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## Not Signing a Return

**By: Liubov (Luba) Shilkova, MST Student**

What consequences can arise for a taxpayer who does not sign a tax return? Also, what requirements must be met by a representative in order to sign the form on behalf of the taxpayer? Let's take a closer look at *Dixon vs. U.S.*<sup>1</sup>, a case from the U.S. Court of Federal Claims that was decided in February 2020. This case reminds us how important it is to pay attention to instructions and comply with the regulations when taxpayers or their representative file tax forms.

Alan C. Dixon was an Australian national who resided in the United States and was one of the owners of an Australian corporation, Dixon Advisory Group Proprietary Limited. Since he paid taxes to Australia, he was eligible to apply for the foreign tax credit. This would allow him to get a refund for a portion of his federal income taxes for the 2013 and 2014 tax years, so he filed amended returns for these years. Mr. Dixon filed and signed under penalties of perjury his original 2013- and 2014-income tax returns, Forms 1040, on October 23, 2014 and October 13, 2015, respectively.

In 2016, John Castro entered in a contract with Mr. Dixon to serve as Mr. Dixon's tax representative. In 2017, Mr. Castro submitted an Internal Revenue Service (IRS) Form 2848, *Power of Attorney (POA) and Declaration of Representative*, that gave Mr. Castro authority to represent Mr. Dixon before the IRS. However, the form was filed improperly for signing tax returns purposes. The boxes on Form 2848 that indicated Mr. Castro was authorized to sign Mr. Dixon's tax returns were not checked. In addition, Mr. Dixon did not sign Form 2848, which was one of the requirements. Therefore, Mr. Castro did not have authority to submit tax returns or amended returns for Mr. Dixon. The Form 2848 was not considered an effective power of attorney.

Then, in April 2017, amended returns, Form 1040X, for the 2013 and 2014 tax years seeking refunds of \$137,656 and \$1,588,653, respectively, were submitted and signed by Mr. Castro. Mr. Dixon did not sign these returns despite the fact that the form provided a space to sign and recited a declaration that the signature was under penalties of perjury.<sup>2</sup> No power of attorney form was attached to the these amended returns.

The IRS assessed additional taxes against Mr. Dixon for the 2013 tax year based on his 2013 amended return, seeking \$161,447 (plus \$19,609.56 in interest) and a failure-to-pay penalty in the amount of \$6,429.65 (plus \$4,785.35 in interest). Mr. Dixon paid these amounts in 2017

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<sup>1</sup> *Dixon v. U.S.*, 125 AFTR 2d 2020-986 (Fed. Cls., 2020).

<sup>2</sup> For the 2013 and 2014 version of the Form 1040X, this declaration states: "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 preparer has any knowledge."

when submitting his 2017 tax return. However, he did not file an administrative claim for a refund of the additional amounts assessed.

In May 2018, the IRS audited Mr. Dixon's 2014 tax return. Mr. Castro responded to the Information Document Request (IDR) twice by providing additional documentation and submitting arguments challenging the IRS's authority to conduct the audit. In February 2019, Mr. Dixon filed the lawsuit against the IRS.

### **Valid and Duly Filed Claims**

The IRS argued that this case must be dismissed because Mr. Dixon's refund claims were not duly filed in accordance with regulations and requirements of the forms. The court agreed with the IRS based on the following reasonings. According to Reg. §301.6402-2(a), "if a taxpayer is required to file a claim for credit or refund using a particular form, then the claim, together with appropriate supporting evidence, shall be filed in a manner consistent with such form, form instructions, publications, or other guidance found on the IRS.gov website."<sup>3</sup>

Also, for claims to be valid and duly filed, Reg. §301.6402-2(b) requires that the "statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury."<sup>4</sup> However, a claim which does meet these requirements shall not be taken into account for refund purposes. Form 1040X meets these requirements and has a space to sign under the penalties of perjury statement to confirm that the amount claimed for the refund is correct. Reg. §301.6402-2(e) states that taxpayers may authorize fiduciaries to sign and submit a form on their behalf. In this case, a valid power of attorney, such as Form 2848, or other proof of representative capacity must be attached to a signed tax claim or return. Mr. Dixon's claims did not meet this requirement as the requested proof was not attached to the form. Form 2848 had been filed and signed by Mr. Castro, but it did not grant him authority to sign the tax return on behalf of his client, as the appropriate boxes were not checked. Even if the power of attorney was signed in December 27, 2019, the court determined that it did not satisfy the requirements as it was dated after the amended returns were filed. Therefore, the court held that the refund claims were not valid.

### **Applicability and Validity of Tax Regulations**

Mr. Dixon also argued that the regulation at issue was inapplicable based on his interpretation that anyone can sign a tax return under penalties of perjury, and no regulation was needed as the relevant statutes were clear and allowed Mr. Castro to sign the tax returns. The court rejected these arguments.

When courts render decisions on the meaning of the statutes, they focus on the interpretation of the law made by Congress. Citing the *Chevron U.S.A. Inc. v. Natural Resources Defense*

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<sup>3</sup> Reg. §301.6402-2. Claims for credit or refund.

<sup>4</sup> Reg. §301.6402-2. Claims for credit or refund.

*Council*,<sup>5</sup> the court determined that in order to decide whether a regulation is ambiguous, the courts must apply the “traditional tools” of construction that help in interpretation including the text and structure. By applying this method, the court held that Reg. §301.6402-2 is clear. The IRS had an interpretation similar to the court’s, and no additional interpretation was needed. According to the plain text and language of the law, Mr. Dixon’s interpretation was not correct.

The second argument was also rejected under §§6011, 6061, 6065, 6402 and 7422 the IRS is authorized to issue regulations governing the requirements of a return, including the signatures on returns and claims for tax refunds. According to these statutes, taxpayers must personally sign tax returns under the penalties of perjury or other documents required by the IRS, unless otherwise allowed under regulations.<sup>6</sup> Also, Reg. §301.6402-2 allows taxpayers to sign tax returns by another person if a power of attorney is provided. As long as the IRS’s regulation specifies how taxpayers must sign their tax returns and other required documents, it is reasonable and consistent with the statutes. This is why Mr. Dixon’s argument about invalidity was rejected.

Finally, the court also took into account Mr. Dixon’s argument that the IRS waived its ability to object to his tax return as it opened an audit for the 2014 amended return and contacted Mr. Castro. Even if the IRS accepted tax returns, it does not mean that the waiver occurred since it was not a final action. The court referred to this concept in the holding in *Angelus Milling Co. v. Commissioner*<sup>7</sup> in which the Supreme Court held that the waiver doctrine is not available just because “somewhere under the IRS Commissioner’s roof is the information which might enable him to” determine whether a refund is valid. This information is referring to the situation when the IRS was not on notice that Mr. Dixon’s tax returns were invalid until after the litigation began. Therefore, Mr. Dixon’s argument was rejected by the court.

## Conclusion

All Mr. Dixon’s complaints were rejected as he did not sign the amended tax return personally or provide a valid power of attorney for his preparer. This suit was dismissed for lack of jurisdiction. This is an interesting case for taxpayers and tax professionals as it covers situations that deal with how important it is to comply with the regulations and follow the filing instructions.

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<sup>5</sup> *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

<sup>6</sup> IRC §6065 Verification of returns.

<sup>7</sup> *Angelus Milling Co. v. Commissioner*, 33 AFTR 837 (USSC, 1945).