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NCLA Brief Asks Federal Circuit to Reject Deference to Retroactive IRS Rule on Proof of Mailing

Ali M. Taha, et al. v. United States

Washington, DC (February 2, 2021) – It’s tax season once again. During Fiscal Year 2019 the Internal Revenue Service (IRS) processed approximately 253 million tax returns and other forms. But if the case of NCLA client Ali M. Taha is any indication, there is no guarantee that the IRS will acknowledge receipt of your tax return or tax-refund claim, and you might just end up in court trying to get your money back.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, represents Mr. Taha, who is authorized to act on behalf of his deceased brother, Mohamad E. Taha, and his brother’s widow, Ms. Sanaa M. Yassin, in a lawsuit against the IRS over claims seeking refund of overpaid taxes. NCLA has filed its [opening brief](#) in *Ali M. Taha, et al. v. United States*, in the U.S. Court of Appeals for the Federal Circuit. The brief argues that the Court of Federal Claims (CFC) erred in concluding that it lacked subject-matter jurisdiction over this lawsuit to obtain a refund of taxes paid. It also urges the Federal Circuit to reject the lower court’s misplaced deference to IRS’s flawed interpretation of the Internal Revenue Code. A victory for Taha here would send the case back to the CFC for a trial on the merits, with instructions that the lower court has jurisdiction.

Mr. Mohamad E. Taha and Ms. Sanaa M. Yassin, filed a claim seeking refund of taxes overpaid in 2002, 2003, and 2004, but the IRS asserts it never received the filing. The CFC conducted a trial on the question of whether Mr. Ali Taha had mailed the tax-refund claim to IRS. The court concluded that Mr. Taha’s testimony was credible and that he had indeed mailed the tax-refund claim. However, IRS argued that an amended 2011 regulation prohibits witness testimony on the timely-mailing question and instead only recognizes certified or registered mail receipts as adequate proof of mailing. The regulation conflicts with the applicable statute, which several courts have read to allow witness testimony on this very question. Moreover, the regulation contradicts the centuries-old common law “mailbox rule” that allows such testimony. A canon of statutory construction called the common law presumption canon forbids construing statutory silence to override the common law.

The CFC below deferred to the IRS’s interpretation under the *Brand X* deference doctrine and a Ninth Circuit precedent (*Baldwin v. United States*) applying it to similar facts. Under the U.S. Supreme Court’s 2005 case, [National Cable & Telecommunications Ass’n v. Brand X Internet Services](#), federal courts must defer to federal agencies’ reasonable statutory interpretations even when those interpretations contradict a previous court ruling interpreting the same statute. Lower federal courts have found this rule to be unworkable, and federal agencies have taken advantage of *Brand X* deference in ways that deny due process and fair notice. Fortunately,

Brand X deference does not apply when clear statutory meaning can be gleaned after applying traditional tools of statutory construction, including the common law presumption canon.

In February 2020, the Supreme Court denied NCLA’s petition for a *writ of certiorari* in the similar case of clients Howard and Karen Baldwin against the IRS. In *Baldwin v. United States*, Justice Clarence Thomas penned a sharp dissent from denial of *certiorari* calling on the Court to revisit *Brand X* because it is incompatible with “the Constitution, the Administrative Procedure Act (APA), and traditional tools of statutory interpretation.” Justice Thomas, who himself authored the original decision in *Brand X*, said he would “revisit” the doctrine, writing that “it is never too late to ‘surrende[r] former views to a better considered position.’”

Here the Federal Circuit only needs to recognize that *Brand X* deference does not apply to this case given that the statutory language preserves the common law mailbox rule.

NCLA released the following statements:

“It has taken Mr. Taha seventeen years to get this far. Sometime in those seventeen years, IRS changed the centuries-old rules of the game and insisted that Mr. Taha play by the new rules *after* it became too late for him to do so. IRS’s actions are unfair, its position is wrong, and its legal approach is unconstitutional. The Federal Circuit should rule that subject-matter jurisdiction exists in this case and order the Court of Claims to hear it.”

— **Adi Dynar, Litigation Counsel, NCLA**

“Our clients reasonably relied on long-established law and precedent when filing their original refund claim. The IRS now seeks the Court’s blessing to retroactively change the rules for proving a return was timely mailed and to deny American taxpayers a valid refund claim. The Court should refuse, because the plain meaning of Section 7502 preserves the centuries-old common-law mailbox rule, under which the return was mailed on time. The lower court’s reflexive application of *Brand X* and *Chevron* deference to uphold IRS’s rule was mistaken.”

— **Kara Rollins, Litigation Counsel, NCLA**

For more information about this case visit [here](#).

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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