

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SUMNER REDSTONE,)	
)	
Petitioner,)	
)	
v.)	Docket No. 8097-13.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
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ORDER

This case is calendared on the Court’s March 3, 2014, Los Angeles, California trial session. The case involves a determination by the Internal Revenue Service (IRS or respondent) of a deficiency in Federal gift tax, and of related additions to tax, for the taxable period ended September 30, 1972. Respondent mailed the notice of deficiency to petitioner on January 11, 2013, and petitioner timely sought review by the Court of respondent’s determination.

No gift tax return was filed by petitioner for the relevant tax period, and I.R.C. § 6501(c)(3) accordingly provides that the tax for such period “may be assessed * * * at any time.” Notwithstanding the timeliness of the notice of deficiency under the relevant statute of limitations, petitioner asserts in his petition that respondent should be estopped by equitable principles from asserting that petitioner made taxable gifts in 1972.

On October 18, 2013, petitioner moved for judgment on the pleadings, contending that respondent’s determinations are barred by the equitable doctrine of laches and the Due Process Clause of the Fifth Amendment. Although petitioner has requested oral argument on its motion, the Court has concluded that oral argu-

ment would be of no assistance to it. The Court will accordingly resolve this matter on the basis of petitioner's motion and respondent's response thereto.

The Court may enter judgment on the pleadings when there are no material facts in dispute and only legal issues remain for the Court to decide. See Nis Family Trust v. Commissioner, 115 T.C. 523, 538 (2000). The moving party bears the burden of showing that the pleadings do not raise any issue of material fact and that he is entitled to judgment as a matter of law. Id. at 537. Thus petitioner bears the burden of proving that judgment on the pleadings is proper.

It is well settled that the United States is not subject to the defense of laches in enforcing its rights. See United States v. Summerlin, 310 U.S. 414, 416 (1940); Guaranty Trust Co. v. United States, 304 U.S. 126 (1938); United States v. Menatos, 925 F.2d 333, 335 (9th Cir. 1991); Wright v. Commissioner, T.C. Memo. 2005-5, 89 T.C.M. (CCH) 662, 666. The inapplicability of the laches doctrine is especially clear where (as here) the Government seeks to enforce tax claims that are governed by an express statute of limitations. In such cases, the "timeliness of Government claims is governed by the statute of limitations enacted by Congress." Fein v. United States, 22 F.3d 631, 634 (5th Cir. 1994). Accord, Kohler v. Commissioner, T.C. Memo. 2008-127, 95 T.C.M. (CCH) 1494, 1496-97; Wright v. Commissioner, 89 T.C.M. at 666.

While recognizing the settled rule that laches does not apply against the United States, several courts have suggested, in dicta, that this defense might be available against the Government in certain legal contexts. See United States v. Dang, 488 F.3d 1135, 1143-44 (9th Cir. 2007) ("[I]t remains an open question in this circuit as to whether laches is a permissible defense to a denaturalization proceeding."); see JANA, Inc. v. United States, 936 F.2d 1265, 1269 (Fed. Cir. 1991) ("[E]ven if laches is available in some situations as a defense against a government claim for repayment on a contract, this clearly is not such a case."). Cf. Cayuga Indian Nation of New York v. Pataki, 413 F.3d 266, 279 n.8 (2d Cir. 2005) (recognizing that "laches is not available against the federal government when it undertakes to enforce a public right or protect a public interest," but distinguishing situation where United States sought to intervene as a plaintiff in a private lawsuit).

In the instant case, the Government seeks to enforce a public right, in the form of a federal tax claim, that is governed by an express statute of limitations enacted by Congress. Petitioner has cited no case, and we have discovered none,

in which a court has applied laches against the United States in a situation such as this.

Even assuming *arguendo* that laches could apply in this scenario, the party asserting this equitable defense must establish certain facts. Petitioner would need to demonstrate, for example, that the IRS was aware of the 1972 gifts and sat on its rights; that petitioner has suffered “undue prejudice” because of this delay; and that petitioner “comes into equity with clean hands.” See, e.g., Fridovich v. Commissioner, T.C. Memo. 2001-32, 81 T.C.M. (CCH) 1143, 1146. Because there are material factual disputes concerning each of these points, disposing of the laches issue via motion for judgment on the pleadings would be wholly inappropriate in any event.¹

In light of the foregoing, it is

ORDERED that petitioner’s Motion for Judgment on the Pleadings is denied.

**(Signed) Albert G. Lauber
Judge**

Dated: Washington, D.C.
December 5, 2013

¹We reach the same conclusion concerning petitioner’s Due Process argument, which relies on the same factual predicate as his laches argument. Petitioner’s Due Process rights are fully protected by his ability to litigate his claims in this Court.