



TaxNewsFlash

United States

No. 2018-176

May 3, 2018

Fifth Circuit: Refund claim denied, overpayment held not “attributable to” foreign taxes paid

The U.S. Court of Appeals for the Fifth Circuit today issued a decision affirming a federal district court’s findings that a refund claim for an overpayment of tax was not timely filed.

The refund claim was filed when in 2013, the taxpayers amended their income tax return for 2002 to reflect a net reduction in foreign tax credit from changes to the taxpayers’ German tax liabilities. The appeals court found that there was not an overpayment “attributable to any taxes paid ... to a foreign country.”

The case is: *Schaeffler v. United States*, No. 17-10719 (5th Cir. May 3, 2018). Read the [Fifth Circuit’s decision](#) [PDF 151 KB]

Background

The taxpayers (then husband and wife) filed a joint income tax return for 2002.

In April 2013, the taxpayers filed an amended return for 2002 that reflected two changes: (1) a net decrease in foreign tax credit of approximately \$1.6 million; and (2) an increase in minimum tax credit of approximately \$6.76 million. The net reduction in foreign tax credit resulted from three changes to the taxpayers’ German tax liabilities for 2002. The increase in minimum tax credit was due to changes made to the taxpayers’ amended return for 2001.

The changes reflected on the 2001 amended return consisted of: (1) a net increase in foreign tax credit of \$5.6 million; and (2) a reduction in minimum tax credit of \$3.1 million. The changes resulted in the taxpayers being subject to the alternative minimum tax of \$2.5 million for 2001. The taxpayers were previously subject to the regular income tax for 2001. As a result, the minimum tax credit reflected on the 2002

amended return increased by \$6.8 million (\$2.5 million minimum tax credit for 2001 plus \$4.3 million minimum tax credit carryforward from pre-2001 tax years).

The 2002 amended return (filed in April 2013) showed that the net decrease in foreign tax credit absorbed a portion of the increase in minimum tax credit, resulting in an overpayment of just over \$5 million. The taxpayers requested a refund of this amount of overpayment.

The IRS denied the refund, and the taxpayers initiated a refund action in federal district court. The government filed a motion to dismiss on the basis that the refund claim was filed after the lapse of the statute of limitations and thus was untimely. The court agreed with the government, and dismissed the refund claim. The taxpayers appealed.

Fifth Circuit

The Fifth Circuit today affirmed.

The appeals court explained that there were two issues in this case:

- Whether the refund claim for 2002 was timely under section 6511(d)(3)(A) because it related to “an overpayment attributable to any taxes paid or accrued to a foreign country ... for which credit is allowed against [income] tax...”
- Whether the refund claim for 2002 was timely under section 6511(a) because it was filed within two years from the time any tax for 2002 was paid

As to the first issue, the Fifth Circuit held that the 2002 overpayment was not attributable to foreign taxes for which credit was allowed. The taxpayers asserted that changes in their German tax liabilities for 2002 caused the 2002 U.S. income tax overpayment and that the 10-year statute of limitations in section 6511(d)(3)(A) applied.

The Fifth Circuit, however, agreed with the government that the change in German tax liabilities for 2002 resulted in a net decrease in the foreign tax credit and that this decrease could not have caused the 2002 overpayment. The appeals court observed that the changes in foreign tax liabilities for 2002 generated a net reduction in (not an increase in or an allowance of) foreign tax credit for 2002, and that this reduction could not have caused the overpayment. In other words, the changes in German tax liabilities for 2002 did not cause the 2002 overpayment. Rather, as the court noted, it was the increase in the 2002 minimum tax credit that caused the overpayment.

Concerning the second issue, the Fifth Circuit held that the application of a foreign tax credit is not a payment under section 6511(a). The appeals court explained that it is the credit of an overpayment—and not the application of a tax credit, such as the foreign tax credit—that constitutes a payment under section 6511(a). In addition, the Fifth Circuit held that the processing of the 2001 increase in foreign tax credit and the

2001 reduction in minimum tax credit did not constitute a payment for purposes of section 6511(a). Accordingly, the Fifth Circuit found that the refund claim for 2002 was not filed within two years of the time any tax for 2002 was paid and thus was not timely under section 6511(a).

KPMG observation

This issue in the case continues to be the subject of tax refund litigation. In this case, the issue as to whether an overpayment is “attributable to” foreign tax credit was addressed with respect to individual taxpayers. In a case pending in the Second Circuit, the “overpayment attributable to” issue concerns a corporate taxpayer and relates to whether net operating losses (NOLs) can give rise to such an overpayment (that is, whether the overpayment is attributable to the NOLs).

The information contained in TaxNewsFlash is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader’s knowledge on the matters addressed therein, and is not intended to be applied to any specific reader’s particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG’s Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)