

As time goes by

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In 1984, Robert J. Isler and Susan L. Isler, who were partners in Oasis Date Associates, a California limited partnership, filed their federal income tax return reporting investment deductions related to their limited partnership. Following the IRS's review of their partnership return, in 1997, the Islers entered into a partner-specific Settlement Agreement, which disallowed various deductions on their 1984 partnership return. This resulted in adjustments to the Isler's 1984 tax liability. IRS therefore assessed the Islers \$4,990 in federal income taxes plus \$11,682 in interest. The Islers filed claims with the IRS to recover the \$4,990 in taxes and \$11,682 in interest, which the IRS denied.

In 2001, the Islers sued for a tax refund of \$22,039.06 in the U.S. Court of Federal Claims, on several theories, including a claim to abate interest. While the Isler case was pending, in 2007, the Supreme Court held in *Hinck v. United States* that the United States Tax Court is the exclusive forum to conduct judicial review of an IRS decision not to abate interest under 26 U.S.C. § 6404(e). Following the *Hinck* ruling, the Islers dismissed their interest abatement claim. In 2011, the Islers also dismissed several other claims, leaving as their only remaining claim that the IRS unlawfully assessed taxes after the statute of limitations had expired.

Six years and four judges later, the CFC ruled on the Government's motion to dismiss, holding that the Court lacked jurisdiction over the claim. The Court explained that under the Tax Equity and Fiscal Responsibility Act of 1982, partners may not bring a partner-level refund claim if the claim is attributable to "partnership items." In *Keener v. United States*, the Federal Circuit held that the Court of Federal Claims did not have jurisdiction to adjudicate claims attributable to partnership items.

The exception to this jurisdictional rule is if the United States has entered into a settlement agreement with the partner, rendering the issue no longer a partnership item. Here, however, the Islers settlement agreement with the IRS did "not address whether the IRS assessed federal income taxes after the relevant statutes of limitations expired." Therefore, the Islers' refund claim fell outside the CFC's jurisdiction and the Court had to dismiss the claim for lack of subject matter jurisdiction.

Read Judge Braden's full opinion [here](#).