**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|---|---|---|
| **KRZYSZTOF WRZESINSKI** | ) | |
| | ) | **Case No.** |
| **v.** | ) | |
| | ) | |
| **THE UNITED STATES OF AMERICA** | ) | **ELECTRONICALLY FILED** |

## COMPLAINT

Plaintiff Krzysztof Wrzesinski, by his undersigned counsel, brings this action against Defendant, The United States of America, for recovery of payment of penalties erroneously and wrongful assessed by the Internal Revenue Service under 26 U.S.C. § 6039F for "Failure to File Form 3520 to Report Receipt of Certain Foreign Gifts," and in support thereof avers as follows:

## THE PARTIES

1. Plaintiff Krzysztof Wrzesinski (hereinafter "Plaintiff") is an adult individual residing at [redacted] Bucks County, Pennsylvania [redacted] which is located within the Eastern District of Pennsylvania.

2. Defendant is The United States of America.

## JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §1346(a)(1), in that it is a civil action against the United States for recovery of a penalty claimed to have been wrongfully collected under the internal-revenue laws.

4. Venue is proper in this District pursuant to 28 U.S.C. §1402(a)(1) in a civil action against the United States under subsection (a) of Section 1346 may be prosecuted only in the judicial district where the plaintiff resides.

## FACTUAL BACKGROUND

5. Plaintiff, a native of Poland, immigrated to the United States in 2005 at the age of 19 and has worked as a Police Officer with the City of Philadelphia Police Department since 2014.

6. In 2010, Plaintiff's mother, Barbara Wrzesinska, a citizen and resident of Poland, having won the Polish lottery, decided to make a gift to her son of $830,000.

7. Plaintiff visited his mother in Poland in mid-November 2010, and while he was in Poland, telephoned his tax advisor in the United States, Peter W. Gardyasz, E.A. ("Gardyasz") advised him that his mother was going to give him a gift of money, and asked Defendant if Plaintiff needed to document the gift in the United States the way it was being reported in Poland.

8. Gardyasz, a tax accountant with a principal place of business in Philadelphia, Pennsylvania, and an Enrolled Agent authorized to practice before the Internal Revenue Service, expressly advised Plaintiff that there was no need to include the gift on his U.S. tax returns and that there was no other U.S. legal requirement to be complied with in connection with Plaintiff's mother's gift.

9. The gift was consummated by four (4) separate transfers of United States Dollars from Citi Handlowy (formerly Citibank (Poland)) to The Beneficial Bank in Philadelphia, Pennsylvania, namely: $250,000.00 on December 7, 2010; $100,000.00 on December 30, 2010; $210,000.00 on January 1, 2011; and $270,000.00 on March 22, 2011; Ms. Wrzesinska obtained separate Certificates from the Tax Administration of Poland attesting that each gift was exempt from Polish gift and inheritance tax.

10. In early 2011, during the preparation of Plaintiff's 2010 federal income tax returns, Plaintiff again asked Gardyasz if any additional paperwork needed to be prepared in connection with the large gift from his mother, but was assured by Gardyasz that there was no such requirement.

11. In April of 2018, Plaintiff, who wished to give some of the gift money to his godson in Poland, performed an Internet search of "foreign gifts" and came across various articles which mentioned the legal requirement imposed on U.S. taxpayers to report large gifts from foreign individuals.

12. Plaintiff, who previously had no reason to suspect that the advice given by Gardyasz in 2010 and 2011 with respect to the reportability of his mother's gift was erroneous, was shocked by this discovery and immediately contacted a Philadelphia tax attorney with expertise in the U.S. laws relating to foreign accounts and assets.

13. Plaintiff was advised by the tax attorney that the gifts from his mother should have been reported to the IRS on Form 3520 pursuant to Section 6038F of the Internal Revenue Code, 26 U.S.C. § 6038F, but that the Internal Revenue Service offered a program known as "Delinquent International Information Return Submission Procedures" which Plaintiff could use to belatedly achieve compliance provided he could demonstrate "reasonable cause" for the untimely filing.

14. The online instructions regarding the Delinquent International Information Return Submission Procedures then in effect stated that taxpayers who have not filed one or more required international information returns and have reasonable cause for not timely filing the information returns should file the delinquent information returns with a statement of all facts

establishing reasonable cause for the failure to file.

15. Plaintiff retained the tax attorney, who proceeded to prepare and file on August 1, 2018 pursuant to the IRS Delinquent International Information Return Submission Procedures Forms 3520 for tax years 2010 and 2011, attaching to each a Statement of Reasonable Cause signed by Plaintiff and submitted under the penalty of perjury.

16. The Statements of Reasonable Cause certified that Plaintiff had been assured by his American tax advisor that there was no need to include the gifts on his U.S. tax returns or other U.S. legal requirement in connection with the gifts.

17. Plaintiff further stated in his Statements that this erroneous advice had been provided in response to a specific request which related the pertinent facts, and that Plaintiff had relied on the advice of his tax advisor, based on his apparent knowledge of and experience working with federal tax law, in concluding that he was not required to report the gift from his mother to the federal government.

18. On or about May 9, 2019, Plaintiff received Form CP15 Notices of Penalty Charge under 26 U.S.C. § 6039F assessing penalties of $87,500.00 and $120,000.00 for tax years 2010 and 2011, respectively, for "Failure to File Form 3520 to Report Receipt of Certain Foreign Gifts," which amounted to 25 percent of the value of the gifts made in each of those years.

19. The Notices stated that ignorance of the tax laws was not a basis for penalty abatement under the "reasonable cause" standard and that ordinary business care and prudence require that taxpayers be aware of their tax obligations and file or deposit accordingly.

20. Plaintiff filed a Protest with the Internal Revenue Service Appeals Division on or about June 26, 2019 from the CP15 Notices of Penalty Charge.

21. On July 8, 2019, Plaintiff supplemented his Protest with a copy of a letter written by Gardyasz which stated: "The facts as you present them in your protest letter to the IRS are, to the best of my knowledge, true and correct."

22. Plaintiff's appeal was somehow lost in the "system," requiring intervention by the Taxpayer Advocate Service, which ultimately resulted in the appeal being assigned to an Appeals Officer in the Los Angeles, California office of the IRS Appeals Division.

23. On or about December 3, 2020, the Appeals Division issued an Appeals Transmittal and Case Memo which abated $70,000 of the $87,000 penalty assessed for tax year 2010 and $96,000 of the $120,000 penalty assessed for tax year 2011, indicating: "Case resolution based on 'Hazards of Litigation'"; the remaining $41,500 in penalties was sustained.

24. The Taxpayer paid the post-abatement assessments in full with interest on February 1, 2021.

25. Plaintiff thereafter filed separate Form 843 Claims for Refund and Request for Abatement as to tax years 2010 and 2011 with the IRS on March 4, 2022, thus satisfying the jurisdictional prerequisite imposed by 26 U.S.C. §7422(a).

26. The IRS denied Plaintiff's Form 843 Claim for tax year 2010 by means of a Letter 854C dated July 13, 2022, signed by Melissa Franklin, Operations 2 Manager, stating that the Claim did not establish reasonable cause.

27. The IRS denied Plaintiff's virtually identical Form 843 Claim for tax year 2011 by means of a Letter 3176C dated July 13, 2022, also signed by Melissa Franklin, Operations 2 Manager, asserting that the Claim was "frivolous" and requiring Plaintiff to provide a signed declaration that the Claim was true, correct and complete; Plaintiff immediately signed and

mailed such a declaration.

28. Since Plaintiff's administrative claims have been disposed of, his right to maintain a civil action against the United States pursuant to 28 U.S.C. §1346(a)(1) for recovery of penalties claimed to have been wrongfully collected under the internal-revenue laws has now accrued.

**COUNT I**

29. Plaintiff hereby incorporates by reference all of the averments of the above paragraphs as if fully set forth herein again at length.

30. Plaintiff has errooneously been assessed penalties for purported violation of Section 6039F of the Internal Revenue Code, 26 U.S.C. § 6039F, entitled "Notice of large gifts received from foreign persons."

31. Section 6039F requires taxpayers to file a Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, to report aggregate gifts over $100,000 from foreign individuals. *Mentum International, Inc. v. Commissioner*, T.C. Memo 2015-56, 29, 2015 Tax Ct. Memo LEXIS 56, *30, 109 T.C.M. (CCH) 1273 (T.C. March 24, 2015), citing IRS Notice 97-34, 1997-1 C.B. 422; IRS Announcement 98-30, 1998-1 C.B. 962.

32. Plaintiff does not dispute that the gifts he received exceeded the sum of $100,000 in value or that his mother was, at the time the gifts were made, a foreign individual.

33. Section 6039F(c)(2) expressly provides that the penalty imposed under subsection (c)(1) "shall not apply to any failure to report a foreign gift if the United States person shows that the failure is due to reasonable cause and not due to willful neglect." 26 U.S.C. § 6039F(c)(2).

34. Plaintiff established reasonable cause for his failure to timely file Form 3520 to report the gifts he received from his Polish mother by filing Forms 3520 for tax years 2010 and 2011, and attaching to each a signed Statement of Reasonable Cause submitted under the penalty of perjury pursuant to the IRS Delinquent International Information Return Submission Procedures.

35. The IRS nevertheless erroneously assessed severe penalties against Plaintiff under Section 6039F totaling $87,500.00 for tax year 2010 and $120,000.00 for tax year 2011 for "Failure to File Form 3520 to Report Receipt of Certain Foreign Gifts."

36. In response to the Protest filed by Plaintiff challenging the erroneous penalty assessment, the Appeals Division abated $70,000 of the $87,000 penalty assessed for tax year 2010 and $96,000 of the $120,000 penalty assessed for tax year 2011, indicating: "Case resolution based on 'Hazards of Litigation'"; the remaining $41,500 in penalties was sustained.

37. The penalty amounts abated by the Appeals Division represent 80 percent of the penalties initially assessed by the IRS, indicating that the Appeals Division concluded that Plaintiff's "reasonable cause" case had an 80 percent likelihood of success if presented in federal court.

38. Given the Appeals Division's decision as to the merits of Plaintiff's "reasonable cause" issue, the IRS's decisions to deny Plaintiff's claims for a refund of the remaining penalty assessments are glaringly erroneous.

39. Plaintiff has demonstrated throughout this matter that he had reasonable cause for failing to file timely international information returns reporting the gifts made by his mother.

40. "A failure to file timely a return is due to 'reasonable cause' if the taxpayer

exercised ordinary business care and prudence and was nevertheless unable to file the return within the date prescribed by law." *Estate of La Meres v. Commissioner*, 98 T.C. 294 , 313-314 (1992)(citations omitted).

41. "When a taxpayer shows that he reasonably relied on the 'advice' of an accountant or attorney, even when such advice turned out to be mistaken, courts have frequently held that such reliance constitutes 'reasonable cause'. Such reliance is consistent with the 'ordinary business care and prudence' . . . ." *Estate of La Meres v. Commissioner*, 98 T.C. at 314.

42. "Courts have frequently held that 'reasonable cause' is established when a taxpayer shows that he reasonably relied on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken." *United States v. Boyle,* 469 U.S. 241, 250 (1985).

"Whether the elements that constitute reasonable cause are actually present in a given situation is a question of fact." *United States v. Boyle,* 469 U.S. at 249 n.8.

43. "When an accountant or attorney *advises* a taxpayer on a matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice." *United States v. Boyle,* 469 U.S. at 251 (emphasis in original).

44. "To require the taxpayer to challenge the attorney, to seek a 'second opinion,' or to try to monitor counsel on the provisions of the Code himself would nullify the very purpose of seeking the advice of a presumed expert in the first place." *Id.*

45. "'Ordinary business care and prudence' do not demand such actions." *Id.*

46. Because Plaintiff established reasonable cause for his failure to timely file Forms 3520 to report the gifts he received from his Polish mother, the penalty imposed under Section

6039F(c)(1) should not have been assessed against Plaintiff pursuant to the express exception contained in Section 6039F(c)(2).

47. Plaintiff is therefore entitled to a refund of all amounts paid pursuant to the post-abatement assessments, together with interest from February 1, 2021 pursuant to 28 U.S.C. §2411 and 26 U.S.C. §6621(a)(1).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment in the amount of $41,500 (check amount paid) plus interest pursuant to 28 U.S.C. §2411 and 26 U.S.C. §6621(a)(1) and reasonable administrative and litigation costs including reasonable attorney's fees pursuant to 26 U.S.C. §7430, and such other relief as the Court may deem just and equitable.

Respectfully submitted,

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