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The facts

6. In June 2006, the applicant, a United States citizen, joined the Office of the United Nations High Commissioner for Refugees.
7. In April 2007, she submitted her United States income tax return for the year 2006 to the Income Tax Unit of the United Nations Secretariat; and in March 2008, she submitted her tax return for the year 2007. No tax was due for the two years.
8. On 24 May 2008, the Income Tax Unit informed her that, since she owed no federal income tax for the year 2007, she could not claim any refund from the United Nations.
9. On 26 June 2008, the Income Tax Unit wrote to inform her that she could not claim any refund from the United Nations for either 2006 or 2007 because she did not owe the IRS any tax on salaries and emoluments received from the United Nations for 2006 and 2007.
10. On 10 September 2008, following several e-mails from the Applicant to other services, the Income Tax Unit confirmed the aforementioned information to the Applicant and informed her that she could appeal to the United Nations Administrative Tribunal.
11. On 2 November 2008, the applicant requested the Secretary-General to review the decision of 10 September 2008. This request was rejected on 8 January 2009.
12. On 6 February 2009, the applicant submitted an appeal to the Geneva Joint Appeals Board.
13. In accordance with the transitional measures laid down in General Assembly resolution 63/253, the case was transferred to the United Nations Dispute Tribunal on 1 July 2009.

Judgment

14. Staff rule 111.2 (a) provides:

“A staff member wishing to appeal an administrative decision, pursuant to staff regulation 11.1, shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such a letter must be sent within two months from the date the staff member received notification of the decision in writing”.
15. The applicant does not dispute that, by the decisions dated 24 May and 26 June 2008, she was informed by the Income Tax Unit of the rejection of her requests to be refunded for staff assessment deductions from her salary and other emoluments received from the Organization in 2006 and 2007. While the applicant subsequently reiterated her requests to the Unit to receive these refunds, it was not until 2 November 2008, following an e-mail dated 10 September 2008 confirming the previous refusals, that she requested the Secretary-General to review the decisions in question, in other words after the two-month deadline stipulated in staff rule 111.2 (a). Thus, since the request for review by the Secretary-General was submitted late, the appeal to the Geneva Joint Appeals Board was not receivable.
16. However, before rejecting this application, the Tribunal must consider whether the failure to meet the deadline might have been caused by incorrect information

provided by the Administration. In this case, on 10 September 2008, the date when the Income Tax Unit confirmed to the applicant its previous refusals and informed her that she could appeal to the United Nations Administrative Tribunal, the applicant had already exceeded the time limit to contest the decisions of 24 May and 26 June 2008. Thus, incorrect information provided by the Administration concerning the possibility of appealing to the United Nations Administrative Tribunal was not the reason for the lateness. While the applicant maintains that she preferred to resort to negotiation, in accordance with the Organization's recommendations to staff members, the fact remains that this did not absolve her from compliance with the deadline stipulated in the Staff Rules, including with respect to her request for review by the Secretary-General.

17. It follows from the above that the application is not receivable by the United Nations Dispute Tribunal because it is time-barred.

18. For these reasons, the Tribunal DECIDES:

The application is rejected.

Judge Jean-François Cousin

Dated this 14th day of October 2009

Entered in the Register this 14th day of October 2009

Víctor Rodríguez, Registrar, UNDT, Geneva
