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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

KIMBERLY HOCKIN,

PLAINTIFF,

v.

UNITED STATES OF AMERICA,

DEFENDANT.

3:17-cv-1926 JR

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

I. INTRODUCTION

In this compelling case, with the assistance of the Lewis & Clark Law School Low-Income Taxpayer Clinic, plaintiff Kimberly Hockin filed this tax refund suit for tax year 2007 and seeks $10,767.76 claiming that the Internal Revenue Service erroneously or illegally collected this amount from her. The payments were made by Ms. Hockin over a period of several years and were cobbled together through the application of tax refunds for subsequent tax years, checks written to the IRS and regular payments credited to her account. In her Complaint, Ms. Hockin invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1346(a)(1) which

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provides, in pertinent part that, "The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of: (1) Any civil action against the United States for the recovery of internal-revenue tax alleged to have been erroneously or illegally assessed or collected...or in any manner wrongfully collected under the internal-revenue laws."[1] Ms. Hockin also properly exhausted her administrative remedies as required by 26 U.S.C. § 7422(a) and Treas. Reg. § 301.7433-1(d) and (e) prior to filing this action by filing an administrative claim with the IRS.[2]

Throughout the administrative process and incorporated through the filing of her Complaint, Ms. Hockin has asserted the 2007 taxes were "erroneously or illegally collected" from her on three primary grounds: 1) Taxpayer Ms. Hockin qualifies for a refund "because there was no valid joint return filed"; 2) Taxpayer also qualifies for innocent spouse relief under "[26 U.S.C.] § 6015(f) Equitable Relief for 2007"; and 3) Because the IRS granted her relief on identical grounds for tax year 2008, the doctrine of quasi-estoppel also known as the duty of consistency should be applied to the IRS requiring a refund for tax year 2007 in the same regard as tax year 2008. (*See* Exhibit 1 attached to the United States' Motion for a complete copy of Ms. Hockin's administrative claim).

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[1] Ms. Hockin also checked the appropriate box on the JS 44 Civil Cover Sheet "870 Taxes (U.S. Plaintiff or Defendant)" and again cited the applicable U.S. Statutes in Section VI. Cause of Action as "28 U.S.C. §§ 1340 and 1346(a)(1) and 26 U.S.C. § 7422(a)."

[2] *See* Exhibit 1 filed with United States' Motion to Dismiss. The United States appropriately acknowledges at page 3 of its brief that this is a copy of Ms. Hockin's refund claim and that it is incorporated by reference in the Complaint at paragraph 13. On a Rule 12(b)(6) motion to dismiss, a trial court may properly consider documents incorporated in the complaint and matter subject to judicial notice without converting the motion to dismiss motion into a motion for summary judgment. *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007); *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). Courts may consider documents not attached to the complaint under the doctrine of incorporation by reference. *Id.* A document is incorporated by reference when: (1) "the complaint necessarily relies upon a document or the contents of the document are alleged in a complaint"; (2) "the document's authenticity is not in question"; and (3) "there are no disputed issues as to the document's relevance." *Coto*, 593 F.3d at 1038; *see Reynoso v. Fid. Nat. Title Ins. Co*., No. 03:13-CV-01600-HZ, 2013 WL 6919666, at *3 (D. Or. Dec. 31, 2013).

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Defendant United States has now filed its "United States' Motion to Dismiss Pursuant to Fed R. CIV P. 12(b)(1)". In the motion, the United States seeks dismissal of this case for lack of jurisdiction and makes the argument that there can be no refund suits in this United States District Court involving equitable relief under 26 U.S.C. §6015. On its face, the United States' Motion to Dismiss glosses over Ms. Hockin's first and third arguments that there was no valid joint return and that the IRS is bound by the duty of consistency to treat Ms. Hockin the same for tax year 2007 just as it did for the 2008. Instead, the motion focuses exclusively on Ms. Hockin's second argument regarding innocent spouse relief yet asks this Court to dismiss the entire case. On this basis alone, the motion should be denied as to the first and third arguments. Notwithstanding this omission, Ms. Hockin will affirmatively show that this Court does have jurisdiction over her first and third arguments under 28 U.S.C. § 1346(a)(1).

Moreover, in reply to the Motion to Dismiss on the second argument concerning jurisdiction over innocent spouse relief, Ms. Hockin is additionally supported by the Federal Tax Clinic of the Legal Services Center of Harvard Law School ("The Harvard Clinic"). The Harvard Clinic filed a Memorandum of Law of *Amicus Curiae* in support of Ms. Hockin and addresses in great detail the arguments opposing the United States' Motion. Included within those arguments are that: 1) Prior to the Enactment of the First Innocent Spouse Provisions, the District Courts Heard Refund Suits Involving the Issue of Whether the Taxpayer Had Filed a Joint Return; 2) Under the First Innocent Spouse Provision at Former § 6013(e)(1), District Courts Heard Refund Suits; 3) Section 6015 Was Enacted to Expand Both Substantive and Procedural Avenues for Raising Innocent Spouse Relief, Not to Eliminate Any Prior Avenues for Raising Such Relief, Including Refund Suits; 4) Confusion About the Wording of § 6015(e) Led Congress to Amend It in 2000 to Clarify That No Other Prior Avenues For Asserting Innocent Spouse Relief Had Been Repealed; 5) Congress Did Not Impliedly Repeal District Court Refund Suits Raising Innocent Spouse Relief; 6) District Court Opinions Holding that § 6015 Relief Is

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not Available as a Defense in Collection Suits are Ill-Reasoned; and 7) The Government's Position that Refund Suits Involving § 6015 Are Not Generally Authorized Conflicts with Its Arguments in Recent Appellate Court Cases. In this brief, rather than restating every argument in the Harvard Clinic's detailed and thorough analysis, it will simply incorporate the arguments by reference and highlight additional material to aid the Court rather than duplicating efforts.

In conclusion, as will be shown below, this Court does have jurisdiction over all of Ms. Hockin's three primary grounds for a refund of taxes she has paid and the United States' Motion to Dismiss should be denied.

II. BACKGROUND[3]

As noted above, the big picture in this case is that plaintiff Kim Hockin seeks a refund of taxes she paid over several years in the amount of $10,767 together with interest. A complete narrative filed with the IRS as part of required administrative proceedings is attached as Exhibit 1 to the United States' Motion at pages 5-13. Fifteen (15) exhibits are also attached thereto in support at pages 14-75.

Also as noted above, there are three primary reasons Ms. Hockin is entitled to a tax refund: 1) Ms. Hockin qualifies for a refund "because there was no valid joint return filed"; 2) Ms. Hockin qualifies for innocent spouse relief under "[26 U.S.C.] § 6015(f) Equitable Relief for 2007"; and 3) Ms. Hockin qualifies because the IRS granted her relief on identical facts for tax year 2008 implicating the doctrine of quasi-estoppel also known as the duty of consistency. By way of background, there are effectively 14 factors that a taxpayer must address to obtain innocent spouse relief. They are found in Subsection 4.01 and 4.03 of Revenue Procedure 2013-

[3] Counsel for Ms. Hockin is a volunteer attorney with the Lewis & Clark Law School Low Income Tax Clinic. I have been volunteering for cases with the Clinic for nearly 15 years. The purpose of the Clinic is to provide low-income taxpayers that cannot afford attorneys with legal representation and to provide students with educational opportunities in a clinical setting as part of their law school education. Accordingly, students work on the cases with attorneys assisting with all phases of litigation.

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34. All of the analysis on each of the factors is found in Exhibit 1.

What makes this a compelling case is what plaintiff Kim Hockin has gone through to get to this point. This case involves the 2007 tax year. So, plaintiff has been dealing with this tax issue and wanting to move forward for more than 10 years.

The basis for her claim for a refund begins with the fact that plaintiff was married to Shawn Harrison beginning in 1997 and resulted in divorce in 2009. Exhibit 1, pages 5-6. During the years at issue, they lived in Nevada. Exhibit 1, page 5. Ms. Hockin gave up her career as an aesthetician to be a stay-at-home mother and raise two daughters from a previous marriage and one daughter with Shawn Harrison. Exhibit 1, page 5. Shawn Harrison controlled all the finances during the marriage and worked frequently outside the country. Exhibit 1, page 5. Near the end of the marriage during the 2007 and 2008 tax years, Shawn Harrison began to show increasing amounts of aggression, including incidents of violence toward Ms. Hockin and the daughters. Exhibit 1, page 6. In addition, Ms. Hockin also noted that Shawn Harrison's substance abuse became increasingly severe and included drugs and alcohol. Exhibit 1, page 6. As time went on, Mr. Harrison also became even more secretive and less present even when home after returning from work trips. Exhibit 1, page 6.

In the midst of all this, in May of 2009, Kim Hockin discovered that her husband had been cheating on her and leading a double life with a woman in Columbia. Exhibit 1, page 6. This discovery occurred on her daughter's birthday. At that time, the 2007 and 2008 tax returns had not been filed. Kim was devastated, despite the forms of abuse she had suffered. Exhibit 1, page 6. Kim took steps to immediately end the marriage and move with her daughter to Oregon. Exhibit 1, page 6-7. Within two months, a divorce petition was filed and they were divorced in late July 2009. Exhibit 1, pages 6-7, 14-40.

As part of the divorce, Shawn Harrison agreed to be responsible for payment of the 2007 and 2008 taxes. Exhibit 1, page 29. The marital settlement agreement provided, in pertinent

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part, that "The parties anticipate no income tax problems from their previously filed Income Tax Returns, other than known tax debt for 2007 and 2008, **which Husband has agreed to pay**." Exhibit 1, page 29 (emphasis added). At some point in 2009, Shawn Harrison hired an accountant and filed the 2007 and 2008 tax returns as joint returns. Kim believes she was in Oregon at that point and never signed the returns. Exhibit 1, pages 6-7.

Sadly, though probably not surprisingly, Shawn Harrison never paid the taxes and the IRS came after Kim to pay the tax. Exhibit 1, pages 6-7. Over the course of the next many years through levying of tax refunds by the IRS and various payments, Kim paid the tax for tax year 2007. What is particularly striking is that the total amount actually paid to the government for tax year 2007 is almost $10,000 more than the amount of tax.

Under any measure, IRS account transcripts are difficult to read or discern. Yet a careful review of Kim's IRS account transcript reflects the amounts she has paid on the 2007 tax liability and is attached at Exhibit 1, pages 53-58. Keep in mind this is a tax liability that her ex-husband had legally agreed to pay in the divorce. From the transcript, when the 2007 return was filed it appears to reflect a tax amount of $21,329.00. Exhibit 1, pages 53, 56. $10,857.00 was credited to the account for "W-2 or 1099 withholding." Exhibit 1, pages 53-58. That leaves a tax balance of $10,472. Over the years, interest and penalties added an additional $9,937.20. Totaling up the payments reflected on the transcript, the amount paid from her transcript is an additional $20,409.20; plus the $10,857.00 initial credit. That means total payments of $9,937.20 over and above the tax due ($10,857.00 + $20,409.20 = $31,266.20 - $21,329 = $9,937.20 of overpayment on the tax). Exhibit 1, pages 53-58. This means the IRS has been made whole on the tax plus above and beyond totaling $31,266.20. In her complaint, Kim is only seeking $10,767.76 due to statute of limitations issues that only allow her to recoup payments made within certain time periods.

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An additional fact that is particularly perplexing and rising to the level of baffling, is that Kim made an application to the IRS for innocent spouse relief for tax years 2007 and 2008 early on in her dealings with the IRS prior to the tax being full paid. Exhibit 1, pages 41-47. On seemingly identical substantive facts, the IRS granted innocent spouse relief for tax year 2008 but denied it for 2007 leading to this lawsuit through the Lewis & Clark Low Income Tax Clinic. Exhibit 1, page 49, 51-52 (IRS Transcript of Account reflecting innocent spouse claim received and balance reduced to 0.00 for 2008 tax year). This lawsuit should go forward on this basis alone.[4]

And finally, just when you think this case can't get any more absurd, the IRS can't find the original 2007 tax return or any copy in its files. Kim does not have a copy. This makes sense because Kim maintains she didn't sign the return; so of course she does not have a copy. The government has even gone so far to subpoena Shawn Harrison and he does not have any copies of the 2007 return. Hence, we have the government in this case making assertions regarding a return for which they cannot produce the evidence.

Again, this Court does have jurisdiction over all of Ms. Hockin's three primary grounds for a refund of taxes she has paid and the United States' Motion to Dismiss should be denied.

The legal arguments supporting jurisdiction based upon this background will now be addressed below.

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[4] Similarly perplexing is that the Internal Revenue Service's own transcripts of account for the 2007 tax year are in conflict. One transcript for tax year 2007 under both Shawn Harrison's and Kim's married name reflects a "write-off of balance due" on 4-28-2014 bringing the account to 0.00. Exhibit 1, page 54. Another transcript for what's labeled a 1040 separate assessment for Kimberly Hockin (Kim's name following divorce) for tax year 2007 does not have a "write-off of balance due" on 4-28-14. Rather, the IRS continued to collect the tax until full paid by Ms. Hockin, arguably mistakenly, resulting in this lawsuit. In addition, this "write-off of balance due" entry of 4-28-2014 is also reflected on the 2008 IRS transcripts following "Innocent Spouse Claim received" on "3-17-2014." Exhibit 1, page 49. And yet, on the 1040 separate assessment transcript for 2008, the transcript is not taken to 0.00 until 08-08-2016. Exhibit 1, pages 51-52.

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III. ARGUMENT

A. This Court has jurisdiction over plaintiff's claims that the IRS erroneously collected taxes from her based on the invalid 2007 tax return that plaintiff was neither aware of nor signed and because the IRS granted her relief on identical facts for tax year 2008.

Plaintiff Kimberly Hockin previously filed an administrative claim for refund of the payments she made on the 2007 tax liability. An administrative claim is a prerequisite to filing a complaint in this Court. *See*, 26 U.S.C. § 7422(a) and Treas. Reg. § 301.7433-1(d) and (e). In that claim, Ms. Hockin alleged, in relevant part, that the IRS "erroneously or illegally" collected taxes from her based on a tax return that she did not sign. In other words, Ms. Hockin contended that the 2007 tax return was invalid and could not support imposing tax liability against her. Exhibit 1, pages 6-7. In her claim, Ms. Hockin also emphasized and provided documentary evidence that the IRS granted her relief for the 2008 tax year where she asserted the same facts. Exhibit 1, page 7 and exhibits referenced therein.

The United States' Motion to Dismiss glosses over any jurisdictional arguments regarding Ms. Hockin's claim that the 2007 tax return was unsigned and therefore invalid and fails to mention or explain at all why Ms. Hockin was granted relief for the 2008 tax year but not the 2007 tax year when she had made the same arguments for both years in her dealings with the IRS. When counsel conferred on the matter, the DOJ stated it did not believe Ms. Hockin had sufficiently raised these issues.

Contrary to the DOJ's assertion, however, paragraph 11 of the Complaint expressly references the fact that Ms. Hockin did not sign nor was she aware of the 2007 return. Similarly, paragraph 12 of the Complaint references the fact that Ms. Hockin was granted relief for 2008 but not 2007. Further, paragraph 13 of the Complaint incorporates by reference Ms. Hockin's administrative refund claim to the IRS, including the entire narrative and 15 exhibits attached thereto. As noted above, the United States filed the entire administrative claim as Exhibit 1 to their motion. An entire heading in the administrative claim is entitled "Taxpayer qualifies for

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relief because there was no valid joint return filed" together with a narrative and referenced exhibits. Exhibit 1, page 7. The disparate treatment between 2007 and 2008 is also noted together with referenced exhibits. Exhibit 1, page 7. Hence, given that the invalidity of the 2007 return and disparate treatment between the 2008 and 2007 tax years by the IRS was raised and preserved, the inquiry now turns to the jurisdictional authority for this Court to hear this case. The argument is straightforward.

This Court has jurisdiction over plaintiff's claim that the IRS erroneously collected taxes from her based on the invalid 2007 tax return that plaintiff was neither aware of nor signed, and the disparate treatment between the 2008 and 2007 tax years by the IRS. The plain language of the federal jurisdictional statute and a reading of *United States v. Williams*, 514 U.S. 527, 536 (1995) should make this clear.

Under 28 U.S.C. § 1346(a)(1), the district courts have jurisdiction over "[a]ny civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected… or in any manner wrongfully collected under the internal-revenue laws." Hence, the plain language of this statute encompasses the lawsuit filed by Ms. Hockin. Her claims certainly fit within at least two aspects of the language of §1346(a)(1); namely, "erroneously or illegally assessed or collected taxes" and the provision of "or in any manner wrongfully collected under internal-revenue laws."

With respect to the invalid return argument, the Tax Code and Treasury Regulations require that a tax return be signed in order to be valid. The Tax Code provides that "any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the secretary." 26 U.S.C. § 6061(a). Further, "[e]xcept as otherwise provided by the Secretary, any return . . . required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that is made under the penalty of perjury."

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26 U.S.C. § 6065. The Treasury Regulation governing joint returns provides: "A joint return of a husband and wife (if not made by an agent of one or both spouses) shall be signed by both spouses." 26 C.F.R. § 1.6013-1(a)(2). Lastly a blank 2007 Form 1040 states at the bottom of page 2: "Spouse's signature. If a joint return **both** must sign." IRS, IRS Static Files Directory, 2007 Form 1040, *available at*, https://www.irs.gov/pub/irs-prior/f1040--2007.pdf (emphasis in original).

Ninth Circuit and Tax Court cases are in accordance that an unsigned tax return does not constitute a valid tax return. *See In re Hatton*, 220 F.3d 1057, 1061 (9th Cir. 2000); *In re Wright*, 23 F. App'x 789, 790, (9th Cir. 2001); *United States v. Edlefsen*, No. 1:13-cv-00685-SU, 2014 WL 5149951, at *13 (D. Or. July 23, 2014), *report and recommendation adopted*, No. 2:13-cv-00685-SU, 2014 WL 4723118 (D. Or. Sept. 17, 2014); *United States v. Howard*, No. CV07-620TUC-DCB(HCE), 2008 WL 4471333, at *5 (D. Ariz. June 25, 2008), *report and recommendation adopted*, No. CV07620TUCDCBHCE, 2008 WL 3200768 (D. Ariz. Aug. 6, 2008); *Hammann v. Comm'r*, 53 T.C.M. (CCH) 884 (T.C. 1987). Accordingly, when examining the Tax Code and Treasury Regulations, an invalid return challenge would certainly fit within the scope of §1346(a)(1) jurisdiction.[5]

Moreover, *United States v. Williams*, 514 U.S. 527, 536 (1995) provides ample authority for this Court's jurisdiction in this case. First off, *Williams* emphasizes throughout and directly in the second sentence of the opinion the "broad language of 28 U.S.C. §1346(a)(1)". *Williams* at 529. Second, in applying the "broad language of 28 U.S.C. §1346(a)(1)," the Court concluded

[5] Should this Court find that it has jurisdiction, as a preview to summary judgment on this issue, thus far discovery has revealed that the IRS cannot find the original 2007 filed tax return in their records. Also, Ms. Hockin does not have a copy because she claims she didn't sign it and the government served a subpoena on Ms. Hockin's ex-husband Shawn Harrison and he responded that he does not have a copy. In addition, Mr. Harrison provided a Declaration to counsel for Ms. Hockin stating, in pertinent part, "To make any sworn testimony to say whether it is Kim Hockin's signature on the 2007 return, I would need to see it. Unless somebody provides me with the original 2007 tax return or a copy, I can't really say whether it would be her signature because there is no signature to look at."

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that even in the situation confronted by Lori Williams, where she was a third party who paid the taxes of her ex-husband to remove a lien on her property, the federal courts still had jurisdiction to hear her tax refund suit. Under an application of these facts, if district courts have jurisdiction to hear a third party's complaint when paying another taxpayer's tax to remove a lien on their property then this Court has jurisdiction to hear Ms. Hockin's challenges in this case. Third, like Lori Williams, Ms. Hockin, by filing an administrative claim with the IRS and fully paying off the erroneously imposed tax liability before filing that claim, plaintiff has satisfied the relevant jurisdictional prerequisites. *See* 26 U.S.C. § 7422 (requiring that a claim with the IRS be filed prior to filing a lawsuit in federal court); *Williams*, 514 U.S. at 538 (citing *Flora v. United States*, 362 U.S. 145 (1960) (stating that § 1346(a)(1) "is a postdeprivation remedy, available only if the taxpayer has paid the Government in full")). And fourth and finally, *Williams* strongly concludes that "28 U.S.C. § 1346(a)(1) clearly allows one from whom taxes are erroneously or illegally collected to sue for a refund of those taxes." *United States v. Williams*, 514 U.S. 527, 536 (1995). Hence, plaintiff raised and preserved her claims, the plain language of the statute together with the application of the *Williams* case provides this Court with ample authority to deny the United States' Motion to Dismiss.

B. This Court has jurisdiction over plaintiff's claims that the IRS erroneously collected taxes from her based on innocent spouse relief and the amicus brief of The Harvard Clinic is incorporated herein.

First, in conferral with the attorney for the United States, it was agreed that there was no need to restate all the arguments in the "Memorandum of Law of Amicus Curiae Federal Tax Clinic of the Legal Services Center of Harvard Law School In Support of the Plaintiff" and that those arguments could simply be incorporated by reference and that the United States would have a full opportunity to respond to both the Harvard Clinic brief and this brief. The Unopposed Motion has been granted by this Court (*see* Docket Entry 30) and to the extent required, the Harvard Clinic arguments are fully incorporated by this reference.

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In addition to the arguments set forth in the Harvard brief, Ms. Hockin submits that her arguments and reliance on the plain language of §1346(a)(1) and the Supreme Court's decision in *United States v. Williams*, 514 U.S. 527, 536 (1995) provide ample authority for this Court's jurisdiction to hear all of Ms. Hockin's case, including her request for innocent spouse relief.

Like the invalid return argument and the disparate and contradictory treatment by the IRS of the 2007 and 2008 tax years, innocent spouse relief also fits within the ambit of §1346(a)(1). The "broad language of 28 U.S.C. §1346(a)(1)" emphasized by *Williams,* the factual context of that case, the meeting of jurisdictional prerequisites by filing an administrative claim and *Williams* conclusion that "28 U.S.C. § 1346(a)(1) clearly allows one from whom taxes are erroneously or illegally collected to sue for a refund of those taxes" *United States v. Williams*, 514 U.S. 527, 536 (1995) all support a conclusion that there is jurisdiction in this Court.

This is particularly true when read in context with 26 U.S.C. §6015(e)(1)(A) which is contained within the innocent spouse relief statute. Section 6015(e) which is titled "Petition for Review By Tax Court" clearly broadcasts that there are other avenues for innocent spouse relief as it lists the requirements for a Tax Court petition when it begins "In addition to any other remedy by law, the individual may petition the Tax Court..." 26 U.S.C. 6015(e)(1)(A). The plain language "In addition to any other remedy provided by law," most certainly encompasses 1346(a)(1) federal district court jurisdiction. This is particularly true when read in conjunction with *Williams* and § 6015(e)(3).

The government argues that IRC § 6015(e)(3) provides only one exclusive avenue for the federal district courts to acquire jurisdiction. This reading must fail because it ignores the "In addition to any other remedy provided by law" language found in 6015(e)(1)(A) and twists the actual language of §6015(e)(3) to get their desired outcome. §6015(e)(3) provides:

> (3) Limitation on Tax Court jurisdiction--If a suit for refund is begun by either individual filing the joint return pursuant to section 6532--

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> (A) the Tax Court shall lose jurisdiction of the individual's action under this section to whatever extent jurisdiction is acquired by the district court or the United States Court of Federal Claims over the taxable years that are the subject of the suit for refund, and
>
> (B) the court acquiring jurisdiction shall have jurisdiction over the petition filed under this subsection.

The plain meaning of IRC § 6015(e)(3) is that in the event of two suits existing simultaneously in both the federal district court (or Court Federal Claims) and the Tax Court, the district court (or Court of Federal Claims) would acquire jurisdiction over both cases; presumably to avoid incongruous rulings and efficient use of Court time. §6015(e)(3) cannot imply that the Tax Court has exclusive jurisdiction over innocent spouse claims. To state it differently, the scenario presented in §6015(e)(3) assumes the federal district courts (or Court of Federal Claims) have jurisdiction. The government's interpretation of the statute simply is strained.

In sum, the statute is meant to clarify which court has jurisdiction in the unlikely event that one party files suit in the Tax Court and another party files in the federal district court or Court of Federal Claims. The statute is taken out of context when used to justify exclusive Tax Court jurisdiction. Here, the statute provides for the possibility of other remedies instead of asserting exclusive jurisdiction for the Tax Court. This statute implies that the federal district court can hear these claims. When interpreting statutes, the court should look to the structure of the statute as a whole, and IRC § 6015(e)(1)(A) provides clarity because before the statute indicates what jurisdiction the Tax Court has, it indicates that other courts may provide taxpayers relief as well.

The object and policy of IRC § 6015 was to expand the ability for taxpayers to seek innocent spouse relief. The Amicus brief filed by the Harvard Clinic shows that the legislative history indicates that federal district courts have traditionally held jurisdiction over innocent spouse suits and that Congress has never expressed any intention to remove that jurisdiction.

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The legislative history supports Ms. Hockin's analysis of IRC § 6015(e)(3) because the jurisdictional requirements have not changed since the enactment of IRC § 6013(e).

In addition, as outlined in the Harvard Clinic Brief, apparently the Tax Division's appellate section has weighed in on the issue in multiple filings is disagreement with the Tax Division's Trial Section brief filed in this case. The United States also acknowledges that the cases cited in its brief at page 9 involve a taxpayer who raises Section 6015 as a defense to a government suit---not the issue presented in this case. And the government acknowledges that "The United States is not aware of any court addressing this issue in the context of a refund suit brought by a taxpayer" ---though the government submits in a conclusory sentence that "But the courts' interpretation of Section 6015 is equally applicable to the refund context." The Harvard Clinic brief addresses this argument and the one case decided since the government's motion was filed. Harvard Brief at pages 25-26.

Of significance and in contrast to the cases cited by the government, the Ninth Circuit has also weighed in on this issue, albeit in dicta. In *Wilson v. Commissioner,* 705 F.3d 980 (9th Cir. 2013), the Court of Appeals considered whether the tax court was correct to review an IRS decision to deny innocent spouse relief under a de novo standard. Before the court addresses the issues of the case, it provides a brief history and context of innocent spouse relief. The Court states, in pertinent part, that:

The IRS established a single processing site in Cincinnati, Ohio to handle the claims, known as "The Commissioner's Cincinnati Centralized Innocent Spouse Operation" ("CCCISO"). CCCISO staff screen innocent spouse tax relief requests to determine whether they meet basic eligibility requirements. Applications that do not meet the requirements are closed at screening, and the taxpayer is informed of the decision. If a claim meets basic eligibility requirements, the file is transferred to an examiner to further review the claim and decide whether relief should be granted. When a decision is made, the taxpayer is informed and

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given thirty days to appeal to the IRS's Office of Appeals. After the administrative appeal is decided, the IRS sends a final determination letter. **The taxpayer then has the right to appeal the IRS decision to federal court. The taxpayer has the option of either petitioning the U.S. Tax Court for review or paying the deficiency and filing a refund claim in federal district court or the Court of Federal Claims**. *Wilson*, 705 F.3d at 983. Emphasis added.

While this statement is dicta, it gives a strong indication of the Court's thinking--a taxpayer is allowed an option to choose whether to pursue their claim in either the Tax Court or federal district court. The statement makes clear that taxpayers are allowed to pay the full tax and sue for a refund in federal district court.

The plain language of the relevant statutes, both 1346 and 6015, legislative history and the weight of authority support that the United States' Motion to Dismiss be denied.

IV. CONCLUSION

Based upon the foregoing, plaintiff Kimberly Hockin respectfully requests that the United States' Motion to Dismiss Pursuant to Fed R. CIV P. 12(b)(1) be denied in its entirety and that Ms. Hockin be allowed to proceed with her Complaint on all three of her primary grounds that the 2007 taxes were "erroneously or illegally collected"; namely 1) Ms. Hockin qualifies for a refund "because there was no valid joint return filed"; 2) Ms. Hockin qualifies for innocent spouse relief under "[26 U.S.C.] § 6015(f) Equitable Relief "; and 3) Because the IRS granted her relief on identical grounds for tax year 2008, the IRS should grant her a refund for tax year 2007.

Dated: December 21, 2018

Respectfully submitted,

/s/ J. Scott Moede

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