



Current Federal Tax Developments

July 1, 2024

Kaplan Financial Education



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This Week We Look At:

Ninth Circuit rules that statute of limitations for the IRS to sue for recovery of erroneous refund begins when the check clears the Federal Reserve and is approved for payment by the US Treasury

IRS National Taxpayer Advocate announces the IRS will automate FTA abatement of penalties beginning in 2026

Attorneys report some ERC claimants now interesting in filing suit to accelerate their claim processing

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Ninth Circuit Rules on Statute of Limitations for IRS to File Suit to Reclaim Erroneous Refund



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- *United States v. Page*, CA9 Case No. 21-17083, June 26, 2024
 - Question is when the two-year statute of limitations for the IRS to bring a suit under IRC §7405 to reclaim an erroneous refund begins
 - District Court ruled it begins when the check is received by the taxpayer
 - IRS claims it does not start until the check is presented for payment and is approved for payment by the US Treasury

United States v. Page, CA9:

<https://www.taxnotes.com/tax-notes-today-federal/litigation-and-appeals/late-cashing-mistaken-491000-refund-check-saves-irs-suit/2024/06/27/7kdsn>

Ninth Circuit Rules on Statute of Limitations for IRS to File Suit to Reclaim Erroneous Refund



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- *United States v. Page*, CA9 Case No. 21-17083, June 26, 2024
 - Facts of the case
 - Taxpayer issued a refund of \$491,104 vs. the \$3,463 the taxpayer should have been paid for his 2016 refund
 - Mailed the check on May 5, 2017
 - On April 5, 2018 taxpayer cashed the check
 - Taxpayer returned \$210,000 when the IRS requested it

United States v. Page, CA9:

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/ninth-circuit-clarifies-erroneous-refund-statute-limitations/7kds0>



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- *United States v. Page*, CA9 Case No. 21-17083, June 26, 2024
 - Facts of the case
 - IRS filed suit on March 31, 2020 to recover the remaining \$277,641
 - Taxpayer did not answer the complaint, Government moved for default
 - After the clerk entered the default, the Government moved for a default judgment
 - USDC denied default judgment, finding the statute had passed

United States v. Page, CA9:

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- *United States v. Page*, CA9 Case No. 21-17083, June 26, 2024
 - Court found the IRS had filed suit more than 2 years after the refund check had been received
 - IRS asked for discovery on the question of when the refund had been received - taxpayer stated he did not remember when he had received the check
 - Court found that even though the receipt date was not known, “common sense” holds that it was more than two years after the receipt
 - IRS appealed the ruling to the Ninth Circuit

United States v. Page, CA9:

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- *United States v. Page*, CA9 Case No. 21-17083, June 26, 2024
 - Per IRC §6532(b) “Recovery of an erroneous refund by suit under section 7405 shall be allowed only if such suit is begun within 2 years **after the making of such refund.**”
 - Panel sought to determine what would be the date of making the refund - found that it is the date it is paid

United States v. Page, CA9:

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- *United States v. Page*, CA9 Case No. 21-17083, June 26, 2024
 - Reason
 - Government cannot sue until funds change hands - and statute should not begin to run until the Government **can** sue
 - Second, the check clearance date is the most certain date to be used for the date a refund is made
 - Third, these statutes of limitations ambiguities must be resolved in the Government's favor

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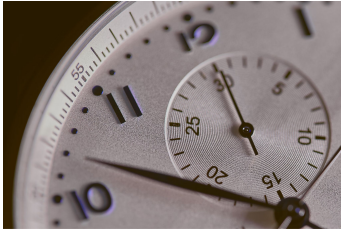


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- *United States v. Page*, CA9 Case No. 21-17083, June 26, 2024
 - Reason
 - Fourth avoids a Circuit split - 2 Circuits have decided this issue and both use the date the checks clears as the payment date. (*United States v. Greene-Thapedi*, 398 F.3d 635, 639 (7th Cir. 2005) and *United States v. Commonwealth Energy Sys.*, 235 F.3d 11 (1st Cir. 2000))
 - District Court improperly found that *United States v. Carter*, 906 F.2d 1375 (9th Cir. 1990) required the payment date to be used

United States v. Page, CA9:

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National Taxpayer Advocate Announces IRS Moving to Automate First-Time Abatement Relief



Photo by [Aryan Dhiman](#) on [Unsplash](#)

- Benjamin Valdez, "IRS to Automate First-Time Abate Program," *Tax Notes Today Federal*, July 1, 2024
 - National Taxpayer Advocate Erin Collins spoke at a New York University School of Professional Studies conference on June 28, 2024
 - She announced the IRS plans to begin automatically abating penalties for taxpayers eligible for first-time abatement
 - The aim is to implement the change - but not until 2026

Benjamin Valdez, "IRS to Automate First-Time Abate Program," *Tax Notes Today Federal*, July 1, 2024 (subscription required):

<https://www.taxnotes.com/tax-notes-today-federal/penalties/irs-automate-first-time-abate-program/2024/07/01/7kdz6>

Information on First-Time Abatement program:

<https://www.irs.gov/payments/penalty-relief-due-to-first-time-abate-or-other-administrative-waiver>

IRM §20.1.1.3.3.2.1 (03-29-2023):

https://www.irs.gov/irm/part20/irm_20-001-001r#idm140719833045088

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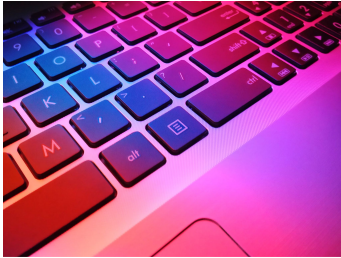


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- Benjamin Valdez, "IRS to Automate First-Time Abate Program," *Tax Notes Today Federal*, July 1, 2024
 - Taxpayers Advocate Service estimates that one to two million taxpayers are eligible for the abatement but don't know about it
 - The program current requires the taxpayers to seek abatement at which time the IRS employee is supposed to check qualification - but it is a manual process and, as many practitioner may have found, not necessarily applied as it should due to IRS employee confusion

Benjamin Valdez, "IRS to Automate First-Time Abate Program," *Tax Notes Today Federal*, July 1, 2024 (subscription required):

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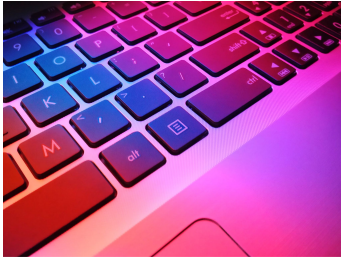


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- Benjamin Valdez, "IRS to Automate First-Time Abate Program," *Tax Notes Today Federal*, July 1, 2024
 - Relief provided for the following penalties
 - Failure to file -
 - Tax returns – IRC §6651(a)(1)
 - Partnership returns – IRC §6698(a)(1)
 - S Corporation returns – IRC §6699(a)(1)
 - Failure to pay under IRC §§6651(a)(2) and (3)
 - Failure to deposit under IRC §6656

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- Benjamin Valdez, "IRS to Automate First-Time Abate Program," *Tax Notes Today Federal*, July 1, 2024
 - Additional criteria:
 - A total of four or more Failure to Deposit penalty waiver codes are not present in the prior three years.
 - The Failure To Deposit penalty is not charged for Electronic Federal Tax Payment System (EFTPS) avoidance.

Benjamin Valdez, "IRS to Automate First-Time Abate Program," *Tax Notes Today Federal*, July 1, 2024 (subscription required):

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- Benjamin Valdez, "IRS to Automate First-Time Abate Program," *Tax Notes Today Federal*, July 1, 2024
 - FTA does not apply to returns with:
 - An event-based filing requirement
 - The Daily Delinquency Penalty (DDP), or
 - Information reporting that is dependent on another filing.
 - Additional information at IRM §20.1.1.3.3.2.1 (03-29-2023)

Benjamin Valdez, "IRS to Automate First-Time Abate Program," *Tax Notes Today Federal*, July 1, 2024 (subscription required):

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Following IRS Update on ERC Claims Processing, Attorneys Report More Interest in Filing Suit



Photo by [Sasun Bughdaryan](#) on [Unsplash](#)

- Lauren Loricchio, "Taxpayers Weighing Refund Suits for ERC Claims," *Tax Notes Today Federal*, July 1, 2024
 - IRS announcement on ERC processing noted
 - 70% of claims before moratorium will need more processing (thus no real expectation of end date)
 - No plans at this point to begin processing claims filed after moratorium date
 - This has lead, per attorneys interviewed, with an increased level of interest for certain taxpayers with claim to file suit before receiving IRS determination

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- Lauren Loricchio, "Taxpayers Weighing Refund Suits for ERC Claims," *Tax Notes Today Federal*, July 1, 2024
 - IRC §6532(a)(1) provides "No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates."

Lauren Loricchio, "Taxpayers Weighing Refund Suits for ERC Claims," *Tax Notes Today Federal*, July 1, 2024 (subscription required):

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- Lauren Loricchio, "Taxpayers Weighing Refund Suits for ERC Claims," *Tax Notes Today Federal*, July 1, 2024
 - A large proportion of the ERC claims still to be processed by the IRS were filed more than six months ago so taxpayers could move forward with suits for refunds
 - Reason may want/need to move forward
 - Financial need
 - Better use for the funds or
 - Want to complete an acquisition (so need this issue resolved)

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 - Article notes some attorneys are now advertising they will take on such cases
 - But there are risks
 - The costs are relatively high to litigate this issue
 - May put the taxpayer "in the crosshairs"
 - May prove risky if tax professional has not done his/her due diligence before advising client to move forward with a refund claim

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