

**United States Court of Appeals
For the First Circuit**

No. 13-2144

FRESENIUS MEDICAL CARE HOLDINGS, INC.,
Plaintiff, Appellee,

v.

UNITED STATES OF AMERICA
Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[Hon. Douglas P. Woodlock, U.S. District Judge]

Before
Thompson, Baldock and Selya,
Circuit Judges.

August 13, 2014

SELYA, Circuit Judge. This tax-refund litigation requires us to explore the uncertain terrain surrounding the tax treatment of settlement payments made under the False Claims Act (FCA), 31 U.S.C. §§ 3729-3733. We hold, as a matter of first impression in this circuit, that in determining the tax treatment of an FCA civil settlement, a court may consider factors beyond the mere presence or absence of a tax characterization agreement between the government and the settling party. While this holding may be at odds with the decision in Talley Industries Inc. v. Commissioner, 116 F.3d 382 (9th Cir. 1997), we are convinced that generally accepted principles of tax law compel us to part company with the Ninth Circuit.

* * *

The case before us involves the tax treatment of roughly \$127,000,000 paid to the government in partial settlement of a kaleidoscopic array of claims. The district court concluded that where, as here, the parties had eschewed any tax characterization, the critical consideration in determining deductibility was the extent to which the disputed payment was compensatory as opposed to punitive. The jury found that a large chunk of the money (\$95,000,000) was deductible. Accepting this finding, the court ordered tax refunds which, with accrued interest, totaled more than \$50,000,000. The government appeals. We take note of the district court's skillful handling of this complicated litigation, and we affirm.

* * *

Affirmed.