

## Refund Suit Dismissed for Lack of Taxpayer's Signature

MARCH 20, 2019

In February 2019, the Court of Federal Claims concluded that it lacked the authority to hear a case where the taxpayer had not signed his claim of refund (Form 843) and his attorney lacked the authority to sign on his behalf.<sup>1</sup> In *Wilson v. United States*, the taxpayer, Joseph Wilson, filed a complaint alleging that the IRS had erroneously and unlawfully imposed a 35% penalty against him for failing to timely report his status as the beneficiary of a foreign trust pursuant to Section 6048(b). Wilson argued that the operative Code section was Section 6048(c), which would only impose a 5% penalty for filing as an owner/grantor of a foreign trust. However, since Wilson's claim for refund was signed by his attorney-in-fact, the question before the Court was whether it had subject matter jurisdiction over the complaint.

The IRS had assessed a 35% penalty against Wilson pursuant to section 6677(a) for failing to file Form 3520 (*Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*). Wilson paid the penalty amount in June 2017 and filed Form 843 (*Claim for Refund and Request for Abatement*) in August 2017. Form 843 was signed solely by Wilson's attorney. Form 843 provides that an attorney may sign on behalf of the taxpayer provided that a properly completed Form 2848 (*Power of Attorney and Declaration of Representative*) is filed along with Form 843. The taxpayer and his attorney did prepare and file Form 2848; however, they had failed to complete certain sections of the form that specifically authorized the attorney with respect to additional acts, such as signing a return. If filled out improperly, the attorney would lack the authority to prepare and sign Form 843 on his behalf. Thus, the question arose as to whether the broad authorization of a signed Power of Attorney, without specific authorization for additional acts, allows an attorney to file a claim of refund, signed under penalties of perjury, on behalf of a taxpayer.

Section 7422(a) provides that no suit or proceeding shall be maintained in any court for any penalty claimed to have been collected without authority until a claim of refund had been duly filed with the Secretary of the Treasury.<sup>2</sup> Section 6532(a)(1) provides that no suit or proceeding pursuant to Section 7422(a) for the recovery of a penalty shall be begun before the expiration of six months from the date of the filing of the claim required by that Section unless the Secretary renders a decision prior to the expiration of such timeframe.<sup>3</sup>

The Court reasoned that since a refund claim is required to be signed under penalties of perjury, it is more akin to the filing of a return (which also is required to be signed under penalties of perjury) and other acts where there are heightened requirements when a representative is signing a document on behalf of a principal under penalties of

perjury.<sup>4</sup> Here, the taxpayer had not met his burden of showing by a preponderance of the evidence that Form 2848 is a broad authorization that extends to the signing of a claim of refund.<sup>5</sup>

The taxpayer argued in the alternative that his refund claim qualified as an informal claim for refund and contended that the IRS recognizes the validity of informal claims even though they are not submitted under penalties of perjury.<sup>6</sup> However, the Court disagreed, stating that the case cited by the taxpayer related to whether the doctrine could be used to satisfy the timeliness requirement of Section 6511.<sup>7</sup> A more analogous case to Wilson’s situation was *Anuforo v. Commissioner*.<sup>8</sup> That case also involved a taxpayer that had not signed his refund claim prior to filing in court and had corrected the defect after filing. The court found for the IRS, holding that the “law does not confer subject matter jurisdiction . . . when the suit is commenced prior to the filing of valid Forms 843.”<sup>9</sup>

Since the Court lacked subject matter jurisdiction, it was required to dismiss the case and was unable to reach the merits of Wilson’s claim. Wilson, out of an abundance of caution, had also submitted an amended claim of refund in January 2019. However, the Court stated that as a general rule, jurisdiction must be determined as of the date the complaint is filed. The Court advised Wilson to re-file his claim for refund, wait the required six months, and then file a new complaint if his claim is rejected. At that point, the Court stated it would clearly have jurisdiction to act on the merits of his refund claim.

<sup>1</sup> *Wilson v. United States*, 123 AFTR 2d 2019-XXXX (Ct. Fed. Claim 2019).

<sup>2</sup> 26 U.S.C. § 7422(a).

<sup>3</sup> 26 U.S.C. § 6532(a)(1).

<sup>4</sup> *Wilson*, 123 AFTR 2d at 6.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 7.

<sup>7</sup> *United States v. Kales*, 314 U.S. 186, 194 (1941).

<sup>8</sup> 2007 WL 2695805 (D. Minn. Sept 10, 2007).

<sup>9</sup> *Id.* at \*3.

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