

THREE CASES THAT EVERY TAXPAYER SHOULD KNOW

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Benjamin Franklin once wrote, “In this world nothing can be said to be certain, except death and taxes.” Although taxes may be certain, tax law is always evolving. On the eve of Tax Day, while procrastinating on my own taxes, I researched recent cases. I found three that all taxpayers in California should know about, especially if they rely on an accountant to file their taxes or believe that they are entitled to a refund.

TAXPAYERS MIGHT NOT BE EXCUSED FOR A LATE PAYMENT DUE TO AN ACCOUNTANT’S ERROR

In *Baccei v. United States*, the Ninth Circuit held that a taxpayer might not be excused for a late payment due to an accountant’s error. 632 F.3d 1140, 1148–49 (2011). The court held that this is true even if the taxpayer relied on the accountant to obtain a payment extension.

Ronald Baccei was the executor of an estate. He retained a certified public accountant to file a federal estate tax return. The accountant filed a form to request an extension of the filing date, but failed to complete the form. After the accountant filed the return and paid the taxes, the Internal Revenue Service assessed a late payment penalty plus interest against the estate. According to the IRS, Baccei had failed to request an extension. Baccei paid the penalty and interest, then sued the IRS for a refund. The

District Court for the Northern District of California granted summary judgment in favor of the IRS.

The Ninth Circuit affirmed. In a matter of first impression, the court held that a taxpayer’s reliance on an accountant to obtain a payment extension is not reasonable cause to abate a late payment penalty. The court explained that it is the taxpayer’s responsibility to ensure that either payment is made or an extension has been granted before the deadline:

Although Baccei was entitled to retain an accountant to seek a payment extension, Baccei was responsible for either identifying the payment deadline and *ensuring that payment was made prior to that deadline, or confirming that a payment extension had been properly requested and granted*. By failing to confirm that an extension had been requested and granted before the payment deadline lapsed, Baccei failed to exercise the “ordinary business care and prudence” necessary to establish reasonable cause. *Baccei*, 632 F.3d at 1148–49 (emphasis added).

TAXPAYERS MIGHT NOT BE ENTITLED TO A JURY TRIAL WHEN THEY SUE FOR A TAX REFUND

In *Franchise Tax Board v. Superior Court*, the California Supreme Court held that taxpayers might not be entitled to a



jury trial when they sue for a tax refund. 51 Cal. 4th 1006, 1012, 1018 (2011). The court held that this is true even though taxpayers may avail themselves of a jury in federal district court.

Tom Gonzales was the personal representative of his son's estate. Gonzales sued the Franchise Tax Board for a refund of his son's personal income tax from previous years and demanded a jury trial. The Franchise Tax Board moved to strike the jury demand. However, the Superior Court in San Francisco County denied the motion, and the Court of Appeal affirmed.

The California Supreme Court reversed. In a matter of first impression, the court held that the California Constitution does not require a jury trial in an action for a refund of state income tax. The court explained that the United States Constitution does not require a jury in an action for a refund of federal income tax:

The *right to a jury trial* provided by the Seventh Amendment to the United States Constitution *does not apply* in statutory actions against the federal government. . . . That rule applies in *tax refund actions*. *Franchise Tax Board*, 51 Cal. 4th at 1012 (emphasis added, citations omitted).

The court further explained that “[s]everal states have followed the federal example and refused to recognize a state

constitutional right to a jury trial in tax refund cases.” *Id.* The court concluded “that article I, section 16 of the California Constitution does not require a jury trial in a statutory action for a state income tax refund.” *Id.* at 1018. The court acknowledged that Congress has statutorily provided for a jury trial in an action for a federal tax refund in district court. However, the court made clear that the state legislature has not acted similarly.

TAXPAYERS MAY SUE A LOCAL GOVERNMENT FOR A TAX REFUND IN A CLASS ACTION

In *Ardon v. City of Los Angeles*, the California Supreme Court held that taxpayers may sue a local government for a tax refund in a class action. 52 Cal. 4th 241, 246–53 (2011).

Estuardo Ardon, a resident of the City of Los Angeles, sued the city. Ardon claimed that the city's telephone users' tax was illegal. Ardon asked the Superior Court in Los Angeles County to certify a proposed class of similarly situated individuals. But the court denied certification. A divided Court of Appeal affirmed, specifically rejecting its own reasoning and contrary holding in a factually similar prior case.

The California Supreme Court reversed and resolved the conflict within the Courts of Appeal. The court held that the Government Claims Act generally permits a class claim

for a tax refund against a local government. Under the act, “[a] claim shall be presented by the claimant or by a person acting on his or her behalf.” Cal. Gov. Code § 910. The court explained that the act authorizes a class claim unless there is specific legislation to the contrary:

[The act] provides the necessary legislative *authorization for class claims of taxpayer refunds against local government entities* . . . in the absence of a specific tax refund procedure set forth in an applicable governing claims statute. 52 Cal. 4th at 252–53 (emphasis added).

The court found that the act authorized Ardon’s class claim because there was no contrary legislation.

SIGNIFICANCE

These cases discuss the extent to which a taxpayer may rely on an accountant to file his or her taxes, as well as the options that may be available to a taxpayer who sues the government for a refund. Under *Baccei*, taxpayers should not rely on an accountant to timely file their taxes, but should keep track of their deadlines and extensions themselves. 632 F.3d at 1148–49. If the accountant files the taxpayers’ taxes late, the taxpayers may be penalized. However, taxpayers may rely on an accountant’s substantive advice as to a tax deduction or “reasonably debatable tax position.” *Baccei*, 632 F.3d at 1148 n. 3. Under *Franchise Tax Board*,

taxpayers who sue the government for a tax refund do not have the right to a jury trial under the federal or state constitutions. 51 Cal. 4th at 1012, 1018. But taxpayers may be entitled to a jury trial in federal district court to the extent that Congress has authorized one by statute. Finally, under *Ardon*, taxpayers may sue the local government for tax refunds *en masse* in a class action. 52 Cal. 4th at 245, 251–53. Thus, taxpayers may pursue money owed to them by the government even if an individual lawsuit would not have been cost effective.

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