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### **Fixed Fees and the Government**

In tax cases, I am often asked the question, usually after an hourly fee is quoted, "How many hours will it take?" Usually I say, "It is impossible to tell." Although clients may think that I am merely being evasive, the attached case judicial decision, which involved my clients, Mr. and Mrs. Belshee, illustrates why it is virtually impossible to predict what might happen when dealing with a government agency.

As the page 2 of the attached decision indicates, the Belshees had requested and obtained an Offer in Compromise and had paid the full amount due under the terms of the Offer. Despite the fact that the deal was "done" and that the IRS was legally prohibited from taking other action against the Belshees, the IRS did just that and demanded payment of amounts to which the IRS had absolute no legal right.

I was required to intervene and finally got "the dogs called off." Under procedures for getting the IRS to pay taxpayer legal fees when the IRS action has no justification, we requested that the IRS reimburse the Belshees for my legal fees. After many years of requesting this reimbursement, we finally received a letter from the then IRS Virginia Director, who informed me, in writing, that the IRS would pay me for the requested legal fees. Following receipt of that letter, an IRS Appeals Officer in Richmond, Larry Ford, called to say they would pay the legal fees but not any interest. Note that the IRS always charges taxpayers interest but never wants to pay interest.

We agreed to accept the principal amount of what had been billed. The IRS then said it would pay only subject to approval of the IRS National Office, which then said "No," despite the fact that their agent, the District Director, had agreed to pay the claim. Apparently, the IRS National Office believed that the decision of the Virginia District Director could be ignored.

We then took the matter to the Tax Court and we lost. The court, ruling on a technical reading of the law, that the Internal Revenue Code allows for reimbursement only if there has been “an appeals office notice of decision or a Notice of Deficiency.” Because this matter involved a collection action, there was neither an appeals decision nor a Notice of Deficiency. Neither was needed.

The Tax Court Judge, Peter Panuthos, wrote that the sovereign (the U.S. Government) could not be sued unless it agreed to be sued. The applicable provision of Internal Revenue Code § 7430 was narrowly construed and the Belshees lost. In other words, the IRS can screw up big time by doing that which it is clearly not permitted to do, and there is not a whole lot taxpayers or their attorneys can do about it if the screw-up is not pursuant to a Notice of Deficiency or an IRS appeals decision.

This case shows why I cannot, and will not, agree to handle an IRS matter for a fixed number of hours or a fixed fee. It is impossible to predict what can happen in dealing with the IRS.

Having said that, I do use fixed fee estimates for various matters that do not involve dealing with a government agency, such as estate planning, business formations and other tasks.

Cordially,

D. Alden Newland

Enc. *Belshee v. Commissioner of Revenue*, T.C. Memo. 1999-380