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Informal Claims for Refund - A Winding Road

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INFORMAL CLAIMS FOR REFUND—A WINDING ROAD

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I. INTRODUCTION

The Internal Revenue Code (“IRC”), which is considered by many to be the most complicated body of law, is dominated by an “intricate web of highly detailed statutory provisions.”¹ To help untangle this intricate web, the United States Department of Treasury (the “Treasury”) and the Internal Revenue Service (“Service”) release numerous Treasury regulations, which provide official interpretations of the IRC.² Therefore, despite the complexity of the IRC, the high level of detail in the Treasury regulations keeps the fraction of tax disputes giving rise to litigation remarkably small.³

However, in some sections of the IRC, the Treasury regulations and other interpretive releases fail to provide sufficient guidance to help taxpayers understand this complicated body of law.⁴ This insufficient

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1. *BCS Financial v. United States*, 118 F.3d 522, 527 (7th Cir. 1997).

2. See 26 C.F.R. Ch. I. See also Kenneth H. Ryesky, *Taxation Unchecked and Unbalanced: The Supreme Court’s Denial of Certiorari in Sorrentino*, 41 GONZ. L. REV. 505, 526 (2005-06).

3. *BCS Financial*, 118 F.3d at 527.

4. See, e.g., *Swallows Holding v. Comm’r*, 515 F.3d 162, 167-71 (3d Cir. 2008); *Allen v. United States*, 173 F.3d 533, 536-37 (4th Cir. 1999).

guidance sometimes leads to the creation of judicially-made doctrines that provide binding interpretations on complicated issues of tax law.⁵ Given that in most matters, “it is more important that the applicable rule of law be settled than that it be right,”⁶ problems can arise when varying courts create multiple interpretations.⁷ There are not many issues that fall into the category of multiple interpretations by various courts. However, in one very important section of the IRC—statute of limitations of refund claims—inconclusive regulations and guidance have led to the creation of the informal claim doctrine, a doctrine that has undergone varying interpretations.⁸

The informal claim doctrine is a judicial creature that provides equitable relief to taxpayers who fail to satisfy requirements for filing a valid refund claim.⁹ The doctrine stems from the IRC and the Treasury regulations’ inflexible requirements for filing valid refund claims.¹⁰ The IRC states that no credit or refund shall be allowed unless the taxpayer files a “valid” claim for credit or refund prior to the expiration of the statute of limitations period.¹¹ The informal claim doctrine steps in and provides equitable relief by tolling the statute of limitations related to refund claims when a taxpayer puts the Service “on notice” of a pending refund claim, but fails to satisfy the formalities outlined in the regulations for filing a valid claim.¹²

Since its inception, the informal claim doctrine has taken on many forms and has been subjected to numerous interpretations.¹³ Taxpayers have, in turn, relied on this equitable doctrine in various contexts.¹⁴ For example, if a taxpayer files a tax return and cautiously overpays because

5. The judicially-made doctrine of “substance over form” is an example of such a doctrine. See *Yosha v. Commissioner*, 861 F.2d 494, 497-99 (7th Cir. 1988). See also Ryesky, *supra* note 2, at 528.

6. How fitting that former Supreme Court Justice Brandeis made this statement in relation to the IRC over 75 years ago. *Burnet v. Coronado Oil & Gas, Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting).

7. See *infra* Section III.

8. See *infra* Section III.

9. *BCS Financial*, 118 F.3d at 524.

10. *Id.* (“[I]t would be absurd rigorism even by the notably unforgiving standards of federal tax law to make the taxpayer’s utterly harmless mistake a basis for forfeiting a claim conceded to be substantively valid.”).

11. I.R.C. § 6511(b)(1).

12. See *United States v. Kales*, 314 U.S. 186, 194 (1941); *BCS Financial*, 118 F.3d at 524; *United States v. Commercial Nat’l Bank of Peoria*, 874 F.2d 1165, 1170 (7th Cir. 1989).

13. See *infra* Section III.

14. See *Kales*, 314 U.S. 186; *BCS Financial*, 118 F.3d 522; *Commercial Nat’l Bank of Peoria*, 874 F.2d 1165; *Mobil Oil Corp. v. United States*, 991 F.2d 811 (Fed. Cir. 1993); *New England Elec. Sys. v. United States*, 32 Fed. Cl. 636 (1995).

there are other issues that have to be resolved before he can determine if he actually owes tax, a standard practice is to attach a letter stating that he will subsequently file a claim for a refund if the matters are resolved in his favor.¹⁵ This practice becomes an issue if the matters are not timely resolved.¹⁶ An issue can also arise if he fails to submit a “valid” refund claim prior to the expiration of the statute of limitations.¹⁷ If the statute of limitations expires prior to the taxpayer filing a valid claim, the taxpayer generally does not have the ability to seek or file suit for a credit or refund.¹⁸

The informal claim doctrine provides an exception to this general rule.¹⁹ Under the doctrine, a taxpayer may assert that the letter submitted with the tax return was an informal refund claim, and that although the taxpayer did not meet the formal statutory requirements that taxpayer is still entitled to claim a refund.²⁰ The problem arises when courts must determine whether a taxpayer has successfully submitted an informal claim for refund. This problem exists because the informal claim doctrine has been subjected to numerous interpretations, and courts have been inconsistent in determining what actually qualifies as an informal claim for refund.²¹ These inconsistencies have created an unsettled body of law and resulted in taxpayers relying on claims that are not upheld in court.²²

In reviewing the manner in which courts have interpreted this doctrine, it appears that the doctrine can be more effective if steps are taken to create a definite set of rules for the doctrine’s application, and if those rules are incorporated into the IRC or Treasury regulations.²³ This Article, after briefly reviewing the history of the informal claim doctrine and its current form, will discuss the possibility of creating such rules.²⁴

15. See *Kales*, 314 U.S. at 194.

16. See *BCS Financial*, 118 F.3d at 523-24.

17. See *Greene-Thapedi v. United States*, 549 F.3d 530 (7th Cir. 2008).

18. See, e.g., *Newton v. United States*, 163 F. Supp. 614, 618 (Ct. Cl. 1958).

19. See *BCS Financial*, 118 F.3d at 524 (“[O]ne office of the judge-made informal-claim doctrine is to plug [the] gap by excusing harmless noncompliance with the formalities prescribed for refund claims by the Treasury regulation . . .”).

20. *Id.*

21. See *infra* Section III.

22. See, e.g., *APG 3, Inc. v. United States*, 32 F. Supp. 2d 451 (5th Cir. 1999); *Greene-Thapedi*, 549 F.3d at 533; *Scianoff Vegetable Oil Corp. v. United States*, 181 F. Supp. 265, 269 (Ct. Cl. 1960); *Disabled Am. Veterans v. United States*, 650 F.2d 1178, 1179-80 (Ct. Cl. 1981); *Yuen v. United States*, 825 F.2d 244 (9th Cir. 1987); *Mobil Oil Corp. v. United States*, 991 F.2d 811 (Fed. Cir. 1993).

23. See *infra* Section IV.B.

24. See *infra* Sections II-IV.B.

II. HISTORY OF THE INFORMAL CLAIM DOCTRINE

To understand the origins of the informal claim doctrine, one must examine the IRC and the Treasury regulations' inflexible laws relating to filing a valid refund claim.²⁵

A. I.R.C. § 6511 and C.F.R. § 301.6402-2

According to I.R.C. § 6511, a claim for credit or refund on an overpayment of any tax where the taxpayer is required to file a return must be filed within three years from the day the return was filed, or within two years from the date the tax was paid.²⁶ A taxpayer is not allowed to request credits or refunds after the expiration of this period.²⁷ Further, even if a refund claim is timely filed, it cannot serve as the basis for a credit or refund unless it relates to the specific grounds set forth in the timely filed refund claim.²⁸

While the IRC does not specifically define what is required to make a refund claim, the Treas. Reg. § 301.6402-2(b)(1) provides that a valid refund claim must do the following: (1) set forth in detail each ground upon which a credit or refund is claimed; (2) provide "facts sufficient to apprise the Commissioner of the exact basis thereof"; and (3) verify the statement of the grounds and facts by a written declaration that it is made under the penalties of perjury.²⁹

According to the regulations, a claim that does not comply with these requirements will not be considered a claim for refund or credit for any purpose.³⁰ Since no credit or refund, or suit pertaining thereto, may be pursued until a claim for refund has been filed with the Service,³¹ a taxpayer who makes a substantial overpayment but fails to timely satisfy all of the aforementioned requirements generally has no recourse for claiming a refund of overpayment.³²

To combat the consequences some taxpayers suffer due to these strict regulations, courts have created the informal claim doctrine, which essentially relaxes these formalities and allows taxpayers to assert claims

25. I.R.C. § 6511; Treas. Reg. § 301.6402-2.

26. § 6511.

27. Treas. Reg. § 301.6402-2(a)(1).

28. *Id.* at § 301.6402-2(b)(1).

29. *Id.*

30. *Id.*

31. I.R.C. § 7422(a).

32. See *BCS Financial v. United States*, 118 F.3d 522, 523-24 (7th Cir. 1997).

for refunds even if the statute of limitations period has lapsed without their filing a valid claim.³³

The informal claim doctrine is very similar to statutory provisions in other areas of law that afford litigants some flexibility when incomplete or non-conforming claims are made prior to the expiration of the statutory limitation.³⁴ The doctrine has been used for many years and has been applied to a wide array of fact situations.³⁵ Courts using the doctrine typically follow the standards set by the facts and holding of the seminal United States Supreme Court informal claim doctrine case, *United States v. Kales*.³⁶

B. *United States v. Kales*

In *Kales*, a taxpayer submitted a payment to the Service in response to an assessment of tax due.³⁷ At the time the taxpayer submitted the payment, there were unsettled issues relating to the payment.³⁸ Therefore, when the taxpayer submitted her payment, she also submitted a letter explaining her overpayment.³⁹ The letter stated that if the unsettled issues were resolved in her favor and the tax she submitted was too high, then she would claim a refund to the extent of the overpayment.⁴⁰ The issues were subsequently resolved in *Kales*' favor and she requested the refund.⁴¹ The Service, however, denied her

33. *Id.* at 524.

34. "When a statute of limitations establishes a deadline for filing a suit in court as distinct from an administrative claim, a technical defect in the pleading that commences the suit and by doing so arrests the running of the statute of limitations is unlikely to be fatal. A complaint afflicted with merely formal defects can ordinarily be amended to correct them with relation back to the date of the original filing of the suit." *BCS Financial*, 118 F.3d at 524 (citing *Woods v. Indiana Univ.-Purdue Univ.*, 996 F.2d 880, 884 (7th Cir. 1993)). "Informal claims have been likened to pleadings, for which technical deficiencies generally can be corrected by amendment so as to relate back to the original date of filing suit." *PALA, Inc. Emp. Profit Sharing Plan and Trust Agreement v. United States*, 234 F.3d 873, 879 (5th Cir. 2000).

35. Many authors credit the United States Supreme Court decision of *United States v. Memphis Cotton Oil, Co.*, 288 U.S. 62 (1932) as the genesis of the informal claims doctrine. *See, e.g.*, Federal Tax Coordinator, Second Edition: ¶ T-7602 AMENDMENTS TO GENERAL CLAIMS AFTER REFUND CLAIM PERIOD BUT BEFORE FINAL IRS ACTION, FTC T-7602; Anthony Bellia Jr., *Article III and the Cause of Action*, 89 IOWA L. REV. 777, 797 n.79 (2004).

36. 314 U.S. 186 (1941).

37. *Id.* at 190.

38. *Id.* at 190-92.

39. *Id.* at 190-91.

40. *Id.* at 191.

41. *Id.*

request on the basis that her letter did not satisfy the requirements for a valid refund claim.⁴²

The Supreme Court rejected the inflexible framework of the IRC and the Treasury regulations and held that regardless of whether the statutory provisions had been satisfied, the important factor was whether the taxpayer's letter effectively put the Service on notice that she may later file a claim for refund.⁴³ The Court found that Kales clearly put the Service on notice that, if certain events were decided in her favor, she believed she was entitled to a refund.⁴⁴ Thus, the Court essentially ignored the requirements of the regulations, allowed the taxpayer to obtain the refund of overpayment, and held that the informal letter was a valid refund claim which effectively tolled the statute of limitations.⁴⁵

Accordingly, *Kales* established the framework for reviewing pleas for relief under the informal claim doctrine. Pursuant to *Kales*, when applying the informal claim doctrine courts should understand that (1) the issue of whether an informal claim has been filed is one of fact, (2) the informal claim/action must be in writing or have a written component, and (3) the matters set forth in the writing must have been sufficient to apprise the Service that a refund is sought and to focus attention on the merits of the dispute so that the Service can commence an examination if it wishes.⁴⁶

As the doctrine has progressed, the framework has somewhat changed, and Courts now generally agree on what standards are required for a valid informal claim.⁴⁷ Nevertheless, despite these oft-cited "standards," the doctrine is not well-settled and courts vary on their interpretation as to what constitutes a valid informal refund claim.⁴⁸

III. THE CURRENT FORM OF THE INFORMAL CLAIM DOCTRINE

Given its ability to toll the statute of limitations and provide equitable relief for taxpayers who fail to satisfy the IRC and Treasury regulations' rigid requirements for filing valid refund claims, the informal claim doctrine is a powerful tool. However, indefinite rules and varying interpretations have led to the doctrine taking on an amoeba

42. *Id.* at 192-93.

43. *Id.* at 194-95.

44. *Id.*

45. *Id.*

46. MICHAEL I. SALTZMAN, IRS PRACTICE AND PROCEDURE, CHAPTER 11: OVERPAYMENT, REFUND, CREDIT, AND ABATEMENT, PART B MAKING REFUND CLAIMS ¶ 11.08 (2d ed. 1991).

47. *See infra* Section III.A.

48. *United States v. Commercial Nat'l Bank of Peoria*, 874 F.2d 1165, 1165 (7th Cir. 1989).

identity—varying its requirements from case to case.⁴⁹ This unfortunately has caused the doctrine to lose its zeal.⁵⁰ These varying interpretations and indefinite rules have also created differing and negative views of the doctrine.⁵¹ While some Courts have stated that the doctrine should not contain specific rules,⁵² others have expressed a desire to rid the doctrine of its vagueness.⁵³ The doctrine’s uncertainties have even led courts to warn taxpayers against relying on the informal claim doctrine.⁵⁴ As one court cautioned:

“We strongly hope that taxpayers faced with similar situations will heed our now explicit warning [that a] decision to rely upon a general notice or informal claim to toll the statute of limitations may prove unwise[.]”⁵⁵

With the inconsistencies in the enforcement of the document, the question remains: Why do taxpayers rely on informal claims, especially in situations where large amounts of money are at issue?⁵⁶ The answer may be simple; many times, taxpayers asking the court to apply the informal claim doctrine are doing so out of desperation.⁵⁷ There are other forms of claims taxpayers can make when they are facing statute of limitation issues and are unable to put together a timely detailed claim for refund.⁵⁸ However, when taxpayers fail to fall under the gamut of those claims, they have no choice but to seek relief under the informal

49. *See id.*; *APG 3, Inc. v. United States*, 32 F. Supp. 2d 451 (5th Cir. 1999); *Goldin v. Comm’r*, 87 T.C.M. (CCH) 1374 (2004); *BCS Financial v. United States*, 118 F.3d 522, 527 (7th Cir. 1997); *Gustin v. United States*, 876 F.2d 485, 488-89 (5th Cir. 1989).

50. *Commercial Nat’l Bank of Peoria*, 874 F.2d at 1176.

51. *See infra* Section III.A.

52. *See, e.g., Commercial Nat’l Bank of Peoria*, 874 F.2d at 1171 (stating there are no specific rules under the doctrine).

53. *See, e.g., Mobil Oil Corp. v. United States*, 67 Fed. Cl. 708, 716 (2005) (stating there are three specific components to a valid informal claim).

54. *Commercial Nat’l Bank of Peoria*, 874 F.2d at 1176.

55. *Id.*

56. *APG 3, Inc. v. United States*, 32 F. Supp. 2d 451 (5th Cir. 1999) (rejecting an informal claim for \$1.5 million in overpaid payroll taxes and stating, “[o]ne cannot seriously expect the IRS to be on notice that Plaintiff had a claim for \$1.5 million dollars based on [a letter that included the statement, ‘[p]lease send any refunds due because of overpayment’ to the above address]”).

57. *See generally Newton v. United States*, 163 F. Supp. 614 (Ct. Cl. 1958); *Kales v. United States*, 314 U.S. 186 (1941); *Pinckes v. United States*, 7 Cl. Ct. 570 (1985); *Favell v. United States*, 22 Cl. Ct. 571 (1991); *Stevens v. United States*, 98 A.F.T.R.2d (RIA) 5184 (2006); *Gustin v. United States*, 876 F.2d 485 (5th Cir. 1989).

58. Taxpayers have the ability to file protective claims, as well as incomplete refund claims in the form of returns, and later amend the returns, etc.

claim doctrine.⁵⁹ Accordingly, the more important question is whether the IRC or the Treasury regulations should be amended to incorporate this judicially-created doctrine or whether the doctrine, having run its course, should be eliminated altogether? This Article suggests the former.⁶⁰

If the doctrine is just, as one court described, “gloss on the text of a Treasury regulation, specifying the form and contents of a claim for a refund, which could be easily amended to specify the circumstances of substantial compliance or excusable noncompliance in which a nonstandard claim would be deemed adequate[,]”⁶¹ then why not simply amend the regulations? An equitable doctrine should be flexible so that it can serve its purpose and help those who are in need of equitable relief. Nevertheless, even a flexible doctrine should be consistent. Without some consistency, the doctrine fails to effectively serve its underlying goal.⁶² Setting specific rules for the informal claim doctrine and amending the IRC or Treasury regulations to incorporate those provisions would not only provide flexibility and equitable relief to taxpayers, but would also allow the Department of Treasury to specify when informal claims will be valid. Further, taxpayers would have clear notice of when they should or should not, rely on this doctrine.

A. Requirements for an Informal Claim

Courts generally agree that to have a valid informal claim, the claim must (1) have a written component that is (2) sufficient to apprise the Service that a refund is being claimed and (3) specifies the tax and the year or years for which the refund is being sought sufficiently, so that the Service can investigate the claim.⁶³ While the third factor is

59. See generally, *Newton*, 163 F. Supp. 614; *Kales*, 314 U.S. 186; *Pinckes*, 7 Cl. Ct. 570; *Favell*, 22 Cl. Ct. 571; *Stevens*, 98 A.F.T.R.2d (RIA) 5184; *Gustin*, 876 F.2d 485.

60. See *infra* Section IV.B.

61. *BCS Financial v. United States*, 118 F.3d 522, 527 (7th Cir. 1997).

62. The doctrine was created to effectively provide equitable relief to taxpayers failing to satisfy the rigid requirements of the IRC and Treasury regulations. However, as the doctrine progressed, its lack of consistent rules led to some courts refusing to provide relief to taxpayers even when the informal claim placed the Service on notice. Some Courts have actually cautioned against use of the doctrine, while others have even refused to review the merits of an informal claim because it had not yet been formalized. See *United States v. Commercial Nat’l Bank of Peoria*, 874 F.2d 1165, 1176 (7th Cir. 1989). (cautioning taxpayers to not rely on the doctrine); see also *Greene-Thapedi v. United States*, 549 F.3d 530, 533 (7th Cir. 2008) (holding that a district court should not have reviewed the merits of the taxpayer’s refund claim because the court lacked subject matter jurisdiction due to the taxpayer’s failure to follow the informal claim with a formal claim).

63. SALTZMAN, *supra* note 46.

clear, the first two factors have been subject to numerous interpretations.⁶⁴

1. Written Component

The requirement that an informal claim have a written component derives from the Service's constant personnel changes.⁶⁵ It would be patently unfair to the Service if a taxpayer made undocumented oral claims to a Service representative and was later able to use those claims as a basis for a refund.⁶⁶

Contrary to the commonsensical meaning of the phrase, there is no requirement that the written component be "written."⁶⁷ Further, case law reveals that what constitutes a "written component" has been subject to litigation because the definition is unclear.⁶⁸ Some courts have determined that oral claims are insufficient to satisfy the "written component" requirement,⁶⁹ while other courts have held the complete opposite.⁷⁰

There has also been debate regarding the degree of formality required for the informal claim's written component.⁷¹ Some courts have been lenient, stretching the limits of what constitutes a written

64. *See infra* Section III.A.1-2.

65. *Furst v. United States*, 678 F.2d 147, 151 (Ct. Cl. 1982).

66. "The rationale behind the requirement for a written claim is that, because many different people may work on a particular case, the fact that a refund has been claimed must be ascertainable from the file." *Gustin v. United States*, 876 F.2d 485, 488 (5th Cir. 1989) (citing *Furst*, 678 F.2d at 151; *Disabled Am. Veterans v. United States*, 650 F.2d 1178, 1180 (Ct. Cl. 1981)).

67. *See Commercial Nat'l Bank of Peoria*, 874 F.2d at 1171; *New England Elec. Sys. v. United States*, 32 Fed. Cl. 636, 643-44 (1995).

68. *See BCS Financial v. United States*, 118 F.3d 522, 527 (7th Cir. 1997).

69. *Scianoff Vegetable Oil Corp. v. United States*, 181 F. Supp. 265, 269 (Ct. Cl. 1960); *Disabled Am. Veterans v. United States*, 650 F.2d 1178, 1179-80 (Ct. Cl. 1981); *Yuen v. United States*, 825 F.2d 244 (9th Cir. 1987); *see also Mobil Oil Corp. v. United States*, 991 F.2d 811 (Fed. Cir. 1993) (holding that an oral assertion by the taxpayer that it was entitled to a refund was insufficient to suffice as a written component even though it was made during a meeting with IRS employees).

70. "Since the written component requirement is to insure that the IRS has some memorandum which it can file, it need not be a writing created by the taxpayer, but may be an internal IRS memorandum recording what the taxpayer stated he intended to do." *Faria Corp. v. United States*, 39 A.F.T.R.2d 1682 (1977). *See also Pinckes v. United States*, 7 Cl. Ct. 570, 571 (1985) (hinting that documented oral statements are sufficient by stating the opposite – "undocumented oral statements are insufficient"). *But cf. Alisa v. Comm'r, T.C.M. (CCH)* 113 (1976) (stating that handwritten notes of a conversation with a taxpayer's lawyer weren't specific enough to show that IRS was on notice that taxpayer was making a claim).

71. The formality or specificity of the written component is reduced when the Service agent has obtained detailed, actual knowledge during an audit. *New England Elec. Sys.*, 32 Fed. Cl. at 644.

component.⁷² For example, the United States Court of Claims found that a taxpayer satisfied the written component requirement by delivering a check to a Service agent and simply writing on the back of the check “this check is accepted as paid under protest pending final decision of the higher courts.”⁷³ On the other hand, other courts have not been as lenient.⁷⁴ In a Fifth Circuit case, the court found no written component where the taxpayer submitted a tax form signed under penalties of perjury, simply because the form was improperly dated.⁷⁵ Nevertheless, regardless of the form of the written component, it seems that courts agree that the written component must contain enough information to put the Service on notice that the taxpayer believes a refund is due.⁷⁶

2. What Information is Required to “Put the Service on Notice” of a Refund Claim?

The written component does not, however, have to be the taxpayer’s sole means of putting the Service on notice of a potential refund claim.⁷⁷ Taxpayers can also rely on other documents, conversations, or correspondence to fulfill their “notice obligation.”⁷⁸ In

72. See *Night Hawk Leasing Co. v. United States*, 84 Ct. Cl. 596, 602-04 (1937); *BCS Financial*, 118 F.3d at 522; *Stevens v. United States*, 98 A.F.T.R.2d (RIA) 5184 (2006), at *16-19 (2006); *Am. Radiator & Standard Sanitary Corp. v. United States*, 318 F.2d 915, 920-21 (Ct. Cl. 1963); *New England Elec. Sys.*, 32 Fed. Cl. at 644; *Furst*, 678 F.2d at 151-52.

73. *Night Hawk Leasing Co.*, 84 Ct. Cl. at 604-05. In another case, the Seventh Circuit refused a taxpayer’s claim that internal government documents sufficed for the written component, but rejected the government’s argument that internal government documents can never suffice. *BCS Financial*, 118 F.3d 522; see also *Stevens*, 98 A.F.T.R.2d (RIA) 5184 (holding that internal government documents alone can suffice as the written component of an informal claim). *But cf. Simmons v. United States*, 29 Fed. Cl. 136, 140-41 (1993) (holding that an IRS substitute for return did not suffice for an informal claim, even where the IRS had information relating to payments made by taxpayer).

74. See *Simmons*, 29 Fed. Cl. at 136; *Gustin v. United States*, 876 F.2d 485, 489 (5th Cir. 1989).

75. *Gustin*, 876 F.2d at 489.

76. “At a minimum, a written component must be ‘sufficient to be regarded as an assertion by the taxpayer that he believes that the tax has been overpaid.’” *New England Elec. Sys.*, 32 Fed. Cl. at 644 (quoting *Newport Indus. v. United States*, 104 Ct. Cl. 38, 45 (1945)). While the informal claim must satisfy the notice requirements, the written component alone does not necessarily have to be the source. *Id.* at 644. The written component alone need not bear the burden of satisfying the notice requirements. *United States v. Commercial Nat’l Bank of Peoria*, 874 F.2d 1165, 1171 (7th Cir. 1989).

77. See *Commercial Nat’l Bank of Peoria*, 874 F.2d at 1171.

78. *Wilshire v. United States*, 102 A.F.T.R.2d (RIA) 6946 (2008) (considering the taxpayer’s written and oral communications, as well as the submission to the IRS of the taxpayer’s will with notations relating to the estate tax return). “The written component should not be considered in a vacuum[, i]t’s adequacy must be determined in light of the particular facts and circumstances of the case at issue.” *New England Elec. Sys.*, 32 Fed. Cl. at 644. The writing should not be given a

fact, while there must be some written component, an informal claim can be adequate if the claim, taken as a whole, provides sufficient information; this is true regardless of how much information is in the actual written component.⁷⁹ Nevertheless, to effectively put the Service on notice, “[i]t is not enough that the Service have in its possession information from which it *might* deduce that a taxpayer is entitled to, or might desire, a refund,”⁸⁰ the claim must furnish sufficient information to allow the Service to make a reasonable, intelligent investigation and evaluation of the taxpayer’s claim.⁸¹

What constitutes sufficient information has also been subject to numerous interpretations.⁸² The lack of consistency as to what is considered “sufficient” is astonishing. For example, according to some courts, it is insufficient to simply request “any refunds due because of overpayment”⁸³ or to provide to the Service, during the course of an audit, financial statements showing entitlement to additional refunds and credits.⁸⁴ Conversely, it has been held sufficient to simply request in a statement that, “the [Service’s] entire adverse determination be withdrawn,”⁸⁵ or to attach a letter to a tax return proclaiming the unconstitutionality of an imposed tax.⁸⁶

crabbed or literal reading, ignoring all the surrounding circumstances which give the body and content. Focus is on the claim as a whole, not merely the written component. *Am. Radiator & Standard Sanitary Corp. v. United States*, 318 F.2d 915, 920 (Ct. Cl. 1963).

79. See *New England Elec. Sys.*, 32 Fed. Cl. at 644.

80. *Am. Radiator & Standard Sanitary Corp.*, 318 F.2d at 920.

81. *Am. Nat’l Bank & Trust Co. v. United States*, 594 F.2d 1141, 1143 n.1 (7th Cir. 1979).

82. See *Newton v. United States*, 163 F. Supp. 614, 619 (Ct. Cl. 1958); *Kales v. United States*, 314 U.S. 186 (1941); *Hotel Conquistador, Inc. v. United States*, 597 F.2d 1348, 1355 (Ct. Cl. 1979), *cert. denied*, 444 U.S. 1032 (1980) (holding that a protest can constitute an informal claim for refund if it notifies the Service that an overpayment has been made).

83. The taxpayer’s letter, which requested “any refunds due because of overpayment,” was denied informal claim relief because it failed to state the amount involved, the date of the payments, or the basis of the claim. *APG 3, Inc. v. United States*, 32 F. Supp. 2d 451, 454-55 (5th Cir. 1999).

84. *Armstrong Rubber Co. v. United States*, 207 Ct. Cl. 1023, 1023-24 (1975) (holding there was no informal claim where Service agent was investigating taxpayer’s original, timely-filed, refund claim and taxpayer gave agent financial statements supporting entitlement to additional refunds and credits but did not submit another refund claim). *But cf. Goldin v. Comm’r*, 87 T.C.M. (CCH) 1374 (2004) (finding an informal claim where the taxpayer’s accountant simply asserted that IRS overstated taxpayer’s tax because the accountant neglected to use certain calculations).

85. *PALA, Inc. Emp. Profit Sharing Plan and Trust Agreement v. United States*, 234 F.3d 873, 878 (5th Cir. 2000) (stating that phrase in the letter gave the IRS “ample notice” that their entire determination was subject to a claim or refund, even though the letter did not state the year in which the refund applied was to be sought).

86. *Penn Mut. Indem. Co. v. Comm’r*, 277 F.2d 16, 18-19 (3d Cir. 1960). *But cf. Kaetz v. IRS*, 83 A.F.T.R.2d (RIA) 2536 (1999) (denying taxpayer’s plea of an informal claim where taxpayer merely made arguments about the unconstitutionality of the income tax system). Courts have used this lack of consistency to support a finding of informal claims where it appears that the

But the inconsistencies of the doctrine are not limited to the information that must be included in the actual claim. Courts have also differed on whether an informal claim can be amended⁸⁷ and whether an invalid formal claim can be considered a valid informal claim.⁸⁸ These inconsistencies can be remedied if the IRC or the Treasury regulations were amended to reflect specific guidance as to what is necessary for a valid informal claim.⁸⁹

IV. FORMALIZING THE INFORMAL CLAIM DOCTRINE

Despite the inconsistencies in the current form, some courts have held that the informal claim doctrine cannot, and should not, contain set rules, because each claim should be based on the merits of the facts presented.⁹⁰ But an argument can be made to the contrary.⁹¹ As discussed below, describing the doctrine in specific terms and incorporating it into the IRC or the Treasury regulations could prove to be beneficial, not only to taxpayers and practitioners, but to the Service as well.⁹²

A. Current Provisions can be Harsh

Currently, the regulations state that a taxpayer's refund claim must set forth in detail each ground upon which a credit or refund is claimed;

claim is questionable at best. See *PALA*, 234 F.3d at 878 (stating cases applying the informal claims doctrine have found informal claims in "similar and arguably less compelling circumstances").

87. *Favell v. United States*, 22 Cl. Ct. 571, 576-77 (1991) (allowing taxpayer's attorney to submit an informal amendment to a prior refund claim); IRS TAM 200429009 (treating taxpayer's form, which included signature defects, as an informal claim for refund and allowing taxpayer to remedy signature defects after the expiration of the statute of limitations). *But cf.* *Muhammed v. United States*, 43 Fed. Cl. 742, 746 (1999) (denying taxpayer's attempt to amend the initial deficient claim).

88. Although a formal claim for refund filed on Form 843 was insufficient because it failed to state the amount to be refunded and incorrectly combined multiple periods on the form, the Court held that the incorrect formal claim was a valid informal refund claim for one of the periods included therein. *Kelly v. United States*, 81 A.F.T.R.2d (RIA) 1047 (1998). *But cf.* *Gustin v. United States*, 876 F.2d 485, 485 (5th Cir. 1989) (refusing to allow an improperly dated Form 843 serve as the basis for an informal claim).

89. See *infra* Section IV.B.

90. "[N]o set rules can be elucidated as to what constitutes an adequate informal claim; rather, each case must be determined based on its own unique set of facts." *New England Elec. Sys. v. United States*, 32 Fed. Cl. 636, 641 (1995).

91. Other courts support this argument. While "the fraction of tax disputes that gives rise to litigation is remarkably small[,] the Treasury Department may . . . wish to consider the possibility of specifying the circumstances in which an informal claim for a refund shall be deemed a valid claim." *BCS Financial v. United States*, 118 F.3d 522, 527 (7th Cir. 1997).

92. See *infra* Section IV.B.

provide facts sufficient to apprise the Commissioner of the exact basis thereof; and include a declaration that the statements have been made under the penalties of perjury.⁹³ According to the regulations, *any claim that does not comply with these requirements will not be considered a claim for refund or credit.*⁹⁴ Therefore, these regulations can lead to harsh results.⁹⁵

For example, suppose that on the last day before the expiration of the statute of limitations, a taxpayer files a claim for a refund.⁹⁶ The claim is complete except for the omission of his signature.⁹⁷ Two days later, the taxpayer discovers and repairs the omission.⁹⁸ According to the IRC and the regulations, this taxpayer cannot obtain a refund or credit of overpayment.⁹⁹

Further, there is no mechanism for a taxpayer to be sure that they have satisfied the “valid claim” requirements, especially as it relates to determining whether they have provided facts sufficient to apprise the Commissioner of the exact basis of their refund claim. If a taxpayer files a timely income tax return and attaches a somewhat detailed letter, stating that there are pending issues that could result in his being entitled to a greater refund, the taxpayer may be under the impression that the letter provided sufficient information regarding the basis of his claim. Notwithstanding the taxpayer’s good faith belief that his letter effectively placed the Service on notice of an overpayment and intent to claim a refund, it is possible for the Service to find that the information provided was insufficient, and deny him the ability to recover a refund or credit of the overpayment.

These results appear to be harsh consequences of “absurd rigorism, even by the notably unforgiving standards of federal tax law.”¹⁰⁰ Further, because the informal claim doctrine has proven inconsistent, a taxpayer could be left in limbo regarding whether their informal claim would hold up in a court proceeding, or if they would actually get a day

93. Treas. Reg. § 301.6402-2(b).

94. *See id.*

95. *See BCS Financial*, 118 F.3d at 524 (“It would be absurd rigorism even by the notably unforgiving standards of federal tax law to make the taxpayer’s utterly harmless mistake a basis for forfeiting a claim conceded to be substantively valid.”).

96. *Id.*

97. *Id.*

98. *Id.*

99. § 301.6402-2(b) (A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit.).

100. *BCS Financial v. United States*, 118 F.3d 522, 524 (7th Cir. 1997).

in court.¹⁰¹ By amending the IRC and the Treasury regulations to incorporate some elements of the informal claim doctrine, an equitable, flexible solution which could serve as middle ground of sorts, can be established between the rigid regulations and the fallible doctrine.¹⁰²

B. Amending the Current Regulations

To reach this middle ground, the regulations should be amended to address those issues that have caused most of the doctrine's varying interpretations. First, the regulations should inform taxpayers of what constitutes a written component. Specifically, in addition to stating the current requirements, there should be a provision informing taxpayers that oral claims, even if documented by a Service agent, will never suffice as a basis for claiming a refund. This would eliminate litigation regarding whether an oral claim effectively placed the Service on notice of a potential claim for overpayment; and would also prevent taxpayers from falsely believing that their oral claims will provide a basis for a future refund.

Second, the regulations should be changed to eliminate its "absurd rigorism."¹⁰³ While there are multiple ways to make the doctrine flexible, but concise, the most effective manner is to eliminate the statement that "[a] claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit,"¹⁰⁴ and insert a procedure that mandates the Service to respond to non-complying claims. The procedure would require the Service to respond to all invalid and informal claims, including informal correspondences that simply indicate the taxpayer disagrees with a tax assessment or believes he may be entitled to a refund. The Service would respond by requesting information from the taxpayer sufficient to place the Service on notice that the taxpayer may request a refund. This procedure would give the taxpayer a chance to remedy an invalid claim and would effectively eliminate the problem that exists when a taxpayer and the Service disagree on whether the taxpayer's correspondence has "provide[d] facts sufficient to apprise the Commissioner of the exact basis"¹⁰⁵ of his refund claim.

101. *Greene-Thapedi v. United States*, 549 F.3d 530, 533 (7th Cir. 2008) (holding that no subject matter jurisdiction exists to review the merits of an informal claim if a formal claim for refund was not subsequently filed).

102. *See infra* Section IV.B.

103. *BCS Financial*, 118 F.3d at 524.

104. § 301.6402-2(b).

105. *Id.*

With these thoughts in mind, the regulations should be amended to reflect the following:

(1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefore except upon one or more of the grounds set forth in a claim filed before the expiration of such period.¹⁰⁶ The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof.¹⁰⁷ The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury.¹⁰⁸

(2) Oral assertions will never suffice as a claim for refund, nor toll the statute of limitation period, regardless as to whether a Service agent documents the taxpayer's oral claim. If, however, a taxpayer submits written documentation to the Service or files with the Service a claim that does not satisfy one or more of the requirements set forth in (1) prior to the expiration of the statutory period, and the written documentation either implies, or expressly states:

(a) an intent to pursue a refund;
(b) a disagreement with the tax assessed; or
(c) an overpayment of tax has been made,
such a writing or claim will toll the statute of limitations, regardless of whether the requirements of (1) have been satisfied.

(3) If the requirements of (1) are not satisfied, the Service shall respond to all claims satisfying the requirements of (2) with a letter stating what steps the taxpayer must follow to file a valid claim for refund. Upon receipt of the letter, the taxpayer will have 45 days to file a valid claim in accordance with the instructions provided in the letter. If the taxpayer does not file a valid claim within 45 days of receipt of the Service's letter, the claim will be considered invalid and therefore, the statute of limitation period will be considered to have continued throughout this period without interruption.

Amending the regulations to reflect the aforementioned would provide a simple solution to a complex doctrine. It would afford the Service the ability to know, in a timely manner, what claim an individual is making, or plans to make, in the future. It also gives the taxpayer an opportunity to properly make a claim, even if such claim initially failed

106. *Id.*

107. *Id.*

108. *Id.*

to provide facts sufficient to apprise the Commissioner of the exact basis of their refund claim.

Moreover, amending the regulations to reflect these changes would help eliminate litigation stemming from the varying interpretations of the doctrine. If these amended regulations were adopted, courts would be on notice that Congress and the Treasury have considered the informal claim doctrine, and have decided what steps are sufficient to make a valid claim for refund when the claim is informally presented. Further, such amendments would be fair to both the taxpayer and the Service. Ultimately, the taxpayer would not be subjected to “absurd rigorism,”¹⁰⁹ and the Service would no longer be concerned about being blindsided by claims after the statute of limitations period.

Opponents to such amendments may argue that the Service would carry the onerous burden of reviewing claims, deciding whether the claims are sufficient to elicit a response, and responding with a request for additional information. However, the Service is already tasked with the burden of reviewing claims and determining whether such claims meet the requirements of the regulations or the ever expanding informal claims doctrine.¹¹⁰ The procedures outlined in the proposed amendments actually help the Service by eliminating any guesswork and requiring the Service to respond to any informal or improper written claim for refund.

Additionally, under these proposed amendments, the Service’s response (as required per paragraph (3) of the proposed amended regulations) would be a generic form, requiring no additional analysis by the Service. The form would explain to the taxpayer what methods are available to the taxpayer for claiming refunds or credits and simply ask the taxpayer to provide the following information regarding the basis of the claim: (1) the tax year(s)/period(s) for which the claim is being made; (2) an estimate of the amount of the claim; (3) any information regarding tax proceedings in which the potential claim is based; and (4) any additional information necessary to support the taxpayer’s basis for the claim.

Since taxpayers are not allowed to seek refunds or claims on grounds other than those included in their claim for refund, this form would benefit the taxpayer by essentially requiring them to satisfy their

109. *BCS Financial*, 118 F.3d at 524.

110. Further, in other areas of the IRC, the Service is required to respond to taxpayers who file incomplete or improper forms with a request for additional information. *See* Treas. Reg. § 301.6320-1(c)(2) (listing the procedures set out for the Collection Due Process Hearings). Therefore, such a procedure does not appear to be overly burdensome.

burden of stating the grounds on which they seek their refund or credit. Further, once the form is returned to the Service within the forty-five-day period, the Service would then be able to effectively investigate the claim. The Service would also be satisfied that if it did not receive the form from the taxpayer, no claim for refund could be asserted after the lapse of the statute of limitation period as the taxpayer would be precluded from asserting such claim or pursuing the claim in a court proceeding because no valid claim for refund was filed prior to the expiration of the limitation period.

Accordingly, if the aforementioned proposed amendments were adopted, the Treasury regulations would reflect a flexible framework, consistent with the goals of the informal claim doctrine, which benefits both taxpayers and the Service.

V. CONCLUSION

The intricate web that is the IRC is filled with complicated issues and detailed provisions, causing some of the most renowned jurists to avoid dealing with its tangled issues.¹¹¹ In many cases, these provisions are unavoidable and are the results of a vast, well-reasoned, comprehensive body of law. In some situations, courts have created powerful doctrines that have helped resolve some of the IRC's confusing provisions and have effectively provided equitable solutions that benefit both the Service and the taxpayers.¹¹² Nevertheless, when courts disagree on how a doctrine should be interpreted, the doctrine loses its zeal, complicated issues are exacerbated, and taxpayers are unable to take advantage of potential equitable relief. Such has been the result of the varying interpretations of the informal claim doctrine.¹¹³ However, if the Treasury regulations were amended to reflect the changes discussed in this Article,¹¹⁴ the doctrine can become the powerful, flexible, equitable tool that its creators intended.

111. Ryesky, *supra* note 2, at 529-30 & nn.168-69.

112. *See supra* note 6, Section II, and Section III.

113. *See supra* Section III.

114. *See supra* Section IV.B.

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