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US court upholds IRS penalty on US expat demanding tax refund

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Added 11th August 2017

A US court has dismissed a complaint by an American citizen residing in Canada who claimed to have paid an unconstitutional penalty for failing to file the fiscal documentation required for his offshore business.

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“Excessive penalties”

The IRS assessed Dewees under OVDP for a quarter of a million US dollars' worth of penalties and tax, although a few weeks later it admitted it had double-counted some of the accounts.

It then commuted the charge to \$185,862 for not filing FBARs from 2003 to 2008. It did

not, however, calculate a penalty for Dewees' failure to file Form 5471.

Dewees refused to pay the reduced assessment. Ultimately, in June 2011, he told the IRS he was withdrawing from the OVDP because of the excessive amount of penalties.

The IRS withdrew the OVDP penalties, but in September 2011 notified Dewees that it had assessed a different penalty of \$120,000 against him for failing to file Form 5471 from 1997 to 2008. This penalty was based entirely on Dewees' failure to file; he was not liable for any unpaid taxes.

Dewees challenged the penalty before the IRS without success, and refused to pay it.

International treaties

In the meantime, Dewees was also owed a substantial tax refund on his Canadian taxes from the Canada Revenue Agency (CRA).

However, in May 2015 the CRA notified Dewees that it was holding his tax refund until his outstanding \$120,000 debt to the IRS was paid in full.

It did so in conformity with the United States-Canada Income Tax Convention, a tax treaty in force between the two countries.

At that point, Dewees sent the CRA a check for \$134,116.34, representing the \$120,000 it owed the IRS plus interest.

Then, in September 2015, he filed a claim seeking a refund of that amount, which was rejected in May 2016.

It was then that the American expat filed his suit against the IRS to have his payment refunded on constitutional grounds, rejected by Court on 8 August.