DOES A TAX RETURN FILED IN THE USVI START THE IRS STATUTE OF LIMITATIONS?

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DOES A TAX RETURN FILED IN THE USVI START THE IRS STATUTE OF LIMITATIONS?

Beckett Cantley & Geoffrey Dietrich†*

Abstract

Statutes of limitations are paramount for the efficient, just, and democratic functioning of the U.S. court systems, and the federal government. Statutes of limitations help the courts control their dockets, but these statutes also protect U.S. citizens. Through these statutes, citizens are protected from frivolous claims by limiting how much time a litigant has for filing a complaint. Additionally, statutes of limitations serve as a vital component of the checks and balances against the power of the government because they limit how long branches of the government have for prosecuting citizens for certain crimes. Their existence motivates government agencies to be efficient in their legal pursuits and in their discovery of such crimes or wrongdoings. Yet, even within seemingly straightforward statutes of limitations, there is an extensive track of judicial interpretation, where courts are asked to decide at what point a statute begins to run, when does it toll, or whether it even attaches to the issue in the first place. One such gray area is the statute of limitations related to the IRS's authority to assess any tax imposed after a return was filed. U.S. courts have been asked to interpret what constitutes a return, and what constitutes a filing when taxpayers challenge the IRS's action as being time barred. This issue is further complicated when courts are asked to rule on whether the IRS action is time barred in matters dealing with those taxpayers who filed returns with the United States Virgin Islands ("USVI"). These Caribbean islands function as a territory of the United States and have a mirror tax system, where USVI residents can file their taxes with the USVI Bureau of Internal Revenue instead of filing with the IRS. The mirror system is meant to both alleviate some of the burdens of those living on the islands, as well as the IRS. The drawback, though, is that the USVI have a stringent process in determining residency. As such, a very narrow issue arises when U.S. taxpayers, believing that they are USVI residents—whether by technicality or mistake—file their taxes with the wrong administration. This article analyzes the distinct issue of does a tax return filed in the USVI start the IRS statute of

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limitations? The answer is derived from a recent Ninth Circuit ruling regarding the running of the statute of limitations and is analyzed within the history of court rulings for USVI – U.S. tax cases. Ultimately, this article demonstrates that a tax return filed in the USVI likely does not start the IRS statute of limitations. Mostly, the precedent of these cases serves as a cautionary tale for taxpayers who may one day find themselves at the litigation table against the IRS.

INTRODUCTION

The United States Virgin Islands[1] (USVI), an unincorporated group of Caribbean islands functioning as an organized territory of the United States, is included in the United States Internal Revenue Code (IRC) by the Naval Service Appropriation Act of 1922 (Act).[2] The Act created a separate territorial income, to be collected by the independent tax authority of the USVI. Since the USVI is its own tax authority, residents and USVI corporations operating solely within the USVI are not generally required to file returns with the Internal Revenue Service (IRS).[3] A USVI corporation typically only files a tax return with the Virgin Islands Bureau of Internal Revenue (BIR), with no additional tax filing requirements.[4] While the Act gave the USVI jurisdiction to tax corporations on income from sources within the islands,[5] the United States continues to tax the income of corporations regardless of source. As a result, USVI corporations doing business in the United States must file a return with the IRS and the BIR. The IRS avoids

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[1] *See generally* ENCYC. BRITANNICA, INC., *United States Virgin Islands* (Oct. 30, 2021), https://www.britannica.com/place/United-States-Virgin-Islands#ref7724. The United States purchased the Caribbean islands from the Netherlands in 1917 for $25 million. Previously known as the Danish West Indies, these islands carry a rich history of European colonialism and then American colonialism. U.S. citizenship was granted to many inhabitants of the islands in the late 1920s and the early 1930s. Today, those born on the islands are automatically U.S. citizens. Since 1970, the islands elect a territorial governor every four years; previously these governors were appointed by the President of the United States. The residents of the islands elect senators to the islands' legislature, the governor and lieutenant governor of the territory, and a delegate to the U.S. House of Representatives. Although USVI residents are U.S. citizens, they cannot vote in the U.S. Presidential elections. The USVI are an attractive destination for U.S. businesses and individuals in the tourist industry.

[2] 48 U.S.C. § 1397 (1964).

[3] Beckett G. Cantley, *How Long Must One Stay in the USVI to Be Considered a "Resident" to Qualify for the 90% Residency Tax Credit?*, 13 J. TRANSNAT'L L. & POL'Y 153, 155 (2003).

[4] *Id.*

[5] Chi. Bridge & Iron Co. v. Wheatley, 430 F.2d 973, 974 (3d Cir. 1970).

double taxation by granting a foreign tax credit to corporations for taxes paid to the BIR.

This double filing requirement creates a 'mirror system.' Although the mirror system has worked in tandem successfully for about a century, there are some critical procedural and legal issues which create confusion. The statutes of limitations for tax statutes with a filing requirement is one such issue. For example, IRC § 6501(a) places a three-year limitation during which the amount of any tax imposed shall be assessed "after the return was filed."[6] USVI corporations doing business in the U.S. and seeking statute of limitations protection must decipher whether a BIR filing satisfies the requirement or whether it must be an IRS filing. This means USVI corporations must determine whether it is their submission to the BIR or the IRS which satisfies the definition of "filing" for the purposes of the statute of limitations.

The continuous need for USVI corporations to interpret jurisdictional and definitional rules undermine the idea of a 'mirror system' between the USVI and the IRS. For example, the BIR is its own authority, yet it cannot choose the forms it uses for tax filings. The BIR is required by federal law to use and accept the same forms as the IRS.[7] "Unlike the revenue agencies of any state or foreign jurisdiction, under section 932(c) [BIR] is a valid recipient of federal tax returns."[8] It would be reasonable to assume that a BIR filing would hold the same value as an IRS filing for starting of the statute of limitations. However, not all U.S. courts have reached this conclusion.

As a result of these inconsistencies, corporations subject to tax filing requirements with both the IRS and the BIR are forced to navigate some challenges. This becomes especially clear when they must determine if they are protected by the § 6501(a) three-year limitation. A failure to file adequately or correctly can leave corporations vulnerable to deficiency notices, penalties, and other severe consequences. Such questions and challenges are not new, and the history of USVI and IRS cases demonstrates how profound and complex these filing and statute of limitation requirements can be. Recently, an issue was presented to the Eighth Circuit in which the court reversed the Tax Court multiple times to hold that "a failure to file a return with the correct individual, even if done

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[6] 26 U.S.C.A. § 6501 (West 2018).

[7] 26 U.S.C.A. § 932(c) (West 2004); Huff v. Comm'r, 138 T.C. 258, 267 (2012).

[8] Brief for Intervenor-Appellee at 31, Coffey v. Comm'r, Nos. 18-3256, 18-3259 (8th Cir. Aug. 12, 2019).

in a mistake of residency, does not create a 'filed' return under section 6501(a)."[9] The court further stated that "taxpayers must demonstrate meticulous compliance with IRS filing requirements" and that "returns filed with the [BIR] are not returns filed with the IRS."[10] However, it is unclear if this holding would apply in cases where residency is not mistaken, and where there is evidence that a company, not a resident, attempted to "meticulously" comply with the IRS but failed.[11] The purpose of this article is to determine when a tax return filed in the USVI starts the IRS statute of limitations.

I. HISTORY OF USVI - IRS CASES

The United States and USVI 'mirror systems' operate as separate but interrelated tax systems – both based on the rules of the IRC. In the mirror systems' history, several cases have arisen over which government should have received taxes from taxpayers, both individuals or corporations, and in what amount.[12] Courts generally address these cases through statutory interpretation of the applicable tax statute, but the majority of courts' analysis boils down to what is considered a tax return, and what sorts of actions constitute a filing. The following cases are samples of the kinds of disputes that the courts have addressed in recent years related to tax issues between the USVI and the IRS.

A. Huff v. Comm'r of Internal Revenue

Huff first appeared before the courts in 2010, and in 2014 came before the Eleventh Circuit Court of Appeals. The individual taxpayer, petitioner, in the original suit claimed to be a bona fide resident of the USVI from 2002 through 2004, and, as such, qualified for the gross income tax exclusion provided by I.R.C.§ 932(c)(4). Since he was a U.S. citizen, the petitioner filed territorial income tax returns with, and paid income tax to, the USVI. For those same years, he did not file federal income tax returns or pay federal income tax to the IRS. The IRS determined that the petitioner was not a bona fide resident of the USVI and that he was not qualified for the gross income exclusion as claimed. The taxpayers petitioned the Tax Court, challenging the IRS's deficiency notices as time barred and, in the alternative, as incorrect. The USVI moved to intervene in the cases, and the Tax Court denied its motions. The petitioner inter-pled the USVI in the

[9] Coffey v. Comm'r, 987 F.3d 808, 814 (8th Cir. 2021).
[10] *Id.*
[11] *See* Seaview Trading, LLC v. Comm'r, 858 F.3d 1281 (9th Cir. 2017).
[12] *See* Huff v. Comm'r, 743 F.3d 790, 793 (11th Cir. 2014).

proceedings, asserting that the U.S. and the USVI have "adverse and independent claims" under Fed.R.Civ.P. 22(a)(1)(A) for the same income.[13] The petitioner's attempts to have the cases dismissed for lack of jurisdiction were denied in his 2010 cases.[14]

In 2012, another related matter came before the tax court. This time, the same petitioner asserted he was a member of NASCO Corporate Finance Consultants, LLC (NASCO), a USVI limited liability company.[15] NASCO filed USVI partnership returns with the BIR for the same years involved but did not file partnership tax returns with the IRS. In this new case, petitioner maintained that the case involves a partnership item, and, therefore, the respondent should have issued a notice of final partnership administrative adjustment to the tax matters partner of NASCO pursuant to the rules of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), as opposed to issuing the petitioner a notice of deficiency. The petitioner argued that the respondent's notice of deficiency is invalid and requested dismissal of the case for lack of jurisdiction. The court denied the petitioner's motion to dismiss and held that the respondent's notice of deficiency is valid. Further, the tax courts denied intervention to the USVI in the litigation matters.

Two years later, in 2014, the Court of Appeals in the Eleventh Circuit reversed and remanded the lower courts' judgments generally holding that the USVI had "direct, substantial, legally protectable interest, of kind supporting intervention as of right."[16] The Eleventh Circuit stated that, usually, when the IRS and BIR disagree over the residency status of a taxpayer or the source of particular items of his income, the two taxing agencies consult together to "endeavor to agree upon the facts and circumstances necessary to achieve consistent application of the tax laws of the respective [g]overnments."[17] They further explained that if the taxpayer has already paid taxes to one or both of the governments, but the agencies agree that the taxpayer should have paid different amounts to each, then the taxpayer may claim a refund from the "overpaid" government or a credit from the "underpaid" government to prevent his income from being taxed more than once. However, if the agencies do not reach an agreement through the consultation process, then the taxpayer must establish his tax liability to the U.S. and the USVI

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[13] Huff v. Comm'r, 135 T.C. 605, 609 (2010).

[14] *See* Huff v. Comm'r, 135 T.C. 222 (2010); *see also* Huff v. Comm'r, 135 T.C. 605 (2010).

[15] Huff v. Comm'r, 138 T.C. 258, 260 (2012).

[16] Huff v. Comm'r, 743 F.3d 790, 792, 796 (11th Cir. 2014).

[17] *Id.* at 797.

in separate judicial proceedings. The court remanded the petitioner's cases with instruction to grant the USVI intervention. *Huff* was not the last case in which the IRS determined that a taxpayer was not a bona fide resident of the USVI and attempted to collect income tax from taxpayers residing in the USVI.

B. Coffey v. Comm'r of Internal Revenue

Appearing before the Eighth Circuit, the IRS determined that Ms. Coffey was not a bona fide resident of the USVI, and that she, along with her husband, owed federal income tax for the 2003 and 2004 tax years.[18] While *Huff*'s arguments focused on the IRS's deficiency notices being both time-barred and incorrect, the Coffeys' strategy focused solely on the 26 U.S.C. § 6501(a) three-year statute of limitations. The USVI intervened in 2011. In 2018, the Tax Court denied the Coffeys' motion for summary judgment. Upon reconsideration, the Tax Court held that the taxpayers' purported returns were filed with the correct IRS service center, as required to trigger the statute of limitations for assessment of the Coffey's documents. Though, the court stated that its conclusion "might seem strange at first,"[19] they explained that the Coffeys sent their tax returns to the BIR, but the first two pages of it somehow (without their knowledge or explicit approval) ended up at the Philadelphia office of the IRS. As a result of that filing with the Philadelphia IRS office, the Coffeys are protected by the statute of limitations. However, citing *Appleton*, the court included that "it is not unprecedented for a court to determine that a return filed in one jurisdiction may commence the period of limitations in a second tax jurisdiction."[20] Unfortunately for the Coffeys, this statement led them to several more years of complex litigation on the statute of limitations issue.

In mid-December of 2020, the Court of Appeals for the Eighth Circuit reversed the Tax Court's order, this time ruling against the Coffeys. The court held that documents filed with the BIR, which were not filed with the IRS, were not returns that could start the three-year limitations period.[21] In both instances, the courts' holding turns on the definition of "filed," "return," and what constitutes a "filing." Ultimately, the court found that Ms. Coffey's position that she was a

[18] Coffey v. Comm'r, 987 F.3d 808, 810 (8th Cir. 2021).

[19] Coffey v. Comm'r, 150 T.C. 60, 97 (2018), *rev'd*, 982 F.3d 1127 (8th Cir. 2020), *rev'd*, 987 F.3d 808 (8th Cir. 2021).

[20] *Id.* (citing Appleton v. Comm'r, 140 T.C. 273, 292 n.23 (2013)).

[21] Coffey v. Comm'r, 982 F.3d 1127, 1132 (8th Cir. 2020), *rev'd*, 987 F.3d 808 (8th Cir. 2021).

USVI resident is irrelevant because (in reality) she was a nonresident. "A failure to file a return with the correct individual, even if done in a mistake of residency, does not create a 'filed' return under 6501(a)."[22] The Coffeys requested a rehearing on the issues.

Less than three months later, in February of 2021, on rehearing, the Court of Appeals for the Eighth Circuit held that the Coffeys did not meticulously comply with federal filing requirements for USVI nonresidents to file with the IRS. Therefore, the three-year limitations period for the IRS to assess taxes never began, and the documents filed with the BIR, which were not filed with the IRS, were not filed returns and did not toll the statute of limitations.[23] Although the IRC and the IRS regulations do not define the terms "file" or "filed," a taxpayer must show "meticulous compliance" with all filing requirements of the IRC or IRS.[24] The court reasoned that because the Coffeys did not intend to file tax returns with the IRS, but only with the BIR, they did not meticulously comply with USVI nonresident federal filing requirements. The court dismissed the Coffeys' argument that filing USVI returns alone satisfied the nonresident filing requirement, which would trigger the three-year limitations period, by simply stating that the USVI and the U.S. are separate taxing entities. Further, the court found that although the BIR uses the same forms, USVI nonresident returns which are filed with the BIR are not considered to be filed with the IRS.

C. Implications of Huff and Coffey

Both *Huff* and *Coffey* present a narrative in which courts battle with determining under what circumstances the IRS initiate examination and collection

[22] *Id.* at 1133 ("The three-year statute of limitations does not run when a taxpayer who is not a bona fide USVI resident files a return with the BIR, but not the IRS, regardless of his subjective good faith beliefs as to his residency" (quoting Comm'r v. Estate of Sanders, 834 F.3d 1269, 1279 (11th Cir. 2016))).

[23] Coffey v. Comm'r, 987 F.3d 808, 812 (8th Cir. 2021).

[24] Lucas v. Pilliod Lumber Co., 281 U.S. 245, 249 (1930) (requiring "meticulous compliance" by taxpayers with all statutory conditions to begin the statute of limitations); Comm'r v. Lane-Wells Co., 321 U.S. 219, 223 (1944) (requiring compliance with IRS regulations to begin the statute of limitations); Comm'r v. Estate of Sanders, 834 F.3d 1269, 1274 (11th Cir. 2016) (Returns are "filed" if "delivered, in the appropriate form, to the specific individual or individuals identified in the Code or Regulations.") (quoting Allnutt v. Comm'r, 523 F.3d 406, 413 (4th Cir. 2008)); *cf.* Comm'r v. Lane-Wells Co., 321 U.S. 219, 223 (1944) (The purpose of filing requirements "is not alone to get tax information in some form but also to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished.").

actions against taxpayers who paid taxes to the BIR in the USVI instead of the IRS. The courts' findings and the overall procedural postures of these cases present a picture of the mirror tax systems that is perhaps more tenuous than one would expect to see in systems that have worked in concert for nearly a century. The history of the U.S. and USVI relations additionally gives rise to issues that could implicate the delicate balance in the mirrored system. When courts, such as the ones in *Huff* and *Coffey* are asked to rule on the federal government's actions related to taxation, the courts may feel the burden of potentially far-reaching policy considerations. Often, if there is non-policy matter which can resolve the matter without extending the judiciary into difficult policy positions, courts will use this way out. This may provide an explanation as to why both courts opted to find that the taxpayers in the cases were not bona fide USVI residents, thus foreclosing the more challenging policy issues.

Although these cases have slightly different fact patterns, in both cases the courts' holdings rested on preliminary findings that the taxpayers were not bona fide USVI residents. This makes it easier for the IRS to demand tax payments from those who reside in the USVI, but, whether by technicality or mistake, are not bona fide residents. These courts' findings demonstrate that the courts would rather analyze and scrutinize someone's residential status than try to dive as deep into the statute of limitations issue. This makes it more convenient for both the judiciary and the IRS. When it comes to individual taxpayers, *Huff* and *Coffey* are telling examples of how the USVI – IRS cases relate to individuals. However, the question of how courts behave when the taxpayer is an entity is not as clear. We now turn to that question to determine whether a tax return filed in the USVI by an entity starts the IRS statute of limitations.

II. THE SEAVIEW TRADING CASE

In 2017, the Ninth Circuit heard a case on appeal regarding whether entities that are disregarded for federal tax purposes may nevertheless constitute pass-thru partners under 26 U.S. § 6501(a) such that their partnership is not eligible for the small-partnership exception contained in § 6231.[25] The court preferred to look at precedent where the IRS has supported this treatment by reasoning set forth in "both formal and informal statements" but cited *Skidmore* to justify the use of

[25] *See* Seaview Trading, LLC v. Comm'r, 858 F.3d 1281, 1283 (9th Cir. 2017); *Id.* at 1287.

judicial deference.[26] When exercising *Skidmore* review of agency action, a court may consider multiple factors including the thoroughness and validity of the agency's reasoning, the consistency of the agency's interpretation, the formality of the agency's action, and all those factors that give it the power to persuade, if lacking the power to control.[27] This Seaview court found a previous Ninth Circuit ruling convincing, where the court found *Skidmore* deference warranted in light of the "rational validity" and consistent application of an agency's position, despite the existence of reasonable alternative interpretations. Here, the court decided to defer to the agency, even despite possible reasonable alternative interpretations.

The case of *Seaview Trading, LLC v. Comm'r*, went back to the Tax Court in 2019, this time on the question of a time limitation for the IRS and what constitutes "filing a return."[28] Seaview argued that the entity filed a tax return when it faxed a copy of its return to the IRS revenue agent or when it mailed a copy of its return to IRS counsel, and that it constituted a proper return to activate the statute of limitations. The Tax Court disagreed and aligned the *Seaview* case with *Friedman*, where a revenue agent requested copies of a taxpayer's return for 1989 and 1990, and the revenue agent believed the taxpayer filed returns for those years although the taxpayer did not.[29] The court stated that because Seaview's accountant "led the respondent to believe that the return had been previously filed in 2002," Seaview did not intend to file a return when it faxed a copy to the agent.[30] Essentially, the court equated an element of deception in *Friedman* with Seaview's lack of intention to file taxes when Seaview responded to the IRS agent. Although unlike *Friedman*, Seaview believed that its returns had already been filed. We discuss the Seaview's circumstances in more detail below.

A. Facts

Seaview's principal place of business was in California, but it was formed as a Delaware limited liability company by Robert Kotick and his father, Charles Kotick. Robert owned 99.15% of Seaview through AGK Investments LLC (AGK), and Charles owned 0.85% of Seaview through KMC Investments, LLC (KMC). In November of 2001, Seaview "entered into a straddle transaction through a

[26] *Id.* (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (an agency's ruling is eligible to claim respect according to its persuasiveness).

[27] *Id.* (citing *Tualatin Valley Builders Supply, Inc. v. U.S.*, 522 F.3d 937, 942 (9th Cir. 2008).

[28] Seaview Trading, LLC v. Comm'r, 118 T.C.M (CCH) 265 (2019).

[29] *Id.* at 269; Friedmann v. Comm'r, 80 F. App'x 285 (3d Cir. 2003).

[30] Seaview Trading, LLC v. Comm'r, 118 T.C.M. (CCH) 265, 269 (2019).

common trust fund" but the trust fund terminated the transaction later that year and allocated over $35 million in loss to AGK and KMC.[31] Petitioner, Seaview, claims it filed a Form 1065 "U.S. Return of Partnership Income" for 2001 in July of 2002. However, on July 27, 2005, an IRS agent issued a letter to Seaview stating the Commissioner never received Seaview's 2001 Form 1065 ("Form"). On September 23, 2005, Seaview's accountant faxed a copy of Seaview's 2001 Form to the IRS agent and included a certified mail receipt supporting Seaview's claim that the return was initially sent to the Commissioner on July 3, 2002.

In October of 2005, the Commissioner selected Seaview's 2001 tax year for examination. On July 24, 2007, Seaview's attorney sent a copy of Seaview's 2001 Form to respondent's counsel. The cover letter stated that the document was a copy of Seaview's 2001 Form. In October of 2010, more than three years after Seaview both faxed the 2001 Form and sent a copy to respondent's counsel, the Commissioner issued an FPAA for 2001 to petitioner claiming Seaview never filed its Form. Seaview filed a motion for summary judgment with the Tax Court.

B. IRS Arguments

The IRS's argument is centered on its assertion that it issued the FPAA within the period of limitations because Seaview never filed a return for the 2001 tax year. Generally, "for a taxpayer to secure the benefit of a limitations period bar, there must be meticulous compliance by the taxpayer with all named conditions."[32] One requirement is that the return must be filed at the designated place of filing returns.[33] Specifically, "the conditions for commencing the running of the statute of limitations, a taxpayer must file his return where section 6091 or the regulations promulgated thereunder require the return to be filed."[34] The IRS argued that usually the period for assessing any income tax attributable to partnership items for a partnership taxable year will not expire before three years after (1) the partnership files its return for the taxable year in question or (2) the last day for filing such return for such year (without extensions).[35] However, the Commissioner may assess a tax attributable to a partnership or affected item at any time if the partnership does not file a return. As such, the IRS contends that Seaview did not file a return because it failed to submit the return at the proper

[31] *Id.* at 268.

[32] *Id.* at *3 (citing Winnett v. Comm'r, 96 T.C. 802, 807–08 (1991)).

[33] *Id*.

[34] Winnett, 96 T.C. at 808.

[35] Seaview Trading, LLC v. Comm'r, 118 T.C. 265, 267 (2019).

place for filing and failed to meticulously comply to secure the benefit of a limitations period bar. Therefore, as the IRS asserts, the limitations period never began to run.

Further, the IRS argues that neither the copy of the 2001 Form 1065 that the accountant faxed in 2005 nor the copy Seaview's attorney mailed in 2007 qualifies as a return. A document must satisfy four elements to trigger the running of the period of limitations.[36] The document must (1) contain sufficient data to calculate the taxpayer's liability, (2) purport to be a return, (3) be an honest and reasonable attempt to satisfy the requirements of the revenue laws, and (4) be executed under the penalties of perjury.[37] The IRS's main arguments focus on whether the purported copy of the return Seaview either faxed to the IRS agent or mailed to the IRS counsel purported to be a return. The IRS contends that because Seaview labeled the forms as a "copy" in its faxing and mailing, that Seaview did not intend to file a return, so the second requirement for a document having to "purport" to be a return is not met. Ultimately, these arguments were convincing for the court.

C. Taxpayer Arguments

Seaview sat in the unenviable position of needing to prove first that it *had* filed a return at all. If Seaview could prove it had filed a return, they would then have to prove that the filed return qualified as a "return" for IRS and case law purposes. Finally, Seaview had to show that, if it had not filed a return as it alleged, their responses to IRS agents and counsel constituted the "filing" of a "return" under then-existing guidance from the IRS itself.

Seaview argued and alleged consistently up through its opening brief to the Ninth Circuit that it filed its Form 1065 with the IRS center in Ogden, Utah, on or about July 3, 2002, and that the FPAA was issued more than three years after the Seaview form was provided to the Respondent.[38] Having conceded the point here, Seaview was unwilling to walk back that any of the following "delinquent" submissions did not constitute a return.

The first instance when the IRS received a copy of the 2001 Seaview Form 1065 was in response to a request by a revenue officer in 2004 during Robert Kotick's individual tax audit for the 2001 and 2002 tax years.[39] Seaview notes in

[36] *Id.* at 267.

[37] *See* Beard v. Comm'r, 82 T.C. 766, 777 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986).

[38] Brief of Petitioner-Appellant at 10, Seaview Trading v. Comm'r, No. 20-72416 (9th Cir. Jan. 4, 2021).

[39] *Id*. at 11.

its brief that in response to their FOIA request, the assigned revenue agent had received and reviewed the Seaview 1065.[40] On July 27, 2005, nearly one month after the alleged deadline had passed, an IRS agent sent a request for information regarding Seaview's Form 1065.[41] Seaview contends that it filed its 2001 Form 1065 again when their accountant faxed a copy of the return to the specifically named IRS agent assigned to this matter on September 23, 2005.[42] The IRS both confirmed receipt of the return and opened an audit for the partnership's federal tax return for 2001—thus removing any doubt in the Seaview parties' minds that the IRS had received and accepted the 2001 return.[43] Finally, Seaview argues that it filed its 2001 Form again when its attorney sent a copy to IRS counsel on July 24, 2007.

Seaview pointed to decades of administrative behavior, pronouncements, and other activity supporting their argument that the IRS accepts a delinquent return when the taxpayer delivers paperwork meeting the case law standards for a "return" to a duly appointed revenue official.[44] The Internal Revenue Manual, the procedural instructions for IRS agents, states that "[w]hen a return is delinquent, the IRS agent conducting the examination must ask the taxpayer to 'deliver the returns promptly to the examiner along with a written statement under penalty of perjury, giving all the facts which caused the delay.'"[45] The agent must then make a copy of the delinquent return with the notation that the exam section holds the original delinquent return and to process the copy as an original.[46] With the IRS's own technical manual as support, it would appear Seaview made a convincing and appropriate argument for how a delinquent return should have been treated. In its reply brief to the court, Seaview further made the point that the cases the IRS cited to basically make it impossible for any taxpayer to "file" a delinquent return today[47] and if any of their three proposed dates were used, then the FPAA was

[40] *Id*. The agent further stated repeatedly in the administrative file that the deadline for any action against Seaview related to that 1065 was on July 2, 2005.

[41] *Id*. at 11–12.

[42] Brief of Petitioner-Appellant at 12, Seaview Trading, LLC v. Comm'r, No. 20-72416 (9th Cir. Jan. 4, 2021).

[43] *Id*.

[44] *Id*. at 24-28.

[45] I.R.M. § 4.12.1.7.2.1 (Oct. 5, 2010).

[46] I.R.M. § 4.12.1.12 (Oct. 5, 2010).

[47] Reply Brief of Petitioner-Appellant at 7, Seaview Trading, LLC v. Comm'r, No. 20-72416 (9th Cir. April 26, 2021) (citing to IRS Brief 26-27 references to numerous pre-

issued after the expiration of the period of limitations on assessment. The success of Seaview's argument for summary judgment depended on whether the court found that Seaview filed a proper return either by submission to an agent in 2004 during an individual tax year audit, by fax in 2005 to a separate IRS agent, or by mail to IRS counsel in 2007.

D. Court Holding

The court found that Seaview did not submit a return to the proper place for filing when it faxed a copy to the IRS agent, nor when it mailed a copy to the IRS's attorney. The instructions for Form 1065 for 2001 clearly state that the proper service center for filing was the Ogden, Utah, service center. Caselaw holds that a revenue agent is not a designated filing place,[48] and neither of Seaview's purported returns were forwarded to the Ogden service center. In pertinent part, the Tax Court found that Seaview sent what purported to be copies of its return to places not designated in the Code or regulations. Therefore, Seaview did not file its return when it faxed a purported copy to the IRS agent, nor when it mailed a purported copy to IRS's counsel. Quite simply, Seaview failed to meticulously comply with the filing requirements.

Secondly, the Tax Court found that Seaview's documents did not satisfy the four elements to toll the statute of limitations on assessment because the documents Seaview submitted did not constitute returns. To trigger the running of the period of limitations the document must: (1) contain sufficient data to calculate the taxpayer's liability, (2) purport to be a return, (3) be an honest and reasonable attempt to satisfy the requirements of the revenue laws, and (4) be executed under the penalties of perjury.[49] When Seaview's accountant faxed a purported copy of the return to the IRS agent in 2005, he enclosed a copy of certified mail receipt purporting to show that the return was previously filed in 2002. Seaview's accountant thus led the IRS to believe that the return was filed in 2002. Therefore,

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World War II precedents raising distinctions now obsolete by statutory amendments); *E.g.*, Friedmann v. Comm'r, 82 T.C.M. (CCH) 381, at *7 (T.C. 2001); Green v. Comm'r, 65 T.C.M. (CCH) 2347, at *7 (T.C. 1993), *aff'd*, 33 F.3d 1378 (5th Cir. 1994); Metals Refin. Ltd. v. Comm'r, 65 T.C.M. (CCH) 2171, at *7 (T.C. 1993); Espinoza v. Comm'r, 78 T.C. 412, 420-21 (1982).

[48] W.H. Hill Co. v. Comm'r, 64 F.2d 506 (6th Cir. 1933), *aff'd* 22 B.T.A. 1351 (1931), *and* 23 B.T.A. 605 (1931); Green v. Comm'r, 65 T.C.M. (CCH) 2347, 2353 (1993), *aff'd* 33 F.3d 1378 (5th Cir. 1994); *see* Metals Ref. v. Comm'r, 65 T.C.M. (CCH) 2171, 2179-80 (1993).

[49] *See* Beard v. Comm'r, 82 T.C. 766, 777 (1984), *aff'd* 793 F.2d 139 (6th Cir. 1986).

the court found that Seaview did not intend to file a return when it provided copies to any of the various revenue agents. The Tax Court found the same problem regarding to the mailing of the purported copy of the return in 2007. Seaview's attorney enclosed with the document a cover letter stating that the document was a "copy of its 2001 Form 1065." This indicated to the Tax Court that Seaview believed it had previously filed its return and, thus, Seaview did not intend to file a return when it mailed a copy to respondent's counsel. In conclusion, the Tax Court found that Seaview did not file its returns in 2001, and that the statute of limitations did not begin to run in 2005 or in 2007, so the issued FPAA was valid. Seaview's appeal is pending before the Ninth Circuit.

III. ANALYSIS

Related to the dominant question of when a tax return filed in the USVI starts the IRS statute of limitations, *Seaview* tells us how Tax Courts determine what constitutes a "return" and how they determine whether there was a filing when a party argues that an IRS assessment is outside of the scope of the statute of limitations. The lesson in *Seaview* aligns with the courts' reasonings in *Huff* and in *Coffey*. When putting these three cases together, a pattern emerges in the Eighth, Ninth, and Eleventh Circuits. Although IRS or IRC regulations do not define the terms file or filed, these courts seem to place a high bar of "meticulous compliance" for taxpayers, and the courts are stringent on this matter, even in cases of mistake or when the IRS action exceeds the three-year limit rather drastically. There is a rather obvious judicial deference that airs on siding with the IRS, but for good reason. Even with American tax values in the backdrop, the U.S. tax courts cannot afford to set a precedent where they actively limit or somehow inhibit an administrative agency's Congressional-given duty, such as the IRS's authority to collect taxes from U.S. citizens. An alternative precedent would set a far lower bar for taxpayer compliance with tax law, creating a sort of safety net for those who do not "meticulously comply" and who slip through the IRS's fingers within the three years. One may argue that three years is plenty of time for an administrative agency to fulfill its duties, but that is not for the U.S. tax courts to decide. The task for U.S. tax courts is to clearly interpret what constitutes a filing of a tax return, and what constitutes a return, which *Huff*, *Coffey*, and *Seaview* successfully do.

A. How Seaview Fits into USVI–IRS History

Seaview does not directly deal with parties in the USVI, but the entire premise

of the case is relevant to USVI – IRS history regarding the question of when does a tax return filed in the USVI start the IRS statute of limitations. Like other USVI – IRS disputes regarding tax filing and IRS assessment timelines, *Seaview* presents analysis on two relevant points for USVI – IRS disputes: (1) taxpayers must submit their returns to the proper place for filing to toll the statute of limitations; and (2) the documents submitted must be in the proper form for a taxpayer's submission to be deemed a properly filed return. Regardless of whether it was enough to just file with the BIR or the taxpayer was also required to file with the IRS, there must be a properly filed return. The taxpayer must also be sure that they are using the proper form in submitting their returns. Since the BIR and IRS use the same forms, there is less room for error on this point. In short, for a tax return filed in the USVI to start the IRS statute of limitations, the taxpayer must be sure that the proper forms are filed correctly with the proper place of filing. Anything less would not be meticulous compliance.

As evidenced in *Huff*, and emphasized in *Seaview*, the essential element to argue about the statute of limitations is the element of location – the taxpayer's residency and recipient entity for a filing. Specifically, it is of utmost importance that the taxpayer identifies the correct location for filing. To file with only the BIR, the taxpayer must first ensure that they are truly and certainly a bona fide resident of the USVI. As demonstrated by *Huff*, if the taxpayer files in the USVI but is not a bona fide resident, then the statute of limitations is not applicable until or unless the taxpayer also properly files the return with the IRS. *Seaview* illustrates how taxpayers must pay specific attention to the instructions on the forms. Faxing a copy of the return to an IRS agent or mailing a copy to the IRS's attorney will be insufficient to deem the taxpayer's return as filed.

In perhaps a better comparison, both *Coffey* and *Seaview* address the issues with mistakes in the filing processes. In *Coffey*, the taxpayers' documents filed with the BIR were somehow, either by mistake or luck, sent to the Philadelphia office of the IRS. The Tax Court found that mistaken filing sufficient to start the statute of limitations for the taxpayers. Of course, the Eighth Circuit ultimately held that the taxpayers did not meticulously comply with the federal filing requirements for USVI nonresidents to file with the IRS. As such, the three-year limitations period for the IRS to assess taxes never began, and documents filed with the BIR—which were not filed with the IRS—were not filed returns that could start the three-year limitations period. Similarly, *Seaview* is a reminder that taxpayers must meticulously comply with the filing instructions for returns. Mistakes in filing or simply putting forth a good faith effort is not enough to be

considered meticulous compliance and will not start the running of the statute of limitations period.

B. *Seaview Likely Properly Decided*

As mentioned, *Seaview* is up for appeal before the Ninth Circuit. This invites the question of whether the case was properly decided. Since *Coffey* was decided at the onset of 2021, it is likely that the *Seaview* court will find that *Seaview* was decided properly, especially concerning the issue of whether the returns were filed. Although the Eighth Circuit's analysis in *Coffey* is only persuasive authority to the Ninth Circuit, the *Coffey* analysis cites the U.S. Supreme Court as well as the Eleventh and Fourth Circuits. The consolidation in *Coffey*'s analysis may be particularly persuasive for the reviewing court in *Seaview*.

Specifically, *Coffey* methodically analyzed the terms of when a return is "filed," which is especially relevant for *Seaview*. Per the U.S. Supreme Court, a "taxpayer must show 'meticulous compliance' with all filing requirements in the [IRC] or IRS regulations."[50] Further, returns are "filed" if "delivered, in the appropriate form, to the specific individual or individuals identified in the Code or Regulations."[51] The purpose of filing requirements is not solely to get tax information but also to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished.[52] In *Seaview*, the taxpayers did not meticulously comply with the filing requirements because the IRS never received their Form.

Further, the taxpayers in *Seaview* did not follow the clear instructions on the form of their filing. The filings were not in the appropriate form, nor addressed to the necessary individual(s) identified on the form in either their fax to the IRS agent or the mailed copy to the IRS attorney. It is not enough that the taxpayers in *Seaview* gave the IRS the tax information "in some form."[53] In totality, the taxpayers could have corrected their mistakes anytime from 2002 to 2010, and yet they did not properly file their Form even after several interactions with the IRS. It would seem that if any of the Seaview parties had submitted the Form 1065 as an original, delinquent return rather than as a copy, the court *may* have reached a different conclusion.

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[50] Coffey v. Comm'r, 987 F.3d 808, 812 (citing Lucas v. Pilliod Lumber Co., 281 U.S. 245, 249 (1930)).

[51] *Id.* (citing Comm'r v. Estate of Sanders, 834 F.3d 1269, 1274 (11th Cir. 2016)).

[52] *Id.* at 812-13 (citing Comm'r v. Lane-Wells Co., 321 U.S. 219, 223 (1944)).

[53] *Id.*

The cause of action in *Seaview* is nearly two decades old. Even if the taxpayers in *Seaview* attempt to argue that the IRS's actual knowledge of the income began the statute of limitations, the court in *Coffey* clearly held that the statute of limitations begins only after the taxpayer's "return was filed," not when the IRS had actual knowledge of the return or the income.[54] Likely, the Ninth Circuit will find *Coffey*'s recent opinion and analysis persuasive in addressing similar questions and issues.

CONCLUSION

Returning to the primary question, a tax return filed in the USVI does not always start the IRS statute of limitations. It may, if the taxpayer meticulously complied with all applicable filing requirements, paying particular attention to the entity with whom they must file based upon their actual—not perceived—USVI residency status. Courts express little empathy for mistakes in filings, and generally prefer the IRS and BIR to work together before acting within the court systems. The mirror tax systems between the U.S. and USVI have managed residence-related tax issues together for about a century. Such history suggests that the two systems should be capable of navigating issues related to the commencement of the IRS's statute of limitations. However, recent case law demonstrates that this is an area of possible strain in the intermingled systems' rapport. Central to the instant question is the importance of USVI's (and subsequently BIR's) status as an unincorporated and organized territory of the United States. Courts must be careful not to interpret the statute of limitations provision to give the IRS an open-ended statute of limitations to assess taxes against any taxpayer it does not believe to be a bona fide USVI resident.[55] While it is true taxpayers might end up in court long after three years have passed, the central question of their litigation would concern whether they are bona fide USVI residents, not the merits of their tax liability.[56] As a result, it is unlikely that courts will be free to interpret the law to give the IRS an eternally open statute of limitations to assess taxes against taxpayers it doesn't believe are bona fide USVI residents.

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[54] *Id.* at 813 (citing Heckman v. Comm'r, 788 F.3d 845, 847 (8th Cir. 2015)).
[55] *See* Coffey v. Comm'r, 150 T.C. 60, 95 (2018).
[56] *Id.*