



# TaxNewsFlash

## United States

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### **Ninth Circuit: Inconsistency between S corporation's and shareholder's returns**

The U.S. Court of Appeals for the Ninth Circuit today affirmed in part and reversed and remanded in part a judgment of a federal district court in a taxpayer's suit for refund of individual income tax.

The refund was based on an overstatement of net income reported on the return of the taxpayer's S corporation (a return that was filed by a bankruptcy trustee), and the issue addressed by the Ninth Circuit was whether statements or forms attached by the taxpayer to his amended returns satisfied the requirement under section 6037(c)(2)(A)(ii) for a "statement identifying the inconsistency" between the S corporation's return and the taxpayer's return (as the shareholder of the S corporation).

The case is: *Rubin v. United States*, No. 16-56633 (9<sup>th</sup> Cir. September 24, 2018). Read the Ninth Circuit's [decision](#) [PDF 59 KB]

#### **Background**

The taxpayer was the sole shareholder of an S corporation that was put into an involuntary bankruptcy. The bankruptcy trustee filed the S corporation's income tax returns for tax years 1998 - 2000, and reported over \$66 million of cancellation of indebtedness income (among other items) for tax year 2000.

The taxpayer asserted that the net income for the S corporation for tax year 2000 was substantially overstated on the return filed by the bankruptcy trustee, and as a consequence, the amount of individual income that flowed through to the taxpayer was substantially overstated, resulting in an overpayment of tax.

The taxpayer filed amended income tax returns seeking refunds of the tax overpayment. With the amended returns, the taxpayer included a statement

describing how his items of income flowed from the S corporation and also stated his disagreement with the tax returns filed by the bankruptcy trustee. The claims for refunds for tax years 1998 and 1999 were based in part on carrying back losses from tax year 2000.

The IRS disallowed the refund claims after analyzing the claims based on substantive disagreements with the taxpayer's positions. After the taxpayer initiated tax refund litigation, the federal district court granted the government's motion for judgment on the pleading by finding that the taxpayer had not satisfied a requirement under section 6037(c)(2)(A)(ii)—that is, if a tax return filed by the shareholder of an S corporation is inconsistent with the S corporation's return, then the shareholder must file a statement identifying the inconsistency.

### **Ninth Circuit's decision**

On appeal, the Ninth Circuit today reversed and remanded the case to the district court.

The appeals court found that although the taxpayer did not report the inconsistencies using Form 8082, *Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR)*, the taxpayer's statement provided all of the information required to be reported on Form 8082; and thus, the Ninth Circuit concluded that the filings made by the taxpayer satisfied the "statement identifying the inconsistency" rule.

In support of its conclusion, the Ninth Circuit found that the taxpayer's statements and supporting materials were sufficient to identify the relevant inconsistencies (as the government originally denied the taxpayer's claims on the merits). Thus, the Ninth Circuit concluded that the taxpayer's filings identified the inconsistencies between his tax returns and those of the S corporation.

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