IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HELEN BLOM	:	
	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	**NO. 05-2383**
	:	
UNITED STATES OF AMERICA,.	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

Stengel, J. **May 31, 2006**

This case involves a conflict between the executrix of an estate and the Internal Revenue Service. The executrix seeks to recover $140,000 remitted to the IRS as estimated estate taxes in 1996. The IRS opposes the refund request as untimely.

Helen Walbridge died on March 1, 1996, and her niece Helene Blom was named executrix of the estate. Ms. Blom believed that the Ms. Walbridge's estate consisted of two distinct parts — approximately $600,000 of her own assets and approximately $400,000 of her late husband's assets. With regard to the latter, when Ms. Walbridge's husband pre-deceased her, he left his assets in trust, naming Harleysville Bank and Robert Chapman as Co-Trustees ("Harleysville Trust" or "Trust"). In the summer of 1996, Ms. Blom, believing that Trust to be a significant portion of Ms. Walbridge's assets, requested that Harleysville Bank transfer the Trust to Ms. Walbridge's estate. The bank declined to

transfer the Trust to the estate, and the parties eventually became embroiled in litigation over disbursement of the Trust.

On November 22, 1996, prior to the institution of litigation with the Harleysville Trust, Ms. Blom visited a United States Internal Revenue Service ("IRS") office in New Jersey to inquire about an extension of time to file the Walbridge estate tax return. The New Jersey branch referred Ms. Blom to the Philadelphia branch, and she went there immediately. At the Philadelphia IRS office, Ms. Blom filed a Form 4768 Application for Extension of Time to File a Return and tendered two checks totaling $140,000 to the IRS. The first check, made out for $75,000, was received by Ms. Blom from the Co-Trustees of the Harleysville Trust. The second check, drawn from the estate account, was for $65,000, the amount Ms. Blom estimated would be due on the Walbridge estate. Ms. Blom testified in her deposition that she had not thought about or estimated the amount of tax liability prior to November 22.[1] The IRS accepted the checks in conjunction with the Form 4768, and categorized them as "payment" of estimated taxes on the estate.

The IRS approved the requested extension, granting the Walbridge estate until June 1, 1997 to file its Form 760 estate tax return. Ms. Blom, however, failed to file the Form 760 within the requisite time period. As a result, the IRS sent Ms. Blom deliquency notices on October 6, 1997 and December 1, 1997. On January 4, 1998, and February 17, 1998, Ms. Blom wrote to the IRS to explain that the Walbridge estate was still involved in

[1] It remains unclear how she ultimately determined that the estimated taxes were $140,000.

litigation, and she intended to wait until the conclusion of the litigation before filing the estate tax return.[2] The Walbridge estate ultimately filed its Form 760 on September 9, 2002, reflecting no estate taxes due. The IRS treated the Form 760 as a request for a refund of the $140,000 paid in 1996 and, while acknowledging that no taxes were owed, declined to issue the refund because the request was made after the three year statute of limitations had run. Ms. Blom filed suit to recover the $140,000.

The IRS has filed a motion for summary judgment, arguing that even if all the facts are undisputed, Ms. Blom filed her request for a refund outside of the three year statute of limitations, and it is therefore under no obligation to refund the money. Ms. Blom essentially agrees, but argues that she *intended* the payment to be a "deposit in the nature of a cash bond," rather than a "payment," and that therefore the statute of limitations does not apply and the IRS must refund her money pursuant to 26 U.S.C. § 6511. *See Rosenman v. U.S.*, 323 U.S. 658 (1945) (establishing distinction between "payment" and "deposit"). She further argues that her state of mind at the time of the deposit is a disputed issue of material fact and that summary judgment is therefore inappropriate.

The court has subject matter jurisdiction over this case because it involves a question of federal law, pursuant to 28 U.S.C. § 1331. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together

[2] It is unclear when the litigation between the Walbridge estate and the Harleysville Trust ended.

with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. *Id.*[3]

The dispositive legal issue here is whether the IRS is under an obligation to refund the $140,000 to Ms. Blom. The parties agree that if the remittance was a "payment," then Ms. Blom is not entitled to a refund, due to untimeliness. 26 U.S.C. §§ 6511(a)—(b). Summary judgment therefore turns on whether Ms. Blom's remittance was a "deposit" or a "payment."

The Internal Revenue Procedures provide that in order to designate a remittance as a "deposit," rather than as a "payment," after the mailing of a notice of deficiency, the

[3] A party seeking summary judgment always bears the initial responsibility for informing the court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial *Celotex* burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." *Id.* at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. Under Rule 56, the court must view the evidence presented on the motion in the light most favorable to the opposing party. *Liberty Lobby*, 477 U.S. at 255. The court must decide not whether the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. *Id.* at 252. If the non-moving party has exceeded the mere scintilla of evidence threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992).

taxpayer must designate it as such in writing. *See* Rev. Proc. 84-58, 1984-2 C.B. 501 (August 13, 1984) (superceded by Rev. Proc. 2005-18, 2005-13 I.R.B. 798 (March 14, 2005)). However, where the remittance was made prior to a notice of deficiency, the Third Circuit has adopted a "facts and circumstances" analysis to determine the legal characterization of the remittance. *See, e.g. Fortugno v. C.I.R.*, 353 F.2d 429 (3d Cir. 1965) (assessing facts and circumstances to determine as a matter of law whether remittance was deposit or payment); *see also Ertman v. U.S.*, 165 F.3d 204, 207 (2d Cir. 1999) (noting "facts and circumstances" test as appropriate under *Rosenman*).[4] In relevant part, the facts and circumstances approach mandates an inquiry into (1) the timing of the remittance; (2) the intent of the taxpayer in making the remittance; and (3) how the IRS treated the remittance upon receipt of the remittance. *See Rosenman*, 323 U.S. at 661-63; *Ertman*, 165 F.3d at 206.

Here, though the IRS treated the remittance as a payment, the first two factors point towards designating the remittance a deposit. Ms. Blom did not consult with a tax attorney or accountant to estimate the taxes owed. Indeed, she testified that she had not seriously thought about the potential tax liability prior to actually writing the check.

[4] I note that while the Third Circuit has adopted a "facts and circumstances" analysis, there is a body of law in other Circuits finding that an estimated payment filed with a Request for Extension is a "payment" for purposes of tolling the statute of limitations. *See, e.g. VanCanagan v. U.S.*, 231 F.3d 1349, 1354 (Fed. Cir. 2000) (holding remittance submitted with a request for extension to be a "payment" rather than a "deposit" where taxpayers did not designate estimated payment as a deposit, did not use the IRS procedure for designating an estimated payment a deposit, and did not make any notation in accompanying paperwork that remittance was a deposit); *Dantzler v. IRS*, 183 F.3d 1247, 1251 (11th Cir. 1999) (same); *accord Deaton v. Commissioner*, T.C.M. 2005-1 (2005) (finding remittance to be payment where taxpayers did not contest designation for 6 1/2 years). I find these cases distinguishable from the instant case.

Further, Ms. Blom testified that her motivation in making the remittance was that no penalties be assessed against the estate due to untimeliness. This sentiment was confirmed by the letters she sent the IRS in the winter of 1998. I find that the facts and circumstances surrounding Ms. Blom's remittance require a finding that the remittance was a deposit. *See Risman v. Commissioner*, 100 T.C. 191 (1993) (finding remittance to be deposit where taxpayers made a wild guess at liability and tax commission initially coded remittance as deposit); *accord Hill v. U.S.*, 263 F.2d 885, 887 (3d Cir. 1959) (noting that where "a taxpayer gives the Government money in discharge of his tax debt or gives it money to stop interest and penalties while he and the Government contest what the debt is to be," the remittance can be deemed a deposit).

Further, even if the foregoing were not persuasive, section 4.04 of Revenue Procedure 84-58 notes that "[a]ny undesignated remittance . . . made before the liability is proposed to the taxpayer in writing (e.g. before the issuance of a revenue agent's or examiner's report), will be treated by the Service as a deposit in the nature of a cash bond." Rev. Proc. 84-58, 1984-2 C.B. 501. It is undisputed that Ms. Blom did not designate the checks as a deposit. On one of the checks, she wrote "Federal Estate Tax for Helen Walbridge," and on the other she did not make any notation. I do not think that a memo on one check constitutes a "designation." Therefore, even if the facts and circumstances of the remittance did not point to her intention to make a deposit, I think that the remittance was "undesignated" and section 4.04 controls.

I therefore find that the remittance on the Walbridge estate tax was a deposit as a matter of law.[5] As a result, I will deny summary judgment. An appropriate Order follows.

[5] I note in passing that though the real issue here is the characterization of the remittance, and though I will find that her payment was a deposit, Ms. Blom had alternate avenues available to prevent the imposition of penalties and interest on the Walbridge estate due to the estate's litigation with the Harleysville trust. Under the Internal Revenue Code, the administrator of an estate is required to file a tax return on the estate. If the administrator needs additional time to file the return, she can file a Form 4768, requesting an extension of time to file the return. This does not obviate her obligation to *pay* the taxes owed, but merely provides her with more time to file the return. Section 6161(a)(2), however, provides for an extension of time to *pay* the taxes, for a period up to ten years for "reasonable cause." 26 U.S.C. § 6161(a)(2). Reasonable cause includes, *inter alia*, "[s]ubstantial estate assets not collectible without litigation." 26 C.F.R 20-6161-1(a)(3). Ms. Blom, therefore, had an alternate legal recourse available to prevent the imposition of interest and penalties by extending the deadline to remit the taxes due on the estate. The estate's litigation with the Harleysville Trust may have provided "reasonable cause" to postpone the payment of taxes.

ORDER

AND NOW, this 31st day of May, 2006, after consideration of the United States' Motion for Summary Judgment and any responses thereto, it is hereby **ORDERED** that the Motion is **DENIED**.

/s/ Lawrence F. Stengel
Judge Lawrence F. Stengel