



# TaxNewsFlash

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## Second Circuit: Jurisdiction of U.S. Court of Federal Claims, claim for overpayment interest

The U.S. Court of Appeals for the Second Circuit today vacated a judgment of a federal district court and transferred a taxpayer's claim for overpayment interest on a delayed tax refund to the U.S. Court of Federal Claims.

The Second Circuit held that jurisdiction over the taxpayer's claim for overpayment interest lies exclusively with the Court of Federal Claims. The case is: *Pfizer, Inc. v. United States*, No. 17-2307-cv (2d Cir. September 16, 2019). Read the Second Circuit's [decision](#) [PDF 283 KB] that includes a concurring opinion.

### Summary

The taxpayer's income tax return for 2008 (filed September 11, 2009) showed a tax overpayment in excess of \$769.6 million. The taxpayer asked the IRS to refund \$500 million and to apply the remaining balance to its estimated tax for 2009. The IRS prepared refund checks, but the taxpayer never received them. The taxpayer contacted the IRS multiple times between December 2009 and February 2010 to inquire about the refund checks. The IRS eventually cancelled the checks, and on March 19, 2010, the IRS deposited the overpayment refund of approximately \$500 million directly into the taxpayer's bank account.

Three years later, the taxpayer filed a claim requesting interest on the tax overpayment. The IRS disallowed the interest claim, on the grounds that IRS records indicated that the refund checks were issued on October 19, 2009. The taxpayer first appealed with the IRS Office of Appeals and eventually filed suit in federal district court seeking about \$8.3 million in overpayment interest. The government first moved to dismiss the district court action, or alternatively to transfer it to the Court of Federal Claims, for lack of subject-matter jurisdiction. Subsequently, the government moved to dismiss the district court action on the grounds that the taxpayer failed to file its claim within the two-year statute of limitations. The federal district court granted the government's second motion to dismiss, and the taxpayer filed an appeal with the Second Circuit.

Today, the Second Circuit vacated the district court's judgment and ordered the case transferred to the Court of Federal Claims. The Second Circuit explained that for a federal district court to have

jurisdiction, the taxpayer's claim for overpayment interest must be an action seeking recovery of: (1) an internal revenue tax alleged to have been erroneously or illegally assessed or collected; (2) a penalty claimed to have been collected without authority; or (3) a sum alleged to have been excessive or wrongfully collected. Because a claim for overpayment interest does not fall within one of these three categories, under the Tucker Act (28 U.S.C. section 1491(a)(1)), the Court of Federal Claims has exclusive jurisdiction over the taxpayer's claim for overpayment interest.

### **KPMG observation**

The Second Circuit's decision today conflicts with the Sixth Circuit's decision in *E.W. Scripps Co. v. United States*, 420 F.3d 589 (6<sup>th</sup> Cir. 2005) and sets up a clear split between the Sixth Circuit and the Second Circuit as to whether federal district courts have jurisdiction to hear overpayment interest claims similar to the one in the instant case.

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