the $7,000 was a tax payment, her refund claim on behalf of her father's estate was not barred because the limitation period imposed by Section 6511(a) was equitably tolled as a result of McGill's mental incompetence.

The district court rejected both of the arguments advanced by Brockamp, concluding that the $7,000 was a tax payment. The district court next ruled that the doctrine of equitable tolling never applies to tax refund cases and, therefore, that the refund claim was barred by the statute of limitations. 859 F. Supp. 1283 (C.D. Cal. 1994).

Brockamp appealed to the Ninth Circuit which reversed, ruling that the doctrine of equitable tolling applies in the context of an income-tax refund claim. In particular, the court noted that "it would be unconscionable to allow the government to retain money that it concedes it was not owed, and may have only received due to a 93-year-old man's senility." 67 F.3d at 263.

In the *Scott* case, Nicholas Scott's father, acting under a power of attorney, made installment payments totaling $30,096 to the IRS for Scott's estimated income tax liability for 1984. In 1989, Scott filed an income tax return for the 1984 tax year and also filed a refund claim for the 1984 tax year. The IRS denied the claim, asserting that the limitation period for claiming the refund had expired. Scott then filed suit against the United States in federal district court seeking to recover an overpayment of federal income taxes for the 1984 tax year.

Scott contended that equitable tolling principles prevented his refund claim from being time-barred. According to Scott, from the time his 1984 tax return was due to the time he actually filed the return, he suffered from severe alcoholism which caused him to be mentally incompetent and incapable of filing a tax return.

The district court held that Scott's alcoholism was sufficiently severe to cause him to be mentally incompetent so that the statute of limitations for filing an income-tax refund action was tolled. 847 F. Supp. 1499 (D. Haw. 1993). In an unpublished opinion, the Ninth Circuit affirmed.

The Ninth Circuit's holding that the doctrine of equitable tolling applies in the income tax context is now before the Supreme Court which granted the Government's petition for a writ of certiorari. 116 S. Ct. 1875 (1996).

Case Analysis

The United States asserts that the equitable tolling doctrine does not apply to overcome the limitations periods set forth in Section 6511(a). In support of its position, the Government places considerable reliance on the Supreme Court's decision in *United States v. Dalm,* 494 U.S. 596 (1990) (suit for refund that does not come within the time limits of Section 6511 may not proceed), 7 ***Aba Preview*** 228 (Feb. 16, 1990). According to the United States, Congress did not intend the detailed limitations provisions it enacted to be disregarded on equitable grounds.

The United States also argues that tax refund statutes do more than merely limit the time for commencing a lawsuit; they expressly and unequivocally prohibit the payment of claims that have not been filed within the defined statutory periods. 26 U.S.C. § 6511(b). In particular, the United States points out that any refund made after the applicable limitation period has expired is deemed erroneous and is void as a matter of law. *See* 26 U.S.C. § 6514(a).

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The Government goes on to argue that Congress has enacted substantive limits on refund amounts, limits that are tied directly to the limitations periods set out in Section 6511(a). Reference here is to Section 6511(b), 26 U.S.C. § 6511(b), which limits the amount of any refund to taxes actually paid within three years of filing a tax return; if no return was filed, the amount of any refund is limited to taxes actually paid within the two-year period immediately preceding the filing of a claim.

Asserting that Section 6511(b) imposes substantive, rather than procedural, limitations on tax refunds, the United States contends that the requirements of Section 6511(b) are not subject to modification under the doctrine of equitable tolling. In other words, according to the Government, even if the limitations periods established by Section 6511(a) were subject to equitable tolling, the taxpayers in these two cases still would get nothing because neither taxpayer paid any income taxes within either the two-year or the three-year period immediately preceding the filing of their respective refund claims. Brockamp filed a return and a refund claim on behalf of her deceased father in 1991, while no income taxes were paid in the three-year period immediately preceding the filing of the claim. Scott filed his claim for refund in 1989, while no income taxes were paid in the three-year period immediately before the claim was filed.

The taxpayers contend that the legislative history of tax refund litigation supports a conclusion that Congress intended equitable tolling to apply to refund suits. They rely on *Irwin v. Department of Veterans Affairs,* 498 U.S. 89 (1990), 1 ***ABA Preview*** 5 (Sept. 28, 1990), a Supreme Court case decided shortly after the *Dalm* case on which the United States relies. In *Irwin,* the Court held that equitable tolling should apply against the United States as a defendant just as it does against a private defendant. (*Irwin,* however, was not a tax case, as the Government repeatedly notes in its argument in this case.)

According to the taxpayers, the structure of Section 6511 is such that, if the limitations periods in Section 6511(a) are amenable to tolling, the refund periods in Section 6511(b) should be tolled for the same length of time. Pointing out that Section 6511(b) incorporates by reference the claim-filing periods of Section 6511(a), the taxpayers assert that the refund periods of Section 6511(b) were not intended to be absolute bars but were intended to make the time period for filing a refund claim coextensive with the period that the IRS has to assess a tax against the taxpayer. In the event that the period for filing a refund claim is tolled, the taxpayers concede that the period the IRS has for assessing additional tax should be tolled for a commensurate period.

Significance

It has been held that the equitable tolling doctrine is read into every federal statute of limitations, and the decision to apply the doctrine lies solely within the sound discretion of the court. *Holmberg v. Armbrecht,* 327 U.S. 392 (1946). And as noted above, the Supreme Court in *Irwin* held that "the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States." 498 U.S. at 95-96. Under *Irwin,* a court assesses legislative intent to determine if the statutory limitation period at issue is subject to the doctrine of equitable tolling.

A year after *Irwin,* the Court rejected equitable tolling for suits under federal securities laws. *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson,* 501 U.S. 350 (1991), 7 ***ABA Preview*** 238 (March 19, 1991). It is important to note, however, that securities-law statutes of limitations generally begin to run only after discovery of a wrong, which, in essence, is a species of equitable tolling.

There is a split among the circuit courts of appeals as to the application of the doctrine of equitable tolling to tax refund actions. On the one hand is the Ninth Circuit which held in these two cases that the doctrine applies to income-tax refund claims. On the other hand, the First, Fourth, and Eleventh Circuits have held that equitable tolling principles do not apply. *Oropallo v. United States,* 994 F.2d 25 (1st Cir. 1993); *Webb v. United States,* 66 F.3d 691 (4th Cir. 1995); and *Vintilla v. United States,* 931 F.2d 1444 (11th Cir. 1991).

In *Webb,* for example, the Fourth Circuit determined that there is a critical distinction between tax refund suits and most other actions against the United States. Pointing to the Court's language in *Irwin* regarding the application of equitable tolling against the Government in the same way that it applies in private suits, the Fourth Circuit noted that tax suits cannot be brought against private litigants, and they are not even comparable to such suits. Accordingly, the Fourth Circuit held that the presumption announced in *Irwin* cannot apply to suits for tax refunds.

A decision by the Supreme Court that Section 6511(a) is subject to the doctrine of equitable tolling could affect a wide range of timeliness provisions in the Internal Revenue Code. Of course, even if the doctrine of equitable tolling applies to Section 6511(a), a taxpayer still would need to prove that his or her particular situation satisfies the narrow grounds for equitable tolling in order to proceed to the merits of a claim.

Where the taxpayer meets the requirements for equitable tolling, the statutory limitation period is halted and any refund claim filed within a reasonable period of time would be timely under Section 6511(a) and timely under all other statutory limitation periods that incorporate Section 6511(a) by reference. If a taxpayer is unable to invoke the doctrine of equitable tolling, he or she will be bound by the statutory periods.

ATTORNEYS OF THE PARTIES

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