



1996

Recent Developments: Commissioner v. Lundy: Tax Court Lacks Jurisdiction to Award Refund of Taxes Paid More Than Two Years Prior to Mailing of Notice of Deficiency to Delinquent Taxpayer

Gabriel A. Terrasa

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

Recommended Citation

Terrasa, Gabriel A. (1996) "Recent Developments: Commissioner v. Lundy: Tax Court Lacks Jurisdiction to Award Refund of Taxes Paid More Than Two Years Prior to Mailing of Notice of Deficiency to Delinquent Taxpayer," *University of Baltimore Law Forum*: Vol. 26 : No. 3 , Article 10.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol26/iss3/10>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

*Commissioner
v. Lundy:*

**TAX COURT
LACKS
JURISDICTION
TO AWARD
REFUND OF TAXES
PAID MORE THAN
TWO YEARS PRIOR
TO MAILING OF
NOTICE OF
DEFICIENCY TO
DELINQUENT
TAXPAYER.**

In *Commissioner v. Lundy*, 116 S. Ct. 647 (1996), the United States Supreme Court held that the Tax Court lacks jurisdiction to award a refund of taxes paid more than two years prior to the mailing of a notice of deficiency to a delinquent taxpayer. The Court analyzed section 6511 of the Internal Revenue Code, 26 U.S.C., governing the time for filing a refund claim, and determined that a two-year, rather than a three-year "look-back" period, applies when the taxpayer has not filed a return by the time a notice of deficiency is sent by the IRS. In so holding, the Supreme Court established a uniform interpretation of section 6511, resolving the existing conflict among the circuits.

During 1987, respondent Robert F. Lundy and his wife ("Lundys") had more income withheld from their wages than they actually owed in taxes. The Lundys, however, failed to file a tax return that year. On September 26, 1990, the Commissioner of the Internal Revenue Service ("Commissioner") mailed the Lundys a notice that they owed additional taxes and interest for that year and that they were liable for delinquent filing and negligent underpayment of taxes. The Lundys filed their 1987 tax return on December 22, 1990, claiming that they did not underpay their taxes, but rather that they were entitled to a \$3,537 refund. Two days after the return was mailed, the Lundys filed a petition for the

refund in the Tax Court.

The Commissioner contended that the Tax Court lacked jurisdiction to award the Lundys a refund. The Tax Court held that if the taxpayer failed to file a return by the time the Commissioner sends a notice of deficiency and the notice is sent more than two years after the taxes were paid, section 6511 establishes a look-back period of two years. Thus, the Tax Court held that it lacked jurisdiction to award a refund of taxes paid more than two years before the claim was filed. The Court of Appeals for the Fourth Circuit reversed, holding that section 6511 established a three-year, rather than a two-year, look-back period. The Fourth Circuit's interpretation of section 6511 was contrary to the interpretation of every other court of appeals that had addressed the issue. The Supreme Court granted certiorari to resolve the conflict.

The Court began its analysis by distinguishing the jurisdictional requirements for refund suits in the United States District Courts and Court of Federal Claims from the jurisdictional requirements for refund suits in the Tax Court. *Lundy*, 116 S. Ct. at 651. The Court noted that in the district courts and the Court of Federal Claims, the taxpayer must file a claim for a refund within two years from the time the tax was paid. *Id.* The Tax Court jurisdiction, however, is only limited by the look-back period and the taxpayer seeking a refund

need only show that the payment in question was made within that period. *Id.* The majority analyzed sections 6511-12 which instruct the Tax Court to apply either a three-year or a two-year look-back period. *Id.* at 651-52. The Court determined that when no return is filed by the taxpayer, there is no date from which to measure the three-year look-back period described in section 6511(a). *Id.* Thus, the applicable look-back period is the default two-year period described in section 6511(b)(2)(B), which is measured from the date the notice of deficiency is mailed. *Id.* The majority concluded that the effect of sections 6511-12 is to afford the taxpayer who timely files a return the three-year period to contest the accuracy of a previously filed tax return, while allowing the delinquent taxpayer the more limited two-year look-back period. *Id.* at 652-53. The Court noted that under the Fourth Circuit's rule, the timely filer, rather than the delinquent one, would be subjected to the shorter limitation period in the Tax Court, a result that Congress could not have intended. *Id.* at 654. Thus, the Court concluded that the Fourth Circuit interpretation of the statute was incorrect. *Id.*

The Court next analyzed respondent's three supporting arguments. *Id.* Respondent first argued that because the only way to file a claim for a refund with the IRS is by filing a tax return, Congress must have

intended the word "claim" in section 6512(b)(3)(B) to mean a claim filed in a tax return. *Id.* Respondent, thus, argued that section 6512 established a uniform three-year look-back period for the Tax Court. *Id.* The Court examined the language of section 6512 and found that the word "claim" in the statute was not susceptible to respondent's interpretation. The majority noted that the language itself suggests that a claim for a refund may be filed separately from the return by requiring that the claim be filed "within 3 years from the time the return was filed." *Id.* (quoting 26 U.S.C. § 6512(b)(3)(B)(1995)).

Respondent then argued that the application of a two-year look-back period was contrary to Congress' purpose in drafting section 6512(b)(3)(B) which was to uphold a taxpayer's claim to a refund in the Tax Court. *Id.* at 655-56. The Court addressed respondent's second argument by noting that Congress could not have intended section 6512(b)(3)(B) to always preserve the taxpayer's claim to a refund. *Id.* at 656. The Court noted that by including a two-year and a three-year look-back period Congress must have intended section 6512(b)(3)(B) to act as a bar against recovery under some circumstances. *Id.*

Respondent finally argued that the Court's interpretation of the statute would result in inconsistencies in the limitation period applicable in the district court and the Court of Federal Claims and the Tax

Court. *Id.* The Court addressed this argument by noting that it was bound by the plain language of the statute and that the incongruence created was no excuse to change the scheme that Congress had chosen to craft. *Id.* The Court concluded that application of section 6512(b)(3)(B) to the facts of the case required the use of a two-year look-back period and that the Tax Court correctly held that it lacked jurisdiction to grant a refund. *Id.* at 657.

In a dissenting opinion, Justice Stevens argued that the statutory history of section 6512(b) indicates that Congress drafted the section to protect the taxpayer who receives a notice of deficiency from missing the time to amend the return and file for a refund before the litigation is over. *Id.* Justice Stevens concluded that it did not make sense to take a statute designed to help the taxpayer who gets an unexpected notice of deficiency from the IRS and use it to shorten the taxpayer's period to file for a refund. *Id.*

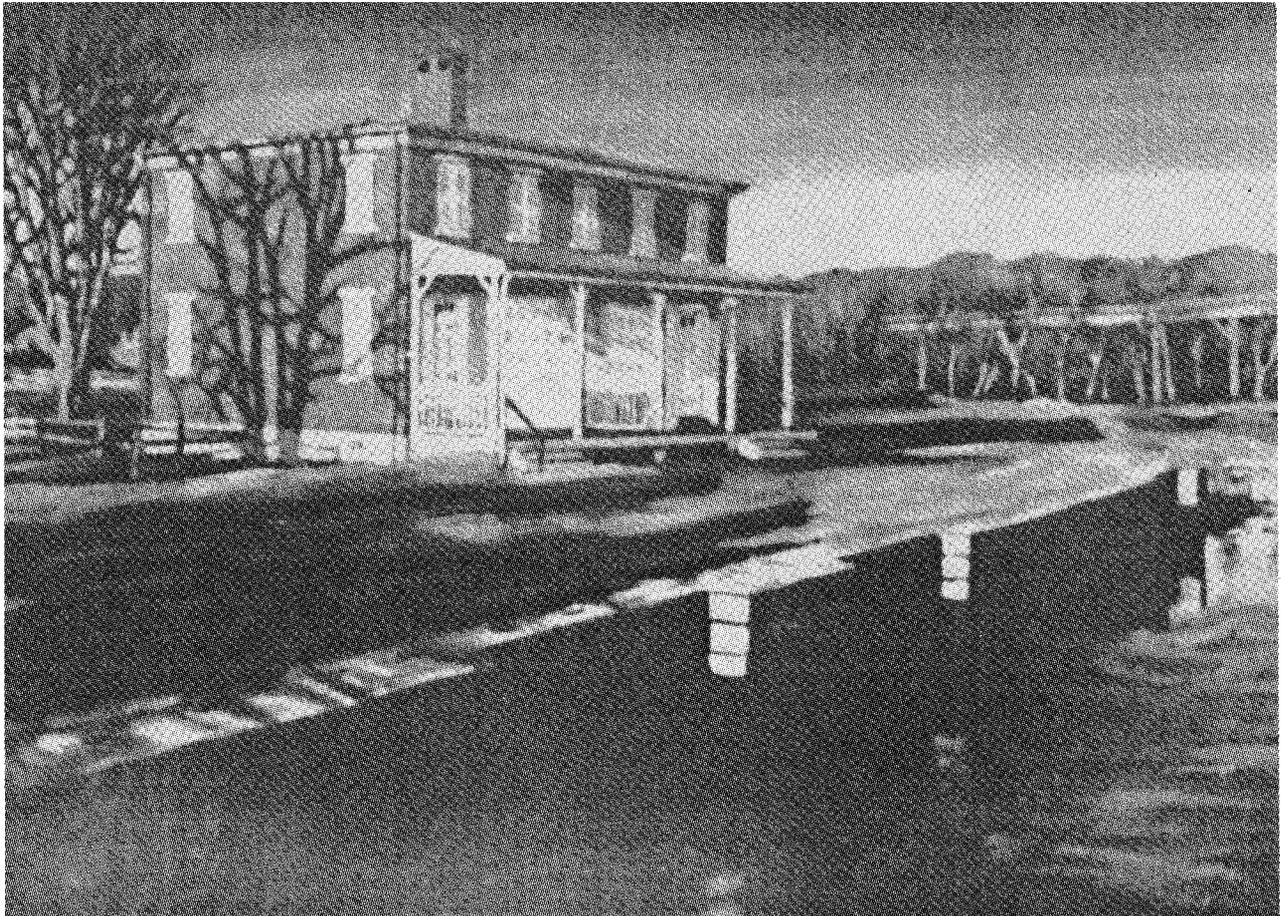
Justice Thomas, joined by Justice Stevens, argued in his dissenting opinion that under the IRS's longstanding interpretation of section 6511 the Lundys would have recovered their refund had they filed suit in district court. *Id.* Justice Thomas argued that nothing in section 6512(b)(3)(B) suggests that Congress intended to shorten the filing period for the Tax Court and, thus, a three-year look-back period should have been applied. *Id.*

In *Commissioner v. Lundy*, the United States Supreme Court held that the Tax Court lacks jurisdiction to award a refund of taxes paid more than two years prior to the mailing of a notice of deficiency to a delinquent taxpayer. While Justice Thomas's analysis of the statutory history of sections 6511-

12 provides a compelling alternative interpretation of the statute, a careful examination of Congress's intent in drafting sections 6511-12 inescapably leads to the conclusion that the majority's interpretation of the statute is the preferred one. In so holding, the Court rejected the Fourth Circuit's interpreta-

tion of sections 6511-12 of the Internal Revenue Code and resolved the existing conflict of interpretation among all the Courts of Appeals.

- *Gabriel A. Terrasa*



(c) 1996, Caroline Jasper

SUSQUEHANNA LOCKHOUSE 1840

This two-story brick structure was built on the Susquehanna River at Havre de Grace, Maryland. It was the office for collecting tolls for vessels that once travelled north through the Susquehanna & Tidewater Canal. A simple building, which was also the home for the locktender, it stands behind the original outlet lock and reconstructed pivot bridge.