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24 UNITED STATES DISTRICT COURT
25 NORTHERN DISTRICT OF CALIFORNIA
26 OAKLAND DIVISION

27 COLIN SCHOLL and LISA STRAWN, on
28 behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

STEVEN MNUCHIN, in his official
capacity as the Secretary of the U.S.
Department of Treasury; CHARLES
RETTIG, in his official capacity as U.S.
Commissioner of Internal Revenue; U.S.
DEPARTMENT OF THE TREASURY;
the U.S. INTERNAL REVENUE
SERVICE; and, the UNITED STATES OF
AMERICA.

Defendants.

Case No. 4:20-cv-5309-PJH

**MEMORANDUM OF LAW OF AMICUS
CURIAE CENTER FOR TAX PAYER
RIGHTS IN SUPPORT OF THE
PLAINTIFFS**

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TABLE OF CONTENTS

	Page
STATEMENT OF INTEREST OF AMICUS CURIAE	4
SUMMARY OF THE ARGUMENT.....	5
ARGUMENT	6
I. 26 U.S.C. § 7422(a) Does Not Apply to the Plaintiffs’ Challenge	6
II. Assuming, Arguendo, that 26 U.S.C. § 7422(a) Applies to the Plaintiffs’ Challenge, It Does Not Provide an Adequate Alternative to Review Under the Administrative Procedure Act	8
CONCLUSION	11

1 **TABLE OF AUTHORITIES**

2 **CASES**

3 Amador v. Mnuchin,
4 No. CV ELH-20-1102, 2020 WL 5849476, (D. Md. Oct. 1, 2020)..... 7, 8, 9

5 Bowen v. Massachusetts,
6 487 U.S. 879, 893, 108 S. Ct. 2722, 2731, 101 L. Ed. 2d 749 (1988)..... 8

7 Colin Scholl, et al., Plaintiffs, v. Steven Mnuchin, et al., Defendants.,
8 No. 20-CV-05309-PJH, 2020 WL 5702129, at *11 (N.D. Cal. Sept. 24, 2020) 7, 10

9 Doe v. Trump,
10 No. 820CV00858SVWJEM, 2020 WL 5076999 (C.D. Cal. July 8, 2020) 8

11 King v. Burwell,
12 759 F.3d 358, 366–67 (4th Cir. 2014), aff'd, 576 U.S. 473, 135 S. Ct. 2480, 192 L. Ed. 2d 483
13 (2015)..... 7, 9, 10

14 R.V. v. Mnuchin,
15 No. 20-CV-1148, 2020 WL 3402300 (D. Md. June 19, 2020) 8

16 U.S. Army Corps of Engineers v. Hawkes Co.,
17 136 S. Ct. 1807, 1810, 195 L. Ed. 2d 77 (2016) 9

18 **STATUTES**

19 26 U.S.C. § 6428 passim

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STATEMENT OF INTEREST OF AMICUS CURIAE¹

The Center for Taxpayer Rights (“the Center”), a 501(c)(3) not-for-profit corporation, is dedicated to furthering taxpayers’ awareness of and access to taxpayer rights. The Center and its Executive Director, Nina E. Olson, the former National Taxpayer Advocate, have experience advocating on behalf of taxpayers whose voices might otherwise not receive attention. Incarcerated individuals represent an especially financially vulnerable class in American society. The Center believes that the Internal Revenue Service’s (“IRS”) policy of withholding economic impact payments provided by 26 U.S.C. § 6428 from individuals incarcerated for part of or all of 2020 is contrary to law and subverts the intention of Congress to aid Americans who are struggling financially as a result of the COVID-19 pandemic. For these reasons, The Center submits this amicus brief in support of Colin Scholl, et al. with respect to their argument that individuals incarcerated for part or all of 2020 should receive advance payments under 26 U.S.C. § 6428 (“the CARES Act”).

¹No party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money that was intended to fund preparing or submitting this brief. This brief is filed with the consent of the plaintiffs, obtained 9/30/2020. Consent of the defendants was sought on 10/6/2020; defendants’ reply is pending.

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SUMMARY OF THE ARGUMENT

The Tax Clinic at the Legal Services Center of Harvard Law School, on behalf of the Center for Taxpayer Rights, requests that the United States District Court for the Northern District of California enter summary judgment in favor of Plaintiffs and the certified class they represent.

The Government erred in asserting that 26 U.S.C. § 7422 (a) bars the Plaintiffs from bringing their challenge. While § 7422 (a) requires that taxpayers first file a tax return before filing suit for the refund of an overpayment of tax, many courts have held that § 7422 (a) does not apply to actions in equity. The Plaintiffs are not seeking money damages but rather are seeking equitable enforcement of the statutory command to expeditiously issue advance payments under 26 U.S.C. § 6428. These advance payments were intended by Congress to provide rapid economic relief to the millions of Americans suffering financial hardship as a result of the COVID-19 pandemic. The Government’s position that incarcerated taxpayers must first file their 2020 tax returns to qualify for this assistance subverts Congress’s intentions and violates 26 U.S.C. § 6428.

The Government also erred in asserting that the Plaintiffs’ claim is not reviewable under the Administrative Procedure Act (“APA”) because filing a suit for refund under § 7422 (a) provides an adequate alternative to APA review. The alternative path that the Government wishes to impose on the Plaintiffs has been analyzed by other courts and has been found to be inadequate. The Plaintiffs represent a class of people who tend to be economically disadvantaged. For this group, the hope of eventually receiving the economic impact payment is substantially different than receiving that payment as rapidly as possible, especially when these payments were intended to provide immediate relief to those adversely affected by the pandemic.

For these reasons, the Center argues that the Court should hold to its reasoning when it granted a preliminary injunction in Plaintiffs’ favor and enter summary judgment in favor of Plaintiffs and the certified class they represent.

1 **ARGUMENT**

2 **I. 26 U.S.C. § 7422(a) Does Not Apply to the Plaintiffs' Challenge**

3 26 U.S.C. § 7422 (a) does not bar the plaintiffs' claim in the instant case. Section 7422 (a)
4 states that:

5 No suit or proceeding shall be maintained in any court for the recovery of any internal
6 revenue tax alleged to have been erroneously or illegally assessed or collected, or of any
7 penalty claimed to have been collected without authority, or of any sum alleged to have been
8 excessive or in any manner wrongfully collected, until a claim for refund or credit has been
9 duly filed with the Secretary, according to the provisions of law in that regard, and the
10 regulations of the Secretary established in pursuance thereof.

11 As this Court has pointed out, the instant claim does not fall within the plain language of §
12 7422(a): “Plaintiffs are not alleging that a tax was erroneously or illegally assessed or collected, a
13 penalty was collected without authority, or any sum is alleged to be excessive.” Colin Scholl, et
14 al., Plaintiffs, v. Steven Mnuchin, et al., Defendants., No. 20-CV-05309-PJH, 2020 WL 5702129,
15 at *11 (N.D. Cal. Sept. 24, 2020).

16 Recent cases interpreting § 7422(a) in similar contexts have reached the same conclusion.
17 In Amador v. Mnuchin, No. CV ELH-20-1102, 2020 WL 5849476, (D. Md. Oct. 1, 2020), the
18 plaintiffs were American citizens married to individuals who did not have Social Security
19 Numbers (SSNs). The plaintiffs filed joint tax returns with their spouses and did not receive
20 economic impact payments under 26 U.S.C. § 6428. They pursued injunctive and declaratory
21 relief, seeking that the IRS be ordered to remit to them advance payments under § 6428.
22 Analyzing the language of § 7422(a), the District Court for the District of Maryland concluded
23 that the plaintiffs' action did not fall under the language of the statute: “Plaintiffs do not seek the
24 recovery of any monies wrongfully “assessed” because they do not allege that the IRS improperly
25 calculated their tax liability... Nor do plaintiffs complain of taxes wrongfully ‘collected.’” Id. at
26 *9. The Amador Court also notes that “if a court were to enjoin the enforcement of §
27 6428(g)(1)(B), this might well result in plaintiffs' receipt of the impact payment. But, an
28 injunction's secondary effects do not transform a suit for equitable relief into one for damages.”

1 Id. at *9, citing Bowen v. Massachusetts, 487 U.S. 879, 893, 108 S. Ct. 2722, 2731, 101 L. Ed. 2d
2 749 (1988).

3 Similarly, Doe v. Trump, No. 820CV00858SVWJEM, 2020 WL 5076999 (C.D. Cal. July
4 8, 2020) also addressed the issue of United States citizens who did not receive advance payments
5 under 26 U.S.C. § 6428 because they filed joint tax returns with immigrant spouses who did not
6 have SSNs. In Doe v. Trump, the District Court for the Central District of California held that
7 suits for injunctive and declaratory relief do not fall under the purview of § 7422(a). “Plaintiff
8 seeks only injunctive and declaratory relief.” Id. at *4. “Because Plaintiff’s claim arises from a
9 Government-imposed barrier to receipt of a benefit, and she is not seeking any refund of tax
10 imposed, § 7422(a) does not bar her claim.” Id. at *5.

11 In R.V. v. Mnuchin, No. 20-CV-1148, 2020 WL 3402300 (D. Md. June 19, 2020), United
12 States citizen children with one or two undocumented parents were not given advance payments
13 under 26 U.S.C. § 6428. In agreement with previously cited cases, the District Court for the
14 District of Maryland concluded that “§ 7422(a) does not apply [in this case] because it is not a
15 suit for any tax, penalty, or sum wrongfully collected.” Id. at *7.

16 In the context of tax credits allowed under the Affordable Care Act, the Fourth Circuit has
17 held that § 7422(a) does not apply to actions for declaratory and injunctive relief. “The plaintiffs
18 are not seeking a tax refund; they ask for no monetary relief, alleging instead claims for
19 declaratory and injunctive relief. . . . This is simply not a typical tax refund action in which an
20 individual taxpayer complains of the manner in which a tax was assessed or collected and seeks
21 reimbursement for wrongly paid sums.” King v. Burwell, 759 F.3d 358, 366–67 (4th Cir.
22 2014), aff’d, 576 U.S. 473, 135 S. Ct. 2480, 192 L. Ed. 2d 483 (2015). The plaintiffs in King did
23 not seek monetary relief. In contrast, granting the plaintiffs relief in the instant case will have the
24 ultimate effect that they receive monetary payments. However, as the Amador court has already
25 pointed out, Bowen v. Massachusetts has held that a suit for equitable relief is not transformed
26 into an action for damages simply because the enforcement of an injunction would result in
27 monetary payments. Amador v. Mnuchin at *9.

28 Although the advance payments ordered by § 6428(f) involve the same amounts as the

1 reconciliation provision in § 6428(e), the structure of the statute implies that these payments are
2 not simply refunds of overpaid taxes. Rather, they are meant to be payments, made “as rapidly as
3 possible,” in order to help Americans ameliorate the economic problems they are facing today
4 due to the COVID-19 pandemic. Therefore, an action in equity seeking faithful enforcement of §
5 6428(f) with respect to incarcerated individuals is fundamentally different from a suit for
6 damages seeking to recover overpaid taxes and § 7422(a) should not be used to bar plaintiffs from
7 making their claim.

8
9 **II. Assuming, Arguendo, that 26 U.S.C. § 7422(a) Applies to the Plaintiffs’ Challenge, It**
10 **Does Not Provide an Adequate Alternative to Review Under the Administrative**
11 **Procedure Act**

12 For a claim to proceed under the Administrative Procedure Act (APA), there must be “no
13 adequate alternatives to APA review in court.” U.S. Army Corps of Engineers v. Hawkes Co.,
14 136 S. Ct. 1807, 1810, 195 L. Ed. 2d 77 (2016). The Government has contended that 26 U.S.C. §
15 7422(a) provides an adequate alternative because the plaintiffs can file their 2020 tax returns
16 requesting a refund and if denied, or after six months with no IRS response, file suit for the
17 amount of the economic impact payment under § 7422(a). Given the vulnerable financial
18 circumstances of the instant class of plaintiffs and the purpose of the economic impact payments
19 under the CARES Act, the path suggested by the Government is not an adequate alternative to
20 APA review.

21 A remedy is inadequate if it imposes upon plaintiffs a process that is “arduous, expensive,
22 and long.” U.S. Army Corps of Engineers v. Hawkes Co. at 1815. The Amador Court, in
23 analyzing whether the procedure suggested by the Government would be adequate, noted that
24 “before an action can be brought under § 7422, the taxpayer must (1) file a tax return; (2) file a
25 timely administrative claim with the IRS; and (3) the IRS must deny the claim or fail to act within
26 six months.” Amador v. Mnuchin at *9. Applied to the case of individuals who filed jointly with a
27 spouse who did not have a Social Security Number, “[the plaintiffs] would first have file a 2020
28 tax return, which they cannot do until 2021. Then, plaintiffs would have to wait until the IRS
invariably denies their request for a refund in the amount of the CARES Act payment... Once

1 that happens, plaintiffs would have to file an administrative claim with the IRS, asking it to
2 reconsider its position. But, here too, the IRS will reject plaintiffs’ claim.” Id. at *9. The Amador
3 court points out that such a path would be a “Kafkaesque scenario” which is “guaranteed to be an
4 exercise in futility.” Id. at *9. For these reasons, the Amador court concluded that a suit under §
5 7422 would be “arduous, expensive, and long” and therefore not an adequate alternative to APA
6 review. The path the Government has suggested the instant plaintiffs take is the same as that
7 suggested by the Government in Amador and therefore would be equally “arduous, expensive,
8 and long.”

9 The CARES Act instructs the IRS to make advance refunds to eligible individuals “as
10 rapidly as possible.” 26 U.S.C. § 6428(f)(3). The plaintiffs, falling within the definition of
11 “eligible individual” as defined in § 6428(d), seek injunctive enforcement of this provision.² The
12 relief the plaintiffs seek is not simply an eventual payment, but an expedited payment of a sum
13 intended by Congress to aid Americans impacted by the COVID-19 pandemic. The plaintiffs
14 represent a class of persons who already tend to be economically disadvantaged. Scholl v.
15 Mnuchin at *18. At a time when millions of Americans are experiencing economic hardship due
16 to the pandemic, providing the plaintiffs with an economic impact payment now is a substantially
17 different type of relief than forcing them to apply for such a payment in 2021 and potentially
18 endure a long and arduous set of administrative and legal hurdles. Furthermore, to issue payments
19 in 2021 after plaintiffs have filed their 2020 tax returns when it is clearly administrable to issue
20 the payments now³ would be contrary to Congress’s command to administer payments “as rapidly
21 as possible” and would therefore not be an adequate alternative to APA review. Just as the Fourth
22 Circuit held in King that an action under § 7422 “would not afford the plaintiffs the complete
23 relief they seek” because the plaintiffs’ challenge was “simply not a typical tax refund action in
24 which an individual taxpayer complains of the manner in which a tax was assessed or collected

25 _____
26 ² An eligible individual is defined as “any individual” other than (1) any nonresident alien
27 individual, (2) any individual who is allowed as a dependent deduction on another taxpayer's
28 return, and (3) an estate or trust. § 6428(d).

³ The IRS has demonstrated its ability to issue economic impact payments to incarcerated
individuals by having done so in the early stages of implementing the economic impact payment
program. Scholl v. Mnuchin at *3.

1 and seeks reimbursement for wrongly paid sums,” so too is the instant challenge not a typical tax
2 refund action and so too would an action under § 7422 not afford the instant plaintiffs the relief
3 they seek. King v. Burwell at 367.

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CONCLUSION

For the reasons set forth above, the Center for Taxpayer Rights requests that the Court grant summary judgment in favor of Plaintiffs and the Class.

Dated: October 9, 2020

By:

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