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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE KALANTARI AND)	Case No. EDCV 14-02580-VAP
YVETTE KALANTARI,)	(SPx)
Plaintiffs,)	ORDER GRANTING SUMMARY
v.)	JUDGMENT (DOC. NO. 18)
UNITED STATES OF)	[Motion filed on June 19,
AMERICA,)	2015]
Defendant.)	

On June 19, 2015, Defendant United States of America filed a Motion for Summary Judgment against Plaintiffs Lawrence Kalantari and Yvette Kalantari ("Motion" or "Mot."). (Doc. No. 18.) After consideration of the papers filed in support of, and in opposition to, the Motion, as well as the arguments advanced at the Motion hearing, the Court GRANTS Defendant's motion for summary judgment.

1 **I. BACKGROUND**

2 Plaintiffs filed their Complaint against Defendant
3 United States of America on December 17, 2014. (Doc. No.
4 1.) Plaintiffs seek a federal income tax refund of
5 \$644,243.28 for the year 1998. (Compl. ¶ 15.) Plaintiff
6 Kalantari was a partner in the Yucaipa Companies, a
7 partnership audited for the 1998 tax year. (Id. ¶ 7.)
8 The partnership entered into a settlement with the
9 Internal Revenue Service ("IRS") in 2008. (Id.) As the
10 result of the settlement agreement Plaintiffs' 1998
11 income was adjusted. (Id. ¶ 9.)
12

13 On November 4, 2008, Mr. Kalantari paid the IRS
14 \$620,000 based on an estimate of his tax liability from
15 the settlement agreement. (Id. ¶ 8.) On July 14, 2010,
16 the IRS made an assessment of \$531,762 in additional
17 taxes due for the year 1998. The income tax deficiency
18 assessment for the year 1998 is not in dispute. (Id. ¶
19 9.) In addition to the tax deficiency assessment,
20 Plaintiffs were assessed a delinquency penalty and
21 interest in the amounts of \$79,764.40 and \$564,478.88,
22 respectively. (Id.) On January 4, 2011, Plaintiffs
23 filed Form 843, Claim for Refund and Request for
24 Abatement. (Id. ¶ 11.) The IRS denied the claim on the
25 grounds that Plaintiffs did not file their 1998 income
26 tax return on time. (Id. ¶ 12.)
27
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1 A genuine issue of material fact will exist "if the
2 evidence is such that a reasonable jury could return a
3 verdict for the non-moving party." Anderson, 477 U.S. at
4 248. In ruling on a motion for summary judgment, a court
5 construes the evidence in the light most favorable to the
6 non-moving party. Scott v. Harris, 550 U.S. 372, 378,
7 380 (2007); Barlow v. Ground, 943 F.2d 1132, 1135 (9th
8 Cir. 1991); T.W. Elec. Serv. Inc. v. Pac. Elec.
9 Contractors Ass'n, 809 F.2d 626, 630-31 (9th Cir. 1987).

11 III. FACTS

12 A. Uncontroverted Facts

13 Both parties cite facts that are not relevant to
14 resolution of the Motion. To the extent certain facts
15 are not mentioned in this Order, the Court has not relied
16 on them in reaching its decision. The Court finds the
17 following material facts are supported adequately by
18 admissible evidence and are uncontroverted. They are
19 "admitted to exist without controversy" for the purposes
20 of this Motion. L.R. 56-3; see generally Fed. R. Civ. P.
21 56.

22
23 Plaintiffs Lawrence and Yvette Kalantari seek a tax
24 refund for the year 1998 in the amount of \$644,243.28
25 from Defendant United States of America. (Doc. No. 19,
26 Statement of Uncontroverted Facts ("SUF") No. 1; Compl. ¶
27 15.) Plaintiff Lawrence Kalantari was a partner in a
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1 partnership which was audited by the IRS for the tax year
2 1998. (SUF No. 3; Compl. ¶ 7.) The audit was resolved
3 in 2008 when the partnership and its partners agreed to
4 certain tax adjustments. (SUF No. 4; Compl. ¶ 7.) On
5 November 4, 2008, Mr. Kalantari paid the IRS \$620,000
6 based on an estimate of his tax liability from the
7 settlement agreement resolving the audit. (SUF No. 5;
8 Compl. ¶ 8.) On July 14, 2010, the IRS assessed
9 Plaintiffs \$531,762 in additional taxes due for the year
10 1998. In addition to the tax deficiency assessment, on
11 July 14, 2010, Plaintiffs were also assessed a
12 delinquency penalty and interest in the amounts of
13 \$79,764.40 and \$564,478.88, respectively. (SUF No. 6;
14 Compl. ¶¶ 8-9.)

15

16 **B. Disputed Facts**

17 The parties here dispute whether: (1) Plaintiffs
18 filed their 1998 federal income tax return timely; (2)
19 settlement of the partnership audit included interest
20 suspension and a waiver of assessment of penalties
21 against Plaintiffs; and (3) Plaintiffs are entitled to
22 interest suspension pursuant to 26 U.S.C. § 6404(g).
23 (See Mot at 4.)

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1 **IV. DISCUSSION**

2 In a refund suit, the taxpayer must prove that he or
3 she is entitled to the refund amount. See United States
4 v. Janis, 428 U.S. 433, 439-440 (1976) ("In a refund
5 suit, the taxpayer bears the burden of proving the amount
6 he is entitled to recover."); Wall v. United States, 133
7 F.3d 1188, 1191 (9th Cir. 1998) (In a conventional
8 refund action, "the taxpayer bears the burden of proving
9 the amount he is entitled to recover."). Moreover,
10 "[w]hen reviewing the assessment of taxes and penalties,
11 '[t]he ruling of the Commissioner of Internal Revenue
12 enjoys a presumption of correctness and a taxpayer bears
13 the burden of proving it to be wrong.'" Id. Hence, to
14 get a refund, Plaintiffs must prove that they filed their
15 1998 income tax return on time.

16
17 **A. Did Plaintiffs file their 1998 federal income tax**
18 **return on time?**

19 The filing of calendar year federal income tax
20 returns must be made before April 15th after the close of
21 the preceding calendar year. 26 U.S.C. § 6072(a). By
22 filing Form 4868 ("Application for Automatic Extension of
23 Time to File U.S. Individual Income Tax Return"), on or
24 before the April 15 deadline, taxpayers may receive an
25 automatic four-month extension to file their return. 26
26 U.S.C. § 6081; Treas. Regs., 26 C.F.R. §§ 1.6081-4(a) and
27 (b)(1)-(4). If taxpayers require an additional extension
28

1 of time to file, they may file Form 2688 ("Application
2 for Additional Extension of Time to File U.S. Individual
3 Income Tax Return"), which is not automatic, but
4 discretionary, and may be granted for "good cause."
5

6 Form 2688's instructions specifically advise
7 taxpayers that they must show good cause for requesting
8 an additional delay beyond the automatic extension and
9 that the additional extension request should be filed
10 early so that if denied, taxpayers can still file their
11 return on time. Torres v. Comm'r, T.C. Memo. 1998-230,
12 *1, fn.4, 1998 WL 341024 (U.S. Tax Court), at *2;
13 Bergersen v. Comm'r, T.C. Memo. 1995-424, *27, 1995 WL
14 510012 (U.S. Tax Court); Treas. Reg. Sec. 1.6081-
15 1(b)(ii).
16

17 Hence, to show that their 1998 return was filed
18 timely, Plaintiffs must prove: (1) they filed an
19 application for an additional extension with the IRS; (2)
20 they showed good cause why they could not file the return
21 by August 15, 1999; and (3) the IRS granted the
22 additional extension of time.
23

24 Here, Plaintiffs' 1998 federal income tax return was
25 due April 15, 1999, but they filed a timely application
26 for an automatic extension. (Exh. A to Compl., date "4-
27 15-1999"; "Extension of Time to File"; and "subsequent
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1 payment [\\$]1,278,476.00".) Plaintiffs' timely filing
2 extended the due date to August 15, 1999. (Exh. A to
3 Compl., "Ext. Date 08-15-1999".) To gain an additional
4 extension, Plaintiffs were required to file Form 2688 by
5 August 15, 1999 showing good cause. The IRS official
6 record does not show that Plaintiffs filed Form 2688 for
7 an additional extension or that the IRS granted a
8 request. (Mot. at 5.)

9
10 Plaintiffs contend they did file a timely Form 2688
11 and reasonably believed the IRS granted the additional
12 extension as it had done in the past. (See generally,
13 Doc. No. 20-1, Declaration of Joseph Mannino ("Mannino
14 Decl."); Doc. No. 20-2, Declaration of Lawrence Kalantari
15 ("Kalantari Decl.")) To support this contention,
16 Plaintiffs point to the general business practices of
17 Joseph Mannino, Plaintiffs' CPA, who prepared their 1998
18 tax return and extension requests, and Lawrence
19 Kalantari. (Mannino Decl. ¶ 9; Kalantari Decl. ¶ 4.)

20
21 It was Mr. Mannino's business practice to file all
22 tax returns and applicable extensions, including Form
23 2688, on behalf of clients like Plaintiffs. (Mannino
24 Decl. ¶ 8-10.) Moreover, Mr. Mannino recalls, and it is
25 his present belief that, Form 2688 was prepared timely
26 (Id. ¶ 12), and filed by his office or the sent to
27 Plaintiffs with filing instructions. (Id. ¶ 11.) Mr.

28

1 Kalantari would have immediately reviewed and completed
2 the filing according to Mr. Mannino's instructions.
3 (Kalantari Decl. ¶ 6.)
4

5 Mr. Kalantari declares that it has been his practice,
6 for the past 20 years, to request an additional extension
7 (Kalantari Decl. ¶ 4), and recalls requesting an
8 additional extension for the tax year 1998 (Id. ¶ 5.)
9 Mr. Kalantari has a history of filing for extensions
10 timely and filing his returns timely. (Id. ¶ 9.)
11

12 Defendant argues that the IRS enjoys the presumption
13 of "administrative regularity" with respect to the
14 processing of payments and assessments. (Pltf Supp. at 3
15 (Doc. No. 24).) According to the doctrine of
16 "administrative regularity," courts presume that IRS
17 officials "discharge their duties" properly, in the
18 absence of clear evidence to the contrary. See United
19 States v. Ahrens, 530 F.2d 781, 786-786 (8th Cir. 1976);
20 see also Donaldson v. United States, 264 F.2d 804, 807
21 (6th Cir. 1959), citing, United States v. Chemical
22 Foundation, Inc., 272 U.S. 1, 14-15 (1926).
23

24 Plaintiffs concede that the IRS enjoys a presumption
25 of administrative regularity and try to rebut the
26 presumption by claiming "it is not unheard of that the
27 IRS may well lose, destroy or misfile a document." (Def't
28

1 Supp. at 2 (Doc. No. 23).) Relying on Lee Brick & Tile
2 Co. v. United States, 132 F.R.D. 414 (M.D.N.C. 1990),
3 Plaintiffs argue that the IRS transcript indicating Form
4 2688 was not filed is insufficient evidence to support
5 the presumption, in light of Plaintiffs' evidence that
6 the claim was mailed. (Deft Supp. at 3.)

7
8 These argument are unpersuasive for two reasons.
9 First, speculation that the IRS sometimes loses documents
10 is not enough to rebut the presumption because Plaintiffs
11 must show irregularity of administrative procedures.
12 Chemical Foundation, Inc., 272 U.S. at 14-15, 47.

13 Second, when a non-moving party relies on its own
14 affidavits to oppose summary judgment, it cannot rely on
15 conclusory allegations unsupported by factual data to
16 create an issue of material fact. Hansen v. United
17 States, 7 F.3d 137, 138 (9th Cir. 1993). Plaintiffs have
18 not provided "factual data" that Form 2688 was mailed on
19 time. Moreover, their supporting declarations do not
20 conclusively describe how they allegedly mailed the form.
21 Mr. Mannino, says it is his "general business practice"
22 to mail such forms or send them to Mr. Kalantari to mail.
23 (Mannino Decl. ¶ 8-10.) Mr. Kalantari states it is his
24 "regular practice" to have his secretary mail extension
25 forms. (Kalantari Decl. ¶ 4.) These statements alone are
26 insufficient to create a genuine issue of material fact.
27 See Hansen, 7 F.3d at 138. Hence, Plaintiffs have not
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1 provided affirmative evidence rebutting the presumption
2 that if they had filed Form 2688 on time, the form would
3 have been processed, and the filing would have been
4 reflected in the IRS official records.

5
6 Finally, even if Plaintiffs filed Form 2688 on time
7 they cannot show the application was granted. The "Notice
8 to Applicant" section of Form 2688 has five possible
9 responses to an application for an additional extension
10 of time. (See Form 2688, Exh. C: grant, deny, return
11 Application, etc.) Neither Mr. Mannino or Mr. Kalantari
12 tried to verify the application was received after not
13 getting one of the five possible responses to the
14 application. Plaintiffs offer no evidence, other than
15 their stated belief, that their application was granted.
16 (Mannino Decl. ¶ 9; Kalantari Decl. ¶ 4.)

17
18 Accordingly, Plaintiffs cannot show that their
19 application for an additional extension of time was filed
20 on time or granted. Since Plaintiffs did not file their
21 1998 tax return by August 15, 1999, it was late, and they
22 are not entailed to a refund.

1 **B. Did the settlement of the partnership audit include**
2 **interest suspension and a waiver of assessment of**
3 **penalties against Plaintiffs?**

4 As part of the settlement with the IRS over their
5 disputed tax liability for the year 1999, Plaintiffs
6 allege that the IRS agreed they were entitled to interest
7 suspension and that no penalties would be assessed.

8 (Compl. ¶ 13(B).) The settlement agreement (Form 870)
9 states, "IRC Section 6651 failure to file penalty applies
10 to any late filed (or non-filed) returns that are
11 required to report the partnership items adjustments."
12 (Exh. D to Mot. at 1.) Moreover, in the "Schedule of
13 Adjustments" to the settlement agreement, the "Remarks"
14 section outlines four penalties. (Id. at 5.) Plaintiffs
15 do not address this issue in their opposition.

16 Accordingly, Plaintiffs concede this ground for recovery.
17

18 **C. Are Plaintiffs entitled to interest suspension**
19 **pursuant to 26 U.S.C. § 6404(g)?**

20 Interest on unpaid taxes is mandated by statute. See
21 26 U.S.C. § 6601. Section 6601 requires a negligent
22 taxpayer to pay interest from the tax deadline until the
23 outstanding amount is paid. See Holland v. United
24 States, 873 F.2d 1321, 1322 (9th Cir. 1989) ("The tax
25 code does not contemplate the interest free use of
26 government funds."). Here, Plaintiffs cannot demonstrate
27 that interest on their unpaid 1998 tax obligation was
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1 "suspended" by the settlement agreement because the
2 agreement does not waive or suspend interest. (See Exh.
3 D to Mot.)
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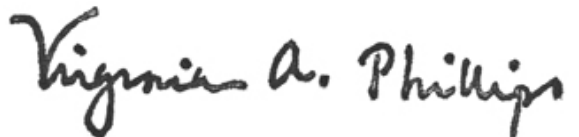
5 Plaintiffs further allege they are entitled to
6 interest suspension under 26 U.S.C. § 6404(g) because the
7 IRS failed to provide notice of delinquency. (Compl. ¶
8 13(A).) While § 6404(g) requires interest suspension if
9 the IRS does not provide notice to the taxpayer
10 identifying the particular amount due and the basis for
11 the liability, the suspension applies only to returns
12 filed timely. Since Plaintiffs did not file their 1998
13 tax return timely, section 640(g) does not apply to them.
14

15 Accordingly, Plaintiffs are not entitled to interest
16 suspension for the 1998 tax year under the settlement
17 agreement or section 6404(g).
18

19 **IV. CONCLUSION**

20 For the foregoing reasons, the Court GRANTS summary
21 judgment in favor of Defendant United States of America.
22

23 Dated: September 3, 2015



24 VIRGINIA A. PHILLIPS
25 United States District Judge
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