No. 2022-1564

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

ALAN C. DIXON,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

On Appeal from the United States Court of Federal Claims
Docket No. 20-1258T (Judge David A. Tapp)

Corrected
***AMICUS* BRIEF OF THE CENTER FOR TAXPAYER RIGHTS IN SUPPORT OF THE APPELLANT'S REQUEST FOR REVERSAL**

Professor T. Keith Fogg
Counsel for Amicus
Director, Tax Clinic of the
Legal Services Center of
Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130
(617) 390-2532
kfogg@law.harvard.edu

—

Professor Andrew Weiner
Counsel for Amicus
Director, Temple University
Beasley School of Law
Low Income Taxpayer Clinic
1719 N. Broad Street
Philadelphia, PA 19122
(215) 204-8807
weiner@temple.edu

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 2022-1564

Short Case Caption Dixon v. United States

Filing Party/Entity The Center for Taxpayer Rights

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box**. Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 06/2022

Signature: s/ Keith Fogg

Name: T. Keith Fogg

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☑ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☑ None/Not Applicable
The Center for Taxpayer Rights		

☐ Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☑ None/Not Applicable ☐ Additional pages attached

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

☑ None/Not Applicable ☐ Additional pages attached

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☑ None/Not Applicable ☐ Additional pages attached

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Regulations

Other Authorities

INTEREST OF THE *AMICUS*[1]

The Center for Taxpayer Rights ("the Center") is a non-profit organization under section 501(c)(3) of the Internal Revenue Code (Title 26) ("I.R.C."),[2] dedicated to furthering taxpayers' awareness of and access to taxpayer rights. The Center accomplishes its mission, in part, by educating the public and government officials about the role taxpayer rights play in promoting compliance and trust in systems of taxation. The Executive Director of the Center is Nina E. Olson, who from 2001 through 2019, served as the IRS National Taxpayer Advocate, appointed under § 7803(c)(1)(B).

Co-counsel for the Center are the Tax Clinic of the Legal Services Center of Harvard Law School and the Temple University Beasley School of Law Low Income Taxpayer Clinic ("the Clinics"), both of which represent low-income taxpayers before the IRS and in the courts. As part of their

---

[1] Pursuant to FRAP 29(a)(4)(E), this is to affirm that no 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. The only non-party who contributed monetarily to this brief is Harvard University, which paid the costs of printing. The Tax Clinic at the Legal Services Center is a component of Harvard University. The parties have consented to the filing of this brief.

[2] Unless otherwise indicated, all section references are to the Internal Revenue Code.

duties, the Clinics advise taxpayers on the requirements to file refund claims and bring refund suits.

Low-income taxpayers often make errors with regard to refund claims. It is not unusual for a client to appear at the clinic with a refund claim in need of perfection but past the statutory time period. Clinics review the client's correspondence with the IRS, almost none of which was signed under penalties of perjury, to determine if the client put the IRS on notice of the basis for the claim prior to the expiration of the statute of limitations. If the decision below in this case stands, many low-income taxpayers who attempt to deal with the IRS will find themselves unable to correct their understandable procedural mistakes through the informal claims process. The Center believes that courts should recognize taxpayers can meet the requirements for filing claims set out in the statute and regulations by filing a document that meets the requirements of an informal claim and that the informal claim here met those requirements thereby keeping open the statutory time period for filing suit.

ARGUMENT

Alan Dixon filed amended tax returns on Form 1040X for 2013 and 2014 that were signed by his accountant and claimed two types of refunds. Dixon reduced his income by characterizing a portion as taxable exclusively

in Australia. Dixon also reported new business income along with foreign tax credits that resulted in a net reduction of his tax liability. In 2017, the IRS audited Dixon's 2013 tax return and assessed additional tax allegedly based on the business income reported on his amended return. In 2018, Dixon paid the additional tax and then brought suit in the Court of Federal Claims ("CFC") for refunds claimed on his 2013 and 2014 amended returns and the additional tax assessed for 2013. Following the dismissal of that suit, Dixon signed and filed identical amended returns for 2013 and 2014, and brought the current suit seeking the same relief. The CFC once again dismissed Dixon's claims for refund on the grounds that Dixon did not satisfy the requirements of I.R.C. § 7422(a) to file valid administrative claims for refund before bringing suit and pay the additional tax assessed for 2013 before filing a claim for refund. The CFC is wrong on both accounts.[3]

Although the amended tax returns Dixon initially filed without signing and verifying under penalty of perjury were deficient, the informal claim doctrine, which goes back nearly a century, prevents such mistakes from extinguishing a taxpayer's rights where the informal claim provides the

[3] Even though the CFC dismissed Dixon's claims for refund on procedural grounds, it proceeded to the merits of his claims based on foreign tax credits. We do not address that part of the CFC's opinion other than to point out the inconsistency of passing on those informal refund claims and not the others.

IRS with notice of the taxpayer's intent to seek a claim for refund and the taxpayer corrects the claim while still pending. The CFC's refusal to recognize valid informal claims in this case misconstrues the doctrine and threatens its continued vitality by requiring that the IRS accept and treat an informal claim as valid. That confuses the informal claim doctrine with waiver and undermines its fundamental purpose to prevent empty formalism from defeating meritorious claims for refund.

The Court of Claims addressed the situation presented in this case in which a taxpayer files an informal refund claim and then pays the tax prior to filing a corrected claim. The court held that the corrected claim was a valid claim for refund of the tax paid. The CFC should have followed this binding precedent in the present case.

I. The CFC misapplied the informal claim doctrine by requiring that the claims be "accepted and treated" as valid by the IRS

We begin by reviewing the requirement to file a claim for refund to which the informal claim doctrine relates. Section 7422(a) of the Internal Revenue Code provides in relevant part that, "[n]o suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, . . . until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary

established in pursuance thereof."[4] The purpose of this requirement is "to both prevent surprise and give adequate notice to the Service of the nature of the claim and the specific facts upon which it is predicated, thereby permitting an administrative investigation and determination." *Computervision Corp. v. United States*, 445 F.3d 1355, 1363 (Fed. Cir. 2006) (quoting *Alexander Proudfoot Co. v. United States*, 454 F.2d 1379, 1383 (Ct. Cl. 1972)). A claim must "be filed . . . within 3 years from the time the return was filed, or 2 years from the time the tax was paid, whichever of such periods expires the later." I.R.C. § 6511(a).

The words "duly filed" in I.R.C. § 7422(a) means, among other things, that a claim for refund "must be verified by a written declaration that it is made under the penalties of perjury." Treasury Regulation (26 C.F.R.) ("Treas. Reg.") § 301.6402-2(b)(1); *see* I.R.C. § 6061(a) ("[A]ny return . . .

[4] This Court concluded just before the CFC issued its opinion in this case that "the 'duly filed' requirement in § 7422(a) is more akin to a claims-processing rule than a jurisdictional requirement." *Brown v. United States*, 22 F.4th 1008, 1011-12 (Fed. Cir. 2022). Without mentioning *Brown*, the CFC expressed doubt that the requirements of I.R.C. § 7422(a) are not jurisdictional. *Dixon v. United States*, No. 20-1258T, slip op. at 8-9 & n.5 (Fed. Cl. Jan 18, 2022) ("slip op."). Ultimately, the issue has no bearing on the outcome of this case given the CFC's finding that Dixon has not established that any equitable exception made available if the requirements are claims-processing rules applies. *Id.* at 9.

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."); I.R.C. § 6065 ("Except as otherwise provided by the Secretary, any return . . . or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury."). What happens when a taxpayer submits a timely claim that fits within the spirit of the statute by providing the IRS adequate notice but falls short on the formal requirements? That is where the well-established informal claim doctrine comes in.

The Supreme Court described the informal claim doctrine in *United States v. Kales*, 314. U.S. 186 (1941), as follows:

> This Court, applying the statute and regulations, has often held that a notice fairly advising the Commissioner of the nature of the taxpayer's claim, which the Commissioner could reject because too general or because it does not comply with formal requirements of the statute and regulations, will nevertheless be treated as a claim, where formal defects and lack of specificity have been remedied by amendment filed after the lapse of the statutory period.

Id. at 194. It effectively recognizes harmless error in the case of a defective claim that is corrected after the limitations period had expired – thus avoiding an unfair and potentially devasting result for taxpayers. In *Kales*, the taxpayer submitted a written protest in 1925 that did not comply with the

requirements that a claim for refund be made on Form 843 and signed under oath. The taxpayer subsequently perfected her claim in 1928, but too late according to the district court, which concluded that the claim was barred by the statute of limitations. *Id.* at 191-92. The Supreme Court reversed that judgment on the ground that the 1925 protest, in which there was "no doubt that she was setting forth her right to a refund," constituted a timely informal claim. *Id.* at 195.

As the Supreme Court had previously explained in *United States v. Memphis Cotton Oil Co.*, 288 U.S. 62 (1933), an informal claim is similar in effect to that of an amended pleading. Provided the amendment does not change the basic cause of action, "a defendant has had notice from the beginning that the plaintiff sets up and is trying to enforce a claim against it because of specified conduct, the reasons for the statute of limitations do not exist, and we are of opinion that a liberal rule should be applied." *Id.* at 69 (quoting *New York Cent. & H.R.R. Co. v. Kinney*, 260 U.S. 340, 346 (1922)). An informal claim, by the same logic, holds open the statute of limitations to allow the claim to be corrected. The Court noted, however, that "[t]he Commissioner has the remedy in his own hands" to keep the limitations period running by rejecting the informal claim based on its noncompliance with the formal requirements. *Id.* at 71. But it continued that

if the Commissioner "holds [the informal claim] without action until the form has been corrected, and still more clearly if he hears it, and hears it on the merits, what is before him is not a double claim, but a claim single and indivisible, the new indissolubly welded into the structure of the old." *Id.*

The informal claim doctrine recognized in *Kales* and *Memphis Cotton Oil Co.* is bedrock law as reflected by a long line of cases in this Court, its predecessor court, and the Court of Federal Claims. *See, e.g., Computervision Corp. v. United States*, 446 F.3d 1355, 1365 (Fed. Cir. 2006); *Western Co. of N. Am. v. United States*, 323 F.3d 1024, 1034 (Fed. Cir. 2003); *Stelco Holding Co. v. United States*, 42 Fed. Cl. 101, 109 (1998); *New England Elec. Sys. v. United States*, 32 Fed. Cl. 636, 641 (1995); *Furst v. United States*, 678 F.2d 147, 151 (Ct. Cl. 1982); *Union Pac. R.R. v. United States*, 389 F.2d 437, 442-43 (Ct. Cl. 1968); *Am. Radiator & Standard Sanitary Corp. v. United States*, 318 F.2d 915, 920 (Ct. Cl. 1963); *Newton v. United States*, 163 F. Supp. 614, 618 (Ct. Cl. 1958); *Stuart v. United States*, 130 F. Supp. 386, 388 (Ct. Cl. 1955); *Cumberland Portland Cement Co. v. United States*, 104 F. Supp. 1010, 1015 (Ct. Cl. 1952); *Night Hawk Leasing Co. v. United States*, 18 F. Supp. 938, 941 (Ct. Cl. 1937); *see also Kaffenberger v. United States*, 314 F.3d 944, 954 (8th Cir. 2003) ("Although the regulation states that a claim that fails to comply with the

requirements will not be considered as a claim for refund, § 301.6402-2(b)(1), the Supreme Court has endorsed informal claims filed within the statutory period that have technical deficiencies, as long as a valid refund claim is subsequently made after the period has run."); *United States v. Forma*, 42 F.3d 759, 767 n.13 (2d Cir. 1994) ("The Supreme Court and lower courts have consistently held that an informal claim is sufficient to satisfy the statutory prerequisite of . . . I.R.C. § 7422(a)") (internal quotation and citation omitted). The CFC's opinion, in contrast, constitutes a stark departure from *Kales* and would all but eliminate the informal claim doctrine.

The CFC misreads *Kales* to require that a valid informal claim be "'*accepted and treated*' by the IRS as valid." Slip op. at 7 (quoting *Kales*, 314 U.S. at 194) (emphasis by the CFC). The Supreme Court stated, rather, that an informal claim is valid "*especially* . . . where such a claim has not misled the Commissioner and he has accepted and treated it as such." *Kales*, 314 U.S. at 194 (emphasis added). The Court explained that "[i]f [the sufficiency of the informal claim] were more doubtful than we think it is, it would be resolved by the consistent administrative treatment," constituting "waiver of the requirements of the regulations as to the formality and particularity with which the grounds for refund are required to be stated." *Id.*

at 196. It is only in the context of questioning whether the informal claim provided adequate notice that the Court considered the IRS's treatment of the claim. With respect to a timely informal claim that advises the IRS of the taxpayer's intent to seek a refund, as is the case here, there is no reason to consider whether the IRS waived the formalities before the statute of limitations had expired because the informal claim doctrine prevents the limitations period from barring the corrected claim. The IRS's treatment of the claim in *Kales* is irrelevant to the application of the informal claim doctrine.

The CFC's error is confirmed by cases following *Kales*, which lend no credence to the view that acceptance and treatment on the merits is a prerequisite to a valid informal claim. To the contrary, the case law reflects that "[i]nformal refund claims have long been held valid," provided they "have a written component and . . . adequately appraise the Internal Revenue Service that a refund is sought and for certain years." *Am. Radiator & Standard Sanitary Corp.*, 318 F.2d at 920 (citations omitted); *accord Computervision Corp.*, 446 F.3d at 1365; *New England Elec. Sys.*, 32 Fed. Cl. at 641; *Furst*, 678 F.2d at 151; *Newton*, 163 F. Supp. at 618.

Newton is particularly instructive. There, the taxpayer filed tax returns for several years in which he deducted alimony payments to his ex-wife. The

IRS first examined the taxpayer's 1944 tax return and proposed an adjustment. The taxpayer paid the additional tax for 1944 and sued for a refund. With respect to his 1945 and 1946 tax returns, in response to IRS audits, the taxpayer's accountant and the taxpayer filed protest letters stating that the taxpayer is raising the same issues presented in litigation regarding his 1944 tax year and subsequently paid the additional taxes to stop the running of interest. *Newton*, 163 F. Supp. at 616. Following a favorable decision for the taxpayer, he filed formal claims for refund on Form 843 for 1945 and 1946. *Id.* at 617-18. The IRS rejected those claims as untimely. The Government argued in the Court of Claims that the informal claim doctrine required three elements that had not been met: "(1) that the original or amended claim must have been considered on its merits; (2) that the original informal claim must have been positively identified as a claim for refund; and (3) that the taxpayer was informed that his original or amended claim was being considered on the merits." *Id.* at 619. The court responded that these elements misconstrue "[t]he basic underlying principle" of the informal claim doctrine, namely "to put the Commissioner on notice of what the taxpayer is claiming and that he is in fact making a claim for refund." *Id.* The CFC in the instant case overlooks this binding precedent and recognizes the very requirements that the Court of Claims discarded in *Newton* as

contrary to the basic purpose of the informal claim doctrine.[5] This reshaping of the informal claim doctrine is improper and unjustified.

At the heart of the CFC's flawed analysis is the basic misconception that the informal claim doctrine is a type of waiver – it is not. This Court explained in *Computervision*, 445 F.3d at 1364-65, that the informal claim doctrine and waiver are separate exceptions to the substantial variance doctrine that permit the consideration of a claim for refund despite the absence of a timely formal claim: the informal claim doctrine provides an exception for an informal claim perfected by an amendment outside the limitations period, whereas wavier applies to an informal claim that the IRS considers on its merits within the limitations period. *See Angelus Mining Co. v. Commissioner*, 325 U.S. 293 296 (1945) ("The basis of this claim of waiver is that the Commissioner through his agents dispensed with the formal requirements of a claim by investigating its merits."). They are not mutually exclusive. In several cases, including *Kales*, as noted above, there is both a valid informal claim and waiver, which may account for why the

[5] This Court adopted as precedent the law of the Court of Claims. *South Corp. v. United States*, 690 F.2d 1368, 1370 (Fed. Cir. 1982); *see First Hartford Corp. Pension Plan & Trust v. United States*, 194 F.3d 1279, 1290 n.3 (Fed. Cir. 1999) ("[B]oth we and the Court of Federal Claims are bound by the decisions of the Court of Claims, this court's predecessor court.").

CFC conflates the exceptions. A careful reading of *Kales* and other cases makes it clear that only waiver requires that the IRS treat the claim on the merits. For good reason – otherwise, even the most harmless error would be the death knell of a defective claim for refund if the taxpayer failed to realize the error during the limitations period. The informal claim doctrine is what prevents the formal requirements from becoming absurdly rigid; requiring that the IRS treat an informal claim on the merits would reduce the doctrine to essential nothing – waiver by another name. That is not the law.

Accordingly, it is of no moment that, as the CFC points out, "[b]ecause the taxpayer signature requirement derives from statute, the IRS cannot *waive* those requirements." Slip op. at 7 (emphasis added). The CFC is not wrong. Several hoary Supreme Court cases indicate that "[i]nsofar as Congress has made explicit statutory requirements, they must be observed and are beyond the dispensing power of Treasury officials." *Angelus Mining*, 325 U.S. at 296; *United States v. Garbutt Oil Co.*, 302 U.S. 528, 533-34 (1938); *Tucker v. Alexander*, 275 U.S. 228, 231 (1927); *accord Brown v. United States*, 22 F.4th 1008, 1012 (Fed. Cir. 2022). The underlying logic is that Congress, not the IRS, dictates the conditions to receive a refund; Treasury, and by delegation, the IRS, can only waive the rules they have the authority to make in the first place, namely, regulations. *See Angelus*

Mining, 325 U.S. at 296-97 ("If the Commissioner chooses not to stand on his own formal or detailed requirements, it would be making an empty abstraction, and not a practical safeguard, of a regulation to allow the Commissioner to invoke technical objections after he has investigated the merits of a claim and taken action upon it."). In this case, the IRS did not dispense with any rules imposed by statutes or regulations. Instead, Dixon corrected his initial claims for refund by filing signed versions. The informal claim doctrine prevents the statute of limitations from barring these perfected claims in light of the fact that the IRS had timely notice.

II. The CFC's reliance on Treasury Regulation § 301.6402(b)(1) is misplaced

In denying Dixon's refund claim, the CFC concluded that Dixon informal claim was not "duly filed" under I.R.C. § 7422(a) because it was not "'verified by a written declaration that it is made under the penalties of perjury'" as required by Treas. Reg. § 301.6402-2(b)(1), and "a tax refund claim that does not comply with this requirement will not be considered '*for any purpose* as a claim for refund.'" Slip op. 7 (quoting Treas. Reg. § 301.6402-2(b)(1)) (emphasis added). The CFC misconstrues the regulation, which Treasury itself concedes does not bar a valid informal claim for refund. The CFC also ignores decades of precedent belying the

notion that an unsigned and unverified informal claim cannot be corrected as Dixon did in this case.

The regulation states that "[a] claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund." Treas. Reg. § 301.6402-2(b)(1). However, as recognized by the Seventh Circuit, "[d]espite this last sentence the courts have . . . occasionally allowed a 'claim' that does not satisfy all the requirements of the regulation to arrest the running of the three-year [statute of limitations] period" by applying the informal claim doctrine. *BCS Financial Corp. v. United States*, 118 F.3d 522, 524 (7th Cir. 1997). In *BCS Financial*, the court illustrated why in a hypothetical analogous to Dixon's case:

> Suppose that on the last day before the three years is up the taxpayer files a claim for a refund complete except for the omission of his signature. Two days later the taxpayer discovers and repairs the omission. It would be absurd rigorism even by the notably unforgiving standards of federal tax law to make the taxpayer's utterly harmless mistake a basis for forfeiting a claim conceded to be substantively valid.

Id. The informal claim doctrine therefore exists to impart practical leniency. *See, e.g., New England Elec. Sys.*, 32 Fed. Cl. at 646 (holding that "any gaps or ambiguities in the plaintiff's informal claim were cured when a formal claim was filed, even though it was filed after the running of the statute of limitations").

The "for any purpose" language has, in fact, been part of the regulation since 1967, during which time numerous taxpayers have successfully made informal claims despite not meeting the requirements of Treas. Reg. § 301.6402-2(b)(1). Claims for Credit or Refund, 32 Fed. Reg. 15295 (Nov. 3, 1967) (to be codified at 26 C.F.R. pt. 301); *see infra* 17-18. The CFC's reliance on the "for any purpose" language is therefore unfounded. To suddenly alter the interpretation of the regulation's language amounts to an inconsistent departure from a long history of recognizing informal claims.

The IRS itself has acknowledged the judicial practice of informal claims within the purview of Treas. Reg. § 301.6402-2(b)(1). When the regulation was updated in 2015, commentators suggested that the text be amended to expressly discuss informal claims. While the IRS opted not to alter the language of Treas. Reg. § 301.6402-2(b)(1), the IRS acknowledged that "[c]ase law provides that a claim for refund that is technically deficient with respect to some formal claim requirement (*that is*, an 'informal' claim) might nonetheless be a valid claim." Claims for Credit or Refund, 80 Fed. Reg. 43949, 43950 (July 24, 2015) (to be codified at 26 C.F.R. pt. 301) (emphasis in original). Dixon's claim is thus not novel or singular within the history of Treas. Reg. § 301.6402-2(b)(1).

Furthermore, contrary to the CFC's assertion that "the plain text of the regulation bars any unsigned tax refund claims from being considered for the purposes of the informal claim doctrine," informal claims can comply with the regulation upon cure of the given defect. *See Kales*, 314 U.S. at 194. There is no question that a taxpayer must file a formal claim for refund, including signing under penalty of perjury, before filing a refund suit. Dixon did that when he filed a signed amended return. *See Wilson v. United States*, No. 18-408T, 2019 U.S. Claims LEXIS 120 at *14 (Fed. Cl. Feb. 27, 2019) (recognizing that the "law does not confer subject matter jurisdiction . . . when the suit is commenced prior to the filing of valid Forms 843") (quoting *Anuforo v. Commissioner*, No. 05-2156, U.S. Dist. LEXIS 96313 at *7 (D. Minn. Sept. 10, 2007)); *see also Greene-Thapedi v. United States*, 549 F.3d 530, 533 (7th Cir. 2008). The issue is whether the unsigned version of the amended return, which the IRS did not reject, held open the statute of limitations for the signed version. As discussed, *supra* 6-9, the informal claim doctrine provides that it does.

Indeed, courts have found repeatedly that claims for refund not signed under penalty of perjury are valid informal claims that hold open the limitations period. In *Kales*, 314 U.S. at 190-191, the taxpayer sent the IRS a letter stating that she intended to seek a refund of tax from the sale of stock

should it be determined in a related proceeding that the IRS understated her basis. In *Newman*, 163 F. Supp. at 616, as discussed, the taxpayer's accountant filed a letter with the IRS protesting deficiencies based on the disallowance of deductions. In *New England Electric System*, 32 Fed. Cl. at 642, assistant treasurer for the taxpayer signed a notice of proposed adjustment expressing disagreement with the disallowance of an investment tax credit, and the revenue agent conducting the audit of the taxpayer documented the issue in IRS records. In *Night Hawk Leasing*, 18 F. Supp. at 941, the taxpayer provided the IRS with checks that on the back stated the tax was being paid under protest. Finally, in *Hrcka v. Crenshaw*, 140 F. Supp. 350, 352 (E.D. Va. 1956), counsel for the taxpayers detailed in a letter to the IRS that the taxpayers intended to pay disputed taxes in installments and then claim a refund. The court found an informal refund claim in all of these cases notwithstanding that the taxpayer neglected to sign and verify the claim.

The CFC's reliance on Treas. Reg. § 301.6402-2(b)(1) taken out of context runs counter to the purpose of the informal claim doctrine, harming the very taxpayers the exception is meant to serve. The essence of the informal claim doctrine is an acknowledgment that some claims which fail to meet these regulatory requirements ought to nonetheless be considered

valid to achieve justice for the taxpayer. Dixon's informal refund claim is not unusual or unique; rather, it is the CFC's outright dismissal based on an alternative understanding of the regulatory text that is exceptional.

III. The CFC also erred in its treatment of Dixon's claim for refund of the additional tax, which was valid because he paid the tax prior to filing a corrected claim

In *Rock Island, Arkansas & Louisiana Railroad Co. v. United States*, 254 U.S. 141, 142 (1922), the Supreme Court interpreted the predecessor to I.R.C. § 7422(a) to mean that a taxpayer must file a claim for refund "after payment." In *Rock Island*, the taxpayer filed a request for abatement of tax, and after it was rejected, the taxpayer paid the tax and sued for a refund. The Court held that the taxpayer should have filed a claim following payment even though it would have reiterated the request for abatement, stating that "[m]en must turn square corners when they deal with the Government." *Id.* at 143. In this case, Dixon filed amended claims for refund *after* paying the additional taxes. The CFC accordingly erred in concluding that he had not filed an administrative claim for refund before bringing this refund action.

The CFC's fatal mistake is that it focused on the wrong filing – namely, the filing of informal claims as opposed to the perfected claims. The court stated that "submission of the unsigned amended tax returns in 2017 preceded the payment of the assessed additional taxes in 2018 and therefore

cannot serve as an administrative refund claim for that tax at all, formalities aside." Slip op. at 4. This reasoning is directly contravened by *Newton*, 163 F. Supp. at 619, in which the court recognized that "[i]t made no difference that the informal claim was made prior to the time that the tax was actually paid since the Commissioner knew or should have known that the plaintiff was claiming a refund." *See Hrcka*, 140 F. Supp. at 353 (distinguishing *Rock Island* and other cases in which the claim preceded payment of the tax on the ground that "[i]n those cases the informal claim was never later perfected."); *cf. Tiernan v. United States*, 113 Fed. Cl. 528 (2013) ("The amounts collected after the *amended* returns were filed would be subject to abatement requests, not refund claims.") (emphasis added). The court in *Newton* concluded that the taxpayer was entitled to seek a refund of the taxes paid between his filing of informal refund claims and when he perfected those claims on Form 843 and ultimately awarded a refund of those taxes. *Newton*, 163 F. Supp. at 620. *Newton* is directly on point.

The CFC's reliance on *Martti v. United States*, 121 Fed. Cl. 87 (2015), slip op. at 4, on the other hand, is misplaced. In that case, the taxpayer filed Forms 1040X requesting audit reconsideration for two years in which the taxpayer was determined to owe additional tax. At that time, the taxpayer had not paid the additional taxes. *Martti*, 121 Fed. Cl. at 99-100.

He argued that the requests for audit reconsideration met the formal requirements of a claim for refund and that the IRS waived any defects. The court in *Martti* dismissed the suit because the taxpayer had failed to pay the taxes in either event. *Id.* at 100, 103. Given that "there was nothing for the IRS to refund . . . at time the forms were filed, they could not have constituted claims for refund, and no retroactive conversion can occur." *Id.* at 103. The court's reasoning is inapplicable here because Dixon paid the additional tax prior to filing a corrected claim for refund. There can be no question that the corrected claim satisfied the requirement in I.R.C. § 7422(a) to file a claim for refund.[6]

[6] The CFC also faults Dixon's claim for refund of the additional tax assessed against him for 2013 because it did not "adequately inform[ ] the IRS of the exact grounds of such claim." Slip op. at 6. The CFC overlooks that the informal claim doctrine is equally applicable in this situation. *See Am. Radiator & Standard Sanitary Corp.*, 318 F.2d at 920 ("[T]he only essential is that there be made available sufficient information as to the tax and the year to enable the Internal Revenue Service to commence, if it wishes, an examination into the claim."); *see also Memphis Cotton Oil Co.*, 288 U.S. at 70.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the CFC, dismissing Dixon's refund action for failure to file timely claims for refund and pay the additional tax assessed for 2013 prior to filing his claim for refund, and remand this case for further proceedings.

Respectfully submitted,

/s/ Keith Fogg

Professor Keith Fogg
Counsel for Amicus
Director, Tax Clinic of the
Legal Services Center of
Harvard Law School
122 Boylston Street
Jamaica Plain, MA 02130
(617) 390-2532
kfogg@law.harvard.edu

/s/Andrew Weiner

Professor Andrew Weiner
Counsel for Amicus
Director, Temple University
Beasley School of Law
Low Income Taxpayer Clinic
1719 N. Broad Street
Philadelphia, PA 19122
(215) 204-8807
weiner@temple.edu

Dated : July 7, 2022

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

Case No. 2022-1564

Short Caption: Dixon v. United States

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because the filing has been prepared using a proportionally spaced typeface and includes 5,261 words.

/s/ Keith Fogg
Keith Fogg
Counsel for Amicus

Dated: July 7, 2022

CERTIFICATE OF SERVICE

This is to certify that a copy of this amicus brief was served on counsel for the appellant and appellee through filing the same with the CM/ECF system on June 29, 2022. All parties in the case are represented, and all counsel in the case are registered with the CM/ECF system.

s/ Keith Fogg
T. Keith Fogg
Counsel for Amicus

Dated: June 29, 2022