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TAXATION-FEDERAL INCOME TAX-CLAIM FOR REFUND-STATUTE OF LIMITATIONS

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TAXATION—FEDERAL INCOME TAX—CLAIM FOR REFUND—STATUTE OF LIMITATIONS—The commissioner determined that a deficiency existed in the taxpayer's income tax for 1938. This deficiency assessment was paid in 1941. More than three years later the taxpayer filed a claim for refund which was rejected by the commissioner on the ground that it was barred by the two year limitation period of section 322 (b) (1) of the Internal Revenue Code.¹ The taxpayer then brought suit in the district court contending that the four year limitation period of section 3313 of the code was applicable.² The district court sustained the taxpayer,³ and the judgment was affirmed by the circuit court of appeals.⁴ On certiorari to the Supreme Court, *held*, reversed. Justice Douglas dissented. *Jones v. Liberty Glass Co.*, 332 U.S. 524, 68 S.Ct. 229 (1947).

The Court held that all income tax refund claims, irrespective of the reasons

¹ I.R.C., § 322 (b) (1): "Unless a claim for . . . refund is filed by the taxpayer within two years from the time the tax was paid, no credit or refund shall be allowed. . . ."

² I.R.C., § 3313: "All claims for the refunding . . . of any internal revenue tax alleged to have been erroneously or illegally assessed . . . must, except as otherwise provided by law in the case of income, war-profits, excess profits, estate, and gift taxes, be presented to the Commissioner within four years next after the payment of such tax. . . ."

³ (D.C. Okla. 1946) 66 F. Supp. 254.

⁴ (C.C.A. 10th, 1947) 159 F. (2d) 316.

giving rise thereto, are governed exclusively by section 322 (b) (1) of the code. It is clear that claims for tax refunds are subject to statutory limitation, and that they must conform strictly to the requirements of Congress.⁵ The code provides periods of limitation within which the taxpayer must file his claim for refund of an alleged overpayment or illegal assessment or collection of a particular tax.⁶ The difficulty arises in determining whether the limitations are exclusive or whether section 3313 of the code operates as an omnibus limitation covering certain classes of tax refund claims. Insofar as the estate tax is concerned, there has been very little difficulty because the language of section 3313 is similar to the language of section 910, and therefore it has been held that the latter section is exclusive.⁷ But the subsections dealing with the income and gift taxes use the term "over-payment" instead of the phrase "erroneously or illegally assessed or collected" which is used in both section 910 and section 3313.⁸ The lower courts have in general relied on this distinction to hold that section 3313 controls income tax refund claims where the excess has been "erroneously or illegally assessed or collected."⁹ These decisions rest on the premise that because it requires less time to discover an overpayment due to miscalculation than to determine an erroneous or illegal assessment, Congress must have intended that section 3313 would grant an extension of time in the latter type of case.¹⁰ It is not, however, a foregone conclusion that it would take longer to discover an error where an erroneous assessment is made. The legislative history of the sections in question is of very little help, for it can be and has been used to support both results.¹¹ But the relative position of these pertinent sections in the code do lend some support to the decision in the instant case; thus section 322 (b) (1) appears in chapter I of title A of the code which deals exclusively with the income tax, while section 3313 is found in title B of the code which deals with miscellaneous taxes. Furthermore, the express

⁵ *Rosenman v. United States*, 323 U.S. 658, 65 S.Ct. 536 (1944).

⁶ For the estate tax, I.R.C., § 910; gift tax, I.R.C., § 1027 (b) (1).

⁷ Note that both sections use the term "erroneously or illegally assessed." See *Rosenman v. United States*, 323 U.S. 658, 65 S.Ct. 536 (1944); *Fawcett v. United States*, (D.C. Cal. 1947) 70 F. Supp. 742.

⁸ The distinction between the two terms seems to be: If the taxpayer had to file a return and simply erred in calculation, an overpayment results; if, on the other hand, the commissioner assesses a deficiency or the taxpayer is not required by law to file a return, there has been an erroneous or illegal assessment or collection.

⁹ *Huntley v. Southern Oregon Sales, Inc.*, (C.C.A. 9th, 1939) 102 F. (2d) 538; *Olsen v. United States*, (D.C. Cal. 1940) 32 F. Supp. 276; *Godfrey v. United States*, (D.C. N.Y. 1940) 61 F. Supp. 240; *United States v. Lederer Terminal Warehouse Co.*, (C.C.A. 6th, 1943) 139 F. (2d) 679. Cf. *Central Hanover Bank & Trust Co. v. United States*, (D.C. N.Y. 1946) 67 F. Supp. 920. See also: *United States v. Andrews*, 302 U.S. 517, 58 S. Ct. 315 (1938), noted in 51 HARV. L. REV. 935 (1938); in this case the Supreme Court assumed that the provisions of I.R.C., § 322 (b) (1) were exclusive.

¹⁰ *United States v. Lederer Terminal Warehouse Co.*, (C.C.A. 6th, 1943) 139 F. (2d) 679; *Sbarbaro v. United States*, (D.C. Ill. 1947) 73 F. Supp. 213; *Pennsylvania Co. for Insurances on Lives and Granting Annuities v. United States*, (D.C. Pa. 1945) 59 F. Supp. 667, *affd.*, (C.C.A. 3d, 1946) 152 F. (2d) 757.

¹¹ Compare the discussion in the instant case with that in *Huntley v. Southern Oregon Sales, Inc.*, (C.C.A. 9th, 1939) 102 F. (2d) 538.

mitigation of the two year limitation of section 322 (b) (1) under some conditions,¹² makes it seem unreasonable that relief from illegal assessments would be left to an ambiguous section. But the most telling argument in favor of the instant decision is that in ordinary business usage the term "overpayment" connotes an excessive payment irrespective of the reason therefor and irrespective of whether it was voluntary or involuntary. Therefore, although the construction adopted by the Supreme Court is not entirely free from doubt, it seems clear that this decision gives meaning to both sections and removes any ambiguities that may have appeared to exist.

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¹² I.R.C., § 3801 (b).