



TaxNewsFlash

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U.S. Tax Court: No refund, taxes not paid within lookback period

The U.S. Tax Court, in a case of first impression, held that the taxpayer was not entitled to a refund of her overpayment of tax because she did not file her 2012 income tax return before the IRS issued a notice of deficiency and her taxes were not paid within two years of the mailing of the notice of deficiency. The court held that the taxpayer was not eligible to apply the three-year lookback period according to the last sentence of section 6512(b)(3) because the notice of deficiency was not mailed to her “during the third year after the due date (with extensions) for filing the return of tax.”

The case is: *Borenstein v. Commissioner*, 149 T.C. No. 10 (August 30, 2017). Read the Tax Court’s [opinion](#) [PDF 118 KB]

Summary

The case reveals the following facts:

- The income tax return of the taxpayer (an individual) for 2012 was originally due on April 15, 2013.
- She requested and received a six-month extension of time to file that return—so that the due date for filing her 2012 return was October 15, 2013.
- The taxpayer made tax payments for 2012 totaling \$112,000. All of these payments were deemed made on April 15, 2013.
- She did not file a return for 2012 by October 15, 2013, or during the following 22 months.
- The IRS on June 19, 2015, issued a notice of deficiency for 2012.

- On August 29, 2015—shortly before filing her petition—the taxpayer submitted a delinquent return for 2012 that reported a tax liability of approximately \$79,600.

The parties agreed that the taxpayer had for 2012 a tax liability (deficiency) of \$79,600 and an overpayment of approximately \$32,000. However, the IRS contended that the taxpayer was not entitled to a credit or refund of this overpayment because her tax payments were made outside the applicable “lookback” period (as linked to the date when the notice of deficiency was mailed).

The taxpayer contended that she was eligible for the three-year lookback period specified in the final sentence of section 6512(b)(3) and that she was entitled to a refund of \$32,000.

The Tax Court held that the taxpayer was not eligible for the three-year lookback period, per the final sentence of section 6512(b)(3) because the notice of deficiency was not mailed to her “during the third year after the due date (with extensions) for filing the return of tax.” Rather, the court found that because the taxpayer did not file her 2012 income tax return before the notice of deficiency was issued and because she did not pay her tax liability within two years of the mailing of the notice of deficiency, she was not entitled to a refund.

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