

# Federal Taxation

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## I. INTRODUCTION

In 2004 the Eleventh Circuit Court of Appeals published three tax decisions of note. In the first of those decisions, the Eleventh Circuit held that taxes that are untimely assessed, yet properly owed and duly paid, are not refundable.<sup>1</sup> In the second, a criminal tax evasion case, the Eleventh Circuit held that enhancing a criminal sentence due to obstruction of justice for making false statements to conceal a fraudulent tax return was not “double counting” under federal sentencing guidelines.<sup>2</sup> Finally, in a brief opinion, the Eleventh Circuit held that “toters” used to transport manufactured homes did not qualify as “tractors” under the definition of section 4051(a)(1)(E) of the Internal Revenue Code of 1986, as amended (the “Code”),<sup>3</sup> and therefore, were not subject to a twelve percent federal excise tax.<sup>4</sup>

The United States district courts within the Eleventh Circuit also published three noteworthy tax decisions. In one of those decisions, the United States District Court for the Southern District of Florida applied

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1. *Williams-Russell & Johnson, Inc. v. United States*, 371 F.3d 1350, 1352-53 (11th Cir. 2004).

2. *United States v. Uscinski*, 369 F.3d 1243, 1247 (11th Cir. 2004).

3. I.R.C. § 4051(a)(1)(E) (2000). Unless otherwise noted, all section references are to the Code.

4. *Horton Homes, Inc. v. United States*, 357 F.3d 1209, 1212 (11th Cir. 2004).

policy considerations in disregarding the literal language of section 4251.<sup>5</sup> The court held that the excise tax provided for in that section applied to long-distance telephone services that were billed according to toll charges that varied by time alone, and not by distance.<sup>6</sup> In another case, the United States District Court for the Middle District of Florida held that an employee leasing company was a co-employer for purposes of employment withholding taxes, and therefore was liable for the payment of those taxes.<sup>7</sup> Finally, in a third decision, the United States District Court for the Middle District of Georgia concluded that the Internal Revenue Service must consider an offer in compromise from a debtor in bankruptcy proceedings on the same grounds as it would consider a similar offer from any other taxpayer.<sup>8</sup>

## II. ELEVENTH CIRCUIT CASES

### A. *Untimely Assessed But Properly Owed and Duly Paid Taxes Not Refundable*

In *Williams-Russell & Johnson, Inc. v. United States*,<sup>9</sup> the Eleventh Circuit affirmed a decision of the District Court for the Northern District of Georgia that employment taxes that were untimely assessed, but otherwise properly owed and timely paid within the statutory period for assessment and collection, were not overpayments and should not be refunded.<sup>10</sup>

Between 1993 and 1995, Williams-Russell & Johnson, Inc. ("WRJ") filed its monthly employment tax returns and duly paid its employment taxes as it estimated them. The Internal Revenue Service (the "Service") determined that WRJ owed additional employment taxes during this period but failed to assess the deficiency until June 1999, after the applicable three-year period of limitations under section 6501(a)<sup>11</sup> had expired. The Service conceded that it could not collect the unpaid balance it assessed in 1999 because of the statute of limitations. The taxpayer, however, subsequently filed a claim for refund, arguing that the late assessment entitled it to a refund of all employment taxes it paid between 1993 and 1995. The Service denied the claim for refund

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5. *Am. Bankers Ins. Group, Inc. v. United States*, 308 F. Supp. 2d 1360, 1367-88 (S.D. Fla. 2004); I.R.C. § 4251 (2000).

6. *Am. Bankers*, 308 F. Supp. 2d at 1367-68.

7. *United States v. Total Employment Co.*, 305 B.R. 333, 341 (M.D. Fla. 2004).

8. *IRS v. Holmes*, 309 B.R. 824 (M.D. Ga. 2004).

9. 371 F.3d 1350 (11th Cir. 2004).

10. *Id.* at 1352-53.

11. I.R.C. § 6501(a) (2000).

on the basis that it was barred by the statute of limitations under section 6511.<sup>12</sup>

The United States District Court for the Northern District of Georgia dismissed the taxpayer's case for lack of subject matter jurisdiction, finding that there was no overpayment and that, in any event, the claim was time-barred. The taxpayer appealed to the Eleventh Circuit.<sup>13</sup>

WRJ argued that the late assessment created an overpayment of taxes under section 6401(a),<sup>14</sup> thereby entitling WRJ to a refund. Section 6401(a) defines the term "overpayment" to include "that part of the amount of the payment of the internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto."<sup>15</sup> Because the Service assessed the amount the taxpayer actually paid plus an additional amount after the limitations period had expired, WRJ argued that the late assessment created an overpayment.<sup>16</sup>

The court acknowledged that a literal reading of the statute supported the taxpayer's argument, but noted that the real issue was "whether . . . payments, properly owed and paid within the [statute of] limitations period, somehow became 'overpayments' merely because the IRS did not get around to assessing liability for them until after the limitations period expired."<sup>17</sup> Recognizing this as an issue of first impression in the Eleventh Circuit, the court followed other circuit court decisions, which have consistently answered this question in the negative.<sup>18</sup>

In disregarding the literal reading of section 6401(a), the Eleventh Circuit invoked the United States Supreme Court's decision in *Lewis v. Reynolds*<sup>19</sup> by holding that "a taxpayer's claim for refund must be reduced by the amount of the correct tax liability for the taxable year, regardless of the fact that the Commissioner can no longer assess any deficiency for the taxable year."<sup>20</sup> Following the Supreme Court's holding, the Eleventh Circuit noted that "an assessment is not a

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12. *Williams-Russell*, 371 F.3d at 1351-52; I.R.C. § 6511 (2000).

13. *Williams-Russell*, 371 F.3d at 1351.

14. I.R.C. § 6401(a) (2000).

15. *Id.*

16. *Williams-Russell & Johnson, Inc.*, 371 F.3d at 1352.

17. *Id.*

18. *Id.* at 1352-53. See *Moran v. United States*, 63 F.3d 663, 666 (7th Cir. 1995), *overruled in part* by 268 F.3d 497 (7th Cir. 2001); *Ewing v. United States*, 914 F.2d 499, 501 (4th Cir. 1990); *Crompton & Knowles Loom Works v. White*, 65 F.2d 132, 133-34 (1st Cir. 1933).

19. 284 U.S. 281 (1932).

20. *Williams-Russell*, 371 F.3d at 1353 (quoting *Bachner v. Commissioner*, 109 T.C. 125, 130 (1997), *aff'd*, 172 F.3d 859 (3rd Cir. 1998)).

prerequisite to tax liability . . . [but] only a formal determination that a taxpayer owes money.”<sup>21</sup> The court determined that section 6501<sup>22</sup> of the Code simply prohibits the Service from forcibly collecting taxes after the expiration of the statute of limitations.<sup>23</sup> The court decided that section 6401<sup>24</sup> does not allow a taxpayer to recover taxes correctly owed and paid.<sup>25</sup>

In light of its holding, the Eleventh Circuit did not reach the question of whether, if the taxpayer were due a refund under section 6401, the three-year limitations period of section 6511 would nevertheless bar that refund. However, the court indicated that it likely would rule in favor of the Service on that issue because the United States Supreme Court in *United States v. Dalm*<sup>26</sup> decided a similar issue—whether the statute of limitations under section 6511 runs from the payment or the assessment of the tax—against the taxpayer.<sup>27</sup>

*B. Sentence Enhancement Due to Obstruction of Justice is Not Double Counting Under Federal Sentencing Guidelines*

In *United States v. Uscinski*,<sup>28</sup> the Eleventh Circuit upheld a district court’s enhancement of a defendant’s criminal sentence for obstruction of justice when the defendant made false statements to law enforcement officials to conceal the defendant’s crime of tax evasion.<sup>29</sup> The court reasoned that the false statements were not included in the sentencing calculation for tax evasion.<sup>30</sup>

In 2002 Henry Uscinski (“Uscinski”) pleaded guilty to tax evasion under section 7201<sup>31</sup> because he willfully filed a false tax return for the 1996 tax year. Between August and November 1996, Uscinski withdrew approximately \$1.5 million from a client’s account for Uscinski’s personal

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21. *Id.* (quoting *Moran*, 63 F.3d at 666).

22. I.R.C. § 6501 (2000).

23. *Williams-Russell*, 371 F.3d at 1353.

24. I.R.C. § 6401 (2000).

25. *Williams-Russell*, 371 F.3d at 1353.

26. 494 U.S. 596 (1990).

27. *Williams-Russell*, 371 F.3d at 1353 n.2 (citing *Dalm*, 494 U.S. at 609 n.7).

28. 369 F.3d 1243 (11th Cir. 2004).

29. *Id.* at 1247.

30. *Id.*

31. I.R.C. § 7201 (2000). Section 7201 provides:

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

*Id.*

























