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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

KIMBERLY HOCKIN, *Plaintiff*, *v.* UNITED STATES OF AMERICA, *Defendant.*	Civil No. 3:17-CV-1926-PK **UNITED STATES' MOTION TO DISMISS PURSUANT TO FED R. CIV P. 12(b)(1)** **Request for Oral Argument**

LR 7-1(a)(1) CERTIFICATION

Pursuant to LR 7-1(a)(1), Counsel for both parties in this case conferred and made a good faith effort to resolve the dispute arising from the United States' Motion below. The parties were unable to come to an agreement.

MOTION TO DISMISS

The United States hereby moves to dismiss Plaintiff's Complaint, (ECF No. 1), pursuant to Fed. R. Civ. P. 12(b)(1). In support of its motion, the United States submits the following facts and legal authorities.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

BACKGROUND

Kimberly Hockin ("Ms. Hockin") and her now ex-husband, Shawn Harrison ("Mr. Harrison"), were married on June 29, 1997. Compl. Ex. 1 ¶ 3, (ECF No. 1-1). According to the Complaint, Mr. Harrison was responsible for all household finances. Compl. ¶ 7, (ECF No. 1). This included preparing the couple's joint tax returns. Sometime in 2008, Ms. Hockin discovered that Mr. Harrison had been having an affair while working abroad. *Id.* ¶ 9. The two filed for a divorce on July 30, 2009. Compl. Ex. 1. (ECF No. 1-1). A divorce decree was entered on August 7, 2009. Compl Ex. 3, (ECF No. 1-1).

Both Ms. Hockin and Mr. Harrison failed to file timely tax returns for 2007 and 2008. Compl. ¶ 8. On June 22, 2009, eight days before Ms. Hockin and Mr. Harrison filed for divorce, the IRS received a joint 2007 tax return for Shawn and Kimberly Harrison. Compl. Ex. 4 (ECF No. 1-1). This return was officially processed on August 3, 2009, *id.*, though Ms. Hockin claims that she "did not sign the returns nor was she aware of their filing." Compl. ¶ 11. The divorce petition, however, accounts for "known tax debt owed for 2007 and 2008." Compl. Ex. 2 at p. 8, ECF No. 1–1.

Around March 17, 2014, the IRS received Ms. Hockin's first request for innocent spouse relief under 26 U.S.C § 6015 for the 2007 and 2008 tax years. *See* Compl. Ex. 4 at p. 2 (ECF No. 1-1). As discussed further below, innocent spouse relief relieves a spouse from being held jointly and severally liable for taxes arising out of a joint tax return. Her claim was denied. Compl. ¶ 12. Employing a somewhat different strategy, Ms. Hockin filed a refund claim on May 10, 2017 pursuant to 26 U.S.C. § 6511. Her sole basis for claiming a tax refund was that the IRS improperly denied innocent spouse relief. A copy of Ms. Hockin's refund claim is attached as **Exhibit 1**.[1] The IRS treated this refund claim as a request for reconsideration of her innocent spouse determination and denied it. Compl. Ex. 9 (ECF No. 1-1). Ms. Hockin then filed the present suit.

STANDARD

As a court of limited jurisdiction, a federal district court is obligated to dismiss a case when it lacks subject matter jurisdiction over the claims alleged. *See* Fed. R. Civ. P. 12(b)(1); *see also Stock W., Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989). A court lacks subject matter jurisdiction if "the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

Under the doctrine of sovereign immunity, the United States is immune from suit except where it consents to be sued. *United States v. Testan*, 424 U.S. 392, 399

[1] This refund claim was "incorporated by reference" in Ms. Hockin's Complaint, Compl. ¶ 13, but it was not attached.

(1976), *United States v. Sherwood*, 312 U.S. 584, 586 (1941). The terms of the United States' consent define the court's jurisdiction over the suit. *Id., United States v. Dalm*, 494 U.S. 596, 608 (1990), *United States v. Mitchell*, 463 U.S. 206, 212 (1983). Waiver of sovereign immunity must be unambiguously expressed, and the burden of showing a waiver lies with the party bringing the cause of action against the United States. *Dalm*, 494 U.S. at 607. Moreover, a waiver of sovereign immunity must be strictly construed in favor of the United States and may not be expanded beyond the statutory language waiving immunity. *United States v. Nordic Village*, 503 U.S. 30, 34 (1992); *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 685–86 (1983); *Dalm*, 494 U.S. at 608.

ARGUMENT

Generally, married individuals who file joint tax returns are jointly and severally liable for any taxes owed. 26 U.S.C. § 6013(d)(3). In certain situations, a spouse can petition the IRS for "innocent spouse" relief, which relieves an individual of that liability. *See generally* 26 U.S.C. § 6015. Section 6015 provides three avenues for innocent spouse relief, though only one is applicable here[2]:

[2] The other avenues, listed under Sections 6015(b) and 6015(c), only apply to situations where income is under*stated*, meaning that taxable income is missing from the underlying return. This case involves an under*payment*. Income was properly reported, but the applicable taxes were not paid. Ms. Hockin's liability is based on an underpayment, and her underlying administrative claim for refund is squarely grounded in the equitable relief afforded by Section 6015(f). Any other claim would be a variance from her administrative claim and cannot be alleged for the first time here. *See, e.g., Boys v. United States*, 762 F.2d 1369, 1371–72 (9th Cir. 1985); *Robinson v. United States*, 84 F. Supp. 2d 1124, 1128 (D. Or. 1999).

> (f) **Equitable relief.**--Under procedures prescribed by the Secretary, if--
> (1) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either); and
>
> (2) relief is not available to such individual under subsection (b) or (c), the Secretary may relieve such individual of such liability.

26 U.S.C. § 6015(f).

After filing an application for innocent spouse relief and an administrative claim for refund, Ms. Hockin now seeks to have this court overturn the IRS's determination that she was not entitled to relief under Section 6015(f). This Court, however, does not have jurisdiction to hear her claim.

A. The United States has not consented to be sued for equitable relief under 26 U.S.C. 6015(f)

"It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction." *United States v. Mitchell*, 463 U.S. 206, 212 (1983); *see also United States v. Park Places Assocs., Ltd.*, 563 F.3d 907, 923–24 (9th Cir. 2009) (discussing relationship between sovereign immunity and subject-matter jurisdiction). The scope of any waiver of federal sovereign immunity is strictly construed in favor of the United States. *Lane v. Pena*, 518 U.S. 187, 192 (1996). Ms. Hockin seeks to bring suit under 28 U.S.C. § 1346 and 26 U.S.C. § 7422, Compl. ¶ 1, which waive sovereign immunity in refund suits for taxes that were "*erroneously or illegally* assessed or collected." 26 U.S.C. § 7422; 28 U.S.C. § 1346(a) (emphasis added).

Innocent spouse relief under Section 6015(f) affords equitable relief from a tax that is otherwise legal and valid. When the IRS grants innocent spouse relief, it

makes no concession regarding the merits of the underlying tax. Section 6013 mandates that joint filers be jointly and severally liable for the resulting tax liability. Until or unless innocent spouse relief is granted, the IRS is within its authority to assess and collect those taxes. Innocent spouse relief provides an extraordinary remedy to taxpayers facing unique circumstances.

Presently, Ms. Hockin and Mr. Harrison are jointly and severally liable for their 2007 income taxes. 26 U.S.C. § 6013(d)(3). If Ms. Hockin were to receive innocent spouse relief, it would not decrease the amount of tax owed. Instead, Ms. Hockin would "be relieved of liability for [that] tax," § 6015(f), and Mr. Harrison would be solely liable for it. Narrowly construing the waiver, Sections 1346 and 7422 do not provide consent to sue the United States for a refund of a tax on an innocent spouse theory because the taxes were not illegally or erroneously collected.

This reading of 1346 and 7422 is consistent with other portions of the Internal Revenue Code, which often relaxes the enforcement of a tax, interest, or penalty for which an individual would be otherwise liable. Aside from providing innocent spouse relief, the IRS can abate interest, 26 U.S.C. § 6404(e), or provide relief through collection due process ("CDP"). *See* 26 U.S.C. §§ 6320, 6330. Under each of these statutes, as in the innocent spouse context, the IRS has the initial power to issue a determination. *Compare* § 6404(a), (f), *and* § 6330(c)(3), *with* § 6015(f). There is also a set path for judicial review of that decision. *Compare* § 6404(h), *and* § 6330(d)(1), *with* § 6015(e). In 2014, Ms. Hockin filed an application for innocent spouse relief. She later filed an amended return (Form 1040X), which

included an administrative claim for refund under 26 U.S.C. § 6511. This refund claim purportedly provides the basis for this suit. Congress would not have designed these schemes with specific jurisdictional requirements if these claims could simply be brought as a claim for refund under Section 6511.[3] If a taxpayer can simply file a general refund claim with the IRS, there is no reason to follow the specific procedures prescribed for innocent spouse claims under Section 6015.

Principles of statutory construction support this conclusion. A statute should not be read so broadly as to render other statutes or provisions redundant or cumulative. *See, e.g.*, *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 185 (2011) ("As our cases have noted in the past, we are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." (internal quotation marks omitted)); *Commodity Futures Trading Comm'n v. White Pine Trust Corp.*, 574 F.3d 1219, 1225 (9th Cir. 2009) ("It is generally disfavored to interpret statutes to create redundancy."); *United States v. Fields*, 783 F.2d 1382, 1384 (9th Cir. 1986) ("If a statue is susceptible to two meanings, we choose the meaning that gives full effect to all provisions of the statute.") If innocent spouse relief could simply be sought through general refund procedures prescribed under Section 6511, the administrative requirements and paths for judicial review enumerated in Section 6015 would serve no purpose. That cannot be correct.

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[3] This may explain why the IRS treated Ms. Hockin's refund claim as a request for reconsideration of her innocent spouse application.

Waivers of sovereign immunity must be strictly construed in favor of the United States. Section 1346 and Section 7422 both limit their waivers of sovereign immunity to suits for refund of taxes that have been *illegally or erroneously* collected. Ms. Hockin is only seeking equitable relief from being held jointly and severally liable for an otherwise valid tax. Further, the Internal Revenue Code has separate administrative processes for adjudicating refund and innocent spouse claims. As such, Sections 7422 and 1346 should not be read to comingle the two. Because the United States has not waived sovereign immunity, Ms. Hockin's Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1).

B. In any event, Section 6015(e) requires a taxpayer to first petition the United States Tax Court

If a claim for innocent spouse relief is rejected by the IRS, then "[i]n addition to any other remedy provided by law, the individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available." 26 U.S.C. § 6015(e)(1)(A). In contrast, Section 6015 mentions district courts only once: "[i]f a suit for refund is begun by either [the requesting or non-requesting spouse] . . . the Tax Court *shall lose* jurisdiction of the individual's action . . . to whatever extent acquired by the district court or the United States Court of Federal Claims . . . ." § 6015(e)(3) (emphasis added). When taken together, these portions of Section 6015(e) make clear that the Tax Court has original and exclusive jurisdiction over review of IRS determinations. If during the course of the Tax Court action the requesting or non-requesting spouse files a refund suit in district court, only then does the Tax Court cede jurisdiction to the district court.

Nearly every court to have considered this issue has found that a taxpayer must first challenge the IRS determination in the Tax Court. *See United States v. Stein*¸ No. 3:13-cv-00743-TBR-LLK, 2015 WL 5943441, at *3 (W.D. Ky., Oct. 13, 2015) (holding that "no part of § 6015 confers jurisdiction to the federal district courts 'to determine innocent spouse claims in this first instance'" (quoting *United States v. Wallace*, No. 1:09-cv-87, 2010 WL 2302377, at *4 (S.D. Ohio, Apr. 28, 2010)); *United States v. Dew*, No. 4:14-cv-00166-TLK, 2015 WL 5037850, at *1 n. 1 (D.S.C. Aug. 26, 2015), *aff'd*, 670 F. App'x 170 (4th Cir. 2016) ("[T]he innocent spouse defense cannot be considered by this Court because it lies within the exclusive jurisdiction of the tax court."); *United States v. Peters*, No. 412CV01395 AGF, 2014 WL 2611813, at *10 (E.D. Mo. June 11, 2014) (holding that a district court has "no authority" to determine innocent spouse claims); *United States v. Elman*, No. 10 CV 6369, 2012 WL 6055782, at *4 (N.D. Ill. Dec. 6, 2012) ("Although [Section 6015] itself does not address whether the tax court's jurisdiction is exclusive, courts interpreting the statute have concluded that it is."); *United States v. Popowski*, No. 2:10-cv-2816-RMG, 2012 WL 6085138, at *1 (D.S.C. Nov. 13, 2012); *United States v. Miles*, No. CV 10-2398 CW, 2012 WL 1094430, at *3 (N.D. Cal. Mar. 30, 2012); *United States v. LeBeau*, No. 10CV817-BTM(NLS), 2012 WL 835160, at *3 (S.D. Cal. Mar. 12, 2012); *United States v. Boynton*, No. 05-V-2243-WQH (RBB), 2007 WL 737725, at *4 (S.D. Cal. Feb. 1, 2007), *United States v. Cawog*, No. 02:05CV1652, 2006 WL 1997421, at *3 (W.D. Pa. June 15, 2006); *United States v. Feda*, No. 05 C 1767, 2006 WL 897887, at *4 (N.D. Ill. Apr. 3, 2006).

Most of the above cases involve a taxpayer who raises Section 6015 as a defense to a government suit. The United States is not aware of any court addressing this issue in the context of a refund suit brought by a taxpayer. But the courts' interpretation of Section 6015 is equally applicable to the refund context.

A minority of courts have held that because Section 6015(e)(1)(A) begins with "in addition to any other remedy provided by law," the Tax Court's jurisdiction is not exclusive. This language was added in the 2000 amendments to the IRS Restructuring and Reform Act. Pub L. 106–554, 114 Stat 2763A-641, Sec. 313(a)(3)(B) (2000). This language sought to "clarif[y] Congressional intent that the procedures of [S]ection 6015(e) were intended to be additional, non-exclusive avenues by which innocent spouse relief could be considered." H. Rep. 106-1033 at 1023. This cannot mean, however, that the district courts are given limitless jurisdiction over innocent spouse determinations. More likely, this phrase refers to other forms of relief available, such as the IRS's Collection Due Process ("CDP") procedures under 26 U.S.C. §§ 6320 and 6330, or otherwise challenging the tax on the merits.

Two courts have reached opposing conclusions as to the meaning of "any other remedy." In *Boynton*, the Court offered a narrower interpretation, arguing that to interpret this language to include any refund suit would lead to inconsistent judgments–a taxpayer could raise the innocent spouse defense in district court and then file a concurrent petition with the Tax Court. 2007 WL 737725, at *4. This runs counter to the other aims of Section 6015(e):

> It is difficult to believe that Congress would have created a situation fraught with possibilities for inconsistent judgments and contrary to basic principles of judicial economy . . . when Congress was careful to avoid concurrent jurisdiction in one instance when district court jurisdiction is expressly granted over the innocent spouse exemption. *Id.*

The language of Section 6015(e)(3) explicitly strips the Tax Court of jurisdiction once a refund suit is filed in district court, which avoids parallel proceedings. But another court explicitly rejected *Boynton*. *In re Pendergraft*, 16-33506, 2017 WL 1091935, at *3 (S.D. Tex. B.R. Mar. 22, 2017). That court held that it could consider an innocent spouse defense as part of a bankruptcy court's powers to determine the amount or legality of a tax under 11 U.S.C. § 505. The court was unconcerned with the possibility of inconsistent judgments, finding that jurisdiction cannot be "based on a hypothetical possibility that concurrent proceedings could produce inconsistent results. That issue, if it ever exists, should be left to Congress." *Id.*

Pendergraft is an outlier decision, and it ignores *Boynton*'s most convincing point: if Congress intended to provide two equally accessible lanes for a taxpayer to seek review of an innocent spouse determination, why does Section 6015(e)(3) treat the process as a one-way street? The Tax Court is clearly divested of jurisdiction when a refund suit is filed in district court, yet the statute is silent on the reverse scenario. Section 6015 sets out a clear, detailed process for funneling review of innocent spouse determinations to the Tax Court. That statute provides no such scheme for the district courts.

Pendergraft was decided based on an incomplete interpretation of Section 6015. Moreover, *Pendergraft* was decided in the U.S. Bankruptcy Courts. The Bankruptcy Code includes unique provisions related to sovereign immunity, 11 U.S.C. § 106(a), and determinations of tax liability, 11 U.S.C. § 505(a)(1). These statutes do not apply here. Section 505 provided the crux of the court's decision. *See e.g.*, *Pendergraft*, WL, at *4, *6 (finding that 11 U.S.C. § 505 both waived the United States' sovereign immunity and was "another remedy provided by law" under Section 6015(e)). Because *Pendergraft* was decided within the unique provisions of the Bankruptcy Code, its reasoning does not translate to the district courts. This Court should follow *Boynton* and the majority of its peers and find that Section 6015 does not provide district courts with original jurisdiction to review innocent spouse determinations.

Finally, the *Boynton* majority view supports the policy aim of the Internal Revenue Code to funnel IRS administrative determinations to the Tax Court for timely review. Tax Court review of an innocent spouse determination must be sought within 90 days. 26 U.S.C. § 6015(e)(1)(A)(ii). A taxpayer seeking review of a collection due process determination must petition the Tax Court within 30 days of a determination, 26 U.S.C. § 6330(d)(1). Review of an IRS determination not to abate interest must be brought within 180 days. 26 U.S.C. § 6404(h)(1)(A). These time limits were included for a reason: they ensure that the administrative record is preserved and can be quickly compiled and presented for court review. Otherwise, as is the case here, a taxpayer could receive a final determination, wait several

years, finally decide to pay the tax at issue[4], and proceed in a refund suit where the key evidence is more difficult to gather or is no longer retained. Allowing a taxpayer to circumvent the time limits for petitioning the Tax Court conflicts with the overarching policy goals of the Internal Revenue Code, which seek to promote speedy review of IRS determinations on certain matters, of which innocent spouse relief is one.

CONCLUSION

For the reasons stated above, this Court should dismiss Ms. Hockin's Complaint for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1).

Dated August 1, 2018

Respectfully submitted,

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[4] Under the *Flora* payment rule, a taxpayer must fully pay a tax liability prior to seeking a refund. *See generally Flora v. United States*, 362 U.S. 145 (1960).

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2018, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system. Pursuant to Local Rule 5-4(a) and (b), the filing fulfilled the service requirements of Federal Rules 5 and 77 upon:

- J. Scott Moede (scott.moede@portlandoregon.gov)

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