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Second Circuit: Special 10-year limitations period applies for credit, not deduction, of foreign taxes paid

The U.S. Court of Appeals for the Second Circuit today affirmed the judgment of a federal district court that the special 10-year statute of limitations for refunds claimed under section 6511(d)(3)(A) applies only to credits, and not deductions, relating to the foreign taxes paid.

The case is: *Trusted Media Brands, Inc. v. United States*, No. 17-3733-cv (2d Cir. August 10, 2018). Read the Second Circuit's [decision](#) [PDF 190 KB]

Summary

The taxpayer originally claimed a credit for foreign taxes paid but on an amended return filed in 2011, the taxpayer changed that credit and instead claimed a deduction for foreign taxes paid on an amended tax return for 2002. This caused a “daisy chain” of adjustments and eventually resulted in the taxpayer’s claim for a refund of an overpayment of tax from the 1995 tax year. The taxpayer claimed that the special 10-year statute of limitations of section 6511(d)(3)(A) applied in this situation to allow the refund (that is, that the special 10-year period started to run from its 2002 tax return). The IRS denied this refund claim as untimely, and asserted that the standard three-year statute of limitations applied. The taxpayer eventually filed a refund action in federal district court.

The federal district court denied the taxpayer’s claim as untimely concluding that: (1) the special 10-year statute of limitations for refund claims for foreign taxes applies only to credits and not deductions; and (2) the taxpayer’s overpayment claim for its 1995 tax year was not properly “attributable to” its 2002 tax year, and therefore, even if the claim for the 10-year limitation period applied, the claim (filed in December 2011) was untimely.

Today, the Second Circuit affirmed, holding that the special 10-year statute of limitations for refund claims for foreign taxes applies only to credits, and not deductions. Thus, the Second Circuit agreed with the lower court that the taxpayer's refund claim was time-barred.

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