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In This Issue:

LAWYERS HELPING DELINQUENT TAXPAYERS

- IRS ISSUES "DIRTY DOZEN" TAX SCAM ALERT
- HELD: IRS FILED TIMELY ACTION TO RECOVER ERRONEOUS REFUND
- HELD: DUE PROCESS HEARING - PROPOSED INSTALLMENT PLAN REJECTED BECAUSE TAXPAYER WAS NOT PRESENTLY IN COMPLIANCE
- HELD: PREVAILING TAXPAYER IN BANKRUPTCY ACTION AGAINST IRS HAD TO EXHAUST ADMINISTRATIVE REMEDIES IN ORDER TO SEEK ATTORNEY'S FEES
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IRS ISSUES "DIRTY DOZEN" TAX SCAM ALERT

WASHINGTON — The Internal Revenue Service today issued the 2006 "Dirty Dozen"—its latest annual tally of some of the most notorious tax scams—along with an alert to taxpayers this filing season to watch out for schemes that promise to reduce or eliminate taxes.

Two new schemes have worked their way onto the list in 2006. In recent months IRS personnel have noted the emergence of the two scams—"zero wages" and "Form 843 tax abatement"—in which filers use IRS forms to claim that their tax bills have been wrongly inflated.

Also high on the list in 2006 is "phishing," a favorite ploy of identity thieves. Over the past few years, the IRS has observed criminals working through the Internet, posing even as representatives of the IRS itself, with the goal of tricking unsuspecting taxpayers into revealing private information that can be used to steal from their financial accounts.

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HELD: IRS FILED TIMELY ACTION TO RECOVER ERRONEOUS REFUND

In order to prevail in an action to recover an erroneous refund, the United States must establish (1) that a refund was paid to the taxpayer; (2) the amount of the refund; (3) that the United States's recovery action was timely brought; and (4) that the taxpayers were not entitled to the refund which the government seeks to recover. *United States v. Daum* 968 F.Supp. 1037, 1997 U.S. Dist. LEXIS 18391, at *12 (W.D.Pa. Apr. 30, 1997) citing *United States v. Commercial Nat'l Bank of Peoria*, 874 F.2d 1165, 1169 (7th Cir.1989); *Johnson v. United States*, 228 F.Supp.2d 1218, 1221 (D.Col. 2002) (quoting *Daum*), *aff'd*, 76 Fed. Appx. 873 (10th Cir.2003).⁸



Accepting the United States's factual assertions as true and drawing all appropriate inferences in its favor, the United States has presented a valid claim for relief. The United States has pleaded that, first, on or about December 15, 2003, the IRS paid a refund to the Fund and, second, the amount of the refund was \$93,365.61.9 Compl. ¶¶ 8-9. Third, by statute the United States had two years from the date of the payment of the refund to institute its suit to recover an erroneous refund. See 26 U.S.C. §§ 7405(d), 6532(b). Since the refund was paid to the Fund, by its own admission, on December 21, 2003, the United States had until December 21, 2005 to file its claim. The United States filed the New Jersey Action on December 1, 2005.

U.S. v. Philadelphia Marine Trade, 471 F.Supp.2d 518 (E.D. Pa., 2007)

HELD: DUE PROCESS HEARING - PROPOSED INSTALLMENT PLAN REJECTED BECAUSE TAXPAYER WAS NOT PRESENTLY IN COMPLIANCE

"Where a taxpayer is challenging the notice of intent to levy, and not the underlying tax liability, the district court will review the Appeals Officer's decision under an abuse of discretion standard."

Taxpayer argued that the Collection Due Process hearing officer abused his discretion in rejecting its installment offer.

After the IRS issued a final notice of intent to levy, taxpayer filed a request for a due process hearing in 2005, for reconsideration of a levy issued to collect taxes from 1999. At the hearing (conducted by telephone with taxpayer's attorney joining) taxpayer proposed a payment plan in lieu of levy. The appeals officer rejected the proposal based, in part, on the fact that even at the time of requesting the hearing the taxpayer was not currently in compliance (unpaid taxes for the last quarter of 2004 and the first quarter of 2005).



The court held that in view of the history of non-payment the appeals officer did not abuse his discretion, and also held that the reasons the appeals officer provided in reporting his decision satisfied any requirement for an explanation of a denial.

The court cited *Tilley v. United States*, 270 F.Supp.2d 731, 740 (M.D.N.C. 2003) stating that a hearing that is either

face to face, by correspondence, or by telephone will be sufficient to satisfy due process.

Usa Financial Services, Inc. v. U.S. I.R.S. 459 F.Supp.2d 440 (E.D.Va. 2006)

HELD: PREVAILING TAXPAYER IN BANKRUPTCY ACTION AGAINST IRS HAD TO EXHAUST ADMINISTRATIVE REMEDIES IN ORDER TO SEEK ATTORNEY'S FEES

The United States Code, at 26 U.S.C. § 7433, permits a prevailing debtor in a bankruptcy action against the IRS to seek an award of attorney's fees in bankruptcy court. However, 26 U.S.C. § 7430 provides that in order to seek attorney's fees in court, the taxpayer must have first exhausted his administrative remedies for seeking fees.

In this case the debtor/taxpayer prevailed against the IRS for violation of debtor's post-discharge stay, and then sought an award of attorneys fees in the bankruptcy court.

The bankruptcy court denied the request because the debtor had not attempted to seek fees administratively with the IRS. The administrative remedies available to the debtor are spelled out in 26 C.F.R. § 301.7430-1, including bankruptcy actions. "In order to overcome sovereign immunity [the debtor] should have sent a letter detailing her claim to the IRS Insolvency Unit ... specifying her claim for attorney's fees." Instead, noted the court, the debtor sent a letter to the IRS Service Center in Fresno, and the letter failed to specify attorney's fees.

Kuhl v. U.S. 467 F.3d 145 (2nd Cir. 2006)



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