THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF MASSACHUSETTS

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Hoff Stauffer, Administrator of the Estate	)	
Of Carlton Stauffer,	)	
	)	Case No. 1:15-cv-10271
Plaintiff	)	
v.	)	Judge Mark L. Wolf
	)	Magistrate Judge Donald L. Cabell
Internal Revenue Service,	)	
	)	
Defendant	)	
	)	
**********	)	

PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR A PRELIMINARY INJUNCTION.

Plaintiff Hoff Stauffer, Administrator of the Estate of Carlton Stauffer, hereby submits this Memorandum in support of his Motion for a Preliminary Injunction compelling Defendant to cease immediately its practice of summarily rejecting refund claims, filed pursuant to 26 U.S.C. §6511(h), on the grounds that a licensed psychologist's statement of financial disability does not conform to the requirements of Revenue Procedure 99-21.

STATEMENT OF FACTS

On or about October 29, 2012, Mr. Carlton Stauffer (hereafter, "Carlton") passed away, leaving his son, Mr. Hoff Stauffer (hereafter, "Hoff"), to act as Administrator of his estate. While executing those duties Hoff discovered that his father had failed to file tax returns for several years prior to his death, including tax year 2006, which is the subject of this case. Accordingly, Hoff prepared and filed the missing returns.

The 2006 tax return was filed on or about April 23, 2013. On that return Carlton's Estate self-assessed itself $136,736 of tax due for the year. Since estimated tax and other payments had previously been made totaling $274,139, the Estate claimed a refund of $137,403. Defendant, however, refused to pay that refund to pay that refund claim, saying that the three year limitation period allowed to claim the refund had expired.

Thereafter, Plaintiff took his administrative appeal of that decision, claiming that the limitations period had been tolled, per 26 U.S.C. §6511(h), (hereafter, "§6511(h)"), due to his father's financial disability. In support, he submitted documents as required by Revenue Procedure 99-21 (hereafter, "RP 99-21") but included as a "physician's statement" the statement of Carlton's licensed psychologist, who had treated Carlton for more than a decade prior his death.

On or about January 7, 2015, Defendant finally rejected that filing on the grounds that the statement of financial disability submitted by Carlton's licensed, treating psychologist was not a "physician's statement" as required by RP 99-21. Consequently, Defendant never considered Plaintiff's refund claim on its merits.

On May 5, 2015, having exhausted his administrative remedies, Plaintiff filed in this Court for relief. On May 3, 2016, Defendant moved to dismiss the instant complaint for lack of subject matter jurisdiction. In particular, Defendant noted that Revenue Procedure 99-21 did not authorize statements of financial disability to be submitted by the licensed psychologist who had actually treated the taxpayer (hereafter, the "exclusionary rule"). In summary form, Defendant, *inter alia*, argued 1) that Plaintiff's noncompliance with RP 99-21's exclusionary rule deprived this Court of subject matter jurisdiction over this refund claim, and 2) that this Court was also

without authority to review the reasonableness of the exclusionary rule that supposedly deprived this Court of subject matter jurisdiction.

Defendant was unsuccessful in either prong of its argument. Instead, by his report dated February 14, 2017, Magistrate Judge Cabell rejected the defense position and recommended that Defendant's motion to dismiss be denied. In particular, Magistrate Judge Cabell found that Defendant's exclusionary rule was "not entitled to deference". He also found that Defendant had presented no evidence or reasoning which supported the exclusionary rule's application. Docket no. 29, p. 16.

By his decision dated September 29, 2017, Judge Wolf ruled that Defendant's exclusionary rule was "arbitrary and capricious", per the Administrative Procedure Act (5 U.S.C. §706) and not entitled to deference. Docket no. 31, p. 11-12. In addition, Judge Wolf wrote:

> Because the government has offered no evidence that the IRS had a reason that was not arbitrary for excluding psychologists from the category of professionals qualified to support a claimant's financial disability, the court is denying the motion to dismiss.

Docket no. 29, p. 11-12. Accordingly, Judge Wolf adopted Magistrate Judge Cabell's recommendation that Defendant's motion to dismiss be denied, but granted Defendant leave to present at summary judgment any evidence it might have "that the IRS considered reasonably obvious alternatives in excluding psychologists from the definition of "physicians" in RP 99-21. Docket no. 31, p. 20.

On October 27, 2017, Defendant submitted to the Court its statement that "the United States reports that it does not presently have evidence on what alternatives that the IRS considered in excluding psychologist from the definition of "physicians" in Revenue Procedure 99-21 other than the rule itself." *See* docket number 37, ¶3.

At proceedings conducted before this Court on November 3, 2017, defense counsel, accompanied by his deputy chief, advised the Court that "we are going to forgo arguing that the taxpayer failed to follow proper procedure and following RP 99-21 with regard to providing the documents from a doctor. So we are not going forward with that defense in this case…as a result of the court's order." Docket no. 46, p. 2-3. Defense counsel also stated he was "not authorized" to state for this Court the Defendant's definition of "physician", as that term is used in RP 99-21. Docket no. 46, p. 6.

None-the-less, as of this filing it appears that Defendant has not altered its practice of applying its exclusionary rule to summarily reject refund claims, submitted pursuant to §6511(h) and RP 99-21, that are supported by licensed psychologists' statements of financial disability. To the contrary, Defendant appears to have chosen deliberately not to bring its conduct into compliance with this Court's ruling. Moreover, on information and belief, Defendant has no present intention of ever so doing.

PLAINTIFF'S ARGUMENT IN SUPPORT OF ITS MOTION FOR A PRELIMINARY INJUNCTION

I. Plaintiff Is Not Barred By Statute from Seeking to Enjoin Defendant's Continued Application of Its Arbitrary and Capricious Exclusionary Rule.

Pursuant to 26 U.S.C. §7421 (hereafter, the "Anti-injunction Act" or "AIA"), Defendant has broad – but not absolute – protection from judicial restraints on its conduct. With certain enumerated exceptions not applicable here, the AIA provides that "no suit for the purpose of restraining the ***assessment*** or ***collection*** of any ***tax*** shall be maintained in any court by any person". 26 U.S.C. §7421(a)(emphasis supplied).

In the present case, however, the conduct at issue - defendant's wrongful application of its judicially disapproved exclusionary rule so as to summarily deny refund claims filed pursuant to §6511(h) – does not relate to either the assessment or collection of any tax. Accordingly, the AIA is no barrier to this Court granting Plaintiff's motion.

A. This Motion Does Not Seek to Enjoin Defendant's Assessment of Any Tax.

An assessment of tax is defined as the "recording of the liability of the taxpayer" by Defendant. 26 U.S.C. §6203. In the first instance, federal income tax is self-assessed by the taxpayer. Known as summary assessment, the taxpayer's self-reported tax liability is recorded Defendant as it was reported on the taxpayer's filed return. 26 U.S.C. §6201(a)(1).

Thereafter, should Defendant actually examine the return and determine that the taxpayer owes tax in addition to that reported on his return, a "deficiency" is said to exist. 26 U.S.C. §6211(a). In that situation a Notice of Deficiency is issued to the taxpayer, after which Defendant must wait ninety (90) days before assessing – that is, recording - the additional tax liability. 26 U.S.C. §6212.

It is well settled that the AIA prevents suits to enjoin Defendant from executing its duty to assess taxes. Instead of an injunction, in a case where Defendant is alleged to have abused the statutory assessment process the taxpayer's remedy is to pay the additional tax claimed as due and seek a refund of it in a subsequent suit for refund. *See, e.g., National Federation of Independent Business et al v. Sebelius*, 567 U.S. 519 (2012); *Bob Jones University v. Simon*, 416 U.S. 725, 736 (1974); *J.L. Enochs v. Williams Packing & Navigation Co., Inc.*, 370 U.S. 1, (1962); *Lane v. United States*, 727 F.2d 18 (1st Cir. 1984).

In this case, Plaintiff's assessed tax – that recorded by the Defendant per Plaintiff's 2006 tax return – totals $136,736. Defendant does not now, nor has it ever, asserted that any deficiency exists, and no Notice of Deficiency has ever issued. Consequently, the amount of Plaintiff seeks as a refund in this case is uncontested. As such, the instant refund is in no way connected to any assessment activity conducted by Defendant.

Rather, the conduct Plaintiff seeks to enjoin relates exclusively to the arbitrary and capricious exclusionary rule Defendant employs when it evaluates refund claims submitted pursuant to §6511(h) and RP 99-21. Plainly, that conduct does not fall within the scope of the Anti-injunction Act.

B. This Motion Does Not Seek to Enjoin Defendant's Collection of Any Tax.

The act of assessing a tax creates a debt owed by the debtor-taxpayer to the creditor-IRS. This debt differs from one owed to a general creditor since the assessment itself is equivalent to a judgment in favor of the general creditor. That is, once the assessment of tax has been made Defendant is free, without further judicial intervention, to use the full force of all the procedures it has available to collect it. *See, e.g., Bull v. United States*, 295 U.S. 247, 260 (1934).

Defendant defines the term "collections" as that "series of actions that the IRS can take to collect the taxes you owe if you don't voluntarily pay them." IRS Publication 594, p. 1. Notably, the "collection process" begins only when a taxpayer fails to pay his assessed tax in full and on time. *See, e.g.*, IRS Publication 594, p. 1.

In this case Defendant has undertaken no collections activity whatever, and none is at issue. It may be initially tempting, of course, to characterize Defendant's post-limitations period seizure of a taxpayer's refund as a "collection" since, after all, Defendant does thereby take a

taxpayer's money. But a bit of consideration makes obvious that such a characterization is specious.

Rather, the term "collections" – by Defendant's own definition – refers to those processes by which the IRS ***collects taxes that have been assessed and not paid***. The IRS taking of a post-limitations refund – money not owed as tax and otherwise belonging to the taxpayer – cannot, therefore, be a "collections activity".

In this case, Plaintiff's taxes were paid in full prior to his 2006 tax return even being filed. In fact, prior to his death the deceased taxpayer somehow managed to overpay those taxes by more than a hundred percent. By this case he seeks only a refund of that overpayment, the amount of which is not in dispute.

Rather than consider that claim for refund, however, Defendant summarily denied it without considering its merits and justified its conduct by the very exclusionary rule this Court has found to be arbitrary, capricious, and not worthy of deference. Accordingly, once again it is apparent that Defendant's behavior does not come within the scope of the Anti-injunction Act.

C. No Taxpayer Overpayment, Retained by Defendant Pursuant to Expiration of the Time to Claim a Refund, Is a Tax.

By its plain language, the AIA applies only to the "assessment or collection ***of any tax***". 26 U.S.C. §7421(a)(emphasis supplied). The meaning of the word "tax" in the AIA is strictly construed. *See National Federation of Independent Business et al v. Sebelius*, 567 U.S. 519 (2012). In *National Federation*, for example, the Supreme Court explicitly ruled that the Anti-injunction Act did not bar a suit to enjoin the IRS from enforcing the Patient Protection and Affordable Care Act's penalty provision, even though that penalty provision arose from Congressional taxing authority:

> The Anti–Injunction Act applies to suits "for the purpose of restraining the assessment or collection of any tax… Congress, however, chose to describe the "[s]hared responsibility payment" imposed on those who forgo health insurance not as a "tax," but as a "penalty." There is no immediate reason to think that a statute applying to "any tax" would apply to a "penalty."…
>
> Where Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally…
>
> The Anti–Injunction Act and the Affordable Care Act, however, are creatures of Congress's own creation. How they relate to each other is up to Congress, and the best evidence of Congress's intent is the statutory text. We have thus applied the Anti–Injunction Act to statutorily described "taxes" even where that label was inaccurate.

National Federation, supra at 543-44 (citations omitted). Accordingly, the Supreme Court ruled that a suit to enjoin the IRS could proceed even though the ACA penalty was otherwise treated as a tax. S*upra* at 544.

In the present case the above-stated principal is far clearer than it was even in *National Federation*. First, claims submitted pursuant to §6511(h) do not involve any payments – penalty or otherwise – meant to be collected from taxpayers by the IRS. As such, retaining a refund for expiration of the period to file a refund claim does not remotely resemble a penalty imposed or tax assessed.

Second, while the term "penalty" might arguably sometimes be a euphemism for "tax" – a notion which, in any event, the Supreme Court declined to accept as dispositive - the plain meaning of the term "refund" is not. A refund is, by plain definition, money previously paid by a taxpayer – in excess of any tax liability - and now owed by the IRS to him as an excess. The situation is not unlike purchasing an item at the store, after all. Even if the store's owner refuses

to hand over a customer's change, he has not thereby imposed an additional purchase price on that customer.

Similarly, the money Plaintiff now seeks as a refund does not become a tax merely because Defendant has asserted – wrongly, as it turns out - that the time to claim his refund had passed. The passage of a period of limitation does not change the character of the money in question – it remains the taxpayer's refund. Only Defendant's obligation regarding is changes, from a "duty to pay it over" into a "right to keep it". *See, e.g.*, 26 U.S.C. §6402(a).

Since the refund being sought here is not a tax the Anti-injunction Act does not bar this Court from enjoining Defendant's arbitrary and capricious exclusionary rule.

D. The Anti-Injunction Act Does Not Apply to Refund Claims.

It is long settled that the AIA is intended to promote the efficient operation of the federal tax system. Thus, the Supreme Court has noted that the purpose of the AIA is:

> [T]he protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of preenforcement judicial interference, 'and to require that the legal right to the disputed sums be determined in a suit for refund.'

Bob Jones University v. Simon, supra at 736-37. *See also McCarthy v. Marshall*, 723 F.2d 1034 (1st Cir. 1983). Thus, the operation of the anti-injunction statute does not act to shield Defendant from injunctions arising from its conduct regarding refund claims.

In this case, the conduct at issue relates entirely to Defendant's use of an arbitrary and capricious exclusionary rule by which Defendant refund claims submitted pursuant to IRC §6511(h), i.e., in cases of financial disability. By the plain language of the AIA, and a long line of judicial rulings, that conduct is not subject to the AIA's prohibition.

To the contrary, Congress and the courts have approved a process by which claims of IRS misconduct are to be litigated only by way of a refund claim. It would be manifestly unjust, therefore, to deny a taxpayer, successfully contesting that conduct via a refund claim, the equitable remedy such misconduct so often necessitates.

After all, if it were not possible to enjoin IRS misbehavior during the refund suit, nor during the assessment or collection phases, there would be no occasion for any court to restrain IRS arbitrary and capricious behavior of the sort this Court ruled has occurred in this case.

E. Pursuant to the *Enochs* exception the Anti-Injunction Act Does Not Bar Plaintiff's Motion Herein for a Preliminary Injunction.

By its decision in *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1 (1962), the Supreme Court announced a judicially created exception to the AIA's prohibition of suits to enjoin IRS assessment or collection activity. In particular, the Supreme Court held that:

> [I]f it is clear that under no circumstances could the Government ultimately prevail…and…if equity jurisdiction otherwise exists…then the bar of section 7421(a) is inapplicable.

Supra at 7. *See also Lane v. United States*, 727 F.2d 18, 20 (1st Cir. 1984); *South Carolina v. Regan*, 465 U.S. 367 (1984).

In the present case, if it were needed application of the *Enochs* exception would plainly be warranted. This Court has, after all, already decided the question of law underlying Plaintiff's present motion for a preliminary injunction. That is, this Court has determined that Defendant's exclusionary rule is both arbitrary and capricious, and not entitled to deference. Moreover, Defendant has admitted to the Court that it has no evidence that it ever considered any alternatives to its present exclusionary rule, or that it had any evidence supporting the rule as

issued. And perhaps most saliently, Defendant has informed the Court that it will no longer assert as a defense that Plaintiff failed to satisfy the unfounded requirements of that exclusionary rule.

Accordingly, it is readily apparent that requirement of the *Enochs* exception to §7421's bar – that under no circumstances could the Government ultimately prevail in defending its exclusionary rule – is satisfied in this case. Therefore, then, the Anti-injunction Act is no bar to Plaintiff's instant motion for a preliminary injunction barring Defendant from continuing use its exclusionary rule to deny refund claims filed pursuant to IRC §6511(h).

II. Plaintiff Has Third Party Standing to Seek A Preliminary Injunction of Defendant's Continued Use of Its Arbitrary and Capricious Exclusionary Rule to Deny Taxpayers Their Statutory Right to Refunds In Accordance with IRC §6511(h)

In the federal courts a litigant is granted third party standing (also called *jus tertii* standing) whenever the criteria for it are met. *See Craig v. Boren*, 429 U.S. 190 (1976); *Kozera v. Spirito*, 723 F.2d 1003 (1st Cir. 1983); *IMS Health, Inc. v. Ayotte*, 550 F.3d 42 (1st Cir. 2008). While limitations are rightly imposed on who may qualify for *jus tertii* standing, those limitations are decidedly not constitutionally based. Rather, they are judicial rules created to minimize the risk of unwarranted intervention into the controversies of others, which may not be fully briefed by the actual parties in the case. *See, e.g., Craig v. Boren*, 429 U.S. 190, 193 (1976).

Where, however, there has been a full litigation of the issue underlying a claim of third party standing the considerations underlying its limitation do not apply. Thus, the Supreme Court has held:

> These prudential objectives, thought to be enhanced by restrictions on third-party standing, cannot be furthered here, where the lower court already has entertained the relevant constitutional challenge and the parties have sought or at least have never resisted an authoritative constitutional determination.

> In such circumstances, a decision by us to forgo consideration of the constitutional merits in order to await the initiation of new challenges to the statute by injured third parties would be impermissibly to foster repetitive and time-consuming litigation under the guise of caution and prudence.
>
> Moreover, insofar as the applicable constitutional questions have been and continue to be presented vigorously and "cogently"…the denial of jus tertii standing in deference to a direct class suit can serve no functional purpose.

Boren, supra at 193-94 (citations omitted).

When seeking injunctive relief, the movant has the burden to show that he has standing to seek that desired relief. *See, e.g., DaimlerChrysler v. Cuno*, 547 U.S. 332, 342 (2006); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Three points of consideration surrounding *jus tertii* standing - not necessarily co-equal - have been set forth. As the Supreme Court stated:

> We have been quite forgiving of these criteria in certain circumstances… And "[i]n several cases, this Court has allowed standing to litigate the rights of third parties when enforcement of the challenged restriction *against the litigant* would result indirectly in the violation of third parties' rights."

Kowalski v. Tesmer, 543 U.S. 125, 567, 568 (2004), *citing Warth v. Seldin*, 422 U.S. 490, 510 (1975). *See also Doe v. Bolton*, 410 U.S. 179, (1973); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Barrows v. Jackson*, 346 U.S. 249 (1953); *Craig v. Boren*, 429 U.S. 190 (1976); *Kozera, supra; IMS Health, Inc., supra.*

As the *Kowalski* court noted, the primary criterion justifying third party standing is that the Movant has suffered the "injury in fact" to be prevented by the injunction he seeks. To demonstrate an "injury in fact" the Movant must show:

1. There has been an "invasion of a legally protected interest", which is
2. Concrete and particularized; and also which is
3. Actual or imminent, not conjectural or hypothetical.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)(citations omitted). In this case Plaintiff's injury of fact is already well established before this Court, i.e., Defendant's denial of Plaintiff's statutory right to have his refund claim considered on its merits and not summarily rejected by application of the arbitrary and capricious exclusionary rule of which this Court has so expressly disapproved.

The second, and lesser, consideration asks whether the movant has a sufficient relationship to the third parties he seeks to stand for. In this case, Plaintiff's relationship is that he shares with others their exact, same injury in fact. He stands in a class with them. Thus, Plaintiff's present motion for a preliminary injunction addresses the cause of all their injuries in fact – Defendant's wrongful use of its arbitrary and capricious exclusionary rule – and so he bears exactly the relationship to them envisioned by this second consideration. That is, this Court by its own experience can rest assured that the questions at issue here will continue to be "vigorously and cogently" litigated. *Cf. Boren, supra*.

Moreover, this relationship is precisely the sort described by the Supreme Court in *Boren*. That is, through use of *jus tertii* standing this Court will avoid "initiation of new challenges…by injured third parties" that would "foster repetitive and time-consuming litigation under the guise of caution and prudence." *Boren, supra* at 193-94 (citations omitted).

Finally, the third *jus tertii* consideration, i.e., that there must be some hindrance to the third parties' ability to protect their own interest, is readily apparent as well. *See, e.g., Kowalski v. Tesmer*, 543 U.S. 125, 567 (2004). In fact, absent issuance of the preliminary injunction requested herein those third parties would be overwhelmingly at a loss to protect their own interests.

Certainly, because Defendant continues to use its judicially disapproved exclusionary rule to deny refund claims submitted pursuant to IRC §6511(h) and RP 99-21, the "injury in fact" suffered by Plaintiff continues to be inflicted on many of the taxpayers who are presently asserting their own refund claims of the same sort. And without question the same can be said for those taxpayers who will in the future file such refund claims.

Moreover, those taxpayers who previously filed for refunds pursuant to §6511(h) - and were summarily denied by application of Defendant's exclusionary rule - are in all likelihood unaware of their right to reapply in light of this Court's rejection of that exclusionary rule. Certainly, it would be imprudent for this Court to rely on Defendant to advise taxpayers of their new possibilities.

And, even among the much smaller group of those §6511(h) refund applicants – those who happen to learn of this Court's rejection of Defendant's exclusionary rule – it is certain that not all will have the means to pursue litigation in federal court. The instant case, for example, grows ever closer to three years old, with all the attendant stress and financial burden attendant to litigation.

And, setting aside for the moment the practical questions that must be faced when federal litigation is considered, it must be noted that for many of those similarly situated taxpayers the amount of the refund to be claimed will simply not justify the litigation required to obtain it. Not all financially disabled taxpayers, after all, will have large refunds awaiting their success.

As to those taxpayers, Defendant will be able to hide its misconduct, as it so often does, behind the shield provided by the practical and socioeconomic barriers to federal vindication of taxpayer rights.

Plaintiff, therefore, now submits that, in light of this Court's ruling every taxpayer summarily denied a §6511(h) refund claim by action of Defendant's now rejected exclusionary rule, is entitled to a review on the merits of their claim. By no reasonable stretch of the imagination, however, can that fair result can only be accomplished other than by this Court recognizing Plaintiff's third party standing and granting the instant motion for a preliminary injunction.

III. Pursuant to Long Settled Legal Principals Plaintiff's Motion for a Preliminary Injunction Should Be Granted by This Court.

On a motion for a preliminary injunction the Court must consider the familiar four elements:

1. The movant's probability of success on the merits;
2. The prospect of irreparable harm absent the injunction;
3. The balance of the relevant impositions, i.e., the hardship to the movant absent the injunction compared to the hardship to the opponent if it issues; and
4. The effect of the Court's action on the public interest.

See, e.g., Rosario-Urdaz v. Rivera-Hernandez, 350 F.3d 219 (1st Cir. 2003); *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 R.3d 12 (1st Cir. 1996).

Taking these elements sequentially, the first must be deemed a given since this Court has already ruled that Defendant's exclusionary rule is arbitrary and capricious, and not entitled to any deference. Moreover, Defendant has admitted to the Court that it has no evidence as to what, if any, alternatives to it were ever considered and so was unable to justify its operation. Finally, Defendant has advised the Court that it has abandoned any defense in this case relating to Plaintiff's purported non-compliance with RP 99-21.

As to the prospect of irreparable harm, Defendant's ongoing use of its now discredited exclusionary rule has harmed Plaintiff personally by wrongly withholding his refund, and by

requiring him to spend years of his time and large amounts of money attempting to obtain it. Moreover, as set forth above, Defendant's ongoing use of that exclusionary rule threatens to harm – or has already harmed - taxpayers now filing, who soon will file, or who in the past have filed similar, rejected refund claims pursuant to §6511(h).

Thus, if not enjoined Defendant's conduct will result – as it no doubt has already done while this case has pended –in additional taxpayers having their refund claims summarily dismissed by the IRS, thereby denying many the refunds to which they have a statutory right. As set forth above, virtually all such harm is perforce irreparable.

Finally, both the balance of equities herein, and the public interest in general, strongly favor issuance of this preliminary injunction. For Plaintiff and those similarly situated to him, equity requires that those entitled to refunds pursuant to §6511(h) not be denied their rights by unfounded government seizures of their property. To leave this case in a posture where the Court has declared that Defendant's arbitrary and capricious exclusionary rule cannot be applied to Plaintiff – all the while leaving Defendant free to inflict that exclusionary rule on all other taxpayers – would be manifestly unjust.

By contrast, the burden of the proposed preliminary injunction on Defendant is negligible. After all, should the requested injunction issue Defendant would need only stop wrongly denying those §6511(h) refund claims and start executing its duty to review those claims on their merits, as Congress has charged them to do. Stated plainly, it is simply not a hardship for Defendant to begin at long last properly executing its obligations pursuant to §6511(h). Issuing the preliminary injunction requested herein does not impose any new obligations on Defendant.

Finally, beyond all doubt, the public interest is better served by merit-based decisions of §6511(h) refund claims than it is by the unjustified, arbitrary, and capricious summary denials

which Defendant presently employs. Wrongful seizures of taxpayer property can do nothing to enhance the operation of our tax system.

CONCLUSION

For all the reasons set forth above, it is respectfully requested that this Court grant Plaintiff's motion for a preliminary injunction prohibiting Defendant from continuing to employ its arbitrary and capricious exclusionary rule to deny, summarily and wrongly, refund claims filed pursuant to IRC §6511(h).

Date: November 22, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 22, 2017, I electronically filed the foregoing document with the Clerk of the District Court using the CM/ECF system, which will send notification of such filing to all registered parties.

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