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## Taxpayers Should File Telecommunications Excise Tax Refund Claims in January To Keep the Statute of Limitations Open Pending Outcome of Radio Shack's Class Action Against the United States

If you pay for long-distance telephone calls based on the duration but not the distance of your calls, you are a prospective class member in the class action Radio Shack filed against the United States on January 10, 2006. Radio Shack filed the class action in the United States Court of Federal Claims seeking refunds of telecommunications excise taxes on behalf of itself and all taxpayers who erroneously paid excise tax on long-distance service for which the charge did not vary by the distance of the calls. Three federal circuit courts of appeal already have ruled in favor of taxpayers on the issue.

### Refunds Based On Plain Language of Excise Statute

The Internal Revenue Code imposes a 3 percent excise tax on toll telephone service. The excise tax is collected by telecommunications providers from their customers and paid over to the IRS quarterly. Toll telephone service is defined to include "a telephonic quality communication for which there is a toll charge which *varies in amount with the distance and elapsed transmission time of each*

*individual communication...*" (emphasis added). Taxpayers have asserted that it is clear from the plain language of the statute that the excise tax does not apply to charges that vary only by the duration and not the distance of the calls. The IRS has argued that Congress intended to tax all long-distance telephone service and that the statute should be interpreted in light of that intent to impose the tax on long-distance charges despite changes in billing practices in the telecommunications industry.

### Favorable Federal Court Decisions

The Sixth, Eleventh and the District of Columbia Circuit Courts of Appeal as well as several federal district courts have agreed with taxpayers and held, based on the plain language of the excise tax statute, that the telecommunications tax applies to long-distance charges that vary by the duration *and* distance of the calls, but not to charges that vary only by the duration of the calls. The Eleventh Circuit Court of Appeals in *American Bankers Group v. United States*, 408 F.3d 1328

(11th Cir. 2005), overturned the only district court that had found in favor of the IRS on the issue. The courts have emphasized that Congress can amend the statute to keep pace with changes in telecommunications industry billing practices if Congress chooses to do so.

#### **Recommended Action**

Taxpayers seeking refunds of telecommunications excise tax must file refund claims within the three-year statute of limitations. The three-year period is measured from the due date of the excise tax returns, which is the last day of the month following the end of

each calendar quarter. Accordingly, taxpayers should preserve their right to obtain a refund of telecommunications excise tax for the fourth quarter of 2002 by filing a refund claim by January 31, 2006. Taxpayers also should file refund claims for subsequent quarters to keep the statute of limitations open while the Radio Shack class action is litigated.

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