'Outside Limit' on Tax Refund Suits After *Bormes*

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In this article, Monahan and O'Connor point out that the Supreme Court's decision in *Bormes* sheds new light on the Court's holdings that the tax-specific statute of limitations applies to refund suits.

This is the first installment of Tax Matters, a periodic column written by Sutherland's tax practice group.

Consider the following scenario: A taxpayer overpays income taxes and files a claim for refund. The IRS takes no action on the claim. What is the deadline (if any) for filing a refund suit in district court or the Court of Federal Claims?

Long-standing case law and the IRS take the position that based on section 6532, the statute of limitations does not begin to run until the IRS issues a notice of disallowance of the refund claim. In the absence of a disallowance notice, a refund suit may be filed at any time, no matter how prolonged the period since the filing of the refund claim.

Three more recent district court cases disagree, holding in effect that based on the general Tucker Act statute of limitations, the taxpayer has only 6½ years from the filing of the refund claim within which to file suit.

Which position is correct? The question is important for two reasons. First, if the Tucker Act statute of limitations applies, the taxpayer's right to pursue the refund could evaporate if the claim remains pending for longer than 6½ years. Second, although the section 6532 statute of limitations can be extended by agreement,[1] there is no way to protect against expiration of the Tucker Act statute of limitations other than by filing suit.[2]

The Supreme Court's recent decision in *United States v. Bormes*[3] clarifies when the general Tucker Act provisions are preempted by a more specific statute. In *Bormes*, the Court held that when a statutory scheme provides its own judicial remedies, the specific statute establishes "the exclusive framework" for the waiver of sovereign immunity and renders the general Tucker Act provisions inapplicable. Specific statutory provisions that establish such a framework cannot be mixed and matched with the general Tucker Act provisions, the Court said.[4] Under the reasoning of *Bormes*, a strong case can be made that the general Tucker Act provisions are rendered inapplicable by the statutory framework for refund suits provided in sections 7422, 6511, 6532, and 28 U.S.C. section 1346(a)(1). Although the *Bormes* decision seemingly answers whether the general Tucker Act statute of limitations applies to refund suits when a disallowance notice has not been issued, because the Tucker Act statute is jurisdictional, taxpayers with pending refund claims approaching the 6½-year mark would still be well advised to file suit as a protective measure.

A. Background

1. The statutory framework for tax refund suits. The statutory framework for refund suits begins with section 7422(a), which provides: "No suit or proceeding shall be maintained in any court for 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, according to the provision of law in that regard, and the regulations of the Secretary established in pursuance thereof." Section 6511 sets forth the requirements for a refund

[1]The two-year period for filing a refund suit after issuance of a disallowance notice may be extended "as may be agreed upon in writing between the taxpayer and the Secretary." Section 6532(a)(2); reg. section 301.6532-1(b). Form 907, "Agreement to Extend the Time to Bring Suit," is used for this purpose.

[2]*See John R. Sand & Gravel Co. v. United States*, 552 U.S. 130 (2008).

[3]133 S. Ct. 12 (2012).

[4]*Id.* at 18-20.

claim, including the timing requirements that a refund claim be filed within three years from the filing of the tax return or two years from the payment of the tax.[5] Section 6532(a)(1) provides the time period within which a refund suit must be filed:

> 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, 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 disallowance of the part of the claim to which the suit or proceeding relates.

Under section 6532, if less than six months have elapsed since the filing of the refund claim and the IRS has not issued a disallowance notice, the taxpayer is prohibited from filing suit.[6] If the IRS has issued a disallowance notice, the taxpayer may file suit immediately following the notice, but in any event, must file suit no later than two years from the date of the notice. Section 6532 contains no time limit other than the initial six-month restriction for a refund suit brought before a disallowance notice has been issued.

A tax-specific provision of the Tucker Act, 28 U.S.C. section 1346(a)(1), applies to refund suits. Section 1346(a)(1) gives the district courts and the Court of Federal Claims concurrent jurisdiction over any suit or proceeding brought against the United States ''for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected.''[7]

The general Tucker Act statute of limitations in 28 U.S.C. sections 2401 and 2501 provides that every claim against the United States ''shall be barred unless the complaint is filed within six years after the right of action first accrues.'' Although sections 2401 and 2501 speak in absolute terms of ''every claim,'' that language does not prohibit the application of a longer or shorter statute of limitations for specific causes of action.[8]

2. Supreme Court decisions on the statute of limitations for refund suits. In *United States v. A.S. Kreider Co.*,[9] the Court held that the predecessor of section 6532 rather than the general Tucker Act statute of limitations prescribed the period within which a tax refund suit must be brought. The Court said that the general Tucker Act statute ''was intended merely to place an outside limit on the period within which all suits might be initiated'' under the Tucker Act but that Congress ''left it open to provide less liberally for particular actions which, because of special considerations, required different treatment.''[10] The Court held that if the general Tucker Act provision applied, section 6532 would have ''no meaning whatsoever'' and therefore that only section 6532 applied.[11]

The Court again addressed the applicability of the Tucker Act statute in *United States v. Clintwood Elkhorn Mining Co*.[12] The question presented was whether the requirements of sections 7422, 6511, and 6532 applied to a refund suit for an admittedly unconstitutional tax. The taxpayers argued that the general Tucker Act statute applied because their claims arose under the export clause rather than the tax code. Relying on *Kreider*, the Court held that because the relief sought was a refund of tax, the ''explicit and expansive'' tax provisions rather than

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[5]Section 6511(a) and (b). The section 6511 statute begins to run on the due date (including extensions) for the return, not on the date the return was actually filed. *See Hodel v. United States*, 62 F.3d 400 (11th Cir. 1995).

[6]*Stelco Holding Co. v. United States*, 42 Fed. Cl. 101, 116-117 (1998). If the taxpayer waives the requirement of mailing a disallowance notice and six months have elapsed since the filing of the refund claim, the signing of the waiver will commence the running of the two-year period within which to file a refund suit. Section 6532(a)(3); reg. section 301.6532-1(c).

[7]Section 1346(a)(2) is the jurisdictional provision for general Tucker Act claims brought in the district courts and is often referred to as the Little Tucker Act. Under the Little Tucker Act, claims against the United States may be brought in district court only if they do not exceed $10,000. Tucker Act claims exceeding $10,000 must be brought in the Court of Federal Claims. 28 U.S.C. section 1491.

[8]*See United States v. Mottaz*, 476 U.S. 834, 843 (1986) (holding that a claim to interests in Indian allotments was governed by the 12-year statute of limitations of the Quiet Title Act); *United States v. Greathouse*, 166 U.S. 601, 605-606 (1897) (based on a statute of limitations in effect before the Tucker Act, allowing ''persons beyond the seas'' three years from the time they returned to the United States to file suit, despite the six-year limit).

[9]313 U.S. 443 (1941).

[10]*Id.* at 447.

[11]*Id.* at 447-448. As discussed below, the three district court decisions holding the general Tucker Act statute of limitations sets an ''outside limit'' on tax refund suits focus on this statement in *Kreider*. The Court's statement that the general Tucker Act statute was intended ''merely'' to place an outside limit on ''all suits'' is ambiguous as well as dicta. The statement could be interpreted to mean that the Court believed the Tucker Act ''merely'' provided an outside limit on ''all suits other than the particular suits for which Congress had specially provided,'' or alternatively, that the Court believed the Tucker Act provided an outside limit on ''all suits'' but did not preclude shorter limits for ''particular suits.'' Because the second interpretation does not account for the Court's use of the word ''merely,'' the first interpretation seems more accurate in terms of ascribing meaning to all the words used.

[12]553 U.S. 1 (2008).

the Tucker Act applied.[13] The Court's reasoning was that because the taxpayers conceded that their export clause claim was subject to the Tucker Act statute of limitations, they had ''more or less give[n] up the game.'' That statement in effect dismisses the notion that the general Tucker Act provisions have any role to play in tax refund suits.[14]

B. The Conflicting Decisions

1. The 1955 Court of Claims decisions and Rev. Rul. 56-381. In *Detroit Trust Co. v. United States*[15] and *Consolidated Edison Co. v. United States*,[16] two decisions issued in 1955, the Court of Claims held that section 6532 completely preempts the Tucker Act statute of limitations. The taxpayer in *Detroit Trust* filed a refund claim in 1923; the IRS issued a notice of disallowance 28 years later, in 1951; and the taxpayer filed suit less than two years afterward.[17] In *Consolidated Edison*, the refund claims were filed in 1942 and 1943; no IRS notices of disallowance were issued; and the taxpayer filed suit in 1950. Relying on the 1931 Supreme Court decision in *United States v. Michel*,[18] the *Detroit Trust* court held that the predecessor to section 6532 ''sets out the terms and conditions under which the Government has given its consent to be sued,'' rendering irrelevant the general Tucker Act limitations period.[19] Thus, as the court found, if the IRS did not issue a disallowance notice, the taxpayer had ''an option'' to file suit at any time beginning six months after the filing of the refund claim or instead await the IRS disallowance notice.[20] The refund suit was timely because it was filed within two years after the disallowance notice.[21] In *Consolidated Edison*, in which no disallowance notice had been issued, the court held that under *Detroit Trust*, the predecessor to section 6532 was ''the governing statute of limitations,'' the general Tucker Act statute was ''not applicable,'' and accordingly, the taxpayer's suit was timely.[22]

Shortly thereafter, the IRS issued Rev. Rul. 56-381, 1956-2 C.B. 953. The ruling adopted *Detroit Trust* and *Consolidated Edison* as the IRS position and stated that in the absence of a disallowance notice, it was unnecessary for the taxpayer and the IRS to agree to extend the section 6532 limitations period.

2. The district court decisions. Three district court decisions hold that the Tucker Act statute of limitations operates as an outside limit, requiring a refund suit to be filed within 6½ years of the refund claim. The earliest case, *Finkelstein v. United States*,[23] presented a confusing factual situation in which a taxpayer demanded return of a deposit in the nature of a cash bond but the IRS instead applied the deposit to the taxpayer's husband's payroll tax liability.[24] The taxpayer received a letter to that effect by regular mail, which the court treated as a valid disallowance notice. The court held that the taxpayer's suit, filed nearly seven years after the letter, was untimely under section 6532.[25] The court alternatively held that even if the IRS letter had not been a valid notice of disallowance, the suit was untimely under the Tucker Act. Relying on *Kreider*, the court said that the Tucker Act limit was ''consistent with, but secondary to, the two year period governing a tax refund.''[26] The taxpayer did not appeal.

In 2009 the U.S. District Court for the Central District of California in *Wagenet v. United States*[27] squarely confronted the issue of the applicable limitations period for a taxpayer who had not received a disallowance notice. The taxpayer had filed a timely refund claim in 1988. No disallowance notice was issued, and the taxpayer filed suit 20 years later, in 2008. Relying on *Finkelstein* and *Kreider*, the court reasoned that because section 6532 does not contain a time limit for filing suit when no disallowance notice has been issued, the general Tucker Act statute should supply that limit. The court believed *Detroit Trust* and *Consolidated Edison*

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[13] *Id.* at 12-16.
[14] *Id.* at 10-11.
[15] 130 F. Supp. 815 (Ct. Cl. 1955).
[16] 135 F. Supp. 881 (Ct. Cl. 1955).
[17] 130 F. Supp. at 817.
[18] 282 U.S. 656, 660 (1931). In *Michel*, the Supreme Court held that the predecessor of section 6532 prescribed the period within which the government has consented to be sued. The statute at issue in *Michel* was the pre-1932 version of section 6532, which provided a five-year limitations period for bringing suit if no disallowance notice was issued. The Court held that the taxpayer's suit was untimely because it was not brought within the five-year period. As discussed in Section D.2 below, the statute was amended in 1932 to remove the five-year limitation.
[19] *Id.* at 817.
[20] *Id.*
[21] *Id.* at 817-818. In 2011 the Court of Federal Claims, apparently unaware of *Detroit Trust* and *Consolidated Edison*, which are binding authority, stated in dicta that ''in the absence of a disallowance notice or waiver, [refund suits] must be filed within the Tucker Act's six-year statute of limitations,'' which would begin to run six months after the refund claim was filed. In that case, the refund suit was filed within the 6½-year period, so this statement did not affect the outcome. *See Hartman v. United States*, 99 Fed. Cl. 168, 179, n.17 (2011), *aff'd on other grounds*, 694 F.3d 96 (Fed. Cir. 2012).

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[22] 135 F. Supp. at 883.
[23] 943 F. Supp. 425 (D.N.J. 1996).
[24] The facts of the case as they relate to the deposit are somewhat unclear. Actions for the return of a deposit are not tax refund actions and are not subject to the requirements of section 7422. *New York Life Insurance Co. v. United States*, 118 F.3d 1553, 1558 (Fed. Cir. 1997).
[25] 943 F. Supp. at 431.
[26] *Id.* at 431-432.
[27] 2009 WL 4895363 (C.D. Cal. Sept. 14, 2009).

were wrongly decided. The taxpayer in *Wagenet* appealed to the Ninth Circuit, and the parties settled the case before any appellate briefs were filed.[28]

In 2011 the U.S. District Court for the Northern District of New York took on the statute of limitations question in *Breland v. United States*.[29] The taxpayer in *Breland* had claimed refunds on her original 2001 return, which was timely filed in 2002. Although she had received various IRS notices, she claimed that none of them constituted a valid notice of disallowance. She filed a refund suit in 2010. Relying on IRS administrative records, the court held that a disallowance notice must have been sent more than two years before the filing of the refund suit. In the alternative, the court held that the suit was barred under the Tucker Act. The court said that it was ''well-settled'' that the specific requirements of section 6532 prevail over the general requirements of the Tucker Act but that it was ''also well-settled'' that the Tucker Act placed an outside limit on all suits against the United States, citing *Kreider* and *Finkelstein*.[30] The taxpayer appealed to the Second Circuit, and the parties settled the case before briefs were filed.[31]

3. The IRS chief counsel notice. In June 2012 the IRS issued a chief counsel notice[32] stating the agency's view that the *Finkelstein*, *Wagenet*, and *Breland* decisions were incorrect. The notice says that if the refund claim has not been denied, the taxpayer may file a refund suit at any time, based on section 6532(a)(1), the regulations thereunder, *Detroit Trust*, and *Consolidated Edison*. The IRS directed its attorneys to continue to comply with Rev. Rul. 56-381 and to refrain from arguing any outside limit based on the general Tucker Act statute of limitations.

In December 2012 the chief counsel notice was incorporated into the Internal Revenue Manual. IRM section 34.5.2.2 states: ''The Service and the Department of Justice should be advised that the general six-year period of limitation for bringing claims against the government in 28 U.S.C. sections 2401 and 2501 does not apply to tax refund suits.'' The DOJ has not issued any statement of its own.[33]

4. Rejection of an outside limit in nontax cases. The argument that the Tucker Act must provide an outside limit for filing suit in the absence of a denial of a claim by the agency is not unique to tax refund suits. The Contract Disputes Act (CDA) governs contract claims against the government. The CDA requires a mandatory administrative process similar to a tax refund claim, in which claimants must submit a claim to a contracting officer for review.[34] If no decision is issued within a specified time, the claimant may file suit, but there is no limitation on suits in the absence of a decision by the contracting officer.[35] In 2010 the Court of Federal Claims held that the CDA provides the exclusive statute of limitations for claims governed by that statute, rejecting the argument that the Tucker Act should provide an outside limit within which to file suit if the contracting officer has not issued a decision.[36]

The Federal Tort Claims Act (FTCA) is a waiver of sovereign immunity that allows tort claims against the United States to be brought in district courts.[37] Claimants must submit an administrative claim to the relevant agency and file suit within six months of the agency's denial of the claim.[38] If the agency has not issued a decision after six months, the claimant may file suit. There is no limitations period for filing suit in the absence of a denial.[39] Six courts of appeals have interpreted the FTCA as allowing an unlimited time in which to file suit in the absence of a claim denial.[40] In two of those decisions, the DOJ conceded the issue.[41]

C. The *Bormes* Decision

In *Bormes*, the Supreme Court clarified the standard for determining whether the Tucker Act is preempted by a more specific statute. The statute at issue was the Fair Credit Reporting Act (FCRA), which imposes civil liability for some disclosures of credit card information.[42] The plaintiff asserted that

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[28]*Wagenet*, No. 09-56800 (9th Cir.), Dkt. Entry 24, Stipulation of Dismissal with Prejudice (Nov. 29, 2010).

[29]2011 WL 4345300 (N.D.N.Y. 2011).

[30]*Id.* at *6-*7, citing *Michel*, 282 U.S. at 658-659; *Finkelstein*, 943 F. Supp. at 432.

[31]*Breland*, Dkt. 5:10-cv-0007 (N.D.N.Y.), Dkt. Entry 43, Local Rule 42.1 Stipulation (Dec. 21, 2011).

[32]CC-2012-012.

[33]In at least two cases predating the chief counsel notice, the DOJ asserted the Tucker Act statute as an alternative argument for dismissal of a refund suit. *See Camangian v. United States*, No. 208-cv-6718, Gov't Motion to Dismiss, 2009 WL 2216893 (C.D. Cal.) (arguing in the alternative that a refund suit was barred by

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section 2401); *Fier v. United States*, No. 02-6093, Gov't Brief, 2002 WL 32422920 (2d Cir. 2002) (same). Neither court reached the argument.

[34]41 U.S.C. section 7103.

[35]41 U.S.C. sections 7103(f)(5) and 7104.

[36]*System Planning Corp. v. United States*, 95 Fed. Cl. 1, 2 (2010).

[37]28 U.S.C. section 1346(b).

[38]28 U.S.C. section 2401(b).

[39]28 U.S.C. section 2675(a).

[40]*Pascale v. United States*, 998 F.2d 186, 188 (3d Cir. 1993); *McCallister v. United* States, 925 F.2d 841, 843 (5th Cir. 1991); *Taumby v. United States*, 919 F.2d 69, 70 (8th Cir. 1990); *Parker v. United States*, 935 F.2d 176, 177-178 (9th Cir. 1991); *Conn v. United* States, 867 F.2d 916, 920-921 (6th Cir. 1989); *Leonhard v. United States*, 633 F.2d 599, 626, n.36 (2d Cir. 1980); *cf. Miller v. United States*, 741 F.2d 148, 150 (7th Cir. 1984) (holding that a claimant may file suit ''at any reasonable time'').

[41]*McCallister*, 925 F.2d at 843; *Taumby*, 919 F.2d at 70.

[42]15 U.S.C. section 1681 et seq.

the Little Tucker Act, which provides district courts jurisdiction over claims against the United States not exceeding $10,000,[43] waived sovereign immunity for an action against the United States for a willful violation of the FCRA. The Court held that any waiver of sovereign immunity must come from the text of the FCRA, and it rejected any application of the Tucker Act or the Little Tucker Act, stating, ''The Tucker Act is *displaced* . . . when a law assertedly imposing monetary liability on the United States contains its own judicial remedies.''[44] The Court noted that its recent precedents ''have consistently held that statutory schemes with their own remedial framework *exclude* alternative relief under the general terms of the Tucker Act.''[45] Because the FCRA set forth a detailed remedial scheme, it was the exclusive framework for determining liability.

In a statement especially relevant to the argument that the Tucker Act statute of limitations is a supplement or outside limit to the statute of limitations provided in section 6532, the Court declined to address the parties' disagreement over the possibility of reconciling differences between the Little Tucker Act and the FCRA. The Court opined succinctly, ''reconcilable or not, FCRA governs.''[46] The Court's statements in *Bormes* make clear that when there is a precisely defined statutory framework for a claim that could be brought against the United States, the Tucker Act has no role.

D. Refund Suits and the *Bormes* Standards

1. Tax refund suits predated the Tucker Act. The Court in *Bormes* reviewed the history of the Tucker Act and characterized its grant of jurisdiction and sovereign immunity waiver as ''the missing ingredient for an action against the United States for the breach of monetary obligations *not otherwise judicially enforceable*.''[47] History makes clear that the right to a tax refund was already judicially enforceable long before the enactment of the Tucker Act. Common-law suits against collectors of internal revenue for refund of wrongful exactions were recognized by the Supreme Court as early as 1836, and the Court has observed that those actions date back to English predecessors.[48] In 1866, more than a decade before the Tucker Act, Congress enacted the statutory scheme for tax refund suits now found in sections 7422, 6511, and 6532.[49] Although the enactment of the Tucker Act in 1877 expanded the jurisdictional options for tax refund suits by allowing them to be brought against the United States directly and in the Court of Claims, it did not preempt suits against collectors.[50] In 1921 Congress enacted the tax-specific Tucker Act jurisdictional provision, the predecessor to 28 U.S.C. section 1346(a)(1).[51] The text of the Little Tucker Act, 28 U.S.C. section 1346(a)(2), suggests that following the 1921 enactment of section 1346(a)(1), only the tax-specific provision applies to tax refund suits and that general Tucker Act jurisdiction does not apply.[52] Because tax refund obligations were judicially enforceable before the enactment of the Tucker Act and remain so under section 1346(a)(1), the general Tucker Act provisions are not needed to supply a right of action against the United States in a tax refund suit.

2. The tax-specific remedial scheme. In applying the *Bormes* standard, the Supreme Court has said that ''to determine whether a statutory scheme displaces Tucker Act jurisdiction, a court must examine the purpose of the [statute], the entirety of

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[43]28 U.S.C. section 1346(a)(2).

[44]133 S. Ct. at 19 (emphasis added).

[45]*Id.* at 18 (emphasis added), citing *Hinck v. United States*, 550 U.S. 501, 506 (2007) (holding that the Tucker Act and section 7422 did not provide jurisdiction for review of abatement decisions under section 6404 when the section 6404 regime was ''carefully circumscribed, time-limited, plaintiff-specific provision, which also precisely defined the appropriate forum'').

[46]*Id.* at 19.

[47]*Id.* at 18 (emphasis added).

[48]The suits against collectors recognized in 1836 were for the refund of import duties. *Elliott v. Swarthout*, 35 U.S. 137 (1836); *see generally* M. Carr Ferguson, ''Jurisdictional Problems in Federal Tax Controversies,'' 48 *Iowa L. Rev.* 312, 327-331 (1963). The Supreme Court held that tax refund actions had been implicitly recognized by the same provisions. *Philadelphia v. The Collector*, 72 U.S. 720 (1866); *see generally* William T. Plumb Jr., ''Tax Refund Suits Against Collectors of Internal Revenue,'' 60 *Harv. L. Rev.* 685 (1947).

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[49]These sections all originate in the Revenue Act of July 13, 1866, section 19, 14 Stat. 98, 152, which provided:

> No suit shall be maintained in any court for the recovery of any tax alleged to have been erroneously or illegally assessed or collected, until appeal shall have been duly made to the commissioner of internal revenue according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of said commissioner shall be had thereon, unless such suit shall be brought within six months from the time this act takes effect: Provided, That if said decision shall be delayed more than six months from the date of such appeal, then said suit may be brought at any time within twelve months from the date of such appeal.

[50]Act of March 3, 1887, ch. 359, sections 1 and 2. Tax refund suits continued to be brought against collectors for nearly 100 years after the enactment of the Tucker Act. *See* Ferguson, *supra* note 48, at 330, n.95.

[51]Revenue Act of 1921, ch. 136, section 1310(c). The Supreme Court characterized section 1346(a)(1) as the ''keystone in a carefully articulated and quite complicated structure of tax laws.'' *Flora v. United States*, 362 U.S. 145, 157 (1960).

[52]28 U.S.C. section 1346(a)(2) applies to ''Any other civil action or claim against the United States,'' *i.e.*, any action other than a tax refund action described in 1346(a)(1).

its text and the structure of review that it establishes.''[53] If the *Clintwood Elkhorn* decision is read with the *Bormes* standard in mind, it seems clear that the Court considered the tax provisions as a ''detailed remedial scheme'' separate and distinct from a general claim against the United States under the Tucker Act.[54]

Although the tax-specific statutory framework does not set forth an outside limitation for filing suit in the absence of a disallowance notice, this does not create a ''gap'' to be filled by the Tucker Act. First, there is no gap because the absence of an outside limitation was intentional. Before 1932, section 6532 contained a limit of five years for bringing suit in the absence of a disallowance notice.[55] The 1932 amendments enacted present-day section 6532 and eliminated the five-year outside limit.[56] And more importantly, because the tax refund provisions create a detailed remedial scheme, they supersede the Tucker Act. Based on *Bormes*, taxpayers have strong arguments that the tax refund provisions are a comprehensive statutory scheme providing an exclusive remedy, preempting the general Tucker Act provisions.

E. Conclusion

The Supreme Court's recent decision in *Bormes* sheds new light on the Court's decisions holding that the tax-specific statute of limitations applies to refund suits. Under *Bormes*, the comprehensive and specific statutory scheme applicable to tax refund suits preempts the general Tucker Act provisions. In light of *Bormes* and the 2012 chief counsel notice, taxpayers with refund claims that have been pending with the IRS for more than 6½ years may still have the opportunity for a day in court.

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[53]*Horne v. Department of Agriculture*, 133 S. Ct. 2053, 2062-2063 (2013) (quoting *United States v. Fausto*, 488 U.S. 439, 444 (1988)).

[54]*See* 553 U.S. at 11 (''The question is thus not whether the companies' refund claim under the Export Clause can be limited, but rather which limitation applies''); *see also Kreider*, 313 U.S. at 448, n.3 (''the applicability of a specific limitation instead of the general Tucker Act limitation has not been challenged for 35 years''); *Alexander Proudfoot Co. v. United States*, 454 F.2d 1379, 1380 (Ct. Cl. 1972) (''If the special tax requirements are applicable, they dominate and exclude the general pre-conditions for suit against the United States'').

[55]The pre-1932 version of section 6532 stated: ''No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of payment of such tax . . . unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates.'' Revenue Act of 1924, ch. 234, section 1014(a).

[56]The legislative history states:

> The use of the two periods (five years and two years) which run from the happening of different events tends to confusion. Your committee is of the opinion that the best interest of all parties concerned will be served by an amendment which makes the date of disallowance of the claim absolutely certain in every case and which specifies but one limitation period after that date. Accordingly, the bill requires the mailing of a notice of disallowance by registered mail, and the bringing of a suit or proceeding within two years from the date of such mailing.

S. Rep. No. 72-665, at 57 (1932).