



TaxNewsFlash

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AOD 2022-1: IRS nonacquiescence to Fifth Circuit's decision; limitations period for backup withholding

An Action on Decision (AOD) reflects the IRS nonacquiescence to a 2020 decision of the U.S. Court of Appeals for the Fifth Circuit.

The Fifth Circuit concluded that the three-year limitations period for assessing backup withholding was triggered when the taxpayer filed a Form 1040 and Forms 1099-MISC that failed to include taxpayer identification numbers (TINs) of subcontractors to whom payments were made. The case is: *Quezada v. IRS*, 982 F.3d 931 (5th Cir. 2020)

AOD 2022-1 appears in [Internal Revenue Bulletin 2022-6](#) [PDF 854 KB] (February 7, 2022).

Fifth Circuit's decision

This case concerns amounts that the taxpayer failed to backup withhold for four tax years—2005, 2006, 2007, and 2008. For each of those years, the taxpayer paid subcontractors and reported the payments on Forms 1099, but many of these forms lacked TINs.

Because the subcontractors failed to furnish their TINs, the taxpayer was required to backup withhold from each payment made to them. And because the taxpayer was required to backup withhold, he was to have filed Forms 945 for the relevant tax years. He failed to file Form 945. He also failed to indicate on any Form 1099 that he had backup withheld any portion of his payments to subcontractors. The IRS investigated, and in 2014, assessed about \$1.2 million for amounts the taxpayer had failed to backup withhold from 2005-2008, plus penalties and interest.

The taxpayer claimed the assessment was barred by the three-year limitations period, which ran from the date "the return" is filed. He asserted that his Form 1040 and Forms 1099, combined, constituted "the return" that triggered the limitations period. The lower courts disagreed, and held that the limitations period never began to run because the taxpayer never filed "the return."

On appeal, the Fifth Circuit concluded that the taxpayer had filed "the return" that started the limitations period when he filed forms containing data sufficient to: (1) show that he was liable for the taxes assessed; and (2) calculate the extent of his tax liability. Because the assessment came more

than three years after the taxpayer filed those forms, the Fifth Circuit held the assessment was barred by the limitations period and vacated the judgment allowing the assessment and remanded to the lower court.

Read the Fifth Circuit's [decision](#) [PDF 113 KB]

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