

ALBEMARLE: REFUND CLAIMS RELATING TO FOREIGN TAX CREDITS

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Tags

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INTRODUCTION

A recent U.S. Court of Appeals case affirmed a lower court's decision that certain refund claims were barred by the statute of limitations.

In a case decided on October 20, 2014, *Albemarle Corp. v. United States*,¹ the U.S. Court of Federal Claims ruled in favor of the government. The court held that the taxpayer's claims for refunds, attributable to foreign tax credits, were time-barred in certain years.

The case involved withholding taxes on payments of interest to Albemarle Corp. ("Albemarle") from its Belgian subsidiary during the years 1997 to 2001. In 2001, the Belgian tax authorities asserted that the interest payments were subject to withholding tax, and in 2002, Albemarle agreed to pay, and did pay, Belgian withholding tax on these payments. The Belgian taxes were then allocated to each of the taxable years involved, 1997 to 2001.

In May 2009, Albemarle filed an amended U.S. income tax return for the 2002 taxable year in which it claimed foreign tax credits with respect to each of the years 1997 to 2001 for the Belgian withholding taxes paid in 2002. The Internal Revenue Service ("I.R.S.") permitted the refund claims for the 1999 to 2001 years but denied the refund claims attributable to 1997 and 1998. The I.R.S. determined, and the U.S. Court of Federal Claims agreed, that the 1997 and 1998 refund claims had not been filed within the ten-year statute of limitations provided in Code §6511(d)(3)(A). The claims for refunds attributable to foreign tax credits for the 1997 and 1998 taxable years (the "origin years") should have been filed on or before March 15, 2008 and March 15, 2009, respectively.

APPEAL

Albemarle appealed to the U.S. Court of Appeals for the Federal Circuit.² The Federal Circuit affirmed the lower court ruling, holding that the 1997 and 1998 refund claims had not been filed within the required ten-year period. With regard to the 1997 claim, the filing period was governed by the pre-1998 version of the statute, whereas the filing period for the 1998 refund claim was governed by the post-1997 version.

¹ 114 AFTR 2d 2014-6184 (118 Fed. Cl. 549).

² 116 AFTR 2d 2015-5609.

Post-1997 Code §6511(d)(3)(A)

Under the amended statute, the ten-year period runs from the date prescribed by law for filing the return for the year in which the taxes were actually paid or accrued.

Albemarle contended that “actually” in Code §6511(d)(3)(A) should be given its ordinary meaning of “in fact” or “in reality,” and thus, the 1998 tax liability could not accrue until it was finally established in 2002. Conversely, the I.R.S. claimed that “actually” indicated that the taxes accrue in the year of origin (*i.e.*, 1998) for purposes of the foreign tax credit. The Federal Circuit held that the government’s interpretation was correct, since it is well established that a contested foreign tax is counted toward the credit limitation of the origin year.

Had the appeal succeeded, Albemarle’s interpretation of the phrase “actually...accrued” would lead to a bizarre result, whereby the taxpayer could take a tax credit for a contested foreign tax in the year of origin (*i.e.*, 1998) but the credit would be counted toward the limitation applicable to the “contested resolution year” (*i.e.*, 2002). This would be contrary to the intent of the statute.

The phrase “actually...accrued” in the post-1997 statute appears to have been taken directly from Treas. Reg. §1.904-2(c). Congress’s usage of the same phrase in the post-1997 statute suggests that it was meant to have the same meaning as the regulation, which stipulates that a foreign tax “actually accrues” in the year of origin.

Relying on *Dixie Pine Products v. Commr.*,³ where the Supreme Court established what is known as the “contested tax doctrine,” Albemarle argued that contested foreign taxes cannot “actually accrue” for purposes of Code §6511(d)(3)(A) until the contest is over and the liability is established.

Albemarle also argued that the “all events test” for contested foreign taxes under Code §461 cannot be satisfied until the taxpayer’s liability is finally established, which is the year in which the tax is “actually accrued.” This would be 2002, the year in which the taxpayer resolved its dispute with the Belgium government.

The court rejected Albemarle’s arguments that the year that the foreign tax “actually...accrued” was controlled by *Dixie Pine Products* or Code §461. The court stated that it “has long been recognized that the contested tax doctrine, which is derived from the law regarding deductions, is not strictly applicable to claims of foreign tax credits.” Rev. Rul. 58-55,⁴ indicates that the contested tax doctrine applies to the accrual of foreign taxes for deduction purposes but not for credit purposes.

The court concluded that contested foreign taxes relate back to the year of origin for purposes of the foreign tax credit and foreign taxes “actually accrue” in the year of origin, *i.e.*, the year in which the foreign tax liability arose. Thus, the court concluded that the ten-year statute of limitations for filing a refund claim of Albemarle’s 1998 Belgian withholding taxes started to run on March 15, 1999, which was the due date for filing the return for the 1998 tax year. As a result, Albemarle’s May 2009 claim for credit of its 1998 Belgian taxes was time-barred.

³ 320 U.S. 516 (1944).

⁴ 1958-1 C.B. 266.

“Foreign taxes relate back to the year of origin for purposes of the foreign tax credit and foreign taxes ‘actually accrue’ in the year... in which the foreign tax liability arose.”

Pre-1998 Code §6511(d)(3)(A)

Under the prior version of Code §6511(d)(3)(A), a claim for a credit or refund attributable to foreign taxes paid must have been brought within ten years of the date prescribed by law for filing the return for the year with respect to which the claim is made.

Albemarle claimed a credit for its 1997 Belgian withholding taxes and intended to use that credit to offset its U.S. tax liability for the 1997 tax year. Therefore, Albemarle's refund claim was with respect to the 1997 tax year. The date prescribed by law for filing the 1997 tax return was March 15, 1998. Thus, Albemarle's May 2009 claim for a refund of the 1997 taxes was untimely.

CONCLUSION

As *Albemarle* demonstrates, taxpayers seeking to file tax refund claims must keep a careful eye on the statute of limitations or risk losing the ability to obtain a refund. In the case of a refund claim based on a foreign tax credit, Code §6511(d)(3) provides that the refund claim must be filed within ten years of the prescribed date for filing the relevant U.S. tax return. If the period of contest for the foreign tax is approaching ten years, a taxpayer should consider extending the statute of limitations by entering into an agreement with the I.R.S. under Code §6511(c).

