



31 F.Supp. 766
 90 Ct.Cl. 606, 31 F.Supp. 766, 40-1 USTC P 9283, 24 A.F.T.R. 614
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Kirkendall v. U.S.
 Ct.Cl.1939

Court of Claims
 KIRKENDALL
 v.
 UNITED STATES
 No. 43504

March 4, 1940

Action by Hazel V. Kirkendall, individually, and as administratrix of the estate of James F. Kirkendall, deceased, against the United States for the recovery of money appropriated by the defendant under legal forms and applied to the unpaid taxes of another person.

Judgment for plaintiff, individually, in the amount of \$1,590.05, and as administratrix in the sum of \$13,800.

An action will lie whenever the United States has received money which is the property of the plaintiff and which the defendant is obliged by natural justice and equity to return, the form of the indebtedness or the mode in which it was incurred being immaterial. Tucker Act 24, Stat. 505.

West Headnotes

[1] Internal Revenue 220 ↪5083

220 Internal Revenue
 220XXVIII Refunding Taxes
 220XXVIII(B) Actions for Refunds
 220XXVIII(B)8 Evidence
 220k5082 Weight and Sufficiency
 220k5083 k. In General. Most Cited Cases
 (Formerly 220k2161, 220k38(12))

In action to recover money appropriated by the United States under legal forms and applied to the unpaid taxes of another person, evidence showed that money taken under warrant of distraint and so applied did not belong to such third person but to plaintiff personally and to plaintiff's intestate.

[2] Internal Revenue 220 ↪4962

220 Internal Revenue
 220XXVIII Refunding Taxes
 220XXVIII(A) In General
 220k4962 k. Claim for Refund in General.
 Most Cited Cases
 (Formerly 220k1971, 220k36)

Internal Revenue 220 ↪5002.1

220 Internal Revenue
 220XXVIII Refunding Taxes
 220XXVIII(B) Actions for Refunds
 220XXVIII(B)3 Conditions Precedent
 220k5002 Claim for Refund
 220k5002.1 k. In General. Most Cited
 Cases

(Formerly 220k5002, 220k38(7), 220k2024)

Claim for refund is appropriate when person who paid the taxes seeks to recover them back but claim for refund is not required by owner where his property is wrongfully taken by the government and applied to payment of taxes of another.

[3] Federal Courts 170B ↪1085

170B Federal Courts
 170BXII Claims Court (Formerly Court of Claims)
 170BXII(A) Establishment and Jurisdiction
 170Bk1073 Particular Claims, Jurisdiction
 170Bk1085 k. Return of Money or Property. Most Cited Cases
 (Formerly 106k449(1))

Where the government has illegally received money which is the property of an innocent citizen and the money has gone into the treasury, there arises an "implied contract" on the part of the government to make restitution to the rightful owner under the statute and Court of Claims has jurisdiction to entertain suit therefor. Tucker Act, 24 Stat. 505.

[4] Implied and Constructive Contracts 205H ↪72

205H Implied and Constructive Contracts
 205HI Nature and Grounds of Obligation
 205HI(E) Defenses and Persons Entitled or Li- able

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205Hk72 k. Persons Liable. Most Cited Cases
 (Formerly 264k14 Money Received)

United States 393 ⇌127

393 United States
 393IX Actions

393k127 k. Rights of Action Against United States or United States Officers. Most Cited Cases
 An action will lie whenever the United States has received money which is the property of the plaintiff and which the defendant is obliged by natural justice and equity to return, the form of the indebtedness or the mode in which it was incurred being immaterial. Tucker Act, 24 Stat. 505, 28 U.S.C.A. §§ 1402 et seq., 2071, 2072, 2402, 2411, 2412, 2501 et seq.

[5] United States 393 ⇌127(1)

393 United States
 393IX Actions

393k127 Rights of Action Against United States or United States Officers
 393k127(1) k. In General. Most Cited Cases
 (Formerly 393k127)

Fraud 184 ⇌30

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k30 k. Persons Liable. Most Cited Cases
 Where the money or property of an innocent person has gone into the coffers of the nation by means of a fraud to which nation's agent was a party, such money or property cannot be held by the nation against the claim of the wronged and injured party. Tucker Act, 24 Stat. 505, 28 U.S.C.A. § 1402 et seq.

Criminal Law 110 ⇌536

110 Criminal Law
 110XVII Evidence

110XVII(T) Confessions
 110k536 k. Use in Different Proceedings. Most Cited Cases
 An admission made by a prisoner, aged and in ill health, after hours of police questioning, is stamped with every

earmark which a court of law will not accept as truth. *Brown v. Mississippi*, 297 U.S. 278; *Chambers v. Florida*, 309 U.S. 227.

Internal Revenue 220 ⇌449

220 Internal Revenue

When the Government has illegally received money which is the property of a citizen, and when this money has gone into the Treasury of the United States, there arises an implied contract on the part of the Government to make restitution to the rightful owner under the Tucker Act, 24 Stat. 505, and the Court of Claims has jurisdiction to entertain the suit.

Internal Revenue 220 ⇌1783

220 Internal Revenue

Where money taken by the police from a prisoner and turned over to the Postal Inspector under a subpoena to be used as evidence, was later under a warrant of distraint on the Postal Inspector, taken by the Collector of Internal Revenue and applied as a credit against an income tax assessment alleged to be due by a third party, and where the facts show that the money so taken was not the property of the taxpayer, it is held that the money so taken was wrongfully confiscated.

Internal Revenue 220 ⇌1961

220 Internal Revenue

A refund claim is an appropriate action under the revenue statutes to recover money paid as taxes when such claim is made by the party who paid the tax.

Internal Revenue 220 ⇌1971

220 Internal Revenue

Where money wrongfully confiscated by the Government was applied as a credit against an income tax assessment alleged to be due by a third party, it is held that a claim for refund by the rightful owners of the property would not be an appropriate action for said owners to take, since it was not claimed that said owners had paid or had assessed against them any taxes.

This case having been heard by the Court of Claims, the court, upon the evidence and the report of a commissioner, makes the following special findings of fact:

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1. The plaintiff is a resident of Chicago, Illinois, and she is the duly qualified Administratrix of the Estate of her deceased husband, James F. Kirkendall.

2. Plaintiff had been married to James F. Kirkendall for thirty-six years. They did not have any children.

For a quarter century or more prior to the latter part of 1933, plaintiff's husband was a travelling salesman for a clothing concern. On April 8, 1935, eleven days before his death, he was arrested for the alleged fraudulent use of the mail in connection with the "Sir Francis Drake Estate."

3. There is little in the record as to the character of the "Sir Francis Drake Estate." It apparently was a venture to collect money chiefly from contributors in this country to settle an alleged estate in England on the theory that the estate would be distributed among the contributors in proportion to the amount of money paid in by them. It was held out to them that for each dollar invested there would be a return of \$1,000 to \$5,000. About ten years before his death Kirkendall and plaintiff, in the honest belief that the estate actually existed, contributed thereto from \$1,600 to \$1,700 between them.

4. The manager of the Drake Estate was one Oscar M. Hartzell. Solicitations were made through the mails and other channels. The number of subscribers ran into the thousands and contributions were sent in money, checks, and postoffice orders to Hartzell at the Croydon Hotel, Chicago, Ill.

5. The latter part of the year 1933, Kirkendall gave up his position as travelling salesman, having been employed by Oscar M. Hartzell at a weekly stipend of between \$30 and \$40, to devote his time to the Drake Estate in the capacity of forwarding money, received in Chicago from contributors all over the country, to one C. Ray in New York City. C. Ray, it developed, was an alias for Canfield Hartzell, a brother of Oscar M. Hartzell. As late as the first part of September 1934, Kirkendall handed some of the money received in Chicago for the Drake Estate to Oscar M. Hartzell in person.

6. The Chicago activities of this venture were headed by one Yant, with an office in the Croydon Hotel. Kirkend-

all, appeared at this hotel in connection with the collection of this money almost daily. Yant issued the receipts or notes to the contributors and turned the contributions over to Kirkendall. Kirkendall deposited the checks and money orders in his checking account in the bank, and, when they were collected, would draw a check for their total sum and place the currency in an envelope in his safe deposit box at the bank.

7. Kirkendall had a safety deposit box in a Chicago bank to which both he and plaintiff carried a key and had access. In this safety deposit box was kept both the Kirkendall money and the money from contributors to the Drake Estate. The money contributed to the Drake Estate was kept in a large envelope separate from the Kirkendall money; and when there was an accumulation of \$4,000 to \$6,000 of Drake Estate money, it was forwarded to New York or London. On the morning of April 8, 1935, Kirkendall forwarded \$4,000 in currency, the entire contents of the Drake Estate envelope in the safety deposit box, by express to C. Ray, New York.

8. About noon on April 8, 1935, Yant, Kirkendall, and another man were arrested in the Croydon Hotel by Chicago police for complicity in the Drake Estate. They were taken to the detective bureau. Thereafter during the early afternoon of April 8, 1935, Kirkendall told the police of his safety deposit box and accompanied the police to the bank, and the money in the safety deposit box consisting of \$13,800 in currency and 324 1/2 English pounds was taken by the police to the detective bureau. From 5 o'clock that afternoon until 1:57 A.M. the next day Kirkendall was rigorously and tirelessly questioned by the police, a postal inspector, and an assistant state's attorney until he was exhausted. Upon the arrival of the postal inspector and assistant state's attorney, questions to Kirkendall and answers by him were taken down by a shorthand reporter and transcribed. Some of his answers as they appear in the transcript, relative to his ownership of the contents of the safety deposit box, were in conflict with his claims to ownership thereof made both before his arrest and shortly following the recording of said answers.

The next day this money was turned over by the police under subpoena to a postal inspector to be used as evidence in the trial against the promoters of the Drake Es-

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tate. Thereafter the collector of internal revenue prepared and filed a return for taxes for Oscar M. Hartzell for the year 1934 disclosing a large tax due the Government, levied the tax under a warrant of distraint on the postal inspector, obtained from him the \$13,800 and 324 1/2 English pounds which had been taken by the police from the safe deposit box, and applied this money as a credit to the outstanding assessment against Hartzell for the year 1934. The English pounds were converted into American currency by the Bureau of Internal Revenue at the rate of exchange of \$4.90 per pound, or a total of \$1,590.05.

Oscar M. Hartzell was convicted of fraud in connection with the Drake Estate, for which he was serving time in the penitentiary for some time prior to the arrest in Kirkendall.

9. at the time of his arrest Kirkendall was 66 years of age and in frail physical condition. He was suffering from diabetes, chronic myocarditis, uraemia, and prostate condition. The day after his arrest he was transferred to the prison hospital and remained there until 5 o'clock in the afternoon of April 19, 1935, at which time he was released on bond. Kirkendall died at 8:25 P.M.

October 10, 1908.	\$ 862.39
September 3, 1925.	1,925.50
January 26, 1928.	2,470.00
September 10, 1928.	274.45
February 26, 1932.	2,285.97
February 20, 1933.	840.70
Total.	\$8,659.01

11. The contents of the safety deposit box, which was taken possession of by the Chicago police on April 8, 1935, was the property of James F. Kirkendall and of the plaintiff.

*768 Thomas V. Sullivan, of Chicago, Ill. (Frank E. McAllister, of Chicago, Ill., on the brief), for plaintiff.

that same day.

10. The plaintiff had inherited about \$1,700 from her mother and most of this she invested in the 324 1/2 English pounds which were kept in the safety deposit box. Before the depression, Kirkendall had assets amounting to \$25,000. Of this, he lost about one-fourth as a result of the depression. Prior to his arrest Kirkendall had converted his assets into cash which was kept in the safety deposit box. He also had a limited checking account.

Kirkendall had saved some money as traveling salesman, had some life insurance, and some United States Bonds. On October 29, 1934, Kirkendall cashed United States Bonds and received \$5,104.76. Kirkendall had taken out four life insurance policies-two for \$10,000 each, one for \$5,000 and another for \$3,000, all of which were surrendered by him on or before February 20, 1933. On these policies he received cash as follows:

J.H. Sheppard, of Washington, D.C., and Samuel O. Clark, Jr., Asst. Atty. Gen. (Robert N. Anderson and Fred K. Dyar, Sp. Assts. to Atty. Gen., on the brief), for defendant.

Before WHALEY, Chief Justice, WHITAKER, WILLIAMS, LITTLETON, and GREEN, Judges.
 WHALEY, Chief Justice.

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The plaintiff brings this action individually and as administratrix of the estate of James F. Kirkendall. The action is based on an implied contract for the recover of money appropriated by the defendant under legal forms and applied to the unpaid taxes of another person.

For many years there was solicited through the mails, and otherwise, subscriptions for the prosecution of a claim to collect a large estate supposed to be in England and known as the "Sir Francis Drake Estate." Promise was held out to those who contributed to receive a return in a thousand fold for each dollar subscribed. The prime mover in this venture was one Oscar M. Hartzell. Thousands of credulous people believing in the existence of this estate and desirous of acquiring wealth in this manner, sent contributions in money, checks, and postoffice orders to Oscar M. Hartzell at the Croydon Hotel in Chicago, Illinois.

Plaintiff and her husband honestly believed in the existence of this estate and contributed between sixteen and seventeen hundred dollars between them some ten years before his demise.

Plaintiff's husband, James F. Kirkendall, had been a travelling clothing salesman for many years. For two years before his death he had not been employed as a travelling salesman but had been engaged by Hartzell at a weekly stipend of between thirty and forty dollars for handling the funds which came to Hartzell. The checks and money orders were turned over to Kirkendall and he deposited them in his checking account in the bank. When they were collected he would draw the amount out of his checking account and place the money in an envelope in his safe deposit box at the bank. When these collections amounted to a substantial sum he would remit the amount to London or New York. The money received by Kirkendall for this fund was never commingled with his own funds in the safe deposit box.

On April 8, 1935, police officers of the City of Chicago raided the Croydon Hotel and arrested James F. Kirkendall and others in connection with this venture. Prior to Kirkendall's arrest, Oscar M. Hartzell had been arrested, tried, and convicted for the fraudulent use of the mail in connection with the Drake Estate and was serving a sentence in the penitentiary.

On the morning of his arrest, Kirkendall had remitted to New York \$4,000, being all the collections of the Drake Estate in his safe deposit box.

After Kirkendall's arrest by the police officers he informed them of his safe deposit box and was taken by the officers to the bank where the contents of the box, consisting of \$13,800 in currency and 324 1/2 English pounds, were confiscated and taken to the Detective Bureau. Following the appropriation of his money by the police, Kirkendall was subjected to an exhausting and almost inhuman examination by the police authorities. This continued from about 5 o'clock in the afternoon until the Assistant State's Attorney and the Postal Inspector were brought in and Kirkendall's statement was taken down at 1:57 the next morning.

At the time of his arrest Kirkendall was 66 years of age and in very frail physical condition. He was suffering from diabetes, chronic myocarditis, uraemia and prostate condition. He was transferred by the police to the jail hospital after nine hours of gruelling questioning. Kirkendall was in *769 the jail hospital until 5 o'clock in the afternoon of April 19, 1935, at which time he was released on bond.

Later the money obtained from Kirkendall by the police was turned over to the postal inspector under a subpoena to be used as evidence in the trial of the promoters of the Drake Estate. Following the acquisition of this money by the postal inspector, the collector of internal revenue prepared and filed a return for taxes for Oscar M. Hartzell for the year 1934, which return disclosed a large tax due the Government. The collector then levied the tax and under a warrant of distraint on the postoffice inspector obtained from him \$13,800 and 324 1/2 English pounds, which had been taken by the police authorities from the safe deposit box of Kirkendall, and applied this amount as a credit to the outstanding assessment against Hartzell for the year 1934.

[1] A mere recital of the facts shows that the money taken from the postal inspector and applied to the taxes of Hartzell was not the taxpayer's personal property. The defendant knew at the time, or had reason to know, that Hartzell was serving a sentence for the fraudulent use of the mail in the collection of money for the Drake

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Estate. This fund either belonged to Kirkendall or to those from whom it had been collected. The action of the Government, in the conviction of Hartzell and the arresting of these other parties on a charge of conspiracy for the fraudulent use of the mail, stamps the fund as not belonging to Hartzell and it could not under any conceivable means be applied to the taxes due by him.

Plaintiff brings this action alleging that the money so taken belonged to her husband and herself and was wrongfully confiscated and applied to taxes due by another.

The only direct evidence in the case as to the ownership of this money is the testimony of the plaintiff. She testified that part of it was derived by her from her mother's estate and the balance was obtained by her husband through loans on life-insurance policies and cash-surrender values of life-insurance policies. Plaintiff's statement is corroborated by the evidence obtained from the life insurance companies which shows that over a number of years plaintiff's husband took out policies and subsequently borrowed on them, and, in other instances, after carrying policies for years, obtained their surrender values.

The only evidence contradictory to plaintiff's testimony is the so-called admission made by Kirkendall after his arrest and after he had been subjected for hours to the reprehensible methods and tactics of the police officers after turning over the contents of his safe deposit box.

Subjecting this sick, old man to hours of police questioning and wringing from him an admission stamps the so-called admission with every earmark which a court of law will not accept as the truth. After hours of questioning Kirkendall was placed in the jail hospital and remained in the hospital until he was released under bond on the afternoon of April 19, 1935. The evidence shows that he died three and one-half hours after his release. See *Brown et al. v. Mississippi*, 297 U.S. 278, 56 S.Ct. 461, 80 L.Ed. 682, and *Chambers et al. v. Florida*, 60 S.Ct. 472, 84 L.Ed. 716, decided by the Supreme Court February 12, 1940.

The defendant has in its possession money to which it is not entitled and which has been wrongfully obtained from the plaintiff and her husband.

[2] The defendant contends that this money, having been applied to taxes due by Hartzell under the Revenue Law and no timely refund claim having been made by the plaintiff, or her husband, cannot now be recovered. It is only necessary to say that a refund claim is an appropriate action under the revenue statutes to recover money paid as taxes when made by the party who paid the tax. There is no claim that either Kirkendall or the plaintiff paid, or had assessed against them, any taxes, and certainly a refund claim would not have been an appropriate action for them to take.

[3] When the Government has illegally received money which is the property of an innocent citizen and when this money has gone into the Treasury of the United States, there arises an implied contract on the part of the Government to make restitution to the rightful owner under the Tucker Act, 24 Stat. 505, and this court has jurisdiction to entertain the suit.

[4][5] As was said by the Supreme Court in the case of *United States v. State Bank*, 96 U.S. 30, 35, 36, 24 L.Ed. 647:

***770** " * * * An action will lie whenever the defendant has received money which is the property of the plaintiff, and which the defendant is obliged by natural justice and equity to refund. The form of the indebtedness or the mode in which it was incurred is immaterial.

* * * * *

"But surely it ought to require neither argument nor authority to support the proposition, that, where the money or property of an innocent person has gone into the coffers of the nation by means of a fraud to which its agent was a party, such money or property cannot be held by the United States against the claim of the wronged and injured party."

See also *Dooley v. United States*, 182 U.S. 222, 21 S.Ct. 762, 45 L.Ed. 1074; *Basso v. United States*, 239 U.S. 602, 36 S.Ct. 226, 60 L.Ed. 462; and *Bull v. United States*, 295 U.S. 247, 55 S.Ct. 695, 79 L.Ed. 1421.

The Government has taken the money of the plaintiff and her husband and it is only common honesty that it should be returned. The United States is required to be honest with its citizens just as much as its citizens are

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required to exercise common honesty with their Government.

Plaintiff is entitled to recover \$13,800, as administratrix, and 324 1/2 English pounds, individually. The English pounds were converted into American currency by the Internal Revenue Bureau at the rate of exchange at that time, in the amount of \$1,590.05.

Judgment will be entered in favor of the plaintiff individually in the amount of \$1,590.05, and as administratrix of the Estate of James F. Kirkendall in the sum of \$13,800.

It is so ordered.

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KEYCITE

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History**Direct History**

=> 1 **Kirkendall v. U.S., 90 Ct.Cl. 606, 31 F.Supp. 766, 40-1 USTC P 9283, 24 A.F.T.R. 614 (Ct.Cl. Mar 04, 1940) (NO. 43504)**

Negative Citing References (U.S.A.)

Called into Doubt by Statute as Stated in

C 2 Dennis v. U.S., 976 F.2d 748 (Fed.Cir. Aug 20, 1992) (TABLE, TEXT IN WESTLAW, NO. 92-5003) **★★ HN: 3 (F.Supp.)**

Citing References**Positive Cases (U.S.A.)****★★★ Discussed**

▶ 3 Gordon v. U. S., 649 F.2d 837, 838+, 227 Ct.Cl. 328, 330+, 47 A.F.T.R.2d 81-1503, 81-1503+, 81-1 USTC P 9409, 9409+ (Ct.Cl. May 06, 1981) (NO. 310-79T) **HN: 3 (F.Supp.)**

C 4 Fletcher v. U.S., 650 F.2d 292, 292+, 226 Ct.Cl. 560, 560+, 47 A.F.T.R.2d 81-1610, 81-1610+, 81-1 USTC P 13,385, 13385+ (Ct.Cl. Dec 31, 1980) (Table, text in WESTLAW, NO. 572-79T) **HN: 1 (F.Supp.)**

H 5 Collins v. U. S, 1975 WL 3598, *5+, 36 A.F.T.R.2d 75-5386, 75-5386+, 75-2 USTC P 9606, 9606+ (Ct.Cl. Trial Div. Jul 16, 1975) (NO. 238-73) **HN: 1 (F.Supp.)**

▶ 6 Economy Plumbing & Heating Co., Inc. v. U. S., 470 F.2d 585, 590+, 200 Ct.Cl. 31, 38+, 31 A.F.T.R.2d 73-993, 73-993+, 73-1 USTC P 9382, 9382+ (Ct.Cl. Dec 12, 1972) (NO. 226-65) **HN: 1 (F.Supp.)**

▶ 7 J.C. Pitman & Sons, Inc. v. U.S., 317 F.2d 366, 368+, 161 Ct.Cl. 701, 705+, 11 A.F.T.R.2d 1492, 1492+, 63-1 USTC P 9467, 9467+ (Ct.Cl. May 10, 1963) (NO. 302-59) " **HN: 3 (F.Supp.)**

★★ Cited

▶ 8 First Nat. Bank of Emlenton, Pa. v. U.S., 265 F.2d 297, 300, 3 A.F.T.R.2d 940, 940, 59-1 USTC P 9329, 9329 (3rd Cir.(Pa.) Mar 18, 1959) (NO. 12701)

▶ 9 Herrington v. U.S., 416 F.2d 1029, 1033+, 24 A.F.T.R.2d 69-5694, 69-5694+, 69-2 USTC P 9650, 9650+ (10th Cir.(Okla.) Sep 30, 1969) (NO. 10179) **HN: 2 (F.Supp.)**

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- ▶ 10 Stewart Sand & Material Co. v. Southeast State Bank, 318 F.Supp. 870, 875+ (W.D.Mo. Sep 23, 1970) (NO. CIV. 17870-3) **HN: 3 (F.Supp.)**
- H 11 Cherbanaeff v. U.S., 77 Fed.Cl. 490, 496, 100 A.F.T.R.2d 2007-5178, 2007-5178, 2007-2 USTC P 50,614 (Fed.Cl. Jul 12, 2007) (NO. 06-640T)
- H 12 Cherbanaeff v. U.S., 77 Fed.Cl. 490, 490, 100 A.F.T.R.2d 2007-5178, 2007-5182, 2007-2 USTC P 50,614 (Fed.Cl. Jul 12, 2007) (NO. 06-640T)
- ▶ 13 Hinck v. U.S., 64 Fed.Cl. 71, 75, 95 A.F.T.R.2d 2005-873, 2005-873, 2005-1 USTC P 50,270, 50270 (Fed.Cl. Feb 03, 2005) (NO. 03-865T)
- H 14 National Medical Enterprises, Inc. v. U.S., 28 Fed.Cl. 540, 545+ (Fed.Cl. Jun 09, 1993) (NO. 92-476C) **HN: 3 (F.Supp.)**
- ▶ 15 Walsh Oil Co. v. U.S., 26 Cl.Ct. 426, 427, 70 A.F.T.R.2d 92-6301, 92-6301, 92-2 USTC P 70,019, 70019 (Cl.Ct. Jun 25, 1992) (NO. 90-848 T) **HN: 4 (F.Supp.)**
- C 16 Hicks v. U.S., 23 Cl.Ct. 647, 652 (Cl.Ct. Jul 31, 1991) (NO. 90-762C) **HN: 3 (F.Supp.)**
- H 17 First Atlas Funding Corp. Through Kersting v. U.S., 23 Cl.Ct. 137, 141, 67 A.F.T.R.2d 91-1080, 91-1080, 92-1 USTC P 50,220, 50220 (Cl.Ct. May 22, 1991) (NO. 90-3878T) **HN: 3 (F.Supp.)**
- H 18 Jeppesen Sanderson, Inc. v. U.S., 19 Cl.Ct. 233, 237 (Cl.Ct. Jan 10, 1990) (NO. 11-87C) **HN: 3 (F.Supp.)**
- C 19 Swartz v. U.S., 14 Cl.Ct. 570, 576+ (Cl.Ct. Mar 30, 1988) (NO. 448-85C, 449-85C) **HN: 3 (F.Supp.)**
- H 20 Barbee v. U.S., 14 Cl.Ct. 387, 389 (Cl.Ct. Mar 03, 1988) (NO. 230-86C) **HN: 3 (F.Supp.)**
- C 21 Document Management Group, Inc. v. U.S., 11 Cl.Ct. 463, 465+, 59 A.F.T.R.2d 87-484, 87-484+, 87-1 USTC P 9125, 9125+ (Cl.Ct. Jan 15, 1987) (NO. 639-85T) **HN: 3 (F.Supp.)**
- C 22 First Nat. Bank of Fort Worth v. U.S., 8 Cl.Ct. 774, 779+, 54 USLW 2220, 2220+, 41 UCC Rep.Serv. 1583, 1583+ (Cl.Ct. Sep 27, 1985) (NO. 555-83C) **HN: 3 (F.Supp.)**
- C 23 Walter E. Heller & Co. Southeast, Inc. v. U.S., 1982 WL 25202, *25202+, 231 Ct.Cl. 713, 714+ (Ct.Cl. Jun 08, 1982) (NO. 305-81T) **HN: 3 (F.Supp.)**
- ▶ 24 Alabama Hosp. Ass'n v. U. S., 656 F.2d 606, 609, 228 Ct.Cl. 176, 180 (Ct.Cl. Jun 17, 1981) (NO. 465-79C)
- ▶ 25 Loesch v. U. S., 645 F.2d 905, 921, 227 Ct.Cl. 34, 56 (Ct.Cl. Mar 11, 1981) (NO. 240-75, 430-75, 435-75, 1-76, 111-76, 307-77)
- H 26 Kingsbury v. U. S., 563 F.2d 1019, 1023, 215 Ct.Cl. 136, 143, 77-2 USTC P 9699, 9699 (Ct.Cl. Oct 19, 1977) (NO. 245-74) **HN: 3 (F.Supp.)**
- H 27 Kingsbury v. U.S., 1977 WL 3811, *4+, 39 A.F.T.R.2d 77-1329, 77-1329+, 77-1 USTC P 9444, 9444+ (Ct.Cl. Trial Div. Apr 25, 1977) (NO. 245-74) **HN: 3 (F.Supp.)**
- ▶ 28 Fidelity & Cas. Co. of New York v. U. S., 490 F.2d 960, 963, 203 Ct.Cl. 486, 493, 33 A.F.T.R.2d 74-621, 74-621, 74-1 USTC P 9194, 9194 (Ct.Cl. Jan 23, 1974) (NO. 329-69) **HN: 3 (F.Supp.)**
- ▶ 29 West Pub. Co. Employees' Preferred Stock Ass'n v. U.S., 1972 WL 20800, *6+, 198 Ct.Cl. 668, 677+, 30 A.F.T.R.2d 72-5007, 72-5007+, 72-2 USTC P 9488, 9488+ (Ct.Cl. Jun 16, 1972) (NO. 26-71)
- H 30 Ralston Steel Corp. v. U.S., 340 F.2d 663, 668, 169 Ct.Cl. 119, 127, 15 A.F.T.R.2d 192, 192, 65-1 USTC P 9189, 9189 (Ct.Cl. Jan 22, 1965) (NO. 155-59) **HN: 3 (F.Supp.)**
- C 31 Catalina Properties, Inc. v. U.S., 166 F.Supp. 763, 764, 143 Ct.Cl. 657, 660, 2 A.F.T.R.2d 5533,

5533, 58-2 USTC P 9864, 9864 (Ct.Cl. Oct 08, 1958) (NO. 500-57)

- C** 32 Tucker v. U. S., 42 F.Supp. 292, 292, 95 Ct.Cl. 415, 416, 42-1 USTC P 9190, 9190, 28 A.F.T.R. 752, 752 (Ct.Cl. Jan 05, 1942) (NO. 44870)
- C** 33 Eastman Kodak Co. v. U. S., 34 F.Supp. 1019, 1020, 92 Ct.Cl. 1, 5, 40-2 USTC P 9698, 9698, 25 A.F.T.R. 902, 902 (Ct.Cl. Oct 07, 1940) (NO. 42658)

★ **Mentioned**

- C** 34 Pasadena Inv. Co. v. Pasadena Air Products, Inc., 234 F.Supp. 128, 133, 14 A.F.T.R.2d 5570, 5570, 64-2 USTC P 9760, 9760 (S.D.Cal. May 15, 1964) (NO. CIV. 62-282-CC)
- C** 35 Royal Indem. Co. v. Board of Educ. of Moore County, 143 F.Supp. 782, 784, 50 A.F.T.R. 177, 177 (M.D.N.C. May 07, 1956) (NO. CIV. 308)
- C** 36 Royal Indem. Co. v. Board of Educ. of Moore County, 137 F.Supp. 890, 892, 56-1 USTC P 9546, 9546, 49 A.F.T.R. 68, 68 (M.D.N.C. Jan 27, 1956) (NO. CIV. 308)
- P** 37 Shelter Island & Greenport Ferry Co. v. U. S., 246 F.Supp. 488, 494, 16 A.F.T.R.2d 5702, 5702, 65-2 USTC P 15,657, 15657 (E.D.N.Y. Sep 09, 1965) (NO. 65C17)
- H** 38 Girling Health Systems, Inc. v. U.S., 22 Cl.Ct. 66, 72, 71A A.F.T.R.2d 93-3304, 93-3304, 90-2 USTC P 50,576, 50576 (Cl.Ct. Nov 20, 1990) (NO. 372-89T)
- H** 39 Kessler v. U.S., 3 Cl.Ct. 123, 124 (Cl.Ct. Jul 12, 1983) (NO. 192-81C) **HN: 3 (F.Supp.)**
- C** 40 Kessler v. U.S., 1981 WL 22030, *22030, 229 Ct.Cl. 472, 473 (Ct.Cl. Oct 02, 1981) (NO. 192-81C) **HN: 3 (F.Supp.)**
- P** 41 Collins v. U. S., 532 F.2d 1344, 1350, 209 Ct.Cl. 413, 413, 37 A.F.T.R.2d 76-1191, 76-1191, 76-1 USTC P 9355, 16220, 76-1 USTC P 16,220 (Ct.Cl. Apr 14, 1976) (NO. 238-73) **HN: 5 (F.Supp.)**

Secondary Sources (U.S.A.)

- 42 Mertens: Law of Federal Income Taxation s 58A:13, s 58A:13. Standing (2007)
- 43 Mertens: Law of Federal Income Taxation s 58A:16, s 58A:16. Administrative refund claim as prerequisite to suit (2007) **HN: 3 (F.Supp.)**
- 44 Mertens: Law of Federal Income Taxation s 58A:70, s 58A:70. Other jurisdictional matters (2007) **HN: 3 (F.Supp.)**
- C** 45 CLAIMS FOR MONEY IN THE CLAIMS COURT, 40 Cath. U. L. Rev. 533, 547 (1991) **HN: 3 (F.Supp.)**
- 46 FEDERAL COURTS - COURT OF CLAIMS - JURISDICTION DOES NOT EXTEND TO SUITS FOR PROPERTY IMPROPERLY SEIZED UNDER REVENUE LAWS WHEN NO VALUE HAS INURED TO BENEFIT OF GOVERNMENT., 72 Harv. L. Rev. 1571, 1572+ (1959) **HN: 3 (F.Supp.)**
- 47 DOES SECTION 7426 PROVIDE EXCLUSIVE REMEDIES FOR A WRONGFUL LEVY?, 88 J. Tax'n 169, 177+ (1998) **HN: 3 (F.Supp.)**
- 48 26 BNA Daily Report for Executives K-7, 2005, INTEREST: FACTS. (2005)
- 49 26 BNA Daily Report for Executives K-7, 2005, Section 6404-Abatements Interest:Claims Court Without Jurisdiction to Review IRS Denial of Request for Interest Abatement (2005)
- 50 22 BNA Daily Tax Report H-15, 1987, LIMITATIONS PERIODS-SIX-YEAR PERIOD AP-

PLIES TO NON-TAXPAYER'S SUIT BASED ON IMPLIED-IN-FACT CONTRACT JURISDICTION: Six-year limitations period applies to a non-taxpayer suit seeking to recover amounts paid to IRS under a (1987) **HN: 3 (F.Supp.)**

- 51 22 BNA Daily Report for Executives H-15, 1987, LIMITATIONS PERIODS-SIX-YEAR PERIOD APPLIES TO NON-TAXPAYER'S SUIT BASED ON IMPLIED-IN-FACT CONTRACT JURISDICTION: Six-year limitations period applies to a non-taxpayer suit seeking to recover amounts paid to IRS under a (1987) **HN: 3 (F.Supp.)**
- 52 26 BNA Daily Tax Report K-7, 2005, INTEREST: FACTS. (2005)
- 53 026 BNA Daily Tax Report K-7, 2005, Interest:Claims Court Without Jurisdiction to Review IRS Denial of Request for Interest Abatement (2005)

Court Documents

Appellate Court Documents (U.S.A.)

Appellate Briefs

- 54 EC Term of Years Trust v. United States of America, 2006 WL 3641453, *3641453+ (Appellate Brief) (U.S. Dec 11, 2006) **Brief for Petitioner** (NO. 05-1541) **★★ HN: 3 (F.Supp.)**
- 55 Linda ROSENBERG, Plaintiff-Appellant, v. THE UNITED STATES, Defendant-Appellee., 2007 WL 551814, *551814+ (Appellate Brief) (Fed.Cir. Jan 28, 2007) **Brief for the Appellee, the United States** (NO. 06-5123) **★★**
- 56 Linda ROSENBERG, Plaintiff-Appellant, v. UNITED STATES, Defendant-Appellee., 2006 WL 3884303, *3884303+ (Appellate Brief) (Fed.Cir. Nov 14, 2006) **Brief for Appellant Linda Rosenberg** (NO. 2006-5123) " **★★ HN: 3 (F.Supp.)**