riods.[129] Finally, it would satisfy the interests of both the taxpayer and the Service without violating a statutory scheme envisioned by Congress to be vital in extraordinary circumstances. Even if the Supreme Court decides to completely affirm the no-deficiency positions of the Second and Seventh Circuits expressed in *Laing v. United States*[130] and *Williamson v. United States*,[131] the future may be brighter for the taxpayer. The American Bar Association's Committee On Collections and Limitations reports that, in such a case, the Committee would draft a legislative recommendation adopting the Sixth Circuit's requisite deficiency position noted in *Rambo*.[132] However, even if the legislature would follow such a lead, the relief will be a long time in coming.

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129. Note, *Termination of Taxable Year: Procedure In Jeopardy*, 26 TAX L. REV. 829, 841 (1971).
130. 496 F.2d 853 (2d Cir. 1974).
131. 31 Am. Fed. Tax R.2d 73-800 (7th Cir. 1971).
132. Report, 28 TAX LAWYER 351 (1975).

Case Notes

CIVIL PROCEDURE—EQUITABLE ESTOPPEL APPLIES TO BAR OPERATION OF STATUTE OF LIMITATIONS WHERE A TIMELY ATTEMPT TO EFFECT SERVICE OF ORIGINAL NOTICE WAS THWARTED BY ADDRESS MISREPRESENTATIONS.—*DeWall v. Prentice* (Iowa 1974) (en banc).

Plaintiff was injured when the tractor he was driving was struck from the rear by a truck owned by defendant Prentice and operated by another defendant. Plaintiff brought an action to recover damages sustained as a result of the accident. The action was filed July 9, 1971, and original notices were delivered to the sheriff for service on both defendants five days before the running of the statute of limitations. After unsuccessfully attempting to serve the defendants in Iowa, the sheriff notified plaintiff's counsel by mail that the owner of the truck was living in Minnesota and the operator of the truck was residing in the state of Washington. By this time the two year limitation period had elapsed[1] but plaintiff proceeded to obtain service upon both defendants by way of the Iowa nonresident motorist statute.[2] Defendants then moved to dismiss the action arguing that no legal action was effectively commenced by plaintiff within the two year limitation period. Plaintiff resisted the motion arguing that defendants had misrepresented their addresses as being within the state of Iowa and plaintiff had detrimentally relied on these misrepresentations. Considering the circumstances, plaintiff urged, it was necessary to invoke the doctrine of equitable estoppel to bar operation of the statute of limitations. The trial court overruled defendants' motion and the case proceeded to trial resulting in judgment on jury verdict for the plaintiff. On appeal, the Supreme Court of Iowa, *held*, affirmed, reversed on other grounds,[3] the doctrine of equitable estoppel may deny the defense of the statute of limitations where plaintiff relies on defendant's representations of Iowa residence and makes

1. IOWA CODE § 614.1(2) (1975).
2. IOWA CODE § 321.498-505 (1975).
3. The court considered two other issues: (1) whether instructions given at trial were such as to permit a jury award of double damages to plaintiff, and (2) whether the jury was instructed regarding loss of plaintiff's income and earning capacity in the absence of adequate evidential support.

The court indicated that on the first issue the trial court committed reversible error, stating that the instructions, as given, without a related instruction precluding an allowance for both lost earnings *and* loss of support as a parent or spouse, to the extent such lost earnings would be the source of any loss of support, enabled the jury to award plaintiff duplicate damages.

The trial court's treatment of the second issue was affirmed by the Iowa supreme court. Concluding that the jury was not called upon to assess plaintiff's damages for loss of time and earnings upon mere speculation, conjecture and surmise, the Iowa court found that there was sufficient evidence presented at trial to allow jury calculation of loss of income and earning capacity.

timely attempt at in-state service of process. *DeWall v. Prentice*, 224 N.W. 2d 428 (Iowa 1974) (en banc).

The expiration of the statute of limitations prior to proper service of original notice upon the defendant has operated to defeat many claims arising out of motor vehicle accidents where the plaintiff is uncertain as to the defendant's actual residence.[4] The Iowa supreme court has recognized that the statute of limitations yields a harsh result—the denial of plaintiff's right to have the claim heard on its merits[5]—but it serves what may be deemed an equally valuable purpose, namely, the prevention of stale claims.[6]

Under certain circumstances the statute of limitations will not bar the action.[7] One set of these circumstances, giving rise to application of the doctrine of equitable estoppel, was considered by the court in *DeWall v. Prentice.*

In order to invoke operation of equitable estoppel several essential elements must be present: (1) a false representation or concealment of material facts; (2) lack of knowledge of true facts on part of party who acts on such false representations or concealment of facts; (3) intention that it be acted upon; and (4) reliance thereon by the party to whom made, to his prejudice and injury.[8] However, even if the essential elements of equitable estoppel exist, a party may not successfully invoke the doctrine if there has been a lack of due diligence or a failure to avail oneself of readily accessible sources of information concerning facts relevant to a particular case.[9] In such an instance a person whose own conduct has created his current dilemma cannot successfully urge estoppel.[10]

In *DeWall* the name of defendant Glenn Melvern Prentice was printed on the side of the truck involved in the accident, along with the the address "Rodman, Iowa." The same afternoon that the accident occurred, July 14, 1969, defendant Prentice visited plaintiff in his home and at this time an agent for Prentice's insurance carrier left a slip of paper with plaintiff on which had been written, in material part: "Glenn M. Prentice, Rodman, Iowa." Prentice had registered the accident-involved truck, at an earlier date, in Palo

4. *See, e.g.*, Fulmer v. Debel, 216 N.W.2d 789 (Iowa 1974); Matney v. Currier, 203 N.W.2d 589 (Iowa 1973); Carpenter v. Kraft, 254 Iowa 719, 119 N.W.2d 277 (1963).

5. *See, e.g.*, George v. Gander, 261 Iowa 275, 154 N.W.2d 76 (1967).

6. *See, e.g.*, Higbee v. Walsh, 229 Iowa 408, 294 N.W. 597 (1940).

7. *See, e.g.*, Wilson v. Wright, 189 N.W.2d 531 (Iowa 1971). In this case the Iowa court examined *Code* section 614.10 which allows a second cause of action to relate back to the date of commencement of the first action, in order to defeat the expiration of the statute of limitations, if the first action fails for any reason except negligence in its prosecution. The court found the plaintiff, in *Wilson*, free from negligence in prosecution and thus institution of the second cause of action, after the statute of limitations had run, could properly relate back to the date of the first action. This relation back operated to defeat defendant's limitation of action defense.

8. Conradi v. Boone, 316 F. Supp. 918, 920 (S.D. Iowa 1970); Walters v. Walters, 203 N.W.2d 376, 379 (Iowa 1973); Holden v. Construction Mach. Co., 202 N.W.2d 348, 355 (Iowa 1972).

9. Johnston v. State Bank, 195 N.W.2d 126, 130 (Iowa 1972); Shellhorn v. Williams, 244 Iowa 908, 918-19, 58 N.W.2d 361, 367 (1953), *citing* Lingar v. Harlan Fuel Co., 298 Ky. 216, 219, 182 S.W.2d 657, 659 (1944).

10. Johnston v. State Bank, 195 N.W.2d 126, 130 (Iowa 1972).

Alto County, with Rodman, Iowa, then being his declared bona fide residence and mailing address. Two accident report forms, one signed by a state trooper and the other signed by defendant Scheller, were executed showing Rodman, Iowa, as defendant Prentice's address.

These representations by defendant Prentice were not necessarily made with intent to defraud DeWall, however, they were representations made with the intent that any parties acting on them could rely thereon.

Plaintiff DeWall remained passive in attempting to verify defendant Prentice's address until May or June of 1971, some 22 months after the accident. At that point one of plaintiff's attorneys inquired as to defendant Prentice's address, as identified on vehicle registry records maintained at the Palo Alto County Courthouse. These records disclosed that Prentice had registered some trucks in 1971, with Rodman, Iowa, given as registrant's address.[11]

Prentice declared by affidavit that he moved from Rodman, Iowa, to a community in Minnesota in 1961. Defendant Prentice made this move without advising the Iowa Public Safety Department, the Palo Alto County Treasurer, or plaintiff to the effect his Rodman, Iowa, address, as represented by the accident reports and motor vehicle registrations, was incorrect.

The Iowa court held that the timely inquiry, by plaintiff's attorneys, as to Prentice's place of residence and plaintiff DeWall's reasonable reliance on the Iowa vehicle misrepresentations were sufficient to require invocation of the doctrine of equitable estoppel to bar operation of the statute of limitations.[12]

The court distinguished the circumstances surrounding defendant Scheller. Although the accident report executed by Scheller designated Rodman, Iowa, as his then current place of residence, the court noted that there was nothing in the record to the contrary and thus they could only assume that the Iowa address was correct. Absent any effort by the plaintiff, over a 23 month period, to locate Scheller's existent place of residence, the court held the doctrine of equitable estoppel inapplicable as to defendant Scheller's asserted limitation of action defense.

The test which emerges from *DeWall* indicates that if the record supports address misrepresentations by a defendant and if the opposing party makes any kind of effort to verify the defendant's purported address within the two year limitation period, the doctrine of equitable estoppel may apply to bar operation of the limitation of the action.[13]

Plaintiff's statute of limitations problem in *DeWall* arose in part from

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11. DeWall v. Prentice, 224 N.W.2d 428, 432 (Iowa 1974).
12. *Id.*
13. As outlined in *DeWall*, the test for application of equitable estoppel appears to partially overlap the test for application of section 614.10 of the *Code*. Both provisions mention the concept of "due diligence or lack of negligence" in the prosecution of an action and both provisions result in barring the operation of the statute of limitations. The distinction between the two provisions is section 614.10's requirement of an initial filing. If plaintiff does not file at all, equitable estoppel may still apply whereas section 614.10 would not.

the method for commencing an action then in force under the Iowa Rules of Civil Procedure. Under Rule 48, as it then existed, a civil action was commenced by serving defendant with original notice.[14] For purpose of the statute of limitations, it was not necessary that defendant actually receive the original notice within the two year period. The Code instead provided that delivery of original notice to the sheriff of the proper county with the intent that it be served immediately would also be deemed a commencement of the action.[15]

In January of 1975, the Supreme Court of Iowa changed Rule 48 to read: "A civil action is commenced by filing a petition with the court."[16] Accompanying this, the court added new Rule 55 which states: "For the purpose of determining whether an action has been commenced within the time allowed by statutes for limitation of actions, . . . the filing of a petition shall be deemed a commencement of the action."[17]

If adopted,[18] these prescribed new rules would appear to solve many of the current jurisdictional problems facing aggrieved plaintiffs in Iowa. Application of the new rules to the facts of *DeWall* provides an excellent example of the rules' potential impact. If the clear wording of the rules is followed, the filing of the petition in *DeWall* tolled the statute of limitations and later location of the defendants in Minnesota and Washington would not operate to defeat the action. Application of the equitable estoppel concept would be unnecessary to bar operation of the statute of limitations.

However, the new rules do not remove every possible problem for plaintiffs who fail to act due to erroneous information or who fail to comply with the appropriate rules of civil procedure. For such parties the doctrine of equitable estoppel may serve a continuing need. For example, those instances where the plaintiff fails to file a petition in a timely manner due to the wilful misrepresentations of the defendant will continue as a problem area unaffected by the new rules.[19] As no petition has been filed, operation of the doctrine of estoppel will be required to save the plaintiff's claim from dismissal.

Another difficulty unresolved by the new rules, concerns the proper constitution of a "filing" sufficient to toll the statute of limitations. For example, will the absence of a proper designation of the plaintiff defeat the required "filing" under the new rules? A federal district court in New York examined this issue in 1970 and determined that a "reasonable conclusion seems to be that if a complaint does not identify any plaintiff in the title or otherwise, then its filing is ineffective to commence an action."[20]

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14. Iowa R. Civ. P. 48.
15. Iowa R. Civ. P. 49.
16. S. Jour., 65th G.A., 2d Sess. 118 (1975).
17. *Id.* at 119.
18. Iowa Code § 684.19 (1975). The rules will take effect July 1, 1975, with such changes, if any, as enacted by the Sixty-sixth General Assembly of the State of Iowa.
19. *See, e.g.*, Glus v. Brooklyn Eastern Dist. Terminal, 359 U.S. 231 (1959).
20. Roe v. New York, 49 F.R.D. 279, 281 (S.D.N.Y. 1970).

This brief examination of the potential ramifications of the new rules demonstrates their provision of needed solutions in certain problem areas, while simultaneously leaving other areas unchanged. Operation of the new rules may have obviated the need for estoppel in *DeWall*; however, there is still a need for the doctrine in those instances where the plaintiff is deterred from filing a petition due to the wilful misrepresentations of the defendant.[21] Other areas of continued application will certainly be defined as they come before the Iowa courts.

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21. *See, e.g.*, Glus v. Brooklyn Eastern Dist. Terminal, 359 U.S. 231 (1959).