NO SETTLEMENT WITHOUT AUTHORIZED SIGNATURE AND MUTUAL ASSENT
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where else to put it, was not enough to make it an estimated payment.

The IRS's treatment of the remittance in the instant case was unclear, and there was contradicting evidence as to whether it treated the remittance as an estimated payment or a deposit. Irrespective of the Service's treatment and based on the "totality of the circumstances," however, the court concluded that the facts, as stated above, were sufficient to determine that a payment was a deposit and granted the taxpayer's motion for summary judgment.

The court's decision in favor of the taxpayer seems consistent with the taxpayer's lack of sophistication in federal tax matters and his reliance on an accountant. It remains to be seen whether the same result would have been reached if the taxpayer had been more sophisticated in federal tax matters and had not relied on a tax advisor.

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In *Burton*, TCM 2009-60, the Tax Court had to determine whether the IRS and the taxpayers entered into a binding settlement agreement when the taxpayers signed a closing agreement prepared (but not signed) by the IRS and provided a check for the settled tax liability. The Tax Court found that no binding agreement existed without the authorized signature of an IRS representative and no mutual agreement on essential terms was reached.

The taxpayers in this case transferred their stock in a corporation to an affiliated employee stock ownership plan (ESOP), which in turn sold the assets of the corporation to an unrelated third party. The IRS determined a deficiency because the taxpayers did not report any income from the transfer of the stock to the ESOP or from the sale of the assets of the corporation by the ESOP. The Service's position was to ignore the transfer of the stock to the ESOP, treat the sale of the assets by the ESOP as a direct sale by the taxpayers, and tax them on the gain.

After taking into consideration the hazards of litigation, the IRS Appeals Officer and the taxpayers settled on the amount of the tax liability. A closing agreement was prepared by the Appeals Officer and sent to the taxpayers. The taxpayers believed that the amount indicated in the closing agreement, along with Form 870-AD, "Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment," included the interest charge on the disputed tax liability. Subsequently, the taxpayers signed and mailed the closing agreement, along with a check on which they wrote the words "paid in full," to the IRS. The Appeals officer refused to process the check because it did not include statutory interest on the deficiency and no representative of the IRS had signed the closing agreement. The taxpayers argued that a binding settlement agreement was in place and the IRS breached the terms of the agreement by not accepting the check in full satisfaction of the disputed claim.

The Tax Court ruled that the law applicable to administrative settlements involving federal income taxes is well established. Section 7121 and the regulations thereunder require that a closing agreement be submitted and executed on specific forms prescribed by the IRS. Reg. 601.106(a) and Delegation Order No. 66 provide that the final authority over administrative settlements involving federal income taxes is delegated to certain authorized officers. In this case, the Tax Court determined that the closing agreement was not executed by an authorized IRS representative, including the Appeals Officer or the Closing Agreement Coordinator.

The Tax Court stated that once a case is docketed in Tax Court, different rules for a settlement agreement apply. Particularly, the Tax Court pointed to *Manko*, TCM 1995-10, in which it ruxwled that a settlement agreement may be reached through an offer and acceptance made in writing, or even in the absence of writing. Generally, the court will look to determine whether essential terms have been mutually agreed on through an offer and acceptance. In this case, the Tax Court found that no settlement was reached between the taxpayers and the IRS because the evidence was inconclusive as to whether the amount of interest on the tax liability was affirmatively included or excluded from the closing agreement. In conclusion, the Tax Court ruled that there was no binding agreement without any authorized signature and mutual assent on the inclusion or exclusion of interest.

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