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New Court Ruling Halts Tax Refunds

By Dave Teibel
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If you are a mainland U.S. resident living here and were planning to cash in on some of the \$2 million in tax refunds that GovGuam was expected to make, then perhaps you should reassess your plans for spending the cash.

According to a former GovGuam tax law, U.S. citizens residing on Guam who had not been on the island for at least two years were not allowed to take the standard deduction in filing their income tax statements or to file joint returns and were classified as "non-resident aliens" for tax purposes.

Corporations having such "non-resident aliens" as share holders also were affected as they could not take tax advantages under "small business" tax status offered to corporation with ten share holders or less.

A federal tax law passed last year changed this, but GovGuam declined to accept the new law.

Subsequently a lawsuit was filed by two U.S. citizens and one corporation to get refunds on their tax payments. The Guam District Court and the U.S. Ninth Circuit Court of Appeals both held that a tax refund was due the defendants in the case, thus setting a precedent for other similar refunds.

According to Phillip Charles, Deputy Director of the Revenue and Taxation Department, the department has made some refunds, but they are holding off on further refunds as the result of a recent court decision involving a Mainland corporation and the Virgin Islands.

In the case of Great Cruz Bay Inc. vs. Virgin Islands, a tax suit similar to the one filed in Guam, and appealed to the U.S. Third Court of Appeals held that the Virgin Islands could classify mainlanders as "non-resident aliens" for tax purposes.

In the suits filed in Guam, the U.S. Supreme Court declined to review the decisions of the Ninth Circuit Court of Appeals, but the decision of the Third Court of Appeals has created a conflict in courts, Charles explained.

According to Charles, when there is a conflict in courts, the U.S. Supreme Court will usually review a case when petitioned to do so. The parties in the cases have 90 days in which to petition the Supreme Court for a review of the decision, and the Revenue and Taxation Department is waiting further developments along this line. If the U.S. Supreme Court upholds the decision in the Virgin Islands case, GovGuam would not have to make payments on the claims.

"It looks like we are obligated to go ahead with payments to claimants in light of court rulings," Charles said in reference to the U.S. Ninth Circuit Court of Appeals decision, however, "We could refuse to follow the court decision, but this would necessitate litigating each individual case." According to Charles, the U.S. Ninth Circuit Court of Appeals ruling pertained to the case of two individuals and one corporation, and although it sets a precedent for the payment of this type of claim it does not mean that the Department of Revenue and Taxation must make refunds on all such claims without requiring individual litigation on the part of each claimant.

Before the department takes anymore action, future policy decisions will have to be made, however, and the department "will probably make payments if the Great Cruz Bay decision is not appealed or reviewed by the Supreme Court," Charles said.