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Ninth Circuit adopts primary purpose test for determining whether attorney-client privilege applies to dual-purpose communications

In ***In re Grand Jury***, the Ninth Circuit ruled that communications relating to taxes between a company and its law firm were not protected by the attorney-client privilege because the communications were not made for the primary purpose of obtaining legal advice.[1]

Factual background

In a criminal investigation, a grand jury issued subpoenas to a "Company" and "Law Firm" (names not disclosed). The Company and Law Firm refused to produce all the documents subpoenaed on the grounds that certain communications were protected by the attorney-client privilege and work-product doctrine. The government moved to compel production. The district court concluded the communications were not privileged and ordered the Company and Law Firm to produce them. The Company and Law Firm appealed to the Ninth Circuit.

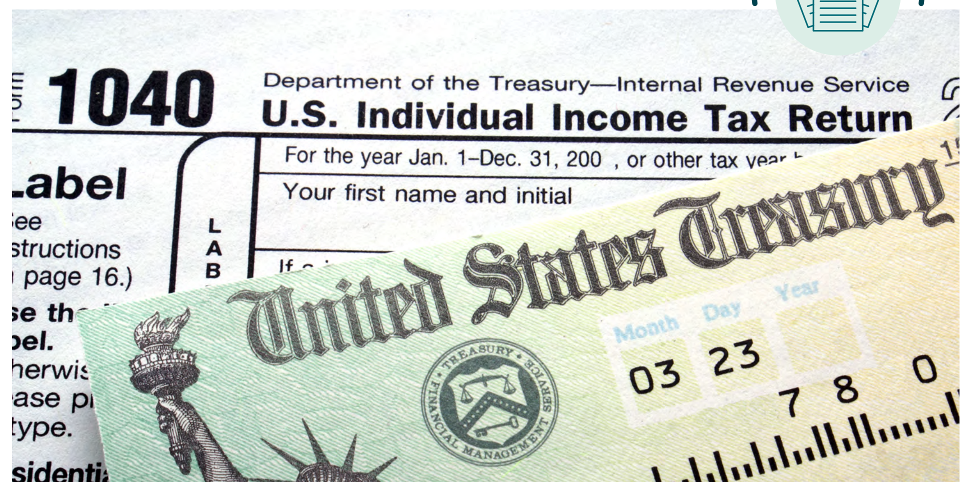
Background

The attorney-client privilege protects confidential communications between attorney and clients if the communication is made for the purpose of obtaining or giving legal advice.[2] Although communications about the preparation of a tax return are not covered by the privilege, legal advice to a client about what to claim on a tax return may be privileged.[3] The Internal Revenue Code has adopted a similar

client-accountant privilege that applies in parallel instances when a client is requesting advice from an accountant on federal tax matters, with some limited exceptions.[4]

Frequently, a communication will have more than one purpose; that is, an attorney's communication may "integrally involve" both legal and non-legal analysis. These communications are referred to as dual-purpose communications.

Courts have developed two tests for determining whether a dual-purpose communication is protected from disclosure: (1) primary purpose test and (2) "because of" test. Under the primary purpose test, a communication is protected if the primary purpose of the communication is "to give or receive legal advice, as opposed to business or tax advice."[5] In the context of the attorney-client privilege, the "because of" test asks "whether a dual-purpose communication was made because of the need to give or receive legal advice."[6] The "because of" test is broader than the primary purpose test because it requires only a "casual connection" and not a primary reason.[7] Before *In re Grand Jury*, the Ninth Circuit had not ruled which test it would apply.



Analysis

In *In re Grand Jury*, the Ninth Circuit adopted the primary purpose test for determining whether a dual-purpose communication was protected by the attorney-client privilege.[8] The court relied on the common law interpretation of the attorney-client privilege, which states that privilege applies "only to communications made 'for the purpose of facilitating the rendition of professional legal services.'"[9]

The Ninth Circuit rejected the Company and Law Firm's argument that the court should apply the same test it applies for determining whether the work-product doctrine applies to the dual-purpose documents. The work-product doctrine protects documents from discovery if they are prepared in anticipation of litigation by a party. The doctrine "preserves a zone of privacy in which a lawyer can prepare and develop legal theories and strategy with an eye toward litigation, free from unnecessary instruction by his adversaries."[10] In the context of the work-product doctrine, the "because of" test protects a document if, considering the totality of the circumstances, "it can fairly be said that the document was created because of anticipated litigation, and would not have been created in substantially similar form but for the prospect of litigation."[11]

The Ninth Circuit noted that although the attorney-client privilege and work-product doctrine are often cited together, the two doctrines are animated by different policy goals and therefore, it makes sense to have different tests.[12] The work product doctrine upholds the fairness of the adversarial process by allowing litigators to develop theories and strategies without their adversaries prying into the litigators' minds.[13] By contrast, the attorney-client privilege serves to provide a sanctuary for candid communications about any legal matter.[14] The Ninth Circuit concluded that applying the broader "because of" test to attorney-client privilege may harm the adversarial process by withholding key documents as privileged.[15]

The Company and Law Firm alternatively argued that the Ninth Circuit should embrace "*a* primary purpose" test instead of "*the* primary purpose test." The Company and Law Firm relied on the D.C. Circuit Court of Appeals opinion in *In re Kellogg Brown & Root, Inc.*[16] In that case, the D.C. Circuit used a modified version of the primary purpose test: "Was obtaining or providing legal advice a primary purpose of the communication, meaning one of the significant purposes of the communication?"[17]

Ninth Circuit left open whether it would adopt the D.C. Circuit's "a primary purpose" test. The Ninth Circuit acknowledged the reasoning behind the D.C. Circuit's position ("trying to find the one primary purpose for a communication motivated by two sometimes overlapping purposes (one legal and one business, for example) can be an inherently impossible task").[18] However, the Ninth Circuit said it did not need to decide whether to apply the "a primary purpose" test because the Company and Law Firm did not establish that *the* or even *a* primary purpose of the communications was to obtain legal advice.[19]

Eleventh Circuit rules taxpayer cannot raise penalty defense argument because it was not included in his refund claim and it was a partnership-level defense

In *Ginsburg v. United States*, a partner in a TEFRA partnership asserted he was not liable for a penalty because the penalty was not approved by a supervisor.[20] The Eleventh Circuit ruled the partner could not raise such argument because (1) he did not raise it in his administrative refund claim and (2) under the TEFRA rules, it was a partnership-level defense that could not be raised in a partner-level proceeding.

Background

Partnership-level proceeding

In 2008, the IRS questioned the validity of a partnership in which plaintiff Alan Ginsburg was a partner. The partnership was subject to the procedural rules under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The IRS issued proposed adjustments disregarding the partnership, disallowing losses allocated to its partners, and imposing a gross valuation misstatement penalty.

In a partnership-level proceeding, Mr. Ginsburg petitioned the US Tax Court disputing the IRS's determination that the partnership was a sham, the disallowance of losses allocated to partners, and the gross valuation misstatement penalty. During the Tax Court proceeding, Mr. Ginsburg conceded that the partnership's transactions did not have substantial economic effect and he was not at risk for the partnership's losses. Accordingly, the Tax Court upheld the IRS's disallowance of losses allocated to partners. However, Mr. Ginsburg continued to contest the gross valuation misstatement penalty. The Tax Court concluded that the penalty applied to any underpayment of tax attributable to any gross valuation misstatement, subject to partner-level defenses.

Partner-level proceeding

Subsequently, Mr. Ginsburg paid the resulting tax deficiency, the penalty, and interest. He then filed a refund claim for the penalty on the grounds that he reasonably relied on the advice of tax advisers. The IRS denied his refund claim, and Mr. Ginsburg sued for a refund in district court.

During the district court proceeding, Mr. Ginsburg argued, for the first time, that the penalty was invalid because the IRS did comply with Section 6751(b)(1). Under Section 6751(b), the IRS cannot assess a penalty "unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination."

The government argued that Mr. Ginsburg could not raise the Section 6751(b) supervisory approval argument because (1) he had not raised this defense in his administrative refund and (2) it was a partnership-level issue that could not be considered in a partner-level proceeding. The district court agreed with the government and did not consider Mr. Ginsburg's supervisory approval argument. Because it found Mr. Ginsburg did not and could not have reasonably relied on his advisers, the district court upheld the gross valuation misstatement penalty. Mr. Ginsburg appealed to the Eleventh Circuit.

Analysis

For the reasons discussed below, the Eleventh Circuit affirmed the district court's ruling that Mr. Ginsburg could not raise his supervisory approval argument.

Refund claim

A taxpayer cannot sue the United States for a refund of taxes paid unless he first files a valid refund claim with the IRS.[21] A refund claim is valid only if it sets "forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the [IRS] of the exact basis thereof."[22] Under Section 7422's exhaustion requirement, courts lack jurisdiction over the taxpayer's allegations that were not presented to the IRS in an administrative refund claim.

Mr. Ginsburg's administrative refund claim did not include his supervisory approval argument. However, Mr. Ginsburg argued he did not need to raise the argument in his refund claim because of Section 7491(c).

Section 7491(c) states that "notwithstanding any other provision of this title, the [IRS] shall have the burden of production in any court

proceeding with respect to the liability of any individual for any penalty." Mr. Ginsburg asserted that under Section 7491(c) and Section 6751(b), the government must show that there was supervisory approval for the gross valuation misstatement penalty. He argued that because Section 7491(c) says it applies "notwithstanding" any other provision, it trumps Section 7422's exhaustion requirement.

The Eleventh Circuit disagreed and concluded that Section 7491(c) and Section 7422 are not in conflict. The court explained that Section 7422 addresses what issues can be considered by a court and Section 7491(c) addresses "limited litigation issues that have been exhausted and are now in court." The court further explained that Section 7491(c) simply "puts the burden of production on the Service as to the exhausted issues."

Mr. Ginsburg next argued he did not learn the factual basis for the supervisory approval argument until there was discovery in the district court litigation and, therefore, he could not have raised the argument in his refund claim. The Eleventh Circuit disagreed. Months before Mr. Ginsburg filed his refund claim, the IRS sent him a penalty notice that did not mention any approval by an immediate supervisor. Accordingly, the Eleventh Circuit held Mr. Ginsburg could have raised the supervisory argument in his refund claim.

Partnership-level proceeding

Under TEFRA, partnership tax disputes are resolved in two stages: (1) partnership level and (2) partner level. During the partnership-level proceedings, the IRS and courts can adjust any "partnership items."[23] During the partner-level proceedings, the partners are bound by the partnership-level determinations, but partners can assert partner-level defenses to penalties imposed.[24]

Partner-level defenses are limited to defenses that are personal to the partner or dependent on the partner's separate return and cannot be determined at the partnership level.[25] For example, reasonable reliance on a tax adviser is a partner-level defense.

The Eleventh Circuit ruled that Mr. Ginsburg's supervisory approval argument was not a partner-level defense because it was not personal to Mr. Ginsburg. If the IRS lacked supervisory approval for the penalty, then the penalty would not be valid for all of the partnership's partners. The Eleventh Circuit concluded that if Mr. Ginsburg were permitted to make the supervisory approval argument it could result in inconsistent treatment among partners and duplicative court proceedings—the very "evil" TEFRA was trying to prevent by requiring all partners to be bound by the determination of partnership items made during partnership-level proceedings.

Chief Counsel advises that the subpart F assessment SOL exception extends assessment SOL for entire return and a taxpayer's consent to extend assessment SOL does not extend expired refund SOL

In October 2021, the IRS released a Chief Counsel Advice Memorandum 202142009 addressing two statute of limitations issues.[26]

Subpart F income SOL exception

The first issue involved subpart F income and the assessment statute of limitations. Generally, under Section 6501(a), the IRS must assess a tax within three years of the taxpayer filing the return. Of course, there are exceptions to this rule. One of those exceptions is in Section 6501(e)(1)(C)—if a taxpayer omits amounts that must be included in income under the subpart F rules (Section 951(a)), the IRS has six years to assess "the tax."

An IRS exam team asked Chief Counsel: If the taxpayer omitted subpart F income, does the IRS have six years to examine the entire return, including items not related to subpart F items? Chief Counsel concluded yes, the exam team could audit the entire return, not just the subpart F items.

Chief Counsel stated its conclusion is consistent with how courts have interpreted other exceptions to the three-year assessment statute. Under the fraud exception, if a taxpayer files a false or fraudulent return, the IRS may assess "the tax" at any time.[27] Courts have interpreted "the tax" language to mean that if there is a fraud on a return, the IRS can assess a tax for non-fraudulent items at any time.[28] On the other hand, under the NOL exception, if a deficiency relates to net operating loss carryback, the IRS can assess "such deficiency" until the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed.[29] Courts have interpreted the "such deficiency" language to mean the assessment statute is extended only for items relating to the net operating loss, not the entire return.[30]

Because the Section 6501(e)(1)(C) subpart F exception uses the same language (i.e., "the tax") as the fraud exception, Chief Counsel concluded that the subpart F exception extends the assessment statute for all items on the return, not just the subpart F items.[31]

Refund claims extensions

The next issue involved the Exam team's inquiry whether a refund claim was timely. In the Exam team's case, the Section 6501(a) three-year assessment period had expired, but Section 6501(c)(1)(E)'s six-year assessment period was still open. The taxpayer agreed to extend the IRS's six-year assessment period. The taxpayer then filed a refund claim. The Exam team asked Chief Counsel if the refund claim was timely because it filed during a period in which the taxpayer and IRS agreed to extend the assessment period.

Under Section 6511(a), a taxpayer generally has to file a refund claim within three years of filing its return or within two years of paying the tax.[32] If a taxpayer agrees to extend the IRS's assessment period, the taxpayer's refund period stays open until six months after the IRS's extended assessment period ends.[33] For example, if the taxpayer agrees to extend the IRS's three-year assessment period until June 1, 2022, then the taxpayer has until December 1, 2022, to file a refund claim. However, this rule applies only if the agreement to extend the assessment period is made within Section 6511(a)'s period for filing a refund or credit claim (i.e., three years from filing and two years from payment).[34]

Chief Counsel relied on *Estate of Chism*, which addressed a similar situation. In that case, the Ninth Circuit held that the IRS can issue a refund only if the "claim has been filed within the three years after the return was filed, or within a period as extended by the *agreement made within that three-year period*."[35] Here, the agreement to extend the assessment period was not made within the time period prescribed in Section 6511(a) or made during a period extended by an agreement that was entered into during the period in Section 6511(a). Accordingly, Chief Counsel concluded that the taxpayer's refund claim was untimely.

District court rules taxpayer cannot exhaust administrative remedies by filing Forms 1040X with court

In *Fulham v. United States*, the district court rejected a taxpayer's attempt to sue the United States for a refund of income taxes without first filing a proper refund claim with the IRS.[36]

Background

After an audit, the IRS increased Andrew Fulham's tax liabilities for his 2010–2012 tax years. Mr. Fulham eventually fully paid the tax liabilities in October 2018. However, Mr. Fulham believed he overpaid. To request the refund, Mr. Fulham mailed the IRS Form 843, Claim for Refund and Request for Abatement, in March 2020. When the IRS did not issue a refund, he filed a lawsuit in district court.

The government moved to dismiss the lawsuit for lack of jurisdiction. The government argued Mr. Fulham had not exhausted his administrative remedies because he used the wrong form to request a refund. In response, Mr. Fulham filed an amended complaint and attached Forms 1040X, Amended U.S. Individual Income Tax Return, for the years at issue. Mr. Fulham did not file the Forms 1040X with the IRS. The government again moved to dismiss on the grounds that Mr. Fulham did not exhaust his administrative remedies with the IRS.

Court's analysis

The United States has sovereign immunity and can be sued only when it consents to be sued. The United States has waived sovereign immunity to allow taxpayers to sue for refunds of income taxes.[37] However, sovereign immunity is waived only if the taxpayer has exhausted its administrative remedies. To do so, the taxpayer must timely file a valid refund claim with the IRS and give the IRS at least six months to consider its claim before it can file a lawsuit for the refund.[38] Under Treas. Reg. § 301.6402-3(a)(2), taxpayers must submit refund claims for individual income taxes on Form 1040X.

Mr. Fulham never filed a refund on Form 1040X with the IRS; accordingly, the district court granted the government's motion to dismiss for lack of jurisdiction. The court said it was immaterial that Mr. Fulham submitted Forms 1040X to the court because (1) they needed to be filed with the IRS and (2) they needed to be filed before Mr. Fulham filed the lawsuit. Similarly, the court found the Forms 843 that Mr. Fulham submitted to the IRS did not constitute a valid refund claim because Form 843 is used for refunds for certain taxes other than income taxes. The court noted that the top Form 843 explicitly states that it is not to be used for a refund of income taxes.

The district court rejected Mr. Fulham's use of the informal claim doctrine. As the district court stated, the informal claim doctrine "gives taxpayers some latitude when they file an incomplete form or wrong form with the IRS, and later correct it before filing suit." If a taxpayer files some notice fairly advising the IRS of the nature of the taxpayer's claim within the statute of limitations period, the taxpayer can later cure the "defects" even if the statute of limitations period has expired. However, the taxpayer must cure the defect before filing suit to allow the IRS "the full opportunity to address the problem administratively."[39] Here, even if filing Forms 843 constituted informal notice, Mr. Fulham never cured the defects by filing Forms 1040X with the IRS. Moreover, even if Mr. Fulham had filed the Forms 1040X with the IRS instead of with the court, his lawsuit would still be premature because the IRS would not have had the opportunity to review and administratively address the refund claim.

This case is a good reminder for taxpayers seeking refunds from the IRS—a taxpayer must strictly comply with the administrative exhaustion requirement before it can bring suit against the United States for a refund.

Arizona district court holds IRS has two years from when taxpayer receives an erroneous refund to sue to recover

In *United States v. Page*, a district court in Arizona ruled the government waited too long to recover $491,104.01 it erroneously issued to Jeffery Page.[40]

Background and analysis

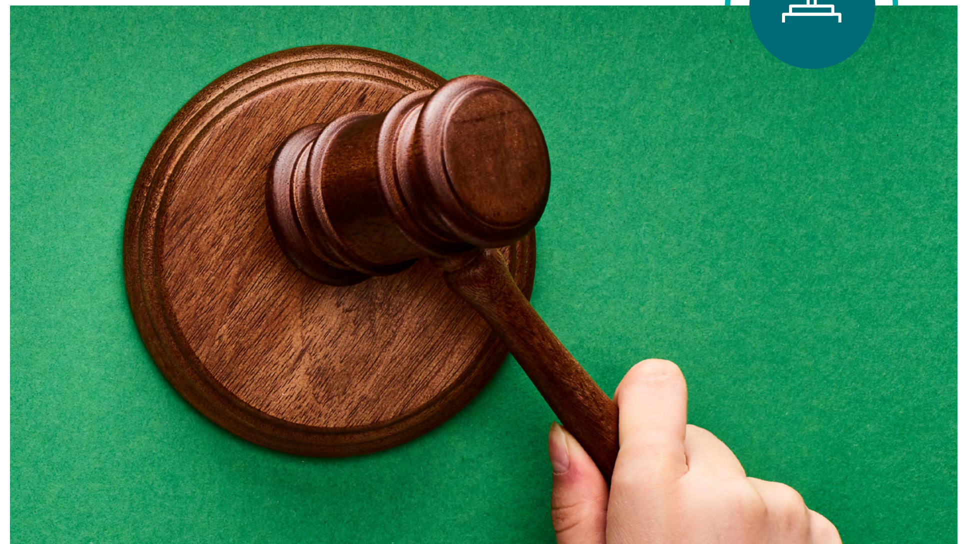
The IRS sent Mr. Page the erroneous refund check on May 5, 2017. It is unknown when Mr. Page actually received the check. Mr. Page cashed the check on April 5, 2018. The IRS did not sue Mr. Page to get the erroneous refund back until March 31, 2020.

Erroneous refund suits are governed by Section 6532(b), which provides that the government must bring the refund suit within "two years after the making of such a refund." The issue in *Page* was when is the refund "made." That is, is the refund made when the IRS sends the check, when the taxpayer receives, when the taxpayer deposits, when the check clears the federal reserve, etc.?

The Arizona district court said the Ninth Circuit, to which the case was appealable, had already ruled that the refund is considered made on the date the taxpayer received the check in *United States v. Carter*.[41] The district court rejected the government's arguments that the court should not follow *Carter*. The government argued that the government's right to sue does not ripen until the taxpayer actually cashes the check, so the statute of limitations cannot begin to run until that date, and relying on the check clearance date provides more clarity than relying on the date the taxpayer received the refund, which is harder to document. The district court was unpersuaded and summarily concluded that neither argument merited contradicting Ninth Circuit precedent.

The court also rejected the government's argument that ambiguous statutes of limitations should be interpreted in the government's favor. The court stated that the statute was not ambiguous because the Ninth Circuit already interpreted it to mean that the government has two years from when the taxpayer receives the refund.

Accordingly, the court dismissed the government's erroneous refund suit as untimely and allowed Mr. Page to keep the $491,104.01 erroneous refund.



In a summary opinion, Tax Court rules taxpayer timely filed return even though IRS rejected due to identify theft concerns

In *Willets v. Commissioner,*[42] the Tax Court held that the submission of a late tax return was a valid refund claim for purposes of the refund statute of limitations under Section 6511, even though the taxpayer's tax return was initially rejected due to potential identity theft concerns.

Factual background

Petitioner James Willets timely filed a request for extension of time to file his 2014 Form 1040, US Individual Income Tax Return, which extended the due date from April 15, 2015, to October 15, 2015. When he filed his extension request, Mr. Willets also submitted a payment of $8,000 for his 2014 tax liability. However, Mr. Willets did not file his 2014 tax return by the extended due date.

Mr. Willets did not file his 2014 tax return until April 14, 2018. The IRS received the return on May 2, 2018. However, the IRS rejected the return because of potential identity theft concerns. The IRS sent Mr. Willets a letter explaining his return had been rejected. Mr. Willets did not respond to the letter; it is unknown whether Mr. Willets received the letter.

On July 29, 2019, the IRS issued a notice of deficiency to Mr. Willets regarding his 2014 tax liability. The notice stated that Mr. Willets never filed a 2014 tax return. Mr. Willets filed a petition in the US Tax Court disputing the IRS's notice of deficiency and requesting the refund claimed on his Form 1040. The IRS conceded that Mr. Willets overpaid his 2014 income taxes but asserted that his refund claim was untimely.

Legal analysis

Mr. Willets needed to file his refund claim by October 15, 2018. Under Section 6511(a), a taxpayer must file a refund claim within three years of filing his return or two years from the time the tax was paid, whichever is later. A tax return can constitute a valid refund claim.[43] Although a taxpayer does not need to file a timely return to satisfy Section 6511(a), the taxpayer must still comply with the lookback provision in Section 6511(b). Under the lookback provision, a taxpayer can recover a refund of an overpayment, only if that overpayment was part of taxes he paid during the past three years plus the period of any extension. Thus, although Mr. Willets could file his refund claim anytime, he needed to file it by October 15, 2018, to receive a refund of the $8,000 payment.

Mr. Willets asserted that he did file a refund claim before October 15, 2018—the income tax return he mailed on April 14, 2018. The IRS claimed that return was not filed because the IRS rejected it due to potential identity theft issues. The Tax Court agreed with Mr. Willets.

First, the Tax Court considered whether the Form 1040 mailed on April 14, 2018, was a valid return. The Tax Court applied the *Beard* test to determine if the return was valid: (1) there is sufficient data to calculate a tax liability, (2) the document purports to be a return, (3) there is an honest and reasonable attempt to satisfy the requirements of the tax law, and (4) the taxpayer executed the document under penalties of perjury.[44] The Tax Court summarily concluded that the Form 1040 satisfied all the *Beard* requirements.

Second, the Tax Court considered when the return was filed. The court stated a return is filed when it is "delivered, in the appropriate form, to the specific individual or individuals identified in the Code or Regulations."[45] Here, Mr. Willets' tax return was delivered to the IRS on May 2, 2018. The Tax Court found it immaterial that the IRS rejected the return. The court said that a "valid return is deemed filed on the day it is delivered, regardless of whether it is accepted by the Commissioner."[46] Thus, Mr. Willets' refund claim was timely, and he was entitled to the refund.

Although this is a taxpayer favorable ruling, taxpayers should note that the case was issued under the Section 7463(b)'s special rules for "small tax" cases. Under those rules, the Tax Court's decision cannot be appealed, and the opinion cannot be treated as precedent for any other case.

End notes

1. *In re Grand Jury,* 13 F.4th 710 (9th Cir. 2021).
2. *United States v. Sanmina Corp.*, 968 F.3d 1107, 1116 (9th Cir. 2020).
3. *United States v. Abrahams*, 905 F.2d 1276, 1283-84 (9th Cir. 1990), *Olender v. United States,* 210 F.2d 795, 806 (9th Cir. 1954).
4. *See* IRC Section 7525.
5. *See In re County of Erie*, 473 F.3d 413, 420 (2d Cir. 2007).
6. *In re Grand Jury*, 13 F.4th at 714.
7. *Id.*
8. *Id.*
9. *Id*. (quoting *United States v. Rowe*, 96 F.3d 1294, 1296 (9th Cir. 1996)).
10. *Id*. at 715 (quoting *United States v. Adlman*, 134 F.3d 1194, 1196 (2d Cir. 1998)).
11. *Id*. at 714 (quoting *In re Grand Jury Subpoena* (*Mark Torf/Torf Env't Mgmt*), 357 F.3d 900, 908 (9th Cir. 2004)).
12. *Id*. at 715.
13. *Id*.
14. *Id*. at 715-16.
15. *Id*. at 716.
16. *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754 (D.C. Cir. 2014).
17. *Id*. at 760.
18. *Id*. at 759.
19. *In re Grand Jury*, 13 F.4th at 717.
20. *Ginsburg v. United States,* 2021 U.S. App. LEXIS 32144 (U.S. 11th Cir. Oct. 26, 2021).
21. Section 7422(a).
22. Treas. Reg. § 301.6402-2(b)(1).
23. Section 6221(a) (2006 ed. and Supp. V.).
24. Section 6230(c)(4) (2006 and Supp. V.).
25. Treas. Reg. § 301.6221-1(d).
26. CCA 202142009 (dated July 26, 2021).
27. Section 6501(c)(1).
28. *Rhone-Poulenc Surfactants & Specialties, L.P. v. Commissioner*, 114 T.C. 533, 548 (2000).
29. IRC 6501(h).
30. *Colestock v.* Commissioner, 102 T.C. 380, 386 (1994).
31. CCA 202142009, at *8.
32. I.R.C. § 6511(a).
33. I.R.C. § 6511(c)(1).
34. I.R.C. § 6511(c).
35. *Estate of Chism et al v. Commissioner*, 322 F.2d 956, 963 (9th Cir. 1963) (emphasis added).
36. Fulham v. United States, No. 20-cv-5871, 2021 U.S. Dist. LEXIS 228361 (N.D. Ill. Nov. 30, 2021).
37. Section 7422.
38. Section 6532(a)(1).

39. *Greene-Thapedi v. United States*, 549 F.3d 530, 533 (7th Cir. 2008).
40. United States v. Page, No. CV-20-08072-PCT-JAT, 2021 U.S. Dist. LEXIS 206339, at *5 (D. Ariz. Oct. 25, 2021).
41. 906 F.2d 1375 (9th Cir. 1990).
42. *Willets v. Commissioner*, T.C. Summary Opinion 2021-39.
43. *Weisbart v. United States Dep't of Treasury*, 222 F.3d 93, 95-96 (2d Cir. 2000); Rev. Rul. 76-511.
44. *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986).
45. *Willets*, T.C. Summary Opinion 2021-39 (quoting *Allnutt v. Commissioner*, 523 F.3d 406, 413 (4th Cir. 2008)).
46. *Willets*, T.C. Summary Opinion 2021-39 (citing *Blount v. Commissioner*, 86 T.C. 383, 387 (1986)).

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