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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE REYNOSO,)	Case No. 10-00098 SC
)	
Plaintiff,)	ORDER GRANTING DEFENDANT'S
)	MOTION FOR SUMMARY
v.)	JUDGMENT; DENYING
)	PLAINTIFF'S MOTION FOR
UNITED STATES OF AMERICA,)	<u>SUMMARY JUDGMENT</u>
)	
Defendant.)	
)	
)	
)	

I. INTRODUCTION

In this action, Plaintiff Jose Reynoso ("Plaintiff" or "Reynoso") seeks to recover a refund for tax overpayments relating to the 1999 and 2000 income tax years and the unapplied portion of a cash bond. ECF No. 1 ("Compl.") ¶ 1. According to Plaintiff, he is entitled to a refund of \$75,852 for the 1999 tax year and \$357,118 for the 2000 tax year, and \$179,227 of his cash bond remains unapplied. Id. ¶¶ 8, 10, 23.

Now before the Court are two motions for summary judgment. Plaintiff moves for judgment in his favor and against the United States in the amount of \$612,917, plus applicable interest. ECF No. 13 ("Pl.'s Mot."); 14 ("Mem. of P. & A. in Support of Pl.'s Mot.") at 9. This motion is fully briefed. ECF No. 19 ("Def.'s Opp'n"); 23 ("Pl.'s Reply").

1 Defendant United States of America ("Defendant" or "the United
2 States") moves for entry of a judgment reducing Plaintiff's refund
3 by \$117,527. ECF No. 10 ("Def.'s Mot."); 11 ("Mem. in Supp. of
4 Def.'s Mot."). This motion is fully briefed. ECF No. 20 ("Pl.'s
5 Opp'n"); 22 ("Def.'s Reply"). For the following reasons,
6 Plaintiff's motion for summary judgment is DENIED and Defendant's
7 motion for summary judgment is GRANTED.

8

9 **II. BACKGROUND**

10 Plaintiff is a chiropractor. Reynoso Decl. ¶ 2.¹ He was
11 charged with and pled guilty to three misdemeanor counts for
12 failing to file tax returns for 1999, 2000, and 2001. Id. ¶ 3.
13 While Plaintiff did not file returns for these years, he did make
14 tax payments during these years. Id. Plaintiff made
15 contemporaneous tax payments of \$245,000 for 1999, \$200,000 for
16 2000, and \$200,000 for 2001. Stamm Decl. Exs. 1 ("Form 4340 for
17 1999"), 2 ("Form 4340 for 2000"), 3 ("Form 4340 for 2001").²

18 As a result of the criminal proceeding, the Internal Revenue
19 Service ("IRS") held \$585,329.48 as a cash bond to offset
20 Plaintiff's anticipated tax liability for 1999, 2000, and 2001.
21 See Reynoso Decl. ¶ 4; Stamm Decl. Ex. 4 ("May 10, 2005 Letter").
22 On December 13, 2005, \$75,852 was paid toward Plaintiff's 1999
23 taxes, \$278,338 was paid towards his 2000 taxes,³ and \$51,913 was

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25 ¹ Reynoso filed a declaration in support of his Motion. ECF No.
15.

26 ² Blake D. Stamm ("Stamm"), an assistant United States Attorney,
27 filed a declaration in support Defendant's Motion. ECF No. 12.

28 ³ This amount appears on Plaintiff's Form 4340 for 2000 as two
advance payments of \$249,999.26 and \$28,338.82.

1 paid towards his 2001 taxes; in 2008 the remainder of \$179,227 was
2 transferred to an excess collection account. See Forms 4340 for
3 1999, 2000, 2001; Mem. in Supp. of Def.'s Mot. at 2 n.1.

4 In 2007 and 2008, Plaintiff finally filed his tax returns for
5 1999, 2000, and 2001. His 1999 taxes were \$127,473, his 2000 taxes
6 were \$238,328, and his 2001 taxes were \$231,042. See Forms 4340
7 for 1999, 2000, 2001; Mem. in Supp. of Def.'s Mot. at 3. Plaintiff
8 filed a tax return for the 1999 tax year on August 6, 2007, see
9 Form 4340 for 1999; Stamm Decl. Ex. 5(a) ("First Form 1040 for
10 1999"), and he filed a second tax return for 1999 on December 5,
11 2007, see Stamm Decl. Ex. 5(b) ("Second Form 1040 for 1999"). In
12 this action, Plaintiff seeks to recover the unapplied portion of
13 the cash bond, and he seeks a refund of overpayments from 1999 and
14 2000. Compl. ¶ 1.

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16 **III. LEGAL STANDARD**

17 Summary judgment must be granted when "the pleadings, the
18 discovery and disclosure materials on file, and any affidavits show
19 that there is no genuine issue as to any material fact and that the
20 movant is entitled to judgment as a matter of law." Fed. R. Civ.
21 P. 56. A genuine issue of fact is one that could reasonably be
22 resolved, based on the factual record, in favor of either party. A
23 dispute is "material" only if it could affect the outcome of the
24 suit under the governing law. Anderson v. Liberty Lobby, Inc., 477
25 U.S. 242, 248-49 (1986).

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1 **IV. DISCUSSION**

2 **A. Statutory Framework**

3 Tax overpayments can be credited against the estimated income
4 tax for a subsequent taxable year. See 26 U.S.C. § 6402(b).
5 Section 6511 of Title 26 of the United States Code contains two
6 separate and distinct hurdles that a taxpayer must overcome in
7 order to claim a credit or tax refund. First, the claim must be
8 filed "within 3 years from the time the return was filed or 2 years
9 from the time the tax was paid, whichever of such periods expires
10 the later, or if no return was filed by the taxpayer, within 2
11 years from the time the tax was paid." 26 U.S.C. § 6511(a).
12 Second, if the taxpayer has timely filed a claim, then the amount
13 of the refund is limited by section 6511(b), which provides, in
14 relevant part, that:

15 [T]he amount of the credit or refund shall not
16 exceed the portion of the tax paid within the
17 period, immediately preceding the filing of the
claim, equal to 3 years plus the period of any
extension of time for filing the return.

18 26 U.S.C. § 6511(b)(2).

19 Section 6513(b)(2) provides:

20 For purposes of section 6511 . . . Any amount
21 paid as estimated income tax for any taxable
22 year shall be deemed to have been paid on the
23 last day prescribed for filing the return under
section 6012 for such taxable year (determined
without regard to any extension of time for
filing such return).

24 26 U.S.C. § 6513(b)(2).

25 Section 6513(d) states:

26 If any overpayment of income tax is, in
27 accordance with section 6402(b), claimed as a
28 credit against estimated tax for the succeeding
taxable year, such amount shall be considered
as a payment of the income tax for the

1 succeeding taxable year (whether or not claimed
2 as a credit in the return of estimated tax for
3 such succeeding taxable year), and no claim for
4 credit or refund of such overpayment shall be
allowed for the taxable year in which the
overpayment arises.

5 26 U.S.C. § 6513(d).

6 **B. Undisputed Facts**

7 Plaintiff filed a tax return for the 1999 tax year on August
8 6, 2007, see Form 4340 for 1999, and he filed a second tax return
9 for 1999 on December 5, 2007, see Second Form 1040 for 1999. He
10 filed his tax return for the 2000 tax year on May 22, 2008. See
11 Form 4340 for 2000; Stamm Decl. Ex. 6 ("Form 1040 for 2000"). On
12 December 12, 2008, Plaintiff filed claims for refunds for the 1999,
13 2000, and 2001 tax years. Stamm Decl. Exs. 8 ("Form 1040X for
14 1999"), 9 ("Form 1040X for 2000"), 10 ("Form 1040X for 2001"). On
15 April 23, 2009, Plaintiff's attorney sent a letter to the IRS
16 concerning his refund claims. Ham Decl. Ex. G ("Apr. 23, 2009
17 Letter").

18 The United States admits it has no basis to withhold from
19 Plaintiff the unapplied amount of the cash bond, \$179,277. Ham
20 Decl. Ex. D ("United States Resp. to Pl.'s Second Set of RFAs")
21 Resp. No. 3.⁴ The United States also admits that applying the cash
22 bond to pay for Plaintiff's 1999 and 2000 taxes resulted in
23 overpayments of \$75,852 for 1999 and \$357,118 for 2000. Id. Resp.
24 Nos. 2, 4.

25 **C. Contested Issue**

26 The only contested issue concerns Plaintiff's attempt to

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28 ⁴ Paul Ham ("Ham"), attorney for Plaintiff, filed a declaration in
support of Plaintiff's Motion. ECF No. 16.

1 transfer \$117,527 as an estimated tax credit from his 1999 tax year
2 to his 2000 tax year. Plaintiff contends he is entitled to recover
3 this overpayment; Defendant contends he is not.

4 On Plaintiff's second tax return for 1999, dated November 20,
5 2007 and filed on December 5, 2007, he states that his tax
6 liability is \$127,473 and his total tax payments are \$245,000, and
7 he requests that the overpayment of \$117,527 be credited towards
8 his year 2000 taxes. See Second Form 1040 for 1999. On
9 Plaintiff's year 2000 tax return, dated April 4, 2008 and filed on
10 May 22, 2008, he includes \$117,527 in estimated tax payments from
11 the previous year. See Form 1040 for 2000.

12 According to the United States, Plaintiff's claim for a refund
13 of the estimated tax payment of \$117,527 is time-barred. Def.'s
14 Mot. at 2. The United States relies on section 6513(b)(2) to argue
15 that his estimated tax payment was "deemed paid" on April 15, 2000.
16 Id. at 6. This argument makes no sense. If the \$117,527 was an
17 estimated tax payment for Reynoso's 2000 tax year, then it was
18 deemed paid on April 15, 2001, the last day prescribed for filing a
19 year 2000 tax return. See 26 U.S.C. §§ 6513(d) ("If any
20 overpayment of income tax is . . . claimed as a credit against
21 estimated tax for the succeeding taxable year, such amount shall be
22 considered as a payment of the income tax for the succeeding
23 taxable year"), 6513(b)(2) ("Any amount paid as estimated
24 income tax for any taxable year shall be deemed to have been paid
25 on the last day prescribed for filing the return . . . for such
26 taxable year"); Baral v. United States, 528 U.S. 431, 435-
27 36 ("the \$1,100 remitted as an estimated income tax in respect of
28 Baral's 1988 tax liability was likewise 'paid' on April 15, 1989.")

1 It is clear to the Court, however, that the IRS did not have
2 the authority to act on Reynoso's request -- made in December 2007
3 in his second 1999 Form 1040 -- to transfer \$117,527 as an
4 estimated tax credit from his 1999 tax year to his 2000 tax year.
5 As stated by the District Court for the Southern District of New
6 York:

7 [A]n overpayment may not be credited against
8 estimated tax for the following year and be
9 deemed to have been paid in the following year
10 for the purpose of the statute of limitations
11 unless the claim for credit itself is asserted
12 within the statutory period. Section
13 6511(b)(2)(A) provides that a claim for credit
14 for an overpayment of tax may not be asserted
15 for an overpayment which was paid more than 3
16 years prior to the claim . . . Any other result
17 would lead to a complete emasculatation of the
18 statute of limitations.

19 Chemical Bank New York Trust Co. v. United States, 275 F. Supp. 26,
20 31 (S.D.N.Y. 1967).

21 The Court agrees with this analysis. Plaintiff's 1999 tax
22 liability was \$127,473. See Form 4340 for 1999. Although
23 Plaintiff did not file a timely tax return, he paid \$25,000 on
24 April 21, 1999, and \$220,000 on April 15, 2000, toward his 1999
25 taxes. See id. On his 1999 tax return, dated November 20, 2007
26 and filed on December 5, 2007, Plaintiff claims an overpayment of
27 \$117,527, and he seeks to have this amount credited towards his
28 year 2000 taxes. See Second Reynoso Form 1040 for 1999. This tax
return constitutes Reynoso's claim for credit. "In general, in the
case of an overpayment of income taxes, a claim for credit or
refund of such overpayment shall be made on the appropriate income
tax return." 26 C.F.R. § 301.6402-3. Therefore, Plaintiff filed
the claim for credit more than seven years after making the

1 overpayment, and, as such, the claim for credit is clearly untimely
2 under section 6511.

3 This case is similar to Burr v. Commissioner of Internal
4 Revenue, where the United States Tax Court determined that the IRS
5 did not have the authority to award an overpayment credit. 2002 WL
6 459233, at *3, T.C. Memo. 2002-69 (U.S. Tax Ct. Mar. 25, 2002). In
7 Burr, the IRS received the taxpayer's 1994 tax return in July 1999.
8 Id. On this return, the taxpayer claimed an overpayment and
9 sought to have it credited towards his 1995 taxes. Id. The Tax
10 Court determined that the claim for a credit was untimely because
11 it was filed outside the two-year period provided under section
12 6511. Id. Accordingly, the IRS did not have authority to award a
13 credit against the taxpayer's estimated taxes for 1995. Id.; see
14 also Stephenson v. Comm'r of Internal Revenue, 1995 WL 27093, at
15 *3, T.C. Memo. 1995-33 (U.S. Tax Ct. Jan. 25, 1995) ("An
16 overpayment may not be credited against estimated tax for a
17 subsequent taxable year, unless the claim for credit itself was
18 filed within the statutory period set forth in section 6511.").

19 As Plaintiff points out, the IRS acted on his request and
20 transferred \$117,527 from his 1999 tax year to his 2000 tax year
21 sometime between February 6, 2009 and April 6, 2009. See Pl.'s
22 Mot. at 8; Pl.'s Opp'n at 3-4; United States Resp. to Pl.'s Second
23 Set of RFAs, Resp. No. 11. Plaintiff concedes that recovery would
24 be barred by section 6511 if the transfer never occurred. See
25 Pl.'s Opp'n at 4 ("To the extent the government argues that recover
26 would be barred by Section 6511 if the transfer never occurred,
27 Plaintiff agrees. But the government did make the transfer and it
28 did occur sometime between February 6, 2009 and April 6,

1 2009.")(emphasis in original).

2 The fact that the IRS mistakenly made a transfer of \$117,527
3 in 2009 does not alter the Court's analysis. The IRS concedes that
4 this transfer was a mistake. Second Ham Decl. Ex. A ("Prodromos
5 Dep.") at 51:1-52:14.⁵ The IRS had no authority to make the
6 transfer because the claim for credit was untimely. Plaintiff
7 seeks to capitalize on this mistake. He argues that his 2009 claim
8 for a refund of the \$117,527 is timely because the IRS applied this
9 credit to his year 2000 taxes sometime between February 6, 2009 and
10 April 6, 2009. Pl.'s Mot. at 8. However, the relevant claim is
11 not Reynoso's 2009 claim for a refund, but rather his 2007 claim
12 for a credit. In 2007, Reynoso finally filed his tax return for
13 1999, and on this return he sought to have an overpayment of
14 \$117,527 applied towards his year 2000 taxes. This claim for
15 credit was time-barred, and hence the IRS did not have the
16 authority to make the transfer. The IRS's mistake does not create
17 an equitable exception to the strict time limits of section 6511.
18 See United States v. Brockamp, 519 U.S. 347, 352 (1997) ("Congress
19 did not intend courts to read . . . unmentioned, open-ended,
20 'equitable' exceptions into . . . [section 6511]").

21 The Court finds that Plaintiff's 2007 claim for a credit was
22 untimely. "Section 6511 has as its purpose foreclosing untimely
23 claims." Miller v. United States, 38 F.3d 473, 475 (9th Cir.
24 1994). As such, Plaintiff is barred from recovering \$117,527 of
25 his overpayment.

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28 ⁵ Ham filed a second declaration in support of Plaintiff's
Opposition to Defendant's Motion. ECF No. 20-1.

1 **V. CONCLUSION**

2 For the reasons explained above, the Court GRANTS Defendant
3 United States of America's Motion for Summary Judgment and DENIES
4 Plaintiff's Motion for Summary Judgment. Rounding out the figures
5 to the nearest dollar, Plaintiff should recover \$75,852 for his
6 1999 tax overpayments, \$239,591 for his 2000 tax overpayments, and
7 \$179,227 for the unapplied portion of the cash bond. In total,
8 therefore, Plaintiff should recover \$494,670. The Court VACATES
9 the Pretrial Conference set for January 7, 2011, and the bench
10 trial scheduled to begin on January 10, 2011.

11 According to Plaintiff, he is entitled to interest on his
12 recovery. Pl.'s Mot. at 9. Neither party discusses the applicable
13 interest rate. The Court ORDERS the parties to meet and confer
14 regarding how much interest Plaintiff should recover, if any.
15 Within ten (10) days of this Order, the parties should file a
16 stipulation regarding the applicable amount of interest, or if they
17 cannot agree, separate declarations addressing the applicable
18 amount of interest and explaining the basis of the calculation.
19 Once this issue has been resolved, the Court will enter a judgment
20 awarding Plaintiff Jose Reynoso \$494,670, plus any applicable
21 interest.

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24 IT IS SO ORDERED.

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26 Dated: December 21, 2010

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UNITED STATES DISTRICT JUDGE

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