

Case No. 2012-5089

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

ROBERT N. CADRECHA and CYNTHIA CADRECHA
Plaintiffs/Appellants

v.

THE UNITED STATES
Defendant/Appellee

On Appeal of a Judgment from the
United States Court of Federal Claims
Case No. 11-cv-152, Judge George W. Miller

CORRECTED BRIEF AND APPENDIX OF PLAINTIFFS/APPELLANTS

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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v.

THE UNITED STATES

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CERTIFICATE OF INTEREST

Counsel for the Appellants certifies the following:

1. I represent ROBERT N. CADRECHA and CYNTHIA CADRECHA.
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: The party named in the caption and represented by me is the real party in interest.
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are: None.
4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in court are: William Kalish, Frank J. Reif, III, AKERMAN SENTERFITT.

DATED: July 26, 2012

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STATEMENT OF RELATED CASES

Plaintiffs-Appellants, Robert N. and Cynthia Cadrecha (“Plaintiffs”), are unaware of any other case pending in this or any other court that will directly affect or be directly affected by this Court’s decision on appeal.

STATEMENT OF JURISDICTION

Pursuant to 28 U.S.C. § 1295, the Court of Appeals for the Federal Circuit has jurisdiction over this appeal as to a final order and judgment of the United States Court of Federal Claims. Specifically, the Plaintiffs/Appellants appeal the final Opinion and Order dated April 2, 2012, 2012 (A1-12, Doc. 29)¹ granting a motion to dismiss, and the final Judgment dated April 4, 2012 (A30, Doc. 30), which resolved the case.

STATEMENT OF THE ISSUES

1. Whether the purported Notice of Disallowance dated August 31, 2007 issued by the Internal Revenue Service (A34-37, Doc. 14-7), which specifically references Plaintiffs’ Refund Claim dated May 23, 2007, means that the Internal Revenue Service issued a Notice of Disallowance of the Plaintiffs’ Refund Claim (*i.e.*, the Amended 1040X) dated March 20, 2007.

¹ References to the attached Appendix are cited without the leading numbers; *e.g.*, “A1” means page “A000001” of the Appendix. “Doc.” reference cite to the location of the same material in the record from the Court of Federal Claims.

2. Whether the Internal Revenue Service ever issued a Notice of Disallowance of Plaintiffs' Refund Claim (*i.e.*, specifically, the Amended 1040X).

3. Whether the Federal Claims Court properly applied the standard in assuming all of a plaintiff's undisputed factual allegations are true and to draw all reasonable inferences in a plaintiff's favor. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), abrogated on other grounds by *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

4. Whether a series of consistent communications issued by the Internal Revenue Service upon which Plaintiffs detrimentally rely should be ignored.

STATEMENT OF THE CASE

Plaintiffs-Appellants, Robert N. and Cynthia Cadrecha (as defined above "Plaintiffs"), filed a complaint in the United States Court of Federal Claims ("Federal Claims Court") seeking a refund of \$26,679 from the Internal Revenue Service ("IRS") and petitioned the court to determine their tax liability. Defendant-Appellee, the United States ("Defendant"), filed a Motion to Dismiss based on the untimely filing of their complaint in the Federal Claims Court after the running of the two-year statute of limitations set forth in I.R.C. § 6532(a)² and

² I.R.C. § 6532(a)(1) provides:

No suit or proceeding under section 7422(a)[, which governs filing refund claims with the IRS,] for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor

because they filed a refund claim with the IRS after the running of the statute of limitations set forth in I.R.C. § 6511(a).³

On April 2, 2012, the Federal Claims Court filed an Opinion and Order, Doc. 29, (the “Order”) disallowing the Plaintiffs’ Claim on two grounds. First, the IRS issued a notice disallowing the Plaintiffs’ refund claim which starts the running of the two year requirement to file suit – and rejected the Plaintiffs’ assertions that the IRS withdrew the notice. Second, none of the actions taken by the IRS, including a consistent four-year pattern of letters and oral communications, tolled the statute of limitations. *See* A9, Order, Doc. 29, p. 9. Because suit was filed more than two years after the said notice of disallowance, the Federal Claims Court concluded that it had no jurisdiction. On April 4, 2012,

after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

³ In relevant part, I.R.C. § 6511(a) provides:

Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

the Federal Claims Court entered judgment, dismissing the Complaint. *See* A13, Judgment, Doc. 30.

STATEMENT OF THE FACTS

Plaintiffs-Appellants filed their 2003 Form 1040 on or about April 15, 2004. *See* Compl., Doc. 1-1. In 2007, the Plaintiffs learned of the filing of a case in the Federal Claims Court by an unrelated taxpayer which eventually resulted in the decision of *Fisher v. United States*, 82 Fed. Cl. 780 (2008). The Plaintiffs timely filed on March 20, 2007, an Amended Income Tax Return, Form 1040X, for 2003, as a Protective Claim for Refund. *See* Compl., Doc. 1 ¶ 16; Pls.' Resp., Doc. 14, p. 2. By way of background, Plaintiffs had initially reported on their 2003 tax return (Form 1040) the gain from the sale of stock they had received as a result of the demutualization of Principal Financial Group in exchange for its interest in the company by virtue of the ownership of a life insurance policy owned by the Plaintiffs' wholly owned S corporation, Tampa Wholesale Furniture Company.⁴ *See* Compl., Doc. 1 ¶ 15.

⁴ An S corporation is a "small business corporation" whose income is taxed through its shareholders, the Plaintiffs here, not through the corporation itself. I.R.C. § 1363.

On May 10, 2007, after the statute of limitations to file an amended return had expired,⁵ the IRS asked for additional supporting information within 30 days. Plaintiffs responded on May 17, 2007 (*see* A29) indicating that the Complaint in *Fisher* was the case to which their protective claim for refund referred. *See* A26-29 and A31-32, Exs. D and E,⁶ Docs. 14-4 and 14-5.⁷

While there are numerous letters between the IRS and the plaintiffs or their accountant which are identified in the Order, certainly a critical letter is the August 31, 2007 letter (105C) allegedly disallowing their claim. *See* A34-37, Ex. G, Doc. 14-7. The letter specifically referred to Plaintiffs' May 23, 2007 submission (which is the referenced May 17, 2007 letter). The IRS letter (which is routinely referenced as the Notice of Disallowance) stated: "You filed your claim for credit or refund more than 3 years after the tax return due date. A claim must be filed within 3 years from the time the return was filed." *See id.*

⁵ As Note 5 of the Federal Claims Court Order of April 2, 2012 (Doc. 29), states, the statute of limitation for plaintiffs to file an amended return as set forth in I.R.C. § 6511(a) expired on April 15, 2007, three years after plaintiffs filed their 2003 tax return. This is the later of the two limitations periods contained in the statute, the other being April 15, 2006, two years after the tax was paid.

⁶ As a matter of convenience, Plaintiffs have referred to the exhibits as they appeared in Plaintiffs' Response before the Federal Claims Court, and also cited their specific docket entry numbers, to avoid unnecessary confusion.

⁷ Attached to the Appendix (A60-65) is the more complete Notice of Disallowance, filed below as Docket Entry 22-1 on Dec. 1, 2011, as explained in Note 6 in the Order below.

While the communications through letters and oral communications continue (which are summarized in A15-18, Ex. A, Doc. 14-1), it is important to note that the Federal Claims Court on August 6, 2008 rules in favor of the taxpayer in *Fisher, supra*. The gist of the holding is that the taxpayer in *Fisher* is entitled to basis in the stock they received as a result of the demutualization and, therefore, the Plaintiffs here would be entitled to the refund but for the alleged jurisdictional issue.

In the Defendant's reply (Doc. 21) below, an affidavit of Charity McDaniel is attached upon which the Federal Claims Court relies. *See* A53-57, Doc. 21-2. Ms. McDaniel identifies herself as a "Revenue Agent Reviewer" designated to handle a large number of claims for refund related to the basis in stock taxpayers received in a demutualization of a mutual insurance company." *Id.*, A53 ¶ 1. Paragraph 2 of the affidavit says, "In June 2009, I was assigned plaintiffs' 2003 refund claim." *Id.*, A53 ¶ 2. Ms. McDaniel claimed to have no knowledge of the August 31, 2007 Notice of Disallowance nor was a copy was in her file. *Id.*, A54 ¶ 4. In substance, Ms. McDaniel admitted that she was unaware of the August 31, 2007 letter of the IRS which was not in "her" file, that she repeatedly told the Plaintiffs and/or their CPA that the Plaintiffs' claim was still held in abeyance and/or suspense pending a determination of whether the IRS would appeal the *Fisher* opinion and in another case, *Dorrance v. U.S.*, No. 2:09-CV-01284 (D.

Ariz. June 15, 2009). Indeed, as late as April 26, 2011, Ms. McDaniel was advising the Plaintiffs that the “IRS was taking no action on plaintiffs’ 2003 refund claim.” *See* A56, McDaniel Declaration, Doc. 21-2, ¶ 10.⁸

SUMMARY OF THE ARGUMENT

The Federal Claims Court erred by concluding that Plaintiffs’ filing was more than two years after the IRS purportedly mailed a Notice of Disallowance. It is undisputed that Plaintiffs did timely file a claim for a refund on March 20, 2007. By letter dated May 10, 2007, the IRS then requested additional information within thirty days, which Plaintiffs timely submitted by letter dated May 23, 2007. In one letter, the IRS claimed that the May 23, 2007 claim was untimely. Defendant asserts that this letter was a Notice of Disallowance from which the statute of limitations period runs. Because Plaintiffs’ March claim was timely and because the purported Notice of Disallowance does not refer to the March claim, but instead to the May submission, the Federal Claims Court erred by holding that the statute of limitations period ran from the date of the purported Notice of Disallowance. Instead, the Federal Claims Court should have viewed the facts and all inferences in the light most favorable to the Plaintiffs and concluded that a proper Notice of Disallowance was never issued on the March claim.

⁸ The Internal Revenue Service maintains a tracking system for each taxpayer’s taxable year. Plaintiffs’ counsel presume that a person in McDaniel’s position would have had access to the Plaintiffs’ Transcript of Account which presumably would have referenced the August 31, 2007 communication.

Moreover, even if the purported Notice of Disallowance did start the statute of limitations period, the facts and all inferences viewed in the light most favorable to Plaintiffs shows that the purported Notice of Disallowance was withdrawn by the IRS' repeated, consistent communications confirming that the Plaintiffs' refund claim was still being reviewed and considered. Simply put, taxpayers, like the Plaintiffs, should be able to rely on declarations and letters issued by a government agency, particularly the IRS, especially when the communications are consistent over a four-year period.

As the Amended 1040X filed on March 20, 2007 was timely and appears not to have been disallowed by the Secretary, the Plaintiffs are entitled to the refund under *Fisher*.

STANDARD OF REVIEW

The standard of review is *de novo*. See *In re Asahi/America, Inc.*, 68 F.3d 442, 444 (Fed. Cir. 1995) (“[Q]uestions of law are subject to full and independent review (sometimes referred to as ‘*de novo*’ or ‘plenary’ review)); *GAF Building Materials Corp. v. ELK Corp. of Dallas*, 90 F.3d 479 (Fed. Cir. 1996) (“We review *de novo* the district court’s decision concerning jurisdiction.”)

ARGUMENT

The Order recognized at great length that the Federal Claims Court has jurisdiction over tax refund cases under 28 U.S.C. § 1491(a). Nevertheless, the

Order rules in favor of both of Defendant's arguments that this case was time barred. First, the court has no jurisdiction because Plaintiffs filed their Petition more than two years after the IRS mailed the Notice of Disallowance (the August 31 letter) which is time barred under I.R.C. § 6532(a). Second, the November 2008 submission by Plaintiffs to the IRS which is a Claim for Refund (Form 843), (A39, Doc. 14-12, Ex. L) was time barred because it was filed more than three years after the due date of the 2003 return. It is important to note that the Order stated (A7):

When deciding a case based on a defendant's motion to dismiss for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1), the court is obligated to assume that all of a plaintiff's undisputed factual allegations are true and to draw all reasonable inferences in a plaintiff's favor. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), abrogated on other grounds by *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

A. The Notice of Disallowance.

Plaintiffs describe in detail in their Response before the Federal Claims Court of the many letters (Exhibits A through Y, Doc. 14-1 through 14-25) and conversations held. The court rejected the Plaintiffs' arguments that the Notice of Disallowance (hereinafter the "Notice") was necessarily withdrawn based on the IRS letters (and communications) themselves. In its Reply, the Defendant attaches the McDaniel Declaration (A53-57, Doc. 21-2) which is indeed a remarkable paper. Notwithstanding that Plaintiffs do not have a right to dispute

the declaration at the stage in the proceedings below (*i.e.*, there is no further briefing beyond the Defendant's Reply), it is certain that accepting the declaration without an opportunity for trial or cross-examination is surprising in light of the assumption that a plaintiff's undisputed factual allegations or reasonable inferences must be taken as true. Plaintiffs reiterate their position that they, and taxpayers in general, should be able to rely on declarations and letters issued by a government agency, particularly the IRS, especially when none have varied in any detail over at least four years. Incidentally, Paragraph 3 of the McDaniel Declaration describes some of the IRS letters as "form letters generated by an IRS Service Center which merely acknowledges receipt of plaintiffs' inquiries and their Form 943." *See* A54, Doc. 21-2, ¶ 3. Plaintiffs and the taxpayers of the United States and this Court should not so lightly dismiss these communications as merely forms. The Federal Claims Court details the interactions in great detail on pages 2 through 6 in the Order. On this record, the Federal Claims Court erred by failing strictly to construe the purported notice and its reference to a *May 23, 2007* document against Defendant and in the light most favorable to Plaintiffs.

1. The Federal Claims Court Erred By Concluding That The Notice Constituted A Notice of Disallowance And That It Was Not Withdrawn.

While critical facts are disputed, the Federal Claims Court concluded that the Notice was not withdrawn as Plaintiffs contended below because (A8, Order p. 8):

Here, plaintiffs make clear that neither plaintiffs' accountant nor the IRS employee with whom the accountant spoke in December 2009 mentioned the notice of disallowance or the two-year period set forth in I.R.S. § 6532(a)(1).

The sole support for this broad statement is the untested declaration in Paragraph 9 of the McDaniel Declaration that no mention of the Notice was made in her second communication with the plaintiffs' accountant in March 2011. Plaintiffs respectfully contend that this issue is clearly a factual one and the Federal Claims Court's conclusion is simply not supported by the record below. Nevertheless, the court jumps to this unsupported factual conclusion thereby distinguishing *First Alabama Bank v. United States*, 981 F.2d 1226, 1229-30 (11th Cir. 1993), *Cooper v. United States*, No. 3:97 CV 502-V, 2000 WL 1141598, at *6-8 (W.D.N.C. May 17, 2000), adopted in relevant part by No. 3:97 CV 502-V, 2001 WL 1673620 (W.D. N.C. Oct. 30, 2001), and other cases cited in the Order (*see* A8, Doc. 29).

The facts are in dispute and the Motion to Dismiss should not be granted without a trier of fact.

2. The Federal Claims Court Also Erred By Concluding That The Statute of Limitations Period Was Not Tolloed.

The Federal Claims Court found that “the IRS appears to have mistakenly disallowed plaintiffs’ claim by referencing the wrong filing, i.e., the May 23, 2007 response by the Plaintiffs. The Federal Claims Court then goes on a rather tortured analysis that the “IRS *may* (emphasis supplied) have inadvertently construed the May 2007 filing as their first and only claim, not as a supplement. And then the court states that because the May 2007 filing was late, the claim is time barred – and issues the Notice. *See* A9, Order, Doc. 29.

And, here, is exactly why the granting of the Motion to Dismiss does not lie. The test is to assume that all of a plaintiff’s undisputed factual allegations are true and to draw all reasonable inferences in plaintiff’s favor. *Scheuer, infra*.

To be clear, Plaintiffs DO NOT subscribe to the Federal Claims Court inferences from the facts in the current record. Why is it fair to assume that the IRS representative who issued the Notice dated August 31, 2007, incorrectly concluded that the “IRS appears to have mistakenly” referenced the wrong filing as plaintiffs’ claim? Indeed, it is far more likely to conclude that the Notice of Disallowance dated August 31, 2007 was separated from the file and has disappeared from further consideration by the IRS. This is so based on the McDaniel Declaration which makes clear that she is the first Revenue Agent to look at the refund claim and admits that the aforesaid Notice of Disallowance is

not in her file and she was unaware of its existence until the Defendant's counsel brought it to her attention. *See* A54, Doc. 21-2, ¶ 4. Plaintiffs are puzzled by the lack of any reference in the McDaniel Declaration to any Transcript of Account which would be typically available to a Revenue Agent as Ms. McDaniel.⁹

If this were true, then this Court is obligated to reverse the Order issued below because there are reasonable inferences the Court could have found different from Ms. McDaniel's unsupported allegations.

First, the Notice references the May 23, 2007 document, an untimely filing, as the Refund Claim and it is reasonable to assume that was all that was considered by the author of the letter. Indeed, no reference is made to the underlying substantive issue of the demutualization in the Notice. And no reference is made to the Amended 1040X which was timely filed. Therefore, it is more likely than not that the Amended 1040X was not acted upon by the IRS through the issued Notice and, therefore, under I.R.C. § 6532 (a)(i), the statute of limitations remains open.¹⁰ A reversal of the Order below should be granted, and Plaintiffs should be entitled to the refund.

⁹ A Transcript of Account sets forth data in each fiscal year of a taxpayer which contains each communication, payment, and filing by the taxpayer and by the IRS. A Transcript of Account is available to the IRS Agent assigned to a case like Ms. McDaniel.

¹⁰ *See Consolidated Edison Co. of New York v. U.S.*, 135 F. Supp. 881 (Ct. Cl. 1955) (suit for refund based on claim filed in 1942 held timely commenced by

Second, should Plaintiffs be permitted to rely on a series of letters and communications all of which Plaintiffs relied upon not to initiate suit especially when it is admitted the Defendant that the Amended 1040X and the IRS consideration of the claim did not include the very Notice itself which relies on a late filing and on its face would be time barred. Under these circumstances, a reversal should be ordered with remand for a determination of what transpired by the Internal Revenue Service in the issuance of the Notice. Defendant successfully found the one IRS employee who did not have in her file the very document at issue. Is this a fair tax system to deny a refund claim the substance of which is undisputed under *Fisher, supra*,— and the very delays have only been caused by the IRS?

What we have here in light of the McDaniel declaration describes for us the actual facts of this matter which Plaintiffs did not know and which regrettably the Court below appears to have misconstrued.

Ms. McDaniel makes clear that she is in charge of many claims for refund dealing with the demutualization. Yet she does not have the August 31, 2007 Notice in her file (which by the way is also a form letter) and no explanation is offered of how her file was created. That letter disallows the claim because it was

petition filed in 1950; six-year limitation period of 28 U.S.C. § 2501 inapplicable to tax refund suits); *Detroit Trust Co. v. U.S.*, 131 Ct. Cl. 223 (1955) (taxpayer has the option of filing suit at the expiration of six months from filing a claim or awaiting rejection by the IRS).

filed untimely. The only filing that was submitted after the three year limitations and prior to the August 31, 2007 IRS letter is the referenced May 23, 2007 response by the Plaintiffs to the IRS May 10, 2007 inquiry. AND, the IRS letter of August 31, 2007 disallows the Claim for Refund dated May 23, 2007. The only credible explanation at this point given all of the facts presented in Defendant's motion to dismiss and the ensuing response and reply of the parties, respectively, is that the IRS' Notice of Disallowance pertained to the May 23, 2007 paper which was filed after the three year limitation is simply that the writer of the August 31, 2007 letter was unaware that the refund claim was indeed the March 20, 2007 Form 1040X which indeed is a valid claim for refund. As a consequence, the IRS has NOT issued a Notice of Disallowance of that refund claim.

Under I.R.C. § 6532(a)(i), a suit may not be brought for six months from the filing of the return "unless the Secretary renders a decision therein within that time..." Inasmuch as the Secretary of Treasury thought the IRS has not issued ANY decision on the March 20, 2007 Amended 1040X which was indeed timely filed, the question is whether the Amended 1040X constitutes a valid claim for refund. (Treasury Regulations Section 301.6402-2(b)(1) says that a claim for refund should be made on a Form 1040X, which was done here.) The requirements for the claim must set forth the amount of credit or refund demanded by the taxpayer and the ground upon which the credit is claimed and the facts

sufficient to apprise the IRS of the basis of the claim. *See* Treasury Regulations Section 301.6402-2(b)(1). Plaintiffs had done precisely that in the Amended 1040X. The amount sought was \$26,679. The facts reported are clearly set forth namely that the initial return reported the full sales proceeds from stock received from a demutualization insurance company. And the grounds were that the taxpayer was entitled to deduct the cost basis in arriving at the gain. *See* A20-24, Ex. B, Doc. 14-2.

The Plaintiffs' response of May 23, 2007 to the IRS request on May 10, 2007 does not make the *timely* filed Amended 1040X disappear. And critically the August 31, 2007 communication only makes reference to a refund claim dated May 23, 2007 which the IRS rejects as untimely filed.

This Court is faced with a dilemma. The Federal Claims Court has taken the position that taxpayers in general and the Plaintiffs here should not rely on IRS personnel or apparently form letters from the IRS. The Federal Claims Court presumably accepts facts by a Revenue Agent Reviewer who is able to remember telephone calls for this taxpayer despite her acknowledgement that she was asked to handle a large number of similar claims, opine about a Notice of Disallowance which was not in her file (one wonders where it is). Defendant was able to find as a witness the one IRS employee who recalls not only what was said, but what was not said – and admits her file was deficient. Further, this one witness admits that

her file did not have many of the documents involved in this case although she reviewed Plaintiffs' exhibits – and conclude they were merely forms. And this one witness was unaware of the critical document in this case. *See* A54, Doc. 21-2, ¶ 3, 4.

Alternatively, this case may be remanded to determine what Ms. McDaniel knew or did not know, what was in her file or not, who created that file, in whose file sits the August 31, 2007 Notice of Disallowance, actually inquire of Plaintiffs and their accountant as to what else may have been said to Ms. McDaniel, what is in the Transcript of Account, and whether Ms. McDaniel looked at the Transcript of Account, etc.

It is clear, however, that if indeed the Amended 1040X filed on March 20, 2007 was timely and appears not to have been disallowed by the Secretary, the Plaintiffs are entitled to the refund under *Fisher*.¹¹

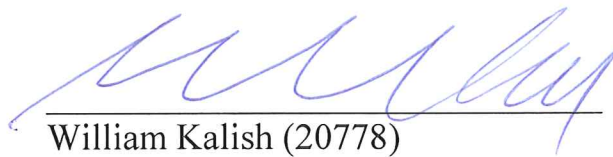
¹¹ Refund litigation in the Federal Claims Court and its predecessor, the Court of Claims, is usually by virtue of its national jurisdiction. When the Court rules in favor of a taxpayer's position, while there are pending cases before various district courts, remaining taxpayers cease filing in any other court. *Cf. Motor Fuel Carriers, Inc. v. U.S.*, 420 F.2d 702 (Ct. Cl. 1970). While some taxpayers file suit, generally the IRS does not issue notices of disallowance – to do so invites unnecessary court cases which would be determined by the rulings of the Federal Claims Court or this Court (or its predecessor Court) unless a conflict in the circuits results in an appeal and decision by the United States Supreme Court. Indeed, the treatment of the Plaintiffs by the Federal Claims Court results in a violation of the Equal Protection Clause when compared to similarly situated taxpayers (*see* McDaniel Declaration, Doc. 21-2, ¶ 1) who received refunds.

CONCLUSION

The Plaintiffs timely filed their Claim for Refund. The Defendant either withdrew the Notice of Disallowance or its August 31, 2007 Notice was related solely to a document which the IRS mistakenly concluded was a late filed claim, thereby, not having issued any notice of disallowance to its March 22, 2007 Amended 1040X, a valid refund claim. Finally, at the very least, there are serious questions of fact for which a Motion to Dismiss does not properly lie.

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Respectfully submitted



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I hereby certify that copies of the foregoing **Corrected Brief and Appendix of Plaintiffs–Appellants Robert N. Cadrecha and Cynthia Cadrecha** were filed electronically with the Clerk of the United States Court of Appeals for the Federal Circuit using the CM/ECF system and served this 26th day of July 2012 on the following:

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Case No. 2012-5089

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

ROBERT N. CADRECHA and CYNTHIA CADRECHA
Plaintiffs/Appellants

v.

THE UNITED STATES
Defendant/Appellee

On Appeal of a Judgment from the
United States Court of Federal Claims
Case No. 11-cv-152, Judge George W. Miller

CORRECTED APPENDIX TO BRIEF OF PLAINTIFFS/APPELLANTS

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In the United States Court of Federal Claims

No. 11-152 T

(Filed: April 2, 2012)

TO BE PUBLISHED

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| ROBERT N. AND CYNTHIA | |) | |
| CADRECHA, | |) | I.R.C. § 6511; I.R.C. § 6532; I.R.C. |
| | |) | § 7422; tax refund claim; basis in stock |
| | Plaintiffs, |) | received in demutualization of mutual |
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| THE UNITED STATES, | |) | limitations on filing tax refund claim in |
| | |) | Court of Federal Claims not tolled. |
| | Defendant. |) | |
| <hr/> | |) | |

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OPINION AND ORDER

GEORGE W. MILLER, Judge

Plaintiffs, Robert N. and Cynthia Cadrecha, filed a complaint on March 9, 2011 claiming that they are owed a refund of \$26,679 from the Internal Revenue Service (“IRS”) and petitioning the Court to determine their tax liability. *See* Compl. (docket entry 1). On June 20, 2011, defendant, the United States, filed a motion to dismiss (docket entry 11) pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the Court of Federal Claims (“RCFC”). Defendant argues that plaintiffs’ claim is untimely because they filed their complaint in the United States Court of Federal Claims after the running of the two-year statute of limitations set forth in I.R.C. § 6532(a)¹ and because they filed a refund claim with the IRS after the running of the statute of limitations set forth in I.R.C. § 6511(a).² Mot. to Dismiss 1.

¹ I.R.C. § 6532(a)(1) provides:

No suit or proceeding under section 7422(a)[, which governs filing refund claims with the IRS,] for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within

I. Background

In 2003, plaintiffs were fifty-percent shareholders in an S corporation³ called Tampa Wholesale Furniture Company (“Tampa Wholesale”). Compl. ¶ 13. Tampa Wholesale owned a life insurance policy on Robert N. Cadrecha that was issued by Principal Mutual Holding Company (“Principal Mutual”). *Id.* Principal Mutual was a mutual insurance company that demutualized in 2003. *Id.* ¶ 14. When a mutual insurance company demutualizes, it converts from a company that is owned by its policyholders to a stock insurance company owned by its shareholders. *See Fisher v. United States*, 82 Fed. Cl. 780, 781–82 (2008) (discussing mutual insurance companies and the demutualization process), *aff’d*, 333 F. App’x 572 (Fed. Cir. 2009); *see also* Stephen J. Olsen, Chuck vs. Goliath: Basis of Stock Received in Demutualization of Mutual Insurance Companies, 9 Hous. Bus. & Tax L.J. 360 (2009). After the demutualization, Tampa Wholesale obtained stock in Principal Financial Group in exchange for its interest in Principal Mutual. Compl. ¶ 14. Tampa Wholesale then sold the newly acquired stock. *Id.* ¶ 15.

On April 15, 2004, plaintiffs filed their 2003 tax return on Form 1040. Pls.’ Resp. in Opp’n to Def.’s Mot. to Dismiss 2 (“Pls.’ Resp.”) (docket entry 14, Aug. 19, 2011). On their tax return, plaintiffs reported a gain from the sale of Principal Financial Group stock that did not account for any basis⁴ plaintiffs or Tampa Wholesale had in the stock. Compl. ¶ 15; *see also* Compl. Ex. A at 5.

that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

² In relevant part, I.R.C. § 6511(a) provides:

Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

³ An S corporation is a “small business corporation” that can have no more than one hundred shareholders, must have only one class of stock, and cannot have as a shareholder “a person . . . who is not an individual.” I.R.C. § 1361(a)–(b). A corporation must formally elect to become an S corporation pursuant to I.R.C. § 1362. Once the election has been made, the income of the corporation is taxed through its shareholders, not through the corporation itself. *See* I.R.C. § 1363; 33A Am. Jur. 2d Federal Taxation ¶ 4621 (2012).

⁴ According to the Internal Revenue Code, “[t]he gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain.” I.R.C. § 1001(a). In general, the adjusted basis of property is its cost, I.R.C. § 1012(a), adjusted according to I.R.C. § 1016.

After timely filing their tax return, plaintiffs learned of *Fisher v. United States*, a case then pending before the Court of Federal Claims that presented issues that could affect plaintiffs' 2003 tax return. Compl. ¶¶ 16–18; Pls.' Resp. 2. In that factually analogous case, which was filed on December 1, 2004, the plaintiff trust sought a refund of taxes paid on gains reported as a result of the sale of stock received when the mutual insurance company with which the plaintiff had a policy demutualized. *See Fisher*, 82 Fed. Cl. at 781–83. The plaintiff sought a refund based on the theory that it realized no capital gain on the sale of its stock “because the proceeds were offset by the plaintiff’s basis in the stock.” *Id.* at 783. The issue was whether the plaintiff had a basis in the stock it obtained as a result of the insurance company’s demutualization and, if so, how to calculate the amount of that basis. *See id.*

Because *Fisher* presented issues analogous to plaintiffs’ situation, plaintiffs understood that, if the *Fisher* court determined that gain realized from selling stock obtained through demutualization could be offset by the basis in that stock, plaintiffs might be able to recover the taxes they paid on the gain they reported from the sale of stock attendant to Principal Mutual’s demutualization. Because of the potential effect *Fisher* could have on plaintiffs’ 2003 tax return, plaintiffs filed an amended income tax return on Form 1040X on March 20, 2007, which the IRS received on March 22, 2007. Compl. ¶ 16; Pls.’ Resp. 2. Plaintiffs styled their amended return as a protective claim for refund pending the outcome of *Fisher*. Pls.’ Resp. 2, Ex. B. This protective claim for refund was filed within three years from the date plaintiffs’ tax return was filed in accordance with the statute of limitations set forth in I.R.C. § 6511(a).⁵

On May 10, 2007, after the statute of limitations to file an amended return had expired, *see supra* note 5, the IRS sent plaintiffs letter 916C regarding their March 22, 2007 filing. *See* Pls.’ Resp. Ex. D. The letter explained that the IRS was unable to process plaintiffs’ claim because the “supporting information was not complete.” *Id.* The letter then invited plaintiffs to file “another claim” that included the name of the court case supporting plaintiffs’ claim for a refund and any additional information relevant to plaintiffs’ claim. *Id.* The IRS allowed plaintiffs thirty days from the date of the letter to submit the information it requested. *Id.* On May 17, 2007, plaintiffs replied to the IRS’s letter, indicating that *Fisher* was the case to which their protective claim for refund referred. *Id.*

After plaintiffs submitted their May 17 letter, which the IRS received on May 23, 2007, *see id.* Ex. E, the IRS sent plaintiffs two letters. The first, dated June 26, 2007, explained that the IRS had not been able to resolve plaintiffs’ claim because the necessary research had not been completed. *Id.* The letter advised plaintiffs that the IRS would contact them within forty-five days. *Id.* The second letter, dated August 13, 2007, advised plaintiffs that the IRS still had not resolved plaintiffs’ claim because of the IRS’s heavy workload and its inability to complete the applicable research. *Id.* Ex. F. The IRS’s letter informed plaintiffs that an additional forty-five days was required. *Id.*

⁵ The statute of limitations for plaintiffs to file an amended return as set forth in I.R.C. § 6511(a) expired on April 15, 2007, three years after plaintiffs filed their 2003 tax return. This is the later of the two limitation periods contained in the statute, the other being April 15, 2006, two years after plaintiffs paid the relevant tax. *See* Stipulation of Facts 1 (docket entry 23, Jan. 12, 2012).

Eighteen days later, on August 31, 2007, the IRS mailed plaintiffs letter 105C disallowing their claim. *Id.*; see Pls.' Notice to Supplement Attach. (docket entry 22-1, Dec. 1, 2011).⁶ The letter referred to plaintiffs' May 23, 2007 submission, which plaintiffs filed in response to the IRS's request for additional information. Pls.' Notice to Supplement Attach. at 1. The letter stated: "You filed your claim for credit or refund more than 3 years after the tax return due date. A claim must be filed within 3 years from the time the return was filed." *Id.* It then notified plaintiffs that they filed their claim "more than 3 years after [they] filed [their] tax return" and "more than 2 years after [they] paid the tax." *Id.*; see I.R.C. § 6511(a).

Letter 105C went on to explain that plaintiffs could appeal the IRS's decision to disallow their claim to the Appeals Office. Pls.' Notice to Supplement Attach. at 1–3. The letter provided instructions on how to file such an appeal. *Id.* Finally, the letter informed plaintiffs that, if they did not agree with the decision, they could "file suit to recover tax, penalties, or other amounts, with the United States District Court having jurisdiction or with the United States Claims Court." *Id.* at 4. It then explained: "The law permits you to do this within 2 years from the date of this letter. If you decide to appeal our decision first, the 2-year period still begins from the date of this letter." *Id.*

In a letter dated August 30, 2007, plaintiffs responded to the IRS and "respectfully disagree[d]" with the IRS's disallowance of plaintiffs' claim.⁷ Pls.' Resp. Ex. H. Plaintiffs argued that they filed their claim for refund in March 2007, which was within three years after their 2003 return was filed on April 15, 2004. *Id.* The IRS responded on November 9, 2007 indicating that it would send plaintiffs' letter to the Appeals Office and that plaintiffs would be contacted within forty-five days. *Id.* Ex. I.

A further exchange of letters followed. On October 1, 2008, plaintiffs sent a letter to the IRS stating that they had not yet received a response to their August 2007 appeal. *Id.* Ex. J. On October 20, 2008, the IRS responded that it had not "completed all the research necessary for a complete response." *Id.* Ex. K. Then, on November 3, 2008, plaintiffs wrote the IRS informing it that plaintiffs filed Form 843 ("Claim for Refund and Request for Abatement") in order to perfect the protective claim that they filed in March 2007. *Id.* Ex. L.

Plaintiffs' November 3, 2008 letter was sent after the trial court decision in *Fisher* was filed on August 6, 2008. *Fisher*, 82 Fed. Cl. 780. The *Fisher* court held that the plaintiff was entitled to a refund because the plaintiff was entitled to subtract its cost basis in the insurance policy from the gain realized on the sale of the stock it received as a result of the insurance company's demutualization. *Id.* at 799. The plaintiff did not owe any tax on the sale because the gain the plaintiff reported was less than the plaintiff's cost basis in the insurance policy. *Id.* Because the *Fisher* court held for the plaintiff, plaintiffs in this case attempted to perfect their

⁶ The letter originally filed as Exhibit G to plaintiffs' response to defendant's motion to dismiss was incomplete. Therefore, the Court requested that plaintiffs file the complete letter. Plaintiffs filed the letter as an attachment to a Notice to Supplement on December 1, 2011.

⁷ It is unclear why plaintiffs' letter in response to the IRS's notice of disallowance is dated one day before the notice. Plaintiffs also recognize this discrepancy. See Pls.' Resp. 2 n.1.

March 2007 protective claim to obtain a refund of the taxes they paid on the gain they reported from the sale of the stock in Principal Financial Group received as a result of Principal Mutual's demutualization. Plaintiffs did not subtract any cost basis from their gain on the sale of Principal Financial Group stock when they filed their 2003 tax return.

On November 5, 2008, two days after plaintiffs filed the November 3, 2008 perfecting document, the IRS again responded to plaintiffs' October 2008 letter stating that it was forwarding the letter to a different IRS office that would contact plaintiffs within forty-five days. Pls.' Resp. Ex. M. On December 3, 2008, the IRS replied to plaintiffs' November 3, 2008 letter, which it received on November 7, 2008, explaining that the requisite research had not yet been conducted and that plaintiffs would be contacted within forty-five days. *Id.* Ex. N. On January 15, 2009, the IRS again responded to plaintiffs' November 2008 letter, informing plaintiffs that their claim had been forwarded to the IRS's Examination Department in Austin, Texas, and that the Examination Department would contact plaintiffs within forty-five days. *Id.* Ex. O. Plaintiffs wrote a letter to the IRS dated May 13, 2009 inquiring as to the status of their claim. *Id.* Ex. P.

The next month, on June 25, 2009, plaintiffs, through their Certified Public Accountant, contacted the Taxpayer Advocate Service requesting assistance with their 2003 tax refund claim. *Id.* Ex. Q. The Taxpayer Advocate Service replied on July 7, 2009, informing plaintiffs that it had forwarded their inquiry regarding the status of their 2003 tax refund claim to the IRS and that plaintiffs would be contacted by August 7, 2009. *Id.* Ex. R.

On or around December 11, 2009, plaintiffs' accountant had a conversation with an IRS employee, Charity McDaniel. Compl. ¶ 10; Pls.' Resp. 4. Ms. McDaniel told plaintiffs' accountant that the IRS was waiting to process plaintiffs' claim because the IRS intended to appeal *Fisher*. Pls.' Resp. 4; *see also* Def.'s Reply to Pls.' Resp. in Opp'n to Def.'s Mot. to Dismiss Attach. 2, paras. 6–7 (“Def.’s Reply”) (docket entry 21, Oct. 18, 2011). Ms. McDaniel told plaintiffs' accountant that, if the *Fisher* plaintiff ultimately prevailed, plaintiffs would receive a refund. Pls.' Resp. 4. Ms. McDaniel and plaintiffs' accountant did not discuss the August 31, 2007 notice of disallowance nor did they discuss any timeliness issues associated with plaintiffs' claim. *Id.*; *see also* Def.'s Reply Attach. 2, para. 7.

Plaintiffs memorialized this conversation in a letter dated December 11, 2009. Pls.' Resp. Ex. S. The letter explained that its purpose was “to confirm [the] recent conversation wherein [Ms. McDaniel] indicated that the reason for a lack of response with regard to [plaintiffs'] outstanding claim . . . was . . . the fact that the court case on which th[e] claim relie[d] . . . [was] being appealed by the [IRS].” *Id.* On March 2, 2010, the IRS wrote to plaintiffs regarding their December 2009 memorialization and advised plaintiffs that their letter was being referred to a different IRS office and that they could expect a response from the IRS within forty-five days. *Id.* Ex. T.

Until this point, all correspondence between the IRS and plaintiffs was through plaintiffs' certified public accountant. On April 19, 2010, Mr. Cadrecha personally wrote to the IRS asking for a resolution of his claim. *Id.* Exs. U, V, W. On August 22, 2010, Mr. Cadrecha sent a letter to the Taxpayer Advocate Service imploring it to “PLEASE help.” *Id.* Ex. X.

Ms. McDaniel states that she had another telephone conversation in March 2011 with plaintiffs' accountant. Def.'s Reply Attach. 2, para. 9. Ms. McDaniel again notified plaintiffs' accountant that plaintiffs' claim was being held in suspense. *Id.* According to Ms. McDaniel, she remained unaware of the August 31, 2007 notice of disallowance and plaintiffs' accountant did not discuss it with her. *Id.* After this conversation, on or around April 26, 2011, the IRS sent plaintiffs a letter signed by Ms. McDaniel stating that plaintiffs' protective claim was "being held in suspense" pending the resolution of litigation concerning a similar demutualization issue in the District Court of Arizona. Pls.' Resp. Ex. Y; see *Dorrance v. United States*, No. 2:09-cv-01284-HRH (D. Ariz. filed June 15, 2009). The IRS explained that once the law on the basis of stock received as a result of an insurance company's demutualization became "well defined," it would act on plaintiffs' claim. Pls.' Resp. Ex. Y.

II. Discussion

"The Court of Federal Claims has jurisdiction to determine claims seeking refund of taxes paid, insofar as Congress has waived sovereign immunity in tax refund matters, pursuant to 28 U.S.C. § 1491(a)." *Walther v. United States*, 54 Fed. Cl. 74, 75 (2002). Both provisions on which defendant's motion to dismiss relies—I.R.C. § 6511 and I.R.C. § 6532—affect this court's jurisdiction to hear tax refund claims. *Murdock v. United States*, No. 11-326T, 2012 WL 401594, at *3–4 (Fed. Cl. Feb. 9, 2012) (discussing the jurisdictional limitations of § 6511(a) and explaining that a motion to dismiss based on this section is one to dismiss for lack of jurisdiction pursuant to RCFC 12(b)(1)); *R.S. Good Trucking, Inc. v. United States*, No. 00-267T, 2001 WL 1589422, at *3 (Fed. Cl. Oct. 22, 2001) ("[T]he Court's jurisdiction is limited by the two-year statute of limitations in I.R.C. § 6532(a).").

In this case, defendant filed a motion to dismiss plaintiffs' complaint pursuant to RCFC 12(b)(1) arguing that the Court does not have jurisdiction over plaintiffs' refund claim for the taxes they paid on the gain reported as a result of Principal Mutual's demutualization.⁸ Mot. to Dismiss 1. Defendant essentially makes two arguments to support its motion. First, defendant argues that the Court lacks jurisdiction to hear plaintiffs' claim because the complaint was filed in this Court more than two years after the IRS mailed the notice of disallowance and plaintiffs' claim is therefore time barred under I.R.C. § 6532(a). Second, defendant argues that the

⁸ Defendant based its motion to dismiss on both RCFC 12(b)(1) and 12(b)(6). RCFC 12(b)(6) permits a party to move the court to dismiss for failure to state a claim on which relief can be granted. When assessing a motion to dismiss based on RCFC 12(b)(1), the court must determine whether it has authority to address a plaintiff's legal and factual issues. *Brach v. United States*, 443 F. App'x 543, 547 (Fed. Cir. 2011). When reviewing a motion pursuant to RCFC 12(b)(6), however, "the court exercises its jurisdiction to look at the plaintiff's legal and factual assertions and concludes that the plaintiff has not made the sort of assertions that could lead to relief." *Id.* Here, although defendant notes that its motion to dismiss is based on RCFC 12(b)(6) in addition to RCFC 12(b)(1), its briefs focus on the court's jurisdiction to hear plaintiffs' claim. See Mot. to Dismiss 1; Def.'s Reply 5–12. Additionally, this court has explained that a motion to dismiss pursuant to I.R.C. § 6511(a)—the statute defendant relies upon with regard to its motion to dismiss plaintiffs' November 2008 filing as untimely, see *infra* Part II.B—is an RCFC 12(b)(1) motion to dismiss for lack of jurisdiction. *Murdock*, 2012 WL 401594, at *3–4.

document plaintiffs submitted to the IRS in November 2008 was filed more than three years after the date on which plaintiffs filed their 2003 tax return and that the claim is therefore time barred under I.R.C. § 6511(a). Therefore, defendant maintains plaintiffs' suit is untimely and the Court does not have jurisdiction.

When deciding a case based on a defendant's motion to dismiss for a lack of subject matter jurisdiction pursuant to RCFC 12(b)(1), the court is obligated to assume that all of a plaintiff's undisputed factual allegations are true and to draw all reasonable inferences in a plaintiff's favor. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *abrogated on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

A. *Plaintiffs' Complaint Is Not Timely and Must be Dismissed*

According to the Internal Revenue Code ("IRC"), a plaintiff seeking a tax refund must meet certain requirements before filing a suit in the Court of Federal Claims. *See Jackson v. United States*, 100 Fed. Cl. 34, 42 (2011). First, the IRC mandates that, before a plaintiff files suit in this court, he or she must file a claim for refund with the IRS. I.R.C. § 7422(a) ("No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected . . . until a claim for refund or credit has been duly filed with the Secretary . . ."). Once a plaintiff has submitted a claim to the IRS, he or she must wait at least six months before he or she can file a suit in this court, unless the IRS renders its decision within that time period. I.R.C. § 6532(a)(1) ("No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time . . ."). If the IRS issues a notice informing a plaintiff that his or her claim is disallowed, the plaintiff then has two years from the mailing date of the notice of disallowance within which to file a complaint in this court. *Id.* ("No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun . . . after the expiration of 2 years from the date of mailing . . . of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.").

Here, plaintiffs filed a protective claim with the IRS on March 22, 2007. The IRS mailed plaintiffs a notice of disallowance on August 31, 2007,⁹ and plaintiffs filed their complaint in this court on March 9, 2011, approximately three-and-one-half years after the mailing date of the notice. Defendant maintains that these facts constitute grounds for dismissal pursuant to RCFC 12(b)(1).

⁹ The Court assumes that the date appearing on the notice of disallowance was the date on which the notice was mailed. *See Tiberio v. Allergy Asthma Immunology of Rochester*, 664 F.3d 35, 37 (2d Cir. 2011) (noting, in the context of a Title VII action, that "[t]here is a presumption that a notice provided by a government agency was mailed on the date shown on the notice"); *Turner v. Shinseki*, No. 07-0643, 2011 WL 5526446, at *6 (D.D.C. Nov. 15, 2011).

1. The Notice of Disallowance Was Not Withdrawn

In response to defendant's timeliness argument, plaintiffs contend that the statute of limitations set forth in I.R.C. § 6532(a)(1) never began running because the notice of disallowance was withdrawn. Pls.' Resp. 3–6. In support of this argument, plaintiffs cite the numerous letters the IRS sent to plaintiffs notifying them that their claim was under consideration. *Id.* at 3–4. Plaintiffs also rely upon the December 2009 conversation plaintiffs' accountant had with an IRS employee. *Id.* at 4. Plaintiffs also cite case law in support of their assertion that an IRS employee can orally withdraw a notice of disallowance and, thereby, prevent the notice from operating to start the running of the two-year period set forth in I.R.C. § 6532(a)(1). *Id.* at 4–5.

In each of the cases plaintiffs cite, however, regardless of the ultimate outcome, the taxpayer or his agent had a conversation with an IRS employee specifically addressing the relevant issue affecting the statute of limitations. *See Haber v. United States*, 831 F.2d 1051, 1052 (Fed. Cir. 1987), *amended by* 846 F.2d 1379 (Fed. Cir. 1988); *Howard Bank v. United States*, 759 F. Supp. 1073, 1078 (D. Vt. 1991), *aff'd*, 948 F.2d 1275 (2d Cir. 1991) (unpublished table decision); *Beardsley v. United States*, 126 F. Supp. 775, 776 (D. Conn. 1954). Here, plaintiffs make clear that neither plaintiffs' accountant nor the IRS employee with whom the accountant spoke in December 2009 mentioned the notice of disallowance or the two-year period set forth in I.R.C. § 6532(a)(1).¹⁰ Because neither the notice nor the timeliness issue was mentioned, there could be no representation of withdrawal on which plaintiffs could rely. A series of form letters and a conversation with an IRS employee that did not address the notice of disallowance or the relevant statute of limitations are not enough to effectively withdraw the notice. *See First Ala. Bank v. United States*, 981 F.2d 1226, 1229–30 (11th Cir. 1993) (affirming the district court's determination that notices of disallowance were not withdrawn when an IRS agent orally informed the plaintiff's counsel that the statute of limitations was not running and when the plaintiff received form letters in response to its second set of claims that did not reference the earlier disallowance notices); *Cooper v. United States*, No. 3:97CV502-V, 2000 WL 1141598, at *6–8 (W.D.N.C. May 17, 2000) (finding that the improper denial of a protective refund claim did not start the running of the two-year statute of limitations within which to file suit because of three oral conversations the plaintiff's accountant had with IRS personnel indicating that a final, perfected claim was anticipated), *adopted in relevant part by* No. 3:97CV502-V, 2001 WL 1673620 (W.D.N.C. Oct. 30, 2001); *Howard Bank*, 759 F. Supp. at 1078 (finding for the taxpayer when it relied, not on "an inadvertent error" of the IRS, but "on the deliberate, commonsensical and laudable actions" of an IRS attorney who orally represented that disallowance would be reconsidered); *Haber v. United States*, 17 Cl. Ct. 496, 503–06 (1989) (finding no oral withdrawal when the taxpayer's accountant claimed to have had a conversation with the IRS concerning withdrawal, but there was no documented evidence of such conversation), *aff'd per curiam*, 904 F.2d 45 (Fed. Cir. 1990) (unpublished table decision).

¹⁰ Moreover, although plaintiffs do not discuss it in their briefs, according to Ms. McDaniel, no mention was made of the notice of disallowance during her second conversation with plaintiffs' certified public accountant in March 2011. *See* Def.'s Reply Attach. 2, para. 9.

2. The Statute of Limitations Is Not Tolloed

Additionally, nothing that the IRS does by way of reconsideration or administrative appellate review after issuing a notice of disallowance has any effect on the statute of limitations. I.R.C. § 6532(a)(4) (“Any consideration, reconsideration, or action by the Secretary with respect to [a] claim following the mailing of a notice by certified mail or registered mail of disallowance shall not operate to extend the period within which suit may be begun.”); *see Estate of Orlando v. United States*, 94 Fed. Cl. 286, 290 (2010) (“The two-year period runs from the date the notice of disallowance is sent and, by statute, it is not tolled by any administrative appeals.” (citing I.R.C. § 6532(a)(4))), *appeal dismissed*, No. 09-CV-702, 2011 WL 7425456 (Fed. Cir. Jan. 11, 2011). Therefore, that plaintiffs filed an appeal with the IRS disagreeing with its disallowance decision and that the IRS sent notices to plaintiffs informing them that their claim was being considered did not affect the two-year period plaintiffs had within which to file a complaint in this court after the notice of disallowance was mailed. *See* I.R.C. § 6532(a)(4).

Furthermore, that the IRS appears to have mistakenly disallowed plaintiffs’ claim by referencing the wrong filing has no effect on the limitations period. Plaintiffs’ March 2007 claim was filed with the IRS within the statute of limitations set forth in I.R.C. § 6511(a). In May 2007, after the statute of limitations had run on April 15, 2007, the IRS sent plaintiffs a letter explaining that it was not able to consider plaintiffs’ claim as filed and requesting that plaintiffs supply additional information. Plaintiffs immediately replied. It is plaintiffs’ May 2007 correspondence to which the notice of disallowance, dated August 31, 2007, refers. The notice explains that plaintiffs’ claim is time barred and, therefore, disallowed.

It appears that, had the IRS not requested additional information from plaintiffs regarding their March 2007 filing, plaintiffs would not have sent the IRS their May 2007 response. Because plaintiffs’ March 2007 claim was timely filed, it seems that the IRS may have inadvertently construed plaintiffs’ May 2007 filing as their first and only claim, not as a supplement to plaintiffs’ March 2007 claim. Because of this potential misinterpretation, and because the May 2007 claim was dated after the three-year statute of limitations in I.R.C. § 6511(a) had run, the IRS disallowed plaintiffs’ claim as time barred.¹¹

¹¹ The Court requested additional briefing on the effect of plaintiffs’ May 2007 submission on the viability and timeliness of their March 2007 refund claim. Jan 13, 2012 Order (docket entry 24). In response to that request, defendant explained that plaintiffs’ May 2007 letter to the IRS was a supplement to their March 2007 refund claim. *See* Def.’s Mem. in Resp. to Ct.’s Jan. 13, 2012 Order 3–7 (docket entry 25, Jan. 27, 2012). Defendant reasons that the May 2007 letter did not contain the requisite information to be considered a claim on its own and, therefore, it could not have been disallowed. *Id.* at 5–6. Additionally, defendant emphasizes that the May 2007 letter was responsive to the IRS’s request for additional information to augment plaintiffs’ March 2007 refund claim. *Id.* at 6–7. Accordingly, defendant maintains that the IRS’s notice of disallowance “disallowed the Form 1040X, as supplemented by the May 23 submission.” *Id.* at 7–8.

In their response to the Court’s January 13, 2012 Order, plaintiffs do not disagree with defendant’s conclusion. Plaintiffs note that the May 2007 filing was in response to the IRS’s inquiry concerning the March 2007 refund claim. Pls.’ Br. in Resp. to Ct.’s Order Filed Jan. 13,

Although the IRS may have misidentified the date of plaintiffs' refund claim in the notice of disallowance by construing plaintiffs' May 2007 submission as their original claim, the IRC makes no provision for tolling the statute of limitations for equitable reasons. *See* I.R.C. § 6532; *RHI Holdings, Inc. v. United States*, 142 F.3d 1459, 1462 (Fed. Cir. 1998) (citing *United States v. Brockamp*, 519 U.S. 347 (1997)) (explaining that I.R.C. § 6532(a) "does not contain an implied 'equitable' exception" and that the statute "explicitly prohibits equitable considerations based on the actions of the IRS after a notice is mailed"). The Federal Circuit has explained that equitable concerns are not to be considered even if the actions of the IRS misled or confused the taxpayer. *RHI Holdings, Inc.*, 142 F.3d at 1460 ("Regardless of any confusion that the IRS's actions may have caused [the plaintiff], unless the statute of limitations, 26 U.S.C. § 6532, contains an implied equitable exception, considerations of equitable principles are not appropriate."). The only way the statute of limitations can be extended is through a written agreement signed by both the taxpayer and the Secretary of the Treasury. I.R.C. § 6532(a)(2) ("The 2-year period . . . shall be extended for such period as may be agreed upon in writing between the taxpayer and the Secretary."). No such agreement exists here.

3. The Notice of Disallowance Explicitly Addressed the Two-Year Statute of Limitations

Finally, the notice of disallowance, even if it misidentified the date of plaintiffs' claim, *see supra* Part II.A.2, explicitly informed plaintiffs that, if they wished to file suit in the Court of Federal Claims, they had to do so within two years from the date of the notice. Pls.' Notice to Supplement Attach. at 4 ("The law permits you to [file suit] within 2 years from the date of this letter."). Therefore, even if plaintiffs disagreed with the IRS's disallowance, they were on notice that, to maintain an action in this court, they had to file suit within two years from the date the notice was mailed, i.e., by August 31, 2009.

In fact, plaintiffs filed their complaint in this court on March 9, 2011—well beyond two years after the notice of disallowance was mailed. Thus, plaintiffs' claim for a refund of taxes paid on their gain on the sale of stock received in the demutualization of Principal Mutual is untimely and must be **DISMISSED** for lack of jurisdiction pursuant to RCFC 12(b)(1).

B. Plaintiffs' November 2008 Filing

Defendant argues that the Court also lacks jurisdiction to consider plaintiffs' November 2008 filing that purported to perfect its March 2007 protective claim. Mot. to Dismiss 6–8; Def.'s Reply 10–12. Defendant makes two contentions in support of this argument. First, defendant contends that the November 2008 filing, taken as a separate claim, is untimely under I.R.C. § 6511. Mot. to Dismiss 6. Second, defendant argues that, even if the November 2008

2012, at 3 (docket entry 28, Feb. 3, 2012). Plaintiffs do not assert that the March 2007 claim is separate and distinct from their May 2007 submission, although they state that they "would like to claim" that such was the case and "would be happy to accept" a determination that the March 2007 claim remains viable. *Id.* at 4–5. Accordingly, it is undisputed that the May 2007 claim was a proper supplementation of plaintiffs' March 2007 refund claim and that the notice of disallowance disallowed plaintiffs' March 2007 claim as supplemented by their May 2007 filing.

filing can be said to perfect plaintiffs' protective claim filed March 22, 2007, that is irrelevant because the 2007 protective claim was disallowed. *Id.* at 6–8. The Court will address each of defendant's contentions in turn.

1. The November 2008 Filing Is Untimely

According to I.R.C. § 6511, a claim for a tax refund must “be filed by the taxpayer [with the IRS] within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later.” I.R.C. § 6511(a). Therefore, in order for this court to have jurisdiction over a taxpayer's claim, the taxpayer must show that he or she filed a claim with the IRS within the later of three years from the date of the return or two years from the date the tax was paid. I.R.C. § 6511(a); *see Mobil Corp. v. United States*, 67 Fed. Cl. 708, 715 (2005) (“[I]n order to vest this court with jurisdiction over the merits of a taxpayer's claim for refund, the taxpayer must show that it filed its claim for refund within the statute of limitations codified at section 6511(a).”).

Here, plaintiffs' 2003 tax return was filed in April 2004. The filing that purports to perfect plaintiffs' protective claim was filed on November 3, 2008, more than three years after the return was filed. This is the later of the two deadlines contained in I.R.C. § 6511, the other being two years after April 15, 2004, the date on which the tax was paid. Stipulation of Facts 1; *see* I.R.C. § 6511(a). Therefore, if the November 2008 filing is construed as a separate claim, as defendant suggests, it was filed beyond the limitations period contained in I.R.C. § 6511 and cannot be considered by the Court.

2. The November 2008 Filing Cannot Perfect a Protective Claim that Has Been Disallowed

Defendant next argues that, even if plaintiffs' November 2008 filing can be construed as perfecting plaintiffs' protective claim, it is not properly before the Court because the IRS disallowed plaintiffs' protective claim.

Defendant correctly notes that a second claim for refund that amends or supplements a previous filing can be construed to “relate back” to the first claim and, therefore, can satisfy the statute of limitations even if it is otherwise filed outside the limitations period. Mot. to Dismiss 6 (citing *Stelco Holding Co. v. United States*, 42 Fed. Cl. 101, 114 (1998)). However, “a refund claim, informal or formal, cannot be amended or perfected after it has been denied or rejected, and after the period of limitations has expired.” *Larson v. United States*, 89 Fed. Cl. 363, 387 (2009), *aff'd*, 376 F. App'x 26 (Fed. Cir. 2010); *accord Computervision Corp. v. United States*, 445 F.3d 1355, 1372 (Fed. Cir. 2006) (“[A]n amendment is ineffective if filed after the original claim has either been allowed or disallowed by the IRS.”). Here, the statute of limitations had run before plaintiffs submitted their November 2008 filing to perfect their original protective claim, and the IRS had disallowed the March 2007 protective claim that the November 2008 filing was intended to perfect. Accordingly, plaintiffs' November 2008 filing could not perfect their protective claim.

Plaintiffs respond to defendant's contentions by reasserting their position that the notice of disallowance was withdrawn. This argument is unpersuasive for the reasons discussed above.

See supra Part II.A.1. Plaintiffs' November 2008 filing cannot be considered by the Court because it was untimely filed as a separate claim. Alternatively, the filing which it sought to perfect had been disallowed. As a result, plaintiffs' claim based on the November 2008 filing must also be **DISMISSED** for lack of jurisdiction pursuant to RCFC 12(b)(1).¹²

CONCLUSION

In view of the foregoing, defendant's motion to dismiss is **GRANTED** and plaintiffs' complaint is **DISMISSED** for lack of jurisdiction pursuant to RCFC 12(b)(1). The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

s/ George W. Miller
GEORGE W. MILLER
Judge

¹² The Court recognizes that some may regard the Court's decision as harsh. As a result, to some degree, of the IRS's actions, plaintiffs may have come to believe that the IRS was continuing to analyze their refund claim and that the IRS was in the process of reconsidering the notice of disallowance. Nevertheless, the Court holds that plaintiffs' refund claim in this court is time barred due, at least in part, to the possible confusion created by (1) the IRS's conversations with plaintiffs' accountant, (2) the form letters the IRS sent to plaintiffs in connection with its analysis of plaintiffs' claim, and (3) the relative informality the IRS's dealings with plaintiffs. However, as Justice Holmes famously stated in the context of a tax refund case in the early twentieth century: "Men must turn square corners when they deal with the Government. If it attaches even purely formal conditions to its consent to be sued those conditions must be complied with." *Rock Island A. & L. R. Co. v. United States*, 254 U.S. 141, 143 (1920). As other courts have recognized, this Court is obligated to apply the laws of Congress as written and is bound by applicable precedent. *See, e.g., Brockamp*, 519 U.S. at 352-53; *Murdock*, 2012 WL 401594, at *6; *Orlando*, 94 Fed. Cl. at 293; *Musungayi v. United States*, 86 Fed. Cl. 121, 125 (2009).

In the United States Court of Federal Claims

No. 11-152 T

**ROBERT N. and CYNTHIA
CADRECHA**

JUDGMENT

v.

THE UNITED STATES

Pursuant to the court's Opinion and Order, filed April 2, 2012, granting defendant's motion to dismiss,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that the complaint is dismissed for lack of jurisdiction pursuant to RCFC 12(b)(1).

Hazel C. Keahey
Clerk of Court

April 4, 2012

By: s/ Debra L. Samler

Deputy Clerk

NOTE: As to appeal, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is \$455.00.

A000013

Exhibit A

EXHIBIT A – TIMELINE OF IRS RELEVANT CORRESPONDENCE

Copies of all correspondence listed below are attached hereto as **Exhibits "B" through "U"**.

- | EXHIBIT | DESCRIPTION |
|----------------|--|
| B. | March 20, 2007 – Plaintiffs filed Form 1040X as a Protective Claim for Refund of a portion of their 2003 income taxes. |
| C. | March 22, 2007 – IRS received the Form 1040X and signed the certified mail receipt. |
| D. | May 10, 2007 – IRS sent a letter to the Plaintiffs advising that they are "unable" to process the Claim for Refund, and requesting that the Plaintiffs send the IRS more information about the demutualization case upon which the Plaintiffs are basing their Claim. |
| E. | June 26, 2007 – IRS sent a letter that they "haven't completed all the research necessary for a complete response" and that they will contact the Plaintiffs within 45 days. |
| F. | August 13, 2007 – IRS sent a letter stating that they are unable to provide a complete response because "due to heavy workload, we have not yet completed our research to resolve your inquiry." The letter asks the Plaintiffs for an additional 45 days so the IRS may obtain the information it needs to let the Plaintiffs know what action the IRS is taking. |
| G. | August 31, 2007 – IRS issued the Notice of Disallowance, stating the Claim for Refund was disallowed because it was not timely filed. |

- H. August 30, 2007 – Plaintiffs' responded to the Notice of Disallowance, enclosing the date-stamped certified mail receipt showing that the Claim for Refund was timely filed.
- I. November 9, 2007 – IRS sent a letter acknowledging Plaintiffs' August 30, 2007 letter, stating that the Claim will be forwarded to the area Appeals Office, which will contact the Plaintiffs within 45 days.
- J. October 1, 2008 – Plaintiffs contacted the Atlanta, Georgia IRS office to follow up on the Claim for Refund.
- K. October 20, 2008 – IRS sent a letter acknowledging receipt of Plaintiffs' October 1, 2008 letter and stating that the IRS will contact the Plaintiffs within 45 days.
- L. November 3, 2008 – Plaintiffs filed Form 843 to perfect their Protective Claim, as a result of this Court's holding in the Fisher case dated August 8, 2008.
- M. November 5, 2008 – IRS sent a letter again acknowledging receipt of the Plaintiffs' correspondence dated October 1, 2008 and stating that the correspondence is being sent to the Austin, Texas office because it "has responsibility for handling matters of this kind" and that they would contact the Plaintiffs within 45 days.
- N. December 3, 2008 – IRS sent a letter thanking the Plaintiffs for their November 7, 2008 letter. The letter states that the IRS has not completed all the research necessary for a complete response, and that the IRS will contact the Plaintiffs within 45 days. The letter further states that the Plaintiffs' "don't need to do anything further now on this matter."

- O. January 15, 2009 – IRS sent a letter acknowledging its receipt of the Form 843, and stating that the claim has been sent to its Examinations Department in Austin, Texas "for consideration," and that the IRS will contact the Plaintiffs within 45 days.
- P. May 13, 2009 – Plaintiffs sent a letter to the Austin, Texas office of the IRS requesting an update on the status of their Claim for Refund.
- Q. June 25, 2009 – Plaintiffs sent a letter to the Taxpayer Advocate Service asking for assistance getting the IRS to make a decision regarding the Plaintiffs' Claim.
- R. July 7, 2009 – IRS Taxpayer Advocate Service sent a letter to the Plaintiffs in response to the Plaintiff's request for assistance. The Taxpayer Advocate Service letter states that the Plaintiffs' inquiry was forwarded to the IRS, and that the Plaintiffs would be contacted by August 7, 2009 with an update on the status of their inquiry. The letter went on to state that the author apologized "for the timeframe it is taking to process your claim."
- S. December 11, 2009 – Plaintiffs mail a letter to IRS employee Charity McDaniel confirming their telephone conversation, during which they discussed that the reason for the IRS's lack of response to the Plaintiffs' Claim for Refund was that the IRS intended to appeal the Fisher case, and that consequently, the Claim was awaiting the decision on that appeal.
- T. March 2, 2010 - IRS mailed the Plaintiffs a letter saying the Plaintiffs' matter was being forwarded to the Austin, Texas office of the IRS because it had "responsibility for handling matters of this kind." The letter went on to state that the Plaintiffs would be contacted by that office within 45.

- U. April 19, 2010 – Bob Cadrecha sent a letter to the Austin, Texas office of the IRS asking the IRS to review his Claim.
- V. April 19, 2010 – Bob Cadrecha sent a letter to the Bensalem, Pennsylvania office of the IRS asking the IRS to review his Claim.
- W. April 19, 2010 – Bob Cadrecha sent a letter to the Jacksonville, Florida office of the IRS asking the IRS to review his Claim.
- X. August 22, 2010 – Bob Cadrecha sent a letter to the Taxpayer Advocate Service in Jacksonville, Florida asking for the status of his Claim.
- Y. April 26, 2011 - IRS sent the Plaintiffs a letter stating that their Claim for Refund was "being held in suspense by this office." The letter went on to state that the government is actively litigating the demutualization issue in an Arizona case (Dorrance v. U.S.), and despite this Court's holding in Fisher v. U.S., the IRS would act on the Plaintiffs' claim once the law in this area "becomes well defined." The letter says that if the Plaintiffs are not willing to wait for a final resolution of the Dorrance case, they may file a refund suit after the claim has been pending for six months. Finally, the IRS letter states that the IRS "encourage[s] you to wait until the issue is finally resolved. If it is determined that you are entitled to a refund, you will receive the refund plus interest." This letter makes no mention whatsoever of the Notice of Disallowance, nor does it give any indication that the IRS believed the claim had been disallowed.

Exhibit B

PEREZ & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS
PROFESSIONAL ASSOCIATION

March 20, 2007

201 EAST KENNEDY BOULEVARD
SUITE 420
TAMPA, FLORIDA 33602
(813) 223-2511
FAX (813) 225-1815
WWW.PACOPPAS.COM

FRANK PEREZ, JR., C.P.A.
FRANK PEREZ, III, C.P.A.
PAUL J. VALITUTTO, C.P.A.
JEFFREY D. MILLER, C.P.A.
EMERITUS
MEMBERS
AMERICAN INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS
FLORIDA INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS

Internal Revenue Service
Atlanta, Georgia 39901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#7003 1010 0002 8080 3766

Re: Robert N. and Cynthia Cadrecha

Ladies/Gentlemen:

Our client, the above captioned taxpayer, has asked us to transmit to you the enclosed Form 1040X, Amended U.S. Individual Income Tax Return, for the calendar year 2003, filed as a Protective Claim.

We would appreciate your acknowledging the receipt of the tax return on the enclosed photocopy of this letter and returning it to us for our files.

If you should have any questions, please do not hesitate to contact us.

Very truly yours,

Frank Perez, Jr.

FPjr/lah
Enclosures
pc: Robert N. and Cynthia Cadrecha

JRS
Stamps
"Received
03 22 2007"

7563 0002 8080 3766

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

| | | |
|---|----|---|
| Postage | \$ | Postmark Here IRS 1040X-2003 |
| Certified Fee | | |
| Return Receipt Fee (Endorsement Required) | | |
| Restricted Delivery Fee (Endorsement Required) | | |
| Total Postage & Fees | \$ | |

Sent To: Robert Cadrecha
 Street, Apt. No., or PO Box to: 3-20-07
 City, State, ZIP+4: Protective Claim

PS Form 3800, June 2002 See Reverse for Instructions

| SENDER: COMPLETE THIS SECTION | COMPLETE THIS SECTION ON DELIVERY |
|--|---|
| <ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. | <p>A. Signature X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>RECEIVED ATSC IRS 13 06</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> |
| <p>1. Article Addressed to: IRS Atlanta, GA 39901</p> | <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> |
| <p>2. Article Number (Transfer from service label)</p> | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> <p style="text-align: center;">7003 1010 0002 8080 3766</p> |
| PS Form 3811, August 2001 | Domestic Return Receipt 102595-02-M-1540 |

Form **1040X**
 (Rev. November 2003)

Amended U.S. Individual Income Tax Return

OMB No. 1545-0091

▶ See separate instructions.

This return is for calendar year **2003**, or fiscal year ended ▶

| | | | |
|----------------------|---|---|---|
| Please print or type | Your first name and initial ROBERT N. CADRECHA | Last name | Your social security number [REDACTED] |
| | If a joint return, spouse's first name and initial CYNTHIA CADRECHA | Last name | Spouse's social security number [REDACTED] |
| | Home address (no. and street) or P.O. box if mail is not delivered to your home 4414 NEPTUNE STREET | Apt. no. | Phone number |
| | City, town or post office, state, and ZIP code. TAMPA, FL 33629 | For Paperwork Reduction Act Notice, see page 6. | |

- A.** If the name or address shown above is different from that shown on the original return, check here
- B.** Has the original return been changed or audited by the IRS or have you been notified that it will be? Yes No
- C.** Filing status. Be sure to complete this line. Note. You cannot change from joint to separate returns after the due date.
- On original return ▶ Single Married filing jointly Married filing separately Head of household Qualifying widow(er)
- On this return ▶ Single Married filing jointly Married filing separately Head of household* Qualifying widow(er)
- * If the qualifying person is a child but not your dependent, see page 2.

| Use Part II on page 2 to explain any changes | | A. Original amount or as previously adjusted (see page 2) | B. Net change - amount of increase or (decrease) - explain in Part II | C. Correct amount |
|--|--|---|---|-------------------|
| Income and Deductions (see pages 2-6) | | | | |
| | 1. Adjusted gross income (see page 3) | 1 212,234. | -108,350. | 103,884. |
| | 2. Itemized deductions or standard deduction (see page 3) | 2 41,769. | 2,182. | 43,951. |
| | 3. Subtract line 2 from line 1 | 3 170,465. | -110,532. | 59,933. |
| | 4. Exemptions. If changing, fill in Parts I and II on page 2 | 4 5,856. | 244. | 6,100. |
| | 5. Taxable income. Subtract line 4 from line 3 | 5 164,609. | -110,776. | 53,833. |
| Tax Liability | 6. Tax (see page 4). Method used in col. C: Sch. D | 6 31,985. | -25,635. | 6,350. |
| | 7. Credits (see page 4) | 7 109. | 1,044. | 1,153. |
| | 8. Subtract line 7 from line 6. Enter the result but not less than zero | 8 31,876. | -26,679. | 5,197. |
| | 9. Other taxes (see page 4) | 9 | | |
| | 10. Total tax. Add lines 8 and 9 | 10 31,876. | -26,679. | 5,197. |
| Payments | 11. Federal income tax withheld and excess social security and tier 1 RRTA tax withheld. If changing, see page 4 | 11 12,475. | | 12,475. |
| | 12. Estimated tax payments, including amount applied from prior year's return | 12 | | |
| | 13. Earned income credit (EIC) | 13 | | |
| | 14. Additional child tax credit from Form 8812 | 14 | | |
| | 15. Credits from Form 2439, Form 4136, or Form 8885 | 15 | | |
| | 16. Amount paid with request for extension of time to file (see page 4) | 16 | | |
| | 17. Amount of tax paid with original return plus additional tax paid after it was filed | 17 | | 19,401. |
| | 18. Total payments. Add lines 11 through 17 in column C | 18 | | 31,876. |
| Refund or Amount You Owe | | | | |
| | 19. Overpayment, if any, as shown on original return or as previously adjusted by the IRS | 19 | | |
| | 20. Subtract line 19 from line 18 (see page 5) | 20 | | 31,876. |
| | 21. Amount you owe. If line 10, column C, is more than line 20, enter the difference and see page 5 | 21 | | |
| | 22. If line 10, column C, is less than line 20, enter the difference | 22 | | 26,679. |
| | 23. Amount of line 22 you want refunded to you | 23 | | 26,679. |
| | 24. Amount of line 22 you want applied to your estimated tax | 24 | | |

Sign Here
 Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

Joint return? See page 2. Keep a copy for your records.

Your signature: _____ Date: _____
 Spouse's signature. If a joint return, both must sign. Date: _____

Preparer's signature: _____ Date: _____
 Check if self-employed Preparer's SSN or PTIN: _____

Preparer's Use Only
 Firm's name (or yours if self-employed), address, and ZIP code: **PEREZ & CO., CPA'S, P.A.
 201 E. KENNEDY BLVD. SUITE 420
 TAMPA, FL 33602**
 EIN: **59-1669671**
 Phone no.: **(813) 223-2511**

| Part I Exemptions. See Form 1040 or 1040A instructions. If you are not changing your exemptions, do not complete this part. If claiming more exemptions, complete lines 25-31. If claiming fewer exemptions, complete lines 25-30. | | A. Original number of exemptions reported or as previously adjusted | B. Net change | C. Correct number of exemptions | | | | | | | | | | | | | | | |
|---|--|--|------------------|--|------|---------|-----------|------|-------|---------|------|-------|--------|------|-------|--------|--------|------|--------|
| 25 | Yourself and spouse <i>Caution.</i> If your parents (or someone else) can claim you as a dependent (even if they chose not to), you cannot claim an exemption for yourself. | 2 | | 2 | | | | | | | | | | | | | | | |
| 26 | Your dependent children who lived with you | | | | | | | | | | | | | | | | | | |
| 27 | Your dependent children who did not live with you due to divorce or separation | | | | | | | | | | | | | | | | | | |
| 28 | Other dependents | | | | | | | | | | | | | | | | | | |
| 29 | Total number of exemptions. Add lines 25 through 28 | 2 | | 2 | | | | | | | | | | | | | | | |
| 30 | Multiply the number of exemptions claimed on line 29 by the amount listed below for the tax year you are amending. Enter the result here and on line 4. | | | | | | | | | | | | | | | | | | |
| | <table border="1"> <thead> <tr> <th>Tax year</th> <th>Exemption amount</th> <th>But see the instructions for line 4 on page 3 if the amount on line 1 is over:</th> </tr> </thead> <tbody> <tr> <td>2003</td> <td>\$3,050</td> <td>\$104,625</td> </tr> <tr> <td>2002</td> <td>3,000</td> <td>103,000</td> </tr> <tr> <td>2001</td> <td>2,900</td> <td>99,725</td> </tr> <tr> <td>2000</td> <td>2,800</td> <td>96,700</td> </tr> </tbody> </table> | Tax year | Exemption amount | But see the instructions for line 4 on page 3 if the amount on line 1 is over: | 2003 | \$3,050 | \$104,625 | 2002 | 3,000 | 103,000 | 2001 | 2,900 | 99,725 | 2000 | 2,800 | 96,700 | 5,856. | 244. | 6,100. |
| Tax year | Exemption amount | But see the instructions for line 4 on page 3 if the amount on line 1 is over: | | | | | | | | | | | | | | | | | |
| 2003 | \$3,050 | \$104,625 | | | | | | | | | | | | | | | | | |
| 2002 | 3,000 | 103,000 | | | | | | | | | | | | | | | | | |
| 2001 | 2,900 | 99,725 | | | | | | | | | | | | | | | | | |
| 2000 | 2,800 | 96,700 | | | | | | | | | | | | | | | | | |

31 Dependents (children and other) not claimed on original (or adjusted) return:

| (a) First name | Last name | (b) Dependent's social security number | (c) Dependent's relationship to you | (d) Check if qualifying child for child tax credit |
|----------------|-----------|--|-------------------------------------|--|
| | | | | <input type="checkbox"/> |
| | | | | <input type="checkbox"/> |
| | | | | <input type="checkbox"/> |
| | | | | <input type="checkbox"/> |
| | | | | <input type="checkbox"/> |
| | | | | <input type="checkbox"/> |

No. of your children on line 31 who:

- lived with you
- did not live with you due to divorce or separation
- Dependents on line 31 not entered above

Part II Explanation of Changes to Income, Deductions, and Credits

Enter the line number from page 1 for each item you are changing and give the reason for each change. Attach only the supporting forms and schedules for the items changed. If you do not attach the required information, your Form 1040X may be returned. Be sure to include your name and social security number on any attachments.

If the change relates to a net operating loss carryback or a general business credit carryback, attach the schedule or form that shows the year in which the loss or credit occurred. See page 2 of the instructions. Also, check here

SEE ATTACHED EXPLANATION.

Part III Presidential Election Campaign Fund. Checking below will not increase your tax or reduce your refund.

If you did not previously want \$3 to go to the fund but now want to, check here

If a joint return and your spouse did not previously want \$3 to go to the fund but now wants to, check here

ROBERT N. AND CYNTHIA CADRECHA
AMENDED FORM 1040X
CALENDAR YEAR 2003

REASON FOR AMENDED RETURN

The taxpayer is a shareholder in a S Corporation which sold stock in a life insurance company that demutualized. The sale was reported during the year; however the sales proceeds were reported as the total gain, without any consideration for a "cost basis". Due to certain current court rulings, it is possible that the taxpayer was entitled to deduct a "cost basis in arriving at the gain. The resolution of the matter is expected to be resolved by the courts later this year, and as a result, a Protective Claim is filed.

At this time, a cost basis equal to the selling price was used for the amended Form 1120S that has been concurrently filed and which eliminated the long-term capital gain pass-through on the shareholder's K-1.

Exhibit D

ATLANTA GA 39901-0025

71084354844481295601

In reply refer to: 0733157630
May 10, 2007 LTR 916C E0
267-56-8363 200312 30 000
00008198
BODC: SB

ROBERT N & CYNTHIA CADRECHA
4414 W NEPTUNE ST
TAMPA FL 33629-5530149

CERTIFIED MAIL

Kind of Tax: Individual
Date Claim(s) Received: Mar. 22, 2007
Tax Period(s) Ending: Dec. 31, 2003

CIS5ZKBXXV

Dear Taxpayer:

We are unable to process your claim for the tax period(s) shown above because your supporting information was not complete. If you have more information you did not send with this claim, you may file another claim and attach your information.

Please indicate the court case which is pending that supports this protective claim.

Please send the information we asked for within 30 days from the date of this letter. If we do not hear from you, we can not process your tax return and your account may be incorrect or incomplete. We enclosed an envelope for your convenience.

If you have any questions, please call us toll free at 1-800-829-8374.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Keep a copy of this letter for your records.

Telephone Number () _____ Hours _____

Form **2848**

(Rev. March 2004)

Department of the Treasury
Internal Revenue Service

Power of Attorney and Declaration of Representative

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date / /

Part I **Power of Attorney**

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address

ROBERT N. & CYNTHIA CADRECHA
4414 NEPTUNE STREET
TAMPA, FL 33629

Social security number(s)

267 56 8363

261 31 8349

Daytime telephone number

Employer identification number

Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address

FRANK PEREZ, JR., C.P.A.
201 E. KENNEDY BLVD., #420
TAMPA, FLORIDA 33602

CAF No. 6505-84745R

Telephone No. 813-223-2511

Fax No. 813-225-1815

Check if new: Address Telephone No. Fax No.

Name and address

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address Telephone No. Fax No.

Name and address

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address Telephone No. Fax No.

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax Matters

| Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3) | Tax Form Number (1040, 941, 720, etc.) | Year(s) or Period(s) (see the instructions for line 3) |
|--|---|---|
| INCOME | 1040X | 2003 |
| | | |
| | | |

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific uses not recorded on CAF.

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See **Unenrolled Return Preparer** on page 2 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Circular 230. See the line 5 instructions for restrictions on tax matters partners.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: _____

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, **BUT NOT TO ENDORSE OR CASH**, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ►

Form 2848 (Rev. 3-2004)

ROBERT N. & CYNTHIA CADRECHA

267-56-8363

Page 2

- 7 Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.
- a** If you also want the second representative listed to receive a copy of notices and communications, check this box
 - b** If you do not want any notices or communications sent to your representative(s), check this box
- 8 Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here
YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.
- 9 Signature of taxpayer(s).** If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

▶ IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.



Signature

5/18/07

Date

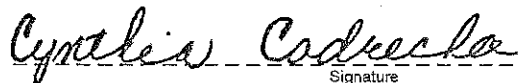
Title (if applicable)

ROBERT N. CADRECHA

Print Name

PIN Number

Print name of taxpayer from line 1 if other than individual



Signature

5/18/07

Date

Title (if applicable)

CYNTHIA CADRECHA

Print Name

PIN Number

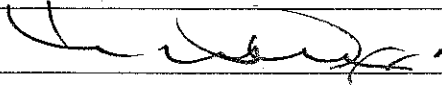
Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a** Attorney - a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b** Certified Public Accountant - duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c** Enrolled Agent - enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d** Officer - a bona fide officer of the taxpayer's organization.
 - e** Full-Time Employee - a full-time employee of the taxpayer.
 - f** Family Member - a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g** Enrolled Actuary - enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d) of Treasury Department Circular No. 230).
 - h** Unenrolled Return Preparer - the authority to practice before the Internal Revenue Service is limited by Treasury Department Circular No. 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See Unenrolled Return Preparer on page 2 of the instructions.

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. See the Part II instructions.

| Designation - Insert above letter (a-h) | Jurisdiction (state) or identification | Signature | Date |
|---|--|--|----------|
| B | FLORIDA |  | 05 21 07 |
| | | | |

Form 2848 (Rev. 3-2004)

**ROBERT N. AND CYNTHIA CADRECHA
AMENDED FORM 1040X – FILED AS A
PENDING COURT CASE SUPPORTING THE PROTECTIVE CLAIM
FOR THE CALENDAR YEAR 2003**

This attachment is in response to the Internal Revenue Service's request of May 10, 2007, a copy of which is attached for further identification which requests "court case which is pending that supports this protective claim" of the proceedings referred to in the amended Form 1040X previously filed as indicated on your notice.

Also enclosed is the documentation requested which is styled:

Eugene A. Fisher, Trustee, Seymour P. Nagan Irrevocable Trust,
Plaintiff v. The United States Dependent, Court of Federal Claims
04-1726T

It is to be noted that the court required that "the parties shall file a joint status report proposing a schedule for a trial to commence no later than May 1, 2007, and indicating the location thereof".

Respectfully submitted,

Frank Perez, Jr.
Perez & Company, C.P.A.'s, P.A.
As Agent As Per
Power of Attorney, Form 2848
Dated May 17, 2007

Exhibit E



IRS

Department of the Treasury
Internal Revenue Service

ATLANTA GA 39901-0025

In reply refer to: 0739900025
June 26, 2007 LTR 2645C K0
267-56-8363 200312 30 000
Input Op: 0709960054 00022700
BODC: WI

ROBERT N & CYNTHIA CADRECHA
4414 W NEPTUNE ST
TAMPA FL 33629-5530149



0976

Taxpayer Identification Number: 267-56-8363
Tax Period(s): Dec. 31, 2003

Form: 1040

Dear Taxpayer:

Thank you for your correspondence received May 23, 2007.

We haven't resolved this matter because we haven't completed all the research necessary for a complete response. We will contact you again within 45 days to let you know what action we are taking. You don't need to do anything further now on this matter.

If you have any questions, please call us toll free at 1-800-829-0922.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

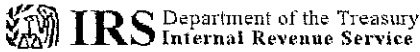
Whenever you write, please include this letter with your telephone number and the hours we can reach you entered in the spaces provided below. You may want to keep a copy of this letter for your records.

Your telephone number () _____ Hours _____

We apologize for any inconvenience we may have caused you, and thank you for your cooperation.

Sincerely yours,

Rebecca H. Henderson
Dept. Manager, Accounts Management



ATLANTA GA 39901-0025

030976.343769.0127.003 1 AT 0.334 532



ROBERT N & CYNTHIA CADRECHA
4414 W NEPTUNE ST
TAMPA FL 33629-5530149



0976

CUT OUT AND RETURN THE VOUCHER AT THE BOTTOM OF THIS PAGE IF YOU ARE MAKING A PAYMENT,
EVEN IF YOU ALSO HAVE AN INQUIRY.



The IRS address must appear in the window.

Use for payments

BODCD-WI

0739900025

Letter Number: LTR2645C
Letter Date : 2007-06-26
Tax Period : 200312

INTERNAL REVENUE SERVICE

ATLANTA GA 39901-0025



267568363

ROBERT N & CYNTHIA CADRECHA
4414 W NEPTUNE ST
TAMPA FL 33629-5530149

Exhibit G



ATLANTA GA 39901-0025

In reply refer to: 0735757555
Aug. 31, 2007 LTR 105C E0
[REDACTED] 200312 30 000 1
00002468
BODC: SB

ROBERT N & CYNTHIA CADRECHA
% FRANK PEREZ JR
201 E KENNEDY BLVD STE 420
TAMPA FL 33602-5823

Taxpayer Identification Number: [REDACTED]
Kind of Tax: INDIVIDUAL
Date of Claim(s) Received: May 23, 2007
Tax Period : Dec. 31, 2003

WE COULDN'T ALLOW YOUR CLAIM

Dear Taxpayer:

WHY WE'RE SENDING YOU THIS LETTER

This letter is your notice that we've disallowed your claim for credit for the period shown above.

WHY WE CANNOT ALLOW YOUR CLAIM

You filed your claim for credit or refund more than 3 years after the tax return due date. A claim must be filed within 3 years from the time the return was filed. In addition, the amount of tax that may be credited or refunded is limited to the tax paid during the three years immediately preceding the filing of the claim (plus the period of any extension of time to file the tax return). Withheld tax and estimated tax payments are deemed to be paid on the last day prescribed (i.e., April 15) for filing your tax return. The excess of any amount allowable for the earned income credit over the actual income tax is treated in a similar manner to these prepaid credits.

You filed your claim more than 3 years after you filed your tax return.

You filed your claim more than 2 years after you paid the tax.

IF YOU DISAGREE

You may appeal our decision with the Appeals Office (which is independent of our office) if we disallowed your claim because our records show that you filed your claim late. Generally, a claim is late if you filed it the later of:

- 3 years from the return due date of a timely filed, unextended return

0735757555

Aug. 31, 2007 LTR 105C E0

[REDACTED] 200312 30 000 1

00002470

ROBERT N & CYNTHIA CADRECHA
% FRANK PEREZ JR
201 E KENNEDY BLVD STE 420
TAMPA FL 33602-5823

- 3. Provide your name, address, taxpayer identification number, daytime telephone number, and a copy of this letter.
- 4. Mail your appeal request to the address shown on this letter.

~~To prepare a formal protest, do the following:~~

- 1. Prepare a written statement that you want to appeal the disallowance to the Appeals Office.
- 2. Provide your name, address, taxpayer identification number, a daytime telephone number, and a copy of this letter. Show the tax periods or years and disallowed items you disagree with and why you don't agree with each item.
- 3. Include a detailed statement of facts with names, amounts, locations, etc. to support your reasons for disputing the disallowance.
- 4. If you know the particular law or authority that supports your position, you should inform us of that law or authority. Please include a legal citation to assist in the appeals process that supports your claim, if applicable.
- 5. Sign the statement below and include it with your written appeal. If your authorized representative prepares the request for an appeal, he/she must sign the statement and include it with the appeal.
- 6. Mail your written formal protest to the address shown on this letter.

STATEMENT BY INDIVIDUALS OR SOLE PROPRIETORS

"Under penalties of perjury, I declare that the facts present on my written appeal are, to the best of my knowledge and belief, true, correct, and complete."

Signature

Date

Spouse's Signature, if a Joint Return

Date

STATEMENT BY ATTORNEY, ENROLLED AGENT OR CERTIFIED PUBLIC ACCOUNTANT

"Under penalty of perjury, I declare that I prepared the written statement and accompanying documents. To the best of my knowledge the protest and accompanying documents are true and correct."



IRS

Department of the Treasury
Internal Revenue Service

ATLANTA GA 39901-0025

ROBERT N & CYNTHIA CADRECHA
% FRANK PEREZ JR
201 E KENNEDY BLVD STE 420
TAMPA FL 33602-5823

CUT OUT AND RETURN THE VOUCHER AT THE BOTTOM OF THIS PAGE IF YOU ARE MAKING A PAYMENT,
EVEN IF YOU ALSO HAVE AN INQUIRY.

The IRS address must appear in the window.

Use for payments

BODCD-SB

0735757555

Letter Number: LTR0105C
Letter Date : 2007-08-31
Tax Period : 200312



INTERNAL REVENUE SERVICE

ATLANTA GA 39901-0025



ROBERT N & CYNTHIA CADRECHA
% FRANK PEREZ JR
201 E KENNEDY BLVD STE 420
TAMPA FL 33602-5823

267568363 DK CADR 30 0 200312 670 0000000000

A000036

0735757555

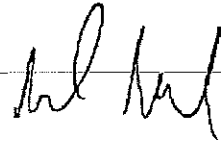
Aug. 31, 2007 LTR 105C E0

~~XXXXXXXXXX~~ 200312 30 000 1

00002472

ROBERT N & CYNTHIA CADRECHA
% FRANK PEREZ JR
201 E KENNEDY BLVD STE 420
TAMPA FL 33602-5823

Sincerely yours,



Michael Beebe
Field Dir., Accounts Management

Enclosure(s):
Publication 1
Envelope
Notice 746

Exhibit L

PEREZ & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS
PROFESSIONAL ASSOCIATION

November 3, 2008

201 EAST KENNEDY BOULEVARD
SUITE 420
TAMPA, FLORIDA 33602
(813) 223-2511
FAX (813) 225-1815
WWW.PADCPAS.COM

FRANK PEREZ, JR., C.P.A.
FRANK PEREZ, III, C.P.A.

PAUL J. VALITUTTO, C.P.A.

JEFFREY C. MILLER, C.P.A.
EMERITUS

MEMBERS
AMERICAN INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS
FLORIDA INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS

**Internal Revenue Service
Atlanta, Georgia 39901**

Re: Robert N. and Cynthia Cadrecha

Ladies/Gentlemen:

In behalf of our clients, the above captioned taxpayers, enclosed find duly executed Form 843, Claim for Refund, for the calendar year 2003.

Please be advised that the filing of this form is merely intended to perfect the prior Protective Claim filed March 20, 2007. This form is now filed as a result of the findings of the Court with regard to the case cited therein as of August 6, 2008.

Further, be further advised that we have previously filed Form 2848, Power of Attorney, issued to the undersigned for the purpose of this matter.

We trust that you will find the information in order; however, if you should have any questions, please do not hesitate to contact us.

Very truly yours,

Frank Perez, Jr.

FPjr/lah
Enclosures
pc: Robert N. and Cynthia Cadrecha

Form **843**
 (Rev. February 2008)
 Department of the Treasury
 Internal Revenue Service

Claim for Refund and Request for Abatement

OMB No. 1545-0024

▶ See separate instructions.

Use Form 843 if your claim or request involves:

- (a) a refund of one of the taxes (other than income taxes) shown on line 3,
- (b) an abatement of employment or certain excise taxes, or
- (c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

Do not use Form 843 if your claim or request involves:

- (a) an overpayment of income taxes (use the appropriate amended income tax return),
- (b) a refund of excise taxes based on the nontaxable use or sale of fuels, or
- (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

| | |
|--|---|
| Name(s) ROBERT N. AND CYNTHIA CADRECHA | Your social security number 267 56 8363 |
| Address (number, street, and room or suite no.) 4414 WEST NEPTUNE STREET | Spouse's social security number 261 31 8349 |
| City or town, state, and ZIP code TAMPA, FLORIDA 33629 | Employer identification number (EIN) |
| Name and address shown on return if different from above | Daytime telephone number (813) 223-2511 |

| | |
|--|--|
| 1 Period. Prepare a separate Form 843 for each tax period From 01 / 01 / 2003 to 12 / 31 / 2003 | 2 Amount to be refunded or abated \$ 26,679 |
| 3 Type of tax. Indicate the type of tax to be refunded or abated or to which the interest, penalty, or addition to tax is related. <input type="checkbox"/> Employment <input type="checkbox"/> Estate <input type="checkbox"/> Gift <input type="checkbox"/> Excise (see instructions) <input checked="" type="checkbox"/> Income | |
| 4 Type of penalty. If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section: <u>N/A</u> | |

5a Interest, penalties, and additions to tax. Check the box that indicates your reason for the request for refund or abatement. (If none apply, go to line 6.) **N/A**

- Interest was assessed as a result of IRS errors or delays.
- A penalty or addition to tax was the result of erroneous written advice from the IRS.
- Reasonable cause or other reason allowed under the law (other than erroneous written advice) can be shown for not assessing a penalty or addition to tax.

b Dates of payment ▶

6 Original return. Indicate the type of return filed to which the tax, interest, penalty, or addition to tax relates.
 706 709 940 941 943 945
 990-PF 1040 1120 4720 Other (specify) ▶

7 Explanation. Explain why you believe this claim or request should be allowed and show the computation of the amount shown on line 2. If you need more space, attach additional sheets.

REFER TO THE ATTACHED SCHEDULE, AND BY REFERENCE MADE A PART OF THIS CLAIM.

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be shown.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature (Type if applicable. Claims by corporations must be signed by an officer.) *[Signature]* Date **10/29/2008**
 Signature (spouse, if joint return) *[Signature]* Date **10/29/2008**

| | | | | |
|---------------------------------|---|-------------------------|---|------------------------|
| Paid Preparer's Use Only | Preparer's signature <i>[Signature]</i> | Date 10.27.08 | Check if self-employed <input type="checkbox"/> | Preparer's SSN or PTIN |
| | Firm's name (or yours if self-employed), address, and ZIP code PEREZ & COMPANY, C.P.A.S.P.A. 201 E. Kennedy Blvd., #420, Tampa, Florida 33602 | EIN 59 | Phone no. (813) 223-2511 | 1669671 |

**ROBERT N. AND CYNTHIA CADRECHA
FORM 843
CLAIM FOR REFUND
CALENDAR YEAR 2003**

Item 7 – Explanation

This Claim for Refund is now filed as a follow-up to a previously filed Form 1040X for the calendar year 2003 as a Protective Claim. As a result of the concluding opinion rendered in the case of

**Eugene A. Fisher, Trustee, Seymour P. Nagan Irrevocable Trust,
Plaintiff v. the United States, Defendant**

dated August 6, 2008.

Further, the Form 1040X for the calendar year 2003 filed as a Protective Claim was filed on March 20, 2007 and received by the Internal Revenue Service on March 22, 2007, as is evidenced by the enclosed copies of our transmittal letter dated March 20, 2007 and U.S. Postal Service "Certified Mail Receipt" and "Domestic Return Receipt" stamped "03222007".

Also attached are copies of Form 1040X for the calendar year 2003, a copy of our subsequent attachment to support the Protective Claim, and which responded to your notice dated May 10, 2007.

Also attached is a copy of Form 2848, Power of Attorney, issued to the preparer for the purpose of this claim which was previously also filed and hereby attached for easier reference.

Form 2848

(Rev. March 2004)

Department of the Treasury
Internal Revenue Service

**Power of Attorney
and Declaration of Representative**

▶ Type or print. ▶ See the separate instructions.

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date / /

Part I Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address

ROBERT N. & CYNTHIA CADRECHA
4414 NEPTUNE STREET
TAMPA, FL 33629

Social security number(s)

267 56 8363

261 31 8349

Daytime telephone number

Employer identification number

Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address

FRANK PEREZ, JR., C.P.A.
201 E. KENNEDY BLVD., #420
TAMPA, FLORIDA 33602

CAF No. 6505-84745R

Telephone No. 813-223-2511

Fax No. 813-225-1815

Check if new: Address Telephone No. Fax No.

Name and address

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address Telephone No. Fax No.

Name and address

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address Telephone No. Fax No.

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax Matters

| Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3) | Tax Form Number (1040, 941, 720, etc.) | Year(s) or Period(s) (see the instructions for line 3) |
|--|---|---|
| INCOME | 1040X | 2003 |
| | | |
| | | |

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific uses not recorded on CAF.

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See Unenrolled Return Preparer on page 2 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Circular 230. See the line 5 instructions for restrictions on tax matters partners.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: _____

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, BUT NOT TO ENDORSE OR CASH, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ▶

LHA: For Privacy Act and Paperwork Reduction Notice, see page 4 of the instructions.

Form 2848 (Rev. 3-2004)

- 7 Notices and communications. Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.
- a If you also want the second representative listed to receive a copy of notices and communications, check this box
- b If you do not want any notices or communications sent to your representative(s), check this box
- 8 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here
- YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**
- 9 Signature of taxpayer(s). If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

▶ IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.

Robert N. Cadrecha Signature 5/18/07 Date _____ Title (if applicable)

ROBERT N. CADRECHA Print Name _____ PIN Number _____ Print name of taxpayer from line 1 if other than individual

Cynthia Cadrecha Signature 5/18/07 Date _____ Title (if applicable)

CYNTHIA CADRECHA Print Name _____ PIN Number _____

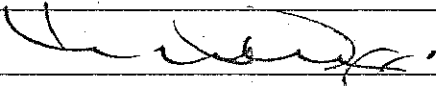
Part III Declaration of Representative

Caution: Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney - a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant - duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent - enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d Officer - a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee - a full-time employee of the taxpayer.
 - f Family Member - a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g Enrolled Actuary - enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d) of Treasury Department Circular No. 230).
 - h Unenrolled Return Preparer - the authority to practice before the Internal Revenue Service is limited by Treasury Department Circular No. 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See Unenrolled Return Preparer on page 2 of the instructions.

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. See the Part II instructions.

| Designation - insert above letter (a-h) | Jurisdiction (state) or identification | Signature | Date |
|---|--|--|----------|
| B | FLORIDA |  | 05 21 07 |
| | | | |
| | | | |

ROBERT N. AND CYNTHIA CADRECHA
AMENDED FORM 1040X - FILED AS A
PENDING COURT CASE SUPPORTING THE PROTECTIVE CLAIM
FOR THE CALENDAR YEAR 2003

This attachment is in response to the Internal Revenue Service's request of May 10, 2007, a copy of which is attached for further identification which requests "court case which is pending that supports this protective claim" of the proceedings referred to in the amended Form 1040X previously filed as indicated on your notice.

Also enclosed is the documentation requested which is styled:

Eugene A. Fisher, Trustee, Seymour P. Nagan Irrevocable Trust,
Plaintiff v. The United States Dependent, Court of Federal Claims
04-1726T

It is to be noted that the court required that "the parties shall file a joint status report proposing a schedule for a trial to commence no later than May 1, 2007, and indicating the location thereof".

Respectfully submitted,

Frank Perez, Jr.
Perez & Company, C.P.A.'s, P.A.
As Agent As Per
Power of Attorney, Form 2848
Dated May 17, 2007

| SENDER COMPLETE THIS SECTION | COMPLETE THIS SECTION ON DELIVERY |
|--|--|
| <ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. | <p>A. Signature X</p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p> |
| <p>1. Article Addressed to:</p> <p>IRS Atlanta, GA 39901</p> | <p>RECEIVED ATSC/IRS 13 06</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type: <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> |
| <p>2. Article Number (Transfer from service label)</p> | <p>7003 1010 0002 8080 3766</p> |
| <p>PS Form 3841, August 2001</p> | <p>Domestic Return Receipt 40259-02-11-3540</p> |

| U.S. Postal Service CERTIFIED MAIL - RECEIPT (Domestic Mail Only; No Insurance Coverage Provided) | | | | | | | | | | | |
|---|--|----|------------|----|--|----|--|----|--|----|--|
| For delivery information visit our website at www.usps.com | | | | | | | | | | | |
| OFFICIAL USE | | | | | | | | | | | |
| Postage Certified Fee Return Receipt Fee (Endorsement Required) Restricted Delivery Fee (Endorsement Required) Total Postage & Fees | <table border="1"> <tr> <td>\$</td> <td>1040X-2003</td> </tr> <tr> <td>\$</td> <td></td> </tr> <tr> <td>\$</td> <td></td> </tr> <tr> <td>\$</td> <td></td> </tr> <tr> <td>\$</td> <td></td> </tr> </table> <p style="text-align: right;">Postmark Here</p> | \$ | 1040X-2003 | \$ | | \$ | | \$ | | \$ | |
| \$ | 1040X-2003 | | | | | | | | | | |
| \$ | | | | | | | | | | | |
| \$ | | | | | | | | | | | |
| \$ | | | | | | | | | | | |
| \$ | | | | | | | | | | | |
| Sent To Street, Apt. No., or PO Box No. City, State, ZIP+4 | <p>IRS</p> <p>1040X-2003</p> <p>Robert Cadrecha</p> <p>3-20-01</p> <p>Protective Claim</p> | | | | | | | | | | |
| PS Form 3800, June 2002 | See Reverse for Instructions | | | | | | | | | | |

CERTIFIED PUBLIC ACCOUNTANTS
PROFESSIONAL ASSOCIATION

March 20, 2007

201 EAST KENNEDY BOULEVARD
SUITE 420
TAMPA, FLORIDA 33602
(813) 223-2511
FAX (813) 225-1815
WWW.PADCCPAS.COM

FRANK PEREZ, JR., C.P.A.
FRANK PEREZ, III, C.P.A.

PAUL J. VALITUTTO, C.P.A.

JEFFREY D. MILLER, C.P.A.
EMERITUS

MEMBERS
AMERICAN INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS
FLORIDA INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS

Internal Revenue Service
Atlanta, Georgia 39901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#7003 1010 0002 8080 3766

Re: Robert N. and Cynthia Cadrecha

Ladies/Gentlemen:

Our client, the above captioned taxpayer, has asked us to transmit to you the enclosed Form 1040X, Amended U.S. Individual Income Tax Return, for the calendar year 2003, filed as a Protective Claim.

We would appreciate your acknowledging the receipt of the tax return on the enclosed photocopy of this letter and returning it to us for our files.

If you should have any questions, please do not hesitate to contact us.

Very truly yours,

Frank Perez, Jr.

FPjr/lah
Enclosures
pc: Robert N. and Cynthia Cadrecha

JRS
Stamp
"Received
03 22 2007"

Department of the Treasury - Internal Revenue Service

Form 1040X

Amended U.S. Individual Income Tax Return

OMB No. 1545-0091

(Rev. November 2003)

See separate instructions.

This return is for calendar year 2003, or fiscal year ended

| | | | |
|----------------------|---|---|---|
| Please print or type | Your first name and initial ROBERT N. CADRECHA | Last name | Your social security number 267 56 8363 |
| | If a joint return, spouse's first name and initial CYNTHIA CADRECHA | Last name | Spouse's social security number 261 31 8349 |
| | Home address (no. and street) or P.O. box if mail is not delivered to your home 4414 NEPTUNE STREET | Apt. no. | Phone number |
| | City, town or post office, state, and ZIP code. TAMPA, FL 33629 | For Paperwork Reduction Act Notice, see page 6. | |

- A. If the name or address shown above is different from that shown on the original return, check here
- B. Has the original return been changed or audited by the IRS or have you been notified that it will be? Yes No
- C. Filing status. Be sure to complete this line. Note. You cannot change from joint to separate returns after the due date.
- On original return Single Married filing jointly Married filing separately Head of household Qualifying widow(er)
- On this return Single Married filing jointly Married filing separately Head of household* Qualifying widow(er)
- * If the qualifying person is a child but not your dependent, see page 2.

| Use Part II on page 2 to explain any changes | | A. Original amount or as previously adjusted (see page 2) | B. Net change - amount of increase or (decrease) - explain in Part II | C. Correct amount |
|--|--|---|---|-------------------|
| Income and Deductions (see pages 2-6) | | | | |
| | 1. Adjusted gross income (see page 3) | 1 212,234. | -108,350. | 103,884. |
| | 2. Itemized deductions or standard deduction (see page 3) | 2 41,769. | 2,182. | 43,951. |
| | 3. Subtract line 2 from line 1 | 3 170,465. | -110,532. | 59,933. |
| | 4. Exemptions. If changing, fill in Parts I and II on page 2 | 4 5,856. | 244. | 6,100. |
| | 5. Taxable income. Subtract line 4 from line 3 | 5 164,609. | -110,776. | 53,833. |
| Tax Liability | 6. Tax (see page 4). Method used in col. C Sch. D | 6 31,985. | -25,635. | 6,350. |
| | 7. Credits (see page 4) | 7 109. | 1,044. | 1,153. |
| | 8. Subtract line 7 from line 6. Enter the result but not less than zero | 8 31,876. | -26,679. | 5,197. |
| | 9. Other taxes (see page 4) | 9 | | |
| | 10. Total tax. Add lines 8 and 9 | 10 31,876. | -26,679. | 5,197. |
| Payments | 11. Federal income tax withheld and excess social security and tier 1 RRTA tax withheld. If changing, see page 4 | 11 12,475. | | 12,475. |
| | 12. Estimated tax payments, including amount applied from prior year's return | 12 | | |
| | 13. Earned income credit (EIC) | 13 | | |
| | 14. Additional child tax credit from Form 8812 | 14 | | |
| | 15. Credits from Form 2439, Form 4136, or Form 8885 | 15 | | |
| | 16. Amount paid with request for extension of time to file (see page 4) | 16 | | |
| | 17. Amount of tax paid with original return plus additional tax paid after it was filed | 17 | | 19,401. |
| | 18. Total payments. Add lines 11 through 17 in column C | 18 | | 31,876. |
| Refund or Amount You Owe | | | | |
| | 19. Overpayment, if any, as shown on original return or as previously adjusted by the IRS | 19 | | |
| | 20. Subtract line 19 from line 18 (see page 5) | 20 | | 31,876. |
| | 21. Amount you owe. If line 10, column C, is more than line 20, enter the difference and see page 5 | 21 | | |
| | 22. If line 10, column C, is less than line 20, enter the difference | 22 | | 26,679. |
| | 23. Amount of line 22 you want refunded to you | 23 | | 26,679. |
| | 24. Amount of line 22 you want applied to your estimated tax | 24 | | |

Sign Here
 Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

Joint return? See page 2. Keep a copy for your records.

Your signature _____ Date _____ Spouse's signature. If a joint return, both must sign. _____ Date _____

Paid Preparer's Use Only

Preparer's signature _____ Date _____ Check if self-employed Preparer's SSN or PTIN _____

Firm's name (or yours if self-employed), address, and ZIP code
PEREZ & CO., CPA'S, P.A.
201 E. KENNEDY BLVD. SUITE 420
TAMPA, FL 33602

EIN **59-1669671**
 Phone no. **(813) 223-2511**

A000047

| Part I Exemptions. See Form 1040 or 1040A instructions. | | A. Original number of exemptions reported or as previously adjusted | B. Net change | C. Correct number of exemptions | | | | | | | | | | | | | | | | |
|--|--|--|------------------|--|------|---------|-----------|------|-------|---------|------|-------|--------|------|-------|--------|----|--------|------|--------|
| If you are not changing your exemptions, do not complete this part. If claiming more exemptions, complete lines 25-31. If claiming fewer exemptions, complete lines 25-30. | | | | | | | | | | | | | | | | | | | | |
| 25 | Yourself and spouse | 25 | 2 | 2 | | | | | | | | | | | | | | | | |
| Caution: If your parents (or someone else) can claim you as a dependent (even if they chose not to), you cannot claim an exemption for yourself. | | | | | | | | | | | | | | | | | | | | |
| 26 | Your dependent children who lived with you | 26 | | | | | | | | | | | | | | | | | | |
| 27 | Your dependent children who did not live with you due to divorce or separation | 27 | | | | | | | | | | | | | | | | | | |
| 28 | Other dependents | 28 | | | | | | | | | | | | | | | | | | |
| 29 | Total number of exemptions. Add lines 25 through 28 | 29 | 2 | 2 | | | | | | | | | | | | | | | | |
| 30 | Multiply the number of exemptions claimed on line 29 by the amount listed below for the tax year you are amending. Enter the result here and on line 4. | | | | | | | | | | | | | | | | | | | |
| | <table border="1"> <thead> <tr> <th>Tax year</th> <th>Exemption amount</th> <th>But see the instructions for line 4 on page 3 if the amount on line 1 is over:</th> </tr> </thead> <tbody> <tr> <td>2003</td> <td>\$3,050</td> <td>\$104,625</td> </tr> <tr> <td>2002</td> <td>3,000</td> <td>103,000</td> </tr> <tr> <td>2001</td> <td>2,900</td> <td>99,725</td> </tr> <tr> <td>2000</td> <td>2,800</td> <td>96,700</td> </tr> </tbody> </table> | Tax year | Exemption amount | But see the instructions for line 4 on page 3 if the amount on line 1 is over: | 2003 | \$3,050 | \$104,625 | 2002 | 3,000 | 103,000 | 2001 | 2,900 | 99,725 | 2000 | 2,800 | 96,700 | 30 | 5,856. | 244. | 6,100. |
| Tax year | Exemption amount | But see the instructions for line 4 on page 3 if the amount on line 1 is over: | | | | | | | | | | | | | | | | | | |
| 2003 | \$3,050 | \$104,625 | | | | | | | | | | | | | | | | | | |
| 2002 | 3,000 | 103,000 | | | | | | | | | | | | | | | | | | |
| 2001 | 2,900 | 99,725 | | | | | | | | | | | | | | | | | | |
| 2000 | 2,800 | 96,700 | | | | | | | | | | | | | | | | | | |

| 31 Dependents (children and other) not claimed on original (or adjusted) return: | | | | No. of your children on line 31 who: |
|--|-----------|--|--|---|
| (a) First name | Last name | (b) Dependent's social security number | (c) Dependent's relationship to you | |
| | | | (d) Check if qualifying child for child tax credit | <input type="checkbox"/> lived with you <input type="checkbox"/> did not live with you due to divorce or separation Dependents on line 31 not entered above |
| | | | <input type="checkbox"/> | <input type="checkbox"/> |
| | | | <input type="checkbox"/> | <input type="checkbox"/> |
| | | | <input type="checkbox"/> | <input type="checkbox"/> |
| | | | <input type="checkbox"/> | <input type="checkbox"/> |
| | | | <input type="checkbox"/> | <input type="checkbox"/> |

Part II Explanation of Changes to Income, Deductions, and Credits
 Enter the line number from page 1 for each item you are changing and give the reason for each change. Attach only the supporting forms and schedules for the items changed. If you do not attach the required information, your Form 1040X may be returned. Be sure to include your name and social security number on any attachments.

If the change relates to a net operating loss carryback or a general business credit carryback, attach the schedule or form that shows the year in which the loss or credit occurred. See page 2 of the instructions. Also, check here

SEE ATTACHED EXPLANATION.

Part III Presidential Election Campaign Fund. Checking below will not increase your tax or reduce your refund.

If you did not previously want \$3 to go to the fund but now want to, check here

If a joint return and your spouse did not previously want \$3 to go to the fund but now wants to, check here

A000048

ROBERT N. AND CYNTHIA CADRECHA
AMENDED FORM 1040X
CALENDAR YEAR 2003

REASON FOR AMENDED RETURN

The taxpayer is a shareholder in a S Corporation which sold stock in a life insurance company that demutualized. The sale was reported during the year; however the sales proceeds were reported as the total gain, without any consideration for a "cost basis". Due to certain current court rulings, it is possible that the taxpayer was entitled to deduct a "cost basis in arriving at the gain. The resolution of the matter is expected to be resolved by the courts later this year, and as a result, a Protective Claim is filed.

At this time, a cost basis equal to the selling price was used for the amended Form 1120S that has been concurrently filed and which eliminated the long-term capital gain pass-through on the shareholder's K-1.

PEREZ & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS
PROFESSIONAL ASSOCIATION

March 14, 2007

201 EAST KENNEDY BOULEVARD
SUITE 420
TAMPA, FLORIDA 33602
(813) 223-2511
FAX (813) 225-1815
WWW.PACCPAS.COM

FRANK PEREZ, JR., C.P.A.
FRANK PEREZ, III, C.P.A.
PAUL J. VALITUTTO, C.P.A.
JEFFREY C. MILLER, C.P.A.
EMERITUS
MEMBERS
AMERICAN INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS
FLORIDA INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS

Robert N. and Cynthia Cadrecha
4414 Neptune Street
Tampa, Florida 33629

Dear Mr. and Mrs. Cadrecha:

Enclosed is the Amended Return that will serve as a Protective Claim for the calendar year 2003, in duplicate.

Don't get excited with regard to the figures that you see there amounting to \$26,679. Under the best of circumstances, that figure will be substantially reduced if the court proceedings are resolved in our favor.

This return must be filed with the Internal Revenue Service by April 16th in order to maintain an open Statute of Limitations which will otherwise expire at that time. The resolution of the proceedings is not expected to be concluded until later on this year.

Consequently, we would appreciate your both signing and dating the original return and returning it to us in order that we may file from our office well before April 16, 2007.

The duplicate copy of the return is for your files.

Very truly yours,

Frank Perez, Jr.

FPjr/lah
Enclosures

Not included

Exhibit Y



Internal Revenue Service
400 West Bay Street - M/S 4042
Jacksonville, FL 32202

Employee: Charity McDaniel
Phone: (904) 665-2057
Fax: (904) 665-1858

APR 26 2011

Robert & Cynthia Cadrecha
4414 West Neptune Street
Tampa, FL 33629

RE: Tax ID 267-56-8363

Dear Taxpayer(s):

Your protective claim for refund for the calendar year 2003 is currently being held in suspense by this office.

As you may be aware, there was a recent decision concerning the basis of stock received in a demutualization, which was affirmed in an unpublished and non-precedential opinion. (Eugene A. Fisher, Trustee, Seymour P. Nagan Irrevocable Trust v. United States, 82 Fed.Cl. 780, 102 A.F.T.R.2d 2008-5608, 2008-2 USTC P 50,481, affirmed Fed. Cir. 2009-5001.) The United States is actively litigating the demutualization issue in another Court (Dorrance v. US, Civil Action No. 09-cv1284-PHX-ROS (D. Arizona)). Once the law on taxpayers' basis in stock received in a demutualization becomes well defined, we will act on your claim for refund. If you are not willing to wait for a final resolution of that issue, you can bring a refund suit after your claim has been pending for six months without the Internal Revenue Service taking action -- see Page 2 of Publication 5 (included).

We would encourage you to wait until the issue is finally resolved. If it is determined that you are entitled to a refund, you will receive the refund plus interest.

Thank you,

Charity McDaniel
Technical Services

Enc: Pub 5

FEDERAL CLAIMS
IN THE UNITED STATES COURT OF

No. 11-152 T

(Judge George W. Miller)

ROBERT N. AND CYNTHIA CADRECHA,

Plaintiffs

v.

UNITED STATES,

Defendant

DECLARATION OF CHARITY McDANIEL

I, Charity McDaniel, declare as follows:

1. I hold the position of Revenue Agent Reviewer, with the Internal Revenue Service, and my office is located at 400 W. Bay St., Mail Stop 4041, Jacksonville, Florida. I have been designated by the IRS to handle a large number of claims for refund related to the basis in stock taxpayers received in a demutualization of a mutual life insurance company. The IRS has determined that all such claims should be suspended until a final decision is rendered in *Dorrance v. U.S.*, No. 09-cv01284 (D. AZ).

2. In June, 2009, I was assigned plaintiffs' 2003 refund claim which sought a refund based on plaintiffs' contention that they did not have to report any capital gain

realized on the 2003 sale of stock they received in the demutualization of Principal Mutual Life Insurance Company in that year. Since that claim related to the basis in stock received in a demutualization of a mutual insurance company it was held in suspense first pending the appeal of *Eugene Fisher, Trustee, Seymour P. Nagan Trust v. United States*, Fed.Cl. No. 04-1726 T, and, second, pending a final decision in *Dorrance*. According to information available to me I was the first IRS Revenue Agent assigned to handle plaintiffs' 2003 claim for refund.

3. I have reviewed the correspondence from the IRS to plaintiffs after the August 31, 2007, Notice of Disallowance and my receiving the case. (Pl. Ex. I, K, M, N, O.) All of those letters are form letters generated by an IRS Service Center which merely acknowledge receipt of plaintiffs' inquiries and their Form 843.

4. At the time I received plaintiffs' 2003 refund claim in June, 2009, I had no knowledge that on August 31, 2007, the IRS had mailed plaintiffs a Notice of Disallowance disallowing their 2003 refund claim. I did not have a copy of that Notice in my file and none of the documents in my file referred to any Notice of Disallowance.

5. As of early December, 2009, my file contained only two pieces of correspondence with plaintiffs, or anyone acting on their behalf. One was a letter dated May 13, 2009, from Frank Perez, Jr., to the IRS Austin Service Center, inquiring about the status of the Form 843 plaintiffs filed on November 7, 2008. (Pl. Ex. P.) The other was a letter from the IRS Service Center to plaintiffs, dated January 15, 2009, also referencing plaintiffs' Form 843 filed on November 7, 2008. (Pl. Ex. O.) Neither letter refers in any way to the Notice of Disallowance. I also had in my file plaintiffs' Form 1040X, dated March 20, 2007, and plaintiffs' Form 843, dated November 7, 2008, as

well as transmittal documents. None of those documents references the August 31, 2007, Notice of Disallowance. Had I known that plaintiffs' 2003 refund claim had been disallowed on August 31, 2007, I would not have held the claim in suspense but would have closed my file.

6. In early December, 2011, I received a call from plaintiff Robert Cadrecha and his representative, Mr. Frank Perez. This was the first contact I had with plaintiffs or anyone acting on their behalf. They called me to inquire about plaintiffs' 2003 refund claim. The conversation was very general as the claim was being held in suspense. I confirmed that I had been assigned plaintiffs' 2003 refund claim, and that the claim was being held in suspense pending the outcome of the appeal of the decision in *Fisher*.

7. At the time of my telephone conversation with Mr. Cadrecha and Mr. Perez in early December, 2009, I did not know that on August 31, 2007, the IRS had mailed to plaintiffs a Notice of Disallowance, disallowing their 2003 refund claim. Neither plaintiff, nor his representative, Mr. Perez, mentioned that Notice of Disallowance during that conversation. Had Mr. Cadrecha or Mr. Perez told me of the Notice of Disallowance I would not have told them that the plaintiffs' 2003 refund claim would be held in suspense. Rather, I would have told them that since that claim had previously been disallowed the matter was closed.

8. Sometime later I received Mr. Perez's December 11, 2009, letter, addressed to the IRS Service Center in Austin, Texas, which referenced our conversation in early December, 2009. (Pl. Ex. S.) That letter accurately states that I told Mr. Perez that plaintiffs' 2003 refund claim was being held in suspense pending the appeal of the decision in *Fisher*. Mr. Perez's letter did not mention the Notice of Disallowance and I

9. Around March, 2011, I had one more conversation with Mr. Perez about plaintiffs' 2003 refund claim. Mr. Perez called me and wanted to know why it was taking so long to resolve this matter. He was very upset that the claim had not already been allowed. I reiterated to Mr. Perez that the claim was being held in suspense pending the outcome of *Dorrance* and that if plaintiffs did not want to wait they could file suit to recover the refund. During that conversation Mr. Perez did not mention the August 31, 2007, Notice of Disallowance. At that time I was still unaware that the Notice had been sent. If had known that fact I would have advised Mr. Perez that the matter was closed. This was the last conversation I had with plaintiffs, or anyone acting on their behalf.

10. Shortly after my last conversation with Mr. Lopez, I sent plaintiffs a letter dated April 26, 2011. (Pl. Ex. Y.) This letter reiterates what I told Mr. Perez in our telephone conversation, that the IRS would take no action on plaintiffs' 2003 refund claim until the *Dorrance* case was resolved. At this time I was still unaware of the August 31, 2007, Notice of Disallowance. I attached to my letter page 2 of IRS Publication 5, which refers to the procedures for filing a suit for recovery of a refund if the IRS has not taken any action on a claim for refund within 6 months after it was filed. (Pl. Ex. Y.) I would not have included that information in my letter if I knew that the IRS had in fact already taken action on plaintiffs' 2003 refund claim by mailing plaintiffs a Notice of Disallowance on August 31, 2007. This was the last correspondence between me and plaintiffs or anyone acting on their behalf.

Under penalty of perjury, I, Charity McDaniel, declare that the foregoing

statements

are true and correct. Thus done and signed on October 17th, 2011, at
Jacksonville, Florida.


CHARITY McDANIEL

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ROBERT N. CADRECHA and CYNTHIA CADRECHA,

Petitioners,

v.

No. 11-152 T
(Judge George W. Miller)

THE UNITED STATES,

Respondent.

NOTICE TO SUPPLEMENT

On August 19, 2011 Plaintiffs filed its Response in Opposition to Defendant's Motion to Dismiss.

Attached thereto was **Exhibit "G,"** which is the Notice of Disallowance issued by the IRS on August 31, 2007. It has come to our attention that the second page of the Notice was inadvertently omitted in our pleading.

Plaintiffs do not believe Defendant is prejudiced inasmuch as the Internal Revenue Service issued the Notice and presumably has a copy of the Notice.

Wherefore, Plaintiffs respectfully request that the attached and complete Exhibit G be accepted by the Court.

Respectfully submitted,

DATED: December 1, 2011

AKERMAN SENTERFITT

FRANK J. RIEF, III, ESQ.
U.S. Court of Federal Claims/Bar No. _____
SunTrust Financial Centre, Suite 1700
401 E. Jackson Street

Tampa, Florida 33602-5250
Tel. No.: (813) 223-7333
Fax No.: (813) 223-7837
Counsel for the Petitioners
**ROBERT N. CADRECHA and
CYNTHIA CADRECHA**



WILLIAM KALISH, ESQ.
U.S. Court of Federal Claims Bar No. _____
SunTrust Financial Centre, Suite 1700
401 E. Jackson Street
Tampa, Florida 33602-5250
Tel. No.: (813) 223-7333
Fax No.: (813) 223-7837
Counsel for the Petitioners
**ROBERT N. CADRECHA and
CYNTHIA CADRECHA**



IRS

Department of the Treasury
Internal Revenue Service

ATLANTA GA 39901-0025

In reply refer to: 0735757555
Aug. 31, 2007 LTR 105C EU
Privacy Act 200312 30 000 1
00002473
BODC: SB

ROBERT N & CYNTHIA CADRECHA
% FRANK PEREZ JR
201 E KENNEDY BLVD STE 420
TAMPA FL 33602-5823

311

Taxpayer Identification Number: Privacy Act
Kind of Tax: INDIVIDUAL
Date of Claim(s) Received: May 23, 2007
Tax Period : Dec. 31, 2003

WE COULDN'T ALLOW YOUR CLAIM

Dear Taxpayer:

WHY WE'RE SENDING YOU THIS LETTER

This letter is your notice that we've disallowed your claim for credit for the period shown above.

WHY WE CANNOT ALLOW YOUR CLAIM

You filed your claim for credit or refund more than 3 years after the tax return due date. A claim must be filed within 3 years from the time the return was filed. In addition, the amount of tax that may be credited or refunded is limited to the tax paid during the three years immediately preceding the filing of the claim (plus the period of any extension of time to file the tax return). Withheld tax and estimated tax payments are deemed to be paid on the last day prescribed (i.e., April 15) for filing your tax return. The excess of any amount allowable for the earned income credit over the actual income tax is treated in a similar manner to these prepaid credits.

You filed your claim more than 3 years after you filed your tax return.

You filed your claim more than 2 years after you paid the tax.

IF YOU DISAGREE

You may appeal our decision with the Appeals Office (which is independent of our office) if we disallowed your claim because our records show that you filed your claim late. Generally, a claim is late if you filed it the later of:

- 3 years from the return due date of a timely filed, unextended return

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Aug. 31, 2007 LTR 105C E0
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ROBERT N & CYNTHIA CADRECHA
% FRANK PEREZ JR
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TAMPA FL 33602-5823

- 3 years from the date we received a late return or a timely filed, extended return
- 2 years after you paid the tax

In addition, the amount of any credit or refund for a claim filed within three years of the tax return is limited to amounts paid within the three years before filing the claim plus the period of any extension of time granted for filing the tax return. Similarly, the amount of a claim filed within the two-year period is limited to the amount paid within the two years before filing the claim. The Appeals Office cannot change the amount of time the law allows you to file a claim for refund or credit.

If you decide to appeal our decision, you should provide us with an explanation of why you consider your claim was filed on time; for example, you had an extension of time to file your original tax return. We will consider your explanation before forwarding your request to the Appeals Office.

Note: reasonable cause or similar explanations that may provide an excuse for relief from a penalty for the late filing of a tax return cannot change the time limitations for filing a claim set by law. Please review Publication 556, Examination of Returns, Appeals Rights, and Claims for Refund, to see if you qualify for an exception provided by law; for example, you were "financially disabled," you were serving in a combat zone, or your claim involves an item that has a filing period in excess of the general three-year period.

You have the right to appeal our decision to disallow your claim. You may represent yourself before Appeals. You may have an attorney, certified public accountant, or person enrolled to practice before the Internal Revenue Service represent you. To have someone represent you, attach Form 2848, Power of Attorney and Declaration of Representative, (or similar written power of attorney) to your written statement. If we do not hear from you within 30 days from the date of this letter, we will process your case without further action.

You may request a small dollar case appeal for a disallowed claim that is less than \$25,000 or prepare a formal protest for a disallowed claim over \$25,000.

To request a small dollar case appeal for a claim, do the following:

1. State that you want to appeal.
2. List the disallowed items you disagree with and why you don't agree with each item.

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- 3. Provide your name, address, taxpayer identification number, daytime telephone number, and a copy of this letter.
- 4. Mail your appeal request to the address shown on this letter.

To prepare a formal protest, do the following:

- 1. Prepare a written statement that you want to appeal the disallowance to the Appeals Office.
- 2. Provide your name, address, taxpayer identification number, a daytime telephone number, and a copy of this letter. Show the tax periods or years and disallowed items you disagree with and why you don't agree with each item.
- 3. Include a detailed statement of facts with names, amounts, locations, etc. to support your reasons for disputing the disallowance.
- 4. If you know the particular law or authority that supports your position, you should inform us of that law or authority. Please include a legal citation to assist in the appeals process that supports your claim, if applicable.
- 5. Sign the statement below and include it with your written appeal. If your authorized representative prepares the request for an appeal, he/she must sign the statement and include it with the appeal.
- 6. Mail your written formal protest to the address shown on this letter.

STATEMENT BY INDIVIDUALS OR SOLE PROPRIETORS

"Under penalties of perjury, I declare that the facts present on my written appeal are, to the best of my knowledge and belief, true, correct, and complete."

Signature

Date

Spouse's Signature, if a Joint Return

Date

STATEMENT BY ATTORNEY, ENROLLED AGENT OR CERTIFIED PUBLIC ACCOUNTANT

"Under penalty of perjury, I declare that I prepared the written statement and accompanying documents. To the best of my knowledge the protest and accompanying documents are true and correct."

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Signature of Representative Enrollment Number Date

If you do not agree with our decision, you may file suit to recover tax, penalties, or other amounts, with the United States District Court having jurisdiction or with the United States Claims Court. These courts are part of the judiciary branch of the federal government and have no connection with the Internal Revenue Service.

The law permits you to do this within 2 years from the date of this letter. If you decide to appeal our decision first, the 2-year period still begins from the date of this letter. However, if you signed an agreement that waived your right to the notice of disallowance (Form 2297), the period for filing suit begins on the date you filed the waiver.

You may call 1-866-899-9083 within 60 days from the date of this notice. Please have your information and this notice available when you call.

HOW TO CONTACT US

If you have any questions, please call us toll free at 1-800-829-8374.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Also, you may want to keep a copy of this letter for your records.

Telephone Number () _____ Hours _____

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ROBERT N & CYNTHIA CADRECHA
% FRANK PEREZ JR
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IFRS

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Sincerely yours,



Melanie Burroughs
Dept. Manager, AM Operations 1/TPR

Enclosure(s):
Publication 1



ATLANTA GA 39901-0025

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% FRANK PEREZ JR
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CUT OUT AND RETURN THE VOUCHER AT THE BOTTOM OF THIS PAGE IF YOU ARE MAKING A PAYMENT,
EVEN IF YOU ALSO HAVE AN INQUIRY.



The IRS address must appear in the window.

Use for payments

BODCD-SB
0735757555

Letter Number: LTR0105C
Letter Date : 2007-08-31
Tax Period : 200312

INTERNAL REVENUE SERVICE

ATLANTA GA 39901-0025



Privacy Act

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APPEAL, CLOSED, ECF

**US Court of Federal Claims
United States Court of Federal Claims (COFC)
CIVIL DOCKET FOR CASE #: 1:11-cv-00152-GWM**

CADRECHA et al v. USA
Assigned to: Judge George W. Miller
Demand: \$27,000
Case in other court: 12-05089
Cause: 28:1491 Tucker Act

Date Filed: 03/09/2011
Date Terminated: 04/04/2012
Jury Demand: None
Nature of Suit: 212 Tax – Income,
Individual
Jurisdiction: U.S. Government Defendant

Plaintiff

ROBERT N. CADRECHA
and

represented by **William Kalish**
Akerman Senterfitt
401 E. Jackson Street
Suite 1700
Tampa, FL 33602
(813) 223-7333
Fax: (813) 223-2837
Email: william.kalish@akerman.com
ATTORNEY TO BE NOTICED

Plaintiff

CYNTHIA CADRECHA

represented by **William Kalish**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

USA

represented by **Benjamin C. King, Jr.**
U. S. Department of Justice
Tax Division, Claims Court Section
P.O. Box 26
Ben Franklin Station
Washington, DC 20044-0026
(202) 307-6506
Email: benjamin.c.king@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|------------|----------|---|
| 03/09/2011 | <u>1</u> | COMPLAINT against USA (DOJ) (Filing fee \$350, Receipt number 072041) (Five copies served on Department of Justice), filed by ROBERT N. CADRECHA, CYNTHIA CADRECHA. Answer due by 5/9/2011. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Exhibit A – Sealed, # <u>3</u> Exhibit B – Sealed, # <u>4</u> Exhibit C – Sealed, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E – Sealed)(hw1) (Entered: 03/10/2011) |
| 03/09/2011 | <u>2</u> | NOTICE of Designation of Electronic Case. (hw1) (Entered: 03/10/2011) |
| 03/10/2011 | <u>3</u> | NOTICE of Assignment to Judge George W. Miller. (hw1) (Entered: 03/10/2011) |
| 03/15/2011 | <u>4</u> | NOTICE of Appearance by Benjamin C. King, Jr for USA. (King, Benjamin) (Entered: 03/15/2011) |
| 05/09/2011 | <u>5</u> | MOTION for Extension of Time until 6/8/2011 to File Answer re <u>1</u> Complaint,, filed by USA. Response due by 5/26/2011. (King, Benjamin) (Entered: 05/09/2011) |
| 05/10/2011 | <u>6</u> | ORDER granting <u>5</u> Motion for Extension of Time to Answer, Answer due by 6/8/2011. Signed by Judge George W. Miller. (kc1) Copy to parties. (Entered: 05/10/2011) |

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| | | 05/10/2011) |
| 06/08/2011 | <u>7</u> | Unopposed MOTION for Extension of Time until 6/14/2011 to File Answer re <u>1</u> Complaint,, filed by USA. Response due by 6/27/2011. (King, Benjamin) (Entered: 06/08/2011) |
| 06/08/2011 | <u>8</u> | ORDER granting <u>7</u> Motion for Extension of Time to Answer, Answer due by 6/14/2011. Signed by Judge George W. Miller. (kc1) Copy to parties. (Entered: 06/08/2011) |
| 06/14/2011 | <u>9</u> | Unopposed MOTION for Extension of Time until 6/21/2011 to File Answer re <u>1</u> Complaint,, filed by USA. Response due by 7/1/2011. (King, Benjamin) (Entered: 06/14/2011) |
| 06/15/2011 | <u>10</u> | ORDER granting <u>9</u> Motion for Extension of Time to Respond to Complaint, Response due by 6/21/2011. Signed by Judge George W. Miller. (kc1) Copy to parties. (Entered: 06/15/2011) |
| 06/20/2011 | <u>11</u> | MOTION to Dismiss pursuant to Rules 12(b)(1) and (6), filed by USA. Response due by 7/21/2011. (King, Benjamin) (Entered: 06/20/2011) |
| 07/21/2011 | <u>12</u> | Unopposed MOTION for Extension of Time until August 19, 2011 to File Response to Motion to Dismiss, filed by CYNTHIA CADRECHA, ROBERT N. CADRECHA. Response due by 8/8/2011. (Kalish, William) (Entered: 07/21/2011) |
| 07/22/2011 | <u>13</u> | ORDER granting <u>12</u> Motion for Extension of Time to File Response re <u>11</u> MOTION to Dismiss pursuant to Rules 12(b)(1) and (6), Response due by 8/19/2011. Signed by Judge George W. Miller. (za) Copy to parties. (Entered: 07/22/2011) |
| 08/19/2011 | <u>14</u> | RESPONSE to <u>11</u> MOTION to Dismiss pursuant to Rules 12(b)(1) and (6), filed by CYNTHIA CADRECHA, ROBERT N. CADRECHA. Reply due by 8/29/2011. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S, # <u>20</u> Exhibit T, # <u>21</u> Exhibit U, # <u>22</u> Exhibit V, # <u>23</u> Exhibit W, # <u>24</u> Exhibit X, # <u>25</u> Exhibit Y)(Kalish, William) (Entered: 08/19/2011) |
| 08/31/2011 | <u>15</u> | Unopposed MOTION for Extension of Time until October 6, 2011 to File Reply to <i>Plaintiffs' Response to Defendant's Motion to Dismiss</i> , filed by USA. Response due by 9/19/2011. (King, Benjamin) (Entered: 08/31/2011) |
| 09/01/2011 | <u>16</u> | ORDER granting <u>15</u> Motion for Extension of Time to File Reply to Plaintiffs' Response to Defendant's Motion to Dismiss Reply due by 10/6/2011. Signed by Judge George W. Miller. (np3) Copy to parties. (Entered: 09/01/2011) |
| 09/22/2011 | <u>17</u> | Unopposed MOTION for Extension of Time until October 14, 2011 to File Reply, filed by USA. Response due by 10/11/2011. (King, Benjamin) (Entered: 09/22/2011) |
| 09/22/2011 | <u>18</u> | ORDER granting <u>17</u> Defendant's Motion for Extension of Time to File Reply. Defendant shall file its reply by Friday, October 14, 2011. Signed by Judge George W. Miller. (np3) Copy to parties. (Entered: 09/22/2011) |
| 10/13/2011 | <u>19</u> | Unopposed MOTION for Extension of Time until October 18, 2011 to File Reply, filed by USA. Response due by 10/31/2011. (King, Benjamin) (Entered: 10/13/2011) |
| 10/14/2011 | <u>20</u> | ORDER granting <u>19</u> Defendant's Motion for an Enlargement of Time to File Reply. Defendant's reply in support of its motion to dismiss shall be filed by Tuesday, October 18, 2011. Signed by Judge George W. Miller. (np3) Copy to parties. (Entered: 10/14/2011) |
| 10/18/2011 | <u>21</u> | REPLY to Response to Motion re <u>11</u> MOTION to Dismiss pursuant to Rules 12(b)(1) and (6), filed by USA. (Attachments: # <u>1</u> Table of Contents and Authorities, # <u>2</u> Exhibit Declaration of Charity McDaniel)(King, Benjamin) (Entered: 10/18/2011) |

| | | |
|------------|-----------|--|
| 12/01/2011 | <u>22</u> | NOTICE, filed by CYNTHIA CADRECHA, ROBERT N. CADRECHA <i>Exhibit G</i> (Attachments: # <u>1</u> Exhibit G – Notice of Disallowance)(Kalish, William) (Entered: 12/01/2011) |
| 01/12/2012 | <u>23</u> | STIPULATION, filed by All Parties. (King, Benjamin) (Entered: 01/12/2012) |
| 01/13/2012 | <u>24</u> | ORDER re Further Briefing. The parties are hereby ORDERED to file simultaneous briefs in response to the Court's questions by January 27, 2012. Signed by Judge George W. Miller. (np3) Copy to parties. (Entered: 01/13/2012) |
| 01/27/2012 | <u>25</u> | RESPONSE to <u>24</u> Order filed January 13, 2012, filed by USA. (King, Benjamin) (Entered: 01/27/2012) |
| 02/01/2012 | <u>26</u> | MOTION for Leave to File Attached answers to the Court's Order filed on January 13, 2012 Out of Time (<i>and</i>) <i>Motion for Enlargement of Time</i> , filed by All Plaintiffs. Response due by 2/21/2012. (Kalish, William) (Entered: 02/01/2012) |
| 02/02/2012 | <u>27</u> | ORDER granting <u>26</u> Plaintiffs' Motion for Leave to File Out of Time. Plaintiffs shall file a response to the Court's January 13, 2012 Order by February 3, 2012. Signed by Judge George W. Miller. (np3) Copy to parties. (Entered: 02/02/2012) |
| 02/03/2012 | <u>28</u> | RESPONSE to <u>24</u> Order dated January 13, 2012, filed by All Plaintiffs. (Kalish, William) (Entered: 02/03/2012) |
| 04/02/2012 | <u>29</u> | PUBLISHED OPINION AND ORDER granting <u>11</u> Defendant's Motion to Dismiss. Plaintiffs' complaint is DISMISSED for lack of jurisdiction pursuant to Rule 12(b)(1) of the Rules of the Court of Federal Claims. The Clerk is directed to enter judgment. Signed by Judge George W. Miller. (np3) Copy to parties. (Entered: 04/02/2012) |
| 04/04/2012 | <u>30</u> | JUDGMENT entered, pursuant to Rule 58, dismissing the complaint for lack of jurisdiction pursuant to RCFC 12(b)(1). (Copy to parties) (dls) (Entered: 04/04/2012) |
| 05/21/2012 | <u>31</u> | NOTICE OF APPEAL, filed by CYNTHIA CADRECHA, ROBERT N. CADRECHA. Filing fee \$ 455, receipt number 073738. Copies to judge, opposing party and CAFC. (ar) (Entered: 05/22/2012) |
| 06/04/2012 | | CAFC Case Number 2012–5089 for <u>31</u> Notice of Appeal filed by CYNTHIA CADRECHA, ROBERT N. CADRECHA. (hw1) (Entered: 06/04/2012) |