

ROCKY BRANCH TIMBERLANDS LLC
ROCKY BRANCH INVESTMENTS LLC, individually and as Tax Matters Partner for ROCKY BRANCH
TIMBERLANDS LLC, and
BRYAN KELLEY, individually and as the Tax Matters Partner Representative for ROCKY BRANCH
INVESTMENTS LLC as Tax Matters Partner for ROCKY BRANCH TIMBERLANDS LLC
Plaintiffs,

v.

UNITED STATES OF AMERICA,
THE INTERNAL REVENUE SERVICE, and
INTERNAL REVENUE SERVICE MANAGER LEE VOLKMANN,
Defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COMPLAINT FOR DECLARATIVE,
INJUNCTIVE, AND MANDAMUS RELIEF

Plaintiffs, Rocky Branch Timberlands LLC; Rocky Branch Investments LLC; and Bryan Kelley (collectively “Plaintiffs”), by counsel, state their claims for relief as follows:

SUMMARY OF THE CLAIM

1. Plaintiffs bring this suit to challenge Defendants' denial of Plaintiffs' right to administrative review and to ask the Court to require Defendants to comply with the Congressionally mandated procedures enacted to safeguard all taxpayers' rights. The primary question presented here is whether Defendants must comply with the laws as enacted by Congress, or whether the scope of Defendants' authority to enforce the provisions of the Internal Revenue Code (“Code”) is so broad that it exceeds the statutorily created mandates imposed by Congress and the constitutional norms of due process. More specifically, the question is whether Defendants can ignore Code § 7803(e) and unilaterally deny Plaintiffs the right to independent appeal of Defendants' proposed determinations.
2. In enacting Code § 7803(e) as part of the Taxpayer First Act of 2019 (“Taxpayer First Act”), Congress established an “Internal Revenue Service Independent Office of Appeals” (“Independent Appeals Office”). Taxpayer First Act of 2019, Pub. L. No. 116-25. Code § 7803(e) states that the Independent Appeals Office is to provide a process for resolving tax controversies without litigation on a fair and impartial basis that promotes a consistent application and interpretation of the Federal tax laws and enhances public confidence in the integrity and efficiency of the IRS.
3. Code § 7803(e), aptly titled “Right of Appeal,” requires the IRS to make the Independent Appeals Office resolution process “generally available to all taxpayers” and further requires the IRS to “prescribe procedures for protesting to the Commissioner of Internal Revenue a denial of a request [for a referral to the Independent Appeals Office].”
4. During an audit of Plaintiff Rocky Branch Timberlands LLC's (“Rocky Branch”) 2017 tax return, Defendants indicated that they would make adjustments to that return. Plaintiffs objected to these adjustments and requested an opportunity to resolve their case with the Independent Appeals Office. Despite the plain language of Code § 7803(e)(4), Defendants denied that request, because they determined that there was insufficient time remaining on the statutory period for the assessment and collection of taxes.
5. Even after Plaintiffs agreed to extend the period for assessment and collection for an additional 18-months by submitting a signed Form 872-P (Consent to Extend Time to Assess Tax Attributable to Partnership Items) Defendants once again denied Plaintiffs' request for statutorily required review by the Independent Appeals Office.
6. In addition to failing to abide by the legal requirements imposed under Code § 7803(e)(4), Defendants further

violated the law by giving no formal explanation or procedures to protest their actions denying Plaintiffs the administrative review requested.

7. Pursuant to Code § 7803(e)(5)(C), Defendants are required to “prescribe procedures for protesting to the Commissioner of Internal Revenue a denial” of a request for review by the Independent Appeals Office. Additionally, pursuant to Code § 7803(e)(5)(A), the letter denying an administrative review by the Independent Appeals Office must: (i) provide a detailed description of the basis for the denial and (ii) describe the procedures for protesting the decision to deny the request.

8. In nearly two years since its passage, Defendants have made no progress towards the creation and implementation of such procedures.

9. By refusing to provide Plaintiffs with a review of their case by the Independent Appeals Office — even after Plaintiffs signed a Form 872-P extending the statutory period for assessment and collection until December 31, 2022 — Defendants violated the legal requirements of Code § 7803(e). Defendants compounded their first violation of the law by violating Code § 7803(e)(5)(A)(ii) in failing to provide Plaintiffs written explanation of Defendants' denial and failing to inform Plaintiffs of their right to protest Defendants' denial or of the procedures for making such a protest.

10. In direct violation of clear requirements of Code § 7803(e)(4), Defendants have repeatedly abused their administrative authority, violated the Taxpayer First Act, and broken the law, by refusing Plaintiffs review by the Independent Appeals Office.

11. Defendants' failure to comport their actions with the legal requirements imposed by Code § 7803(e)(4) will result in the violation and denial of Plaintiffs' constitutionally protected right to due process. By depriving Plaintiffs of their statutorily mandated right to a hearing with the Independent Appeals Office now, Defendants will be able to immediately issue a Final Partnership Administrative Adjustment (“FPAA”) forever depriving Plaintiffs of their right to an independent and impartial review of their administrative case outside of litigation — it is a harm that cannot be fixed, resulting from an abuse that cannot be remedied.

12. Defendants' blatant disregard for the legal requirements of the Taxpayer First Act is not only an abuse of Plaintiffs' rights as a taxpayer, but such abuses are the very reason that the law exists.

13. One aim of the Taxpayer First Act was to “restrict and provide oversight of the procedures and standards that the IRS must follow in denying requests for an independent administrative review.” H.R. Rep. No. 116-39 at 29 (2019). Another aim was “to codify the role of an independent administrative appeals function within the IRS” in an effort “to reassure taxpayers of the independence of the persons providing the administrative review.” *Id.* At 29.

14. As noted in the legislative history to the Taxpayer First Act of 2019, Congress enacted Code § 7803(e) — which created an “Independent” Appeals Office and generally provided all taxpayers with the right to an administrative appeal with the Independent Appeals Office — for the very purpose of reigning in IRS abuses of taxpayer rights and to protect the constitutionally guaranteed due process rights of taxpayers subject to IRS enforcement actions. Such legislation was necessary because oversight of Defendants' activities revealed that IRS enforcement activities exceeded Congressional intent.

15. Contrary to Defendants' actions giving rise to this complaint, “tax officials and taxpayers alike are under the law, not above it.” *Brafman v. U.S.*, 384 F.2d 863 at 866 (1967).

16. By creating the statutory requirements of Code § 7803(e), Congress intended to provide taxpayers with a right to meet with an Independent Appeals Office in order to protect taxpayers from Defendants' abuses and denial of taxpayer's constitutionally mandated due process rights. Defendants, however, have ignored these directives from Congress and refused Plaintiffs their rights under the law. Unless the Court grants the injunctive and mandamus relief requested by Plaintiffs, Defendant will continue to disregard, circumvent, and undermine the laws contrary to the clear intent of Congress and at the expense of the rights of all taxpayers.

17. As the Supreme Court stated, the only way to remove the “agency fox” from the “legislative henhouse” is to “tak[e]

seriously, and apply[] rigorously . . . statutory limits on agencies' authority.” *City of Arlington v. FCC*, 569 U.S. 290, 307 (2013). In 2019 with the Taxpayer First Act, Congress set forth the statutory bounds of the IRS' authority. If the Court does not reign in the IRS here, there is nothing to stop the agency fox from continuing to raid the legislative henhouse.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction over this action by virtue of 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201 *et seq.* (Declaratory Judgement Act); 5 U.S.C. § 702 (APA authorizing judicial review of legal wrongs arising from agency action); and 28 U.S.C. § 1361 (mandamus relief).

19. The Court's jurisdiction to grant the requested relief is not barred by either the Anti-Injunction Act (“AIA”) provided in Code § 7421 (which generally prohibits “suits for restraining the assessment or collection of any tax) or the Declaratory Judgement Act (“DJA”) (which allows individuals to obtain declaratory relief in cases of actual controversy “except with respect to Federal taxes”).

20. The narrow relief sought by this Complaint does not “block[] the downstream [tax] that may” arise at the conclusion of the matter. *CIC Serv., LLC v. IRS*, 593 U.S. ____ at 9 (2021). Rather, the Complaint contests the legality of Defendants' actions, not the legality of any potential tax. The requested relief merely instructs Defendants to follow the proper procedures mandated by Congress before an assessment can be made.

21. Congress implemented these laws to protect taxpayers from abuse by Defendants, the enforcement of taxpayers' rights – the relief sought here – cannot be an attempt to “restrain” the assessment or collection of any tax for purpose of the AIA. Any other finding would render the Congressionally mandated taxpayer protections meaningless and unenforceable.

22. In *Direct Marketing Association v. Brohl*, the Supreme Court explained that whether a suit is an attempt to “restrain” the assessment or collection of a tax depends on “whether the relief to some degree stops 'assessment, levy, or collection,' not whether it merely inhibits them.” *Direct Marketing Association v. Brohl*, 135 S.Ct. 1124, 1133 (2015). Stated another way “when there is 'too attenuated a chain of connection' between an upstream duty and a 'downstream tax,' a court should not view a suit challenging the duty as aiming to 'restrain the assessment or collection of a tax.’” *CIC Serv., LLC v. IRS*, 593 U.S. ____, at 11 (2021) (quoting the Government's oral argument).

23. As the relief sought by Plaintiffs is not prohibited by the AIA, it cannot be prohibited by the DJA, which courts have determined to be coextensive and coterminous with the AIA. As such an action allowed under one statute will not be barred by the other statute. *See, e.g., Cohen v. United States*, 650 F.3d 717, 727-31 (D.C. Cir. 2011) (*en banc*); *Mobile Republican Assembly v. United States of America*, 353 F.3d 1357, 1362 n.6 (11th Cir. 2003) (noting that “the federal tax exception to the Declaratory Judgment Act is at least as broad as the prohibition of the Anti-Injunction Act”).

24. Venue is proper in the United States District Court for the Northern District of Georgia under 28 U.S.C. §§ 1391 and 1402 as Plaintiffs' principal place of business are located in this district.

PARTIES

25. Plaintiff, Rocky Branch Timberlands LLC (“Rocky Branch”) is a Limited Liability Company formed under the laws of the State of Alabama and for purposes of federal income tax is treated as partnership under the Code. Rocky Branch's principal office is located at 210 East Second Avenue, Suite 105, Rome, Georgia 30161.

26. Plaintiff, Rocky Branch Investments LLC (“Rocky Branch Investments”) is a limited liability company organized under the laws of the State of Delaware and for purposes of federal income tax is treated as partnership under the Code. Rocky Branch Investment's principal office is located at 210 East Second Avenue, Suite 105, Rome, Georgia 30161.

27. Plaintiff, Bryan Kelley, is an individual and serves as the Tax Matters Partner for Rocky Branch Investments. Mr.

Kelley's principal place of business is located at 210 East Second Avenue, Suite 105, Rome, Georgia 30161.

28. The United States of America is a proper defendant because the IRS is an agency of the United States government.

29. The IRS is an agency of the United States and is a division of the United States Department of the Treasury. It is the Executive Branch Agency charged with administering the Tax laws enacted by Congress. The IRS has locations in Washington, DC, the Northern District of Georgia, as well as many other locations.

30. IRS Manager Lee Volkman is an agent of the IRS serving as a Manger in the Large Business and International Division of the IRS. At all times material to this complaint, Defendant Volkman was acting under the color of law and training and supervision of the IRS and the U.S. Department of the Treasury, engaged in the administering of the policies, practices, customs, and regulations of the IRS including but not limited to those policies, practices, customs, and regulations directly related to Defendants' examination of Rocky Branch's 2017 Federal tax returns.

31. Plaintiffs bring this action against each defendant in both their official and individual capacities.

THE APPLICABLE LAW AND FRAMEWORK

The Statutory Right to Appeal

32. Congress added Code § 7803(e)(4) as part of the Taxpayer First Act, creating a “Right of Appeal” for taxpayers by requiring that the Independent Office of Appeals process described in Code § 7803(e)(3) be made “generally available to all taxpayers.”

33. In the legislative history implementing Code § 7803(e)(4), Congress noted that “the Code does not currently require that all taxpayers be provided an opportunity to contest an administrative decision in Appeals.” U.S. House, Committee on Ways and Means, *Taxpayer First Act of 2019* at 29 (April 9, 2019).

34. Recognizing the lack of a taxpayer right to an administrative appeal within the IRS, Congress added Code § 7809(e) (4) explaining that “[t]he provision seeks to ensure that generally all taxpayers are able to access the administrative review process, allowing for their cases to be heard by an independent decision maker.” U.S. Senate, Committee on Finance, *Legislative Summary of Taxpayer First Act of 2019* at 1.

35. Not only does the legislative history demonstrate Congress' intent to provide taxpayers the right to an administrative review by the Independent Appeals Office, but the legislative history also explained why Congress believed that it was necessary to add such a requirement to the Code. In its report the Committee on Ways and Means noted that “[t]he work of the Ways and Means Subcommittee on Oversight ('Oversight Subcommittee') revealed areas where the IRS's use of enforcement tools exceeded Congressional intent.” U.S. House, Committee on Ways and Means, *Taxpayer First Act of 2019* at 26 (April 9, 2019).

36. Concerns about the IRS's abuse of taxpayer rights in enforcement were further discussed in the House of Representatives debate on this provision of the Taxpayer First Act during which the act's co-sponsor Rep. Kevin Brady of Texas explained that: “The Constitution guarantees Americans the right to due process and protection from unreasonable search and seizures. In the hearings led by Chairman Lewis and others, we have heard stories from across the country of the IRS abusing these rights. Under this bill, that stops . . . the Taxpayer First Act recasts the IRS as our tax administrator rather than simply an enforcement agency. We will better protect taxpayers from enforcement abuses by creating an impartial review of disputes they have with the IRS.” 165 Cong. Rec. H4363 (daily ed. June 10, 2019) (statement of Rep. Brady).

Administrative Procedures Act

37. The APA provides a means for judicial review for persons who suffer legal wrong because of agency action or who have been adversely affected or aggrieved by an unlawful agency action and have no other legal method for challenging

that unlawful action. 5 U.S.C. §§ 702-703.

38. The court may hold unlawful and set aside agency action that is found to be: “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A); “in excess of statutory jurisdiction, authority, or limitations or short of statutory right,” 5 U.S.C. § 706(2)(C); or “without observance of procedure requirement by law,” 5 U.S.C. § 706(2)(D).

39. The validity of an agency action depends upon whether the action is based on a permissible construction of the statute. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 873 (1984). If the agency action is not reasonably consistent with congressional intent, the courts must invalidate it.

40. An agency action is arbitrary and capricious if the agency fails to “articulate a satisfactory explanation” for the action. An agency action is arbitrary and capricious if it treats similarly situated taxpayers differently without reasoned explanation. *Good Fortune Shipping SA v. Commissioner*, 897 F.3d 256, 264-65 (D.C. Cir. 2018).

Plaintiffs Examination

41. By a Deed of Conservation Easement recorded on December 28, 2017, Plaintiff Rocky Branch donated a conservation easement to a qualified tax-exempt public charity pursuant to Code § 170(h).

42. On or about September 14, 2018, Rocky Branch filed a Form 1065, U.S. Return of Partnership Income, for tax year ending December 31, 2017 on which it reported a charitable deduction resulting from the donation of the conservation easement.

43. By a letter dated December 12, 2019, Defendants informed Plaintiffs that the Form 1065 filed by Rocky Branch for tax year ended December 31, 2017 had been selected for examination.

44. During the examination, Plaintiffs provided Defendants thousands of pages of documents in response to Defendants' requests.

45. During their examination of Rocky Branch's return, Defendants determined that the statutory period for assessment and collection of taxes under Code § 6501 expired on September 15, 2021, which Defendants deemed to be an insufficient amount of time to complete the examination.

46. On or about January 19, 2021 the IRS through its employee, IRS Agent Kendrick Veney, requested that Rocky Branch extend the statutory period for the assessment and collection of taxes for an additional 15 months, until December 31, 2022, to provide the IRS with sufficient time to develop and review all facts pertinent to the entity's charitable donation. To effectuate that extension Agent Veney sent Plaintiffs a Form 872-P

47. On or about January 27, 2021, Plaintiffs signed the Form 872-P but did not submit it to the IRS at that time.

48. In February 2021, due to concerns about the duration and expense of an examination requiring the extension of the statute of limitations until December 31, 2022, Plaintiffs did not see the benefit of extending the statute of limitations at that time.

49. By an email dated February 22, 2021, legal counsel for Rocky Branch informed Defendants that Plaintiff had decided not to extend the statute of limitations at that time.

50. On or about April 8, 2021, Defendants sent Plaintiffs a Notice of Proposed Adjustment “NOPA” proposing to disallow the entire charitable deduction and adjusting other deductions.

51. Following the issuance of the NOPA, Plaintiffs revisited the IRS' request to extend the statutory period to assess and collect. Following discussions with their legal counsel, Plaintiffs understood that as the statute of limitations expired within six-months (on September 15, 2021), there was likely insufficient time remaining on the statute of limitations to allow for the case to be reviewed by the IRS Appeals Division.

52. Recognizing the significant and potential benefits of the post-examination review processes, Plaintiffs decided to extend the statute of limitations and submitted the signed Form 872-P previously issued by Defendants.
53. On or about April 27, 2021, Plaintiffs' counsel informed Agent Veney on a phone call that Plaintiffs contested the NOPA and planned to submit the signed Form 872-P.
54. On May 7, 2021, Plaintiffs legal counsel sent Defendant Agent Veney an email confirming that Rocky Branch disagreed with the proposed findings in the NOPA and would like to file a written protest and avail itself of its right to appeal.
55. To allow for sufficient time for review by the Independent Appeals Office, Plaintiffs agreed to extend the statute of limitations. Plaintiffs' legal counsel attached the signed Form 872-P to the email dated May 7, 2021 and requested that Defendant Agent Veney provide a counter signed Form 872-P.
56. In that same email dated May 7, 2021, Plaintiffs' counsel acknowledged that since “additional time may be required in order to submit this case to the IRS Appeals Division, Rocky Branch [will] sign another Form 872-P providing any such additional time required by the Independent Appeals Office.”
57. By submitting the Form 872-P, Plaintiffs protected not only their rights provided by the Code, but also Defendants' ability to assess and collect any potential tax deficiencies until after the conclusion of the administrative due process.
58. At any time since Plaintiffs submitted the executed Form 872-P, Defendants could effectuate the extension of the statute of limitations by undertaking the merely ministerial act of counter signing; to this day, Defendants continue to have the ability to extend the statute of limitations.
59. In a phone call on or about May 11, 2021, Agent Veney informed Plaintiffs legal counsel that he had received the email with the signed Form 872-P and the offer to further extend the statute of limitations for any additional amount of time that may be required.
60. Agent Veney explained that Defendants would not accept Plaintiffs' signed Form 872-P because in February 2021 Plaintiffs' legal counsel informed Agent Veney that Plaintiffs did not, at that time, intend to sign the Form 872-P sent by the IRS.
61. Agent Veney informed Plaintiffs' counsel that due to the insufficient amount of time remaining on the statute of limitations, Defendants were not going to provide Plaintiffs with the administrative review processes generally provided to taxpayers. Instead, Defendants were going to process the case and issue the FPAA notice based solely on Agent Veney's proposed adjustments, thereby denying Plaintiffs the right to have Defendant's proposed determination reviewed by the Independent Appeals Office prior to litigation as provided in Code § 7803(e)(4).
62. The only reason in support of Defendant's unilateral decision to deny Plaintiffs' their administrative rights to due process — which Defendants' are generally statutorily required to provide — was that, absent a signed Form 872-P, the statute of limitations was set to expire on September 15, 2021.
63. At the time of the May 11, 2021 phone call, however, Defendants had in their possession a signed Form 872-P which Defendants declined to acknowledge or countersign.
64. Thus, the only reason the statutory period for assessment and collection would expire on September 15, 2021, and not December 31, 2022, was because Defendant decided not to countersign the signed Form 872-P in their possession without explanation.
65. By undertaking the merely ministerial act of countersigning the Form 872-P, Defendants could (and in fact still can) add an additional 15 months to the statute of limitations providing Defendants with: (1) ample time to send the case to the Independent Appeals Office and (2) more than enough time to request an additional extension if necessary.
66. By not accepting and countersigning the Form 872-P, Defendants have undermined the legal requirements of Code §

7803(e)(4)(b).

67. Plaintiffs have undertaken every action within their power and abilities to permit a review of their case by the Independent Appeals Office, including: (1) signing the Form 872-P and (2) offering to sign additional extensions, if provided.

68. The only basis for denying Plaintiffs access to the appeals process required by law is the February 22, 2021 email stating that Plaintiffs would not *at that time* sign an extension — an untenable position undermined by the fact that Plaintiffs actually signed and submitted a Form 872-P statute extension two months later.

69. Defendants have not provided Plaintiffs a written explanation of why Defendants are denying Plaintiffs the review with Independent Appeals Office nor have the Defendants provided a method for protesting such denial.

70. Defendants' deliberate decision to violate Plaintiffs' right to due process by failing to provide the independent review and appeals process required by the Code lacks any basis or justification. The failure is an intentional and unnecessary abuse of taxpayer rights and one of many examples of Defendants' failure to adhere to the Code, their own regulations, or the written directives of the executive office.

71. As it is Defendants' usual course of business to accept and countersign all signed Forms 872-P which it previously issued to taxpayers, Defendants' failure to countersign Plaintiffs' signed Form 872-P is an abuse of Defendants' discretion that arbitrarily treats Plaintiffs differently from other similarly situated taxpayers who also signed Forms 872-P issued by Defendants.

72. Defendants' failure to countersign the Form 872-P which would extend the statutory period to assess or collect taxes until December 31, 2022, serves only as a pretense for Defendants' failure to provide Plaintiffs with the administrative review procedures mandated by Code § 7803(e)(4) and thus is an abuse of Defendants' discretion and is not in accordance with the law.

73. Plaintiffs have been harmed by Defendants' failure to countersign the Form 872-P and Defendants' denial of access to the Independent Appeals Office because Plaintiffs must now incur the cost of litigating the proposed adjustments without the ability to pursue administrative review with the Independent Appeals Office.

74. Defendants' failure to countersign the Form 872-P and then denial of Rocky Branch's request for independent review with the Independent Appeals Office: (1) violated Plaintiffs statutory right to appeals under Code § 7803; (2) was short of statutory right and exceeded statutory jurisdiction, authority, or limitations; and (3) was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

75. As Defendants actions continue to undermine taxpayer protections in the Code, the only avenue available to Plaintiffs to protect their rights to due process and avail themselves of the administrative and procedural remedies created by Congress is this suit seeking a declaration that Defendants are subject to the laws that they are charged with enforcing.

FIRST CAUSE OF ACTION (Administrative Procedure Act)

76. The allegations set forth hereinabove in Paragraphs 1 through 75 are restated as though fully set forth herein.

77. The APA provides a right of action to seek relief from the actions of government agencies by parties wronged by those agencies. The court should hold unlawful and set aside agency action that is found to be: “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A); “in excess of statutory jurisdiction, authority, or limitations or short of statutory right,” 5 U.S.C. § 706(2)(C); or “without observance of procedure requirement by law,” 5 U.S.C. § 706(2)(D).

78. By failing to countersign the Form 872-P, Defendants are treating Plaintiffs differently than similarly situated

taxpayers.

79. By denying Rocky Branch access to the Independent Appeals Office, Defendants have treated Plaintiffs differently than similarly situated taxpayers.

80. Defendants' failure to countersign the Form 872-P was arbitrary, capricious, an abuse of discretion, was not in accordance with the law, and exceeded statutory jurisdiction, authority, or limitations or were short of statutory right.

81. Defendants' refusal to provide Plaintiffs with the administrative review procedures mandated by Code § 7803(e)(4) was arbitrary, capricious, an abuse of discretion, was not in accordance with the law, and exceeded statutory jurisdiction, authority, or limitations or was short of statutory right.

82. Defendants' refusal to provide Plaintiffs with a written notification which: (a) provided Plaintiffs with a detailed description of the basis for the decision to deny Plaintiffs request for the administrative review of its case by Independent Office of Appeals or (b) described the procedures for protesting the decision to deny Plaintiffs request for administrative review procedures mandated by Code § 7803(e)(4), as required by Code § 7803(e)(5) was arbitrary, capricious, an abuse of discretion, was not in accordance with the law, and exceeded statutory jurisdiction, authority, or limitations or was short of statutory right.

83. Defendants' arbitrary and anomalous treatment of Plaintiffs cannot be used to circumvent the legal limitations placed on Defendants to prevent abuse of taxpayer rights. Such arbitrary actions cannot absolve Defendants of adhering to the legal requirements imposed by Congress.

84. Defendants' refusal to comply with the legal requirements of Code § 7803(e)(4) is an absolute abuse of Defendants' discretion because, like taxpayers, Defendants are under the law, not above it.

85. In failing to sign the Form 872-P and denying Plaintiffs' appeal rights, Defendants' actions harmed Plaintiffs and warrant relief.

SECOND CAUSE OF ACTION (Mandamus)

86. The allegations set forth hereinabove in Paragraphs 1 through 85 are restated as though fully set forth herein.

87. In order to obtain mandamus relief, Plaintiff must demonstrate: (1) a clear right to the relief requested; (2) that Defendants had a duty to perform the Act in question; and (3) no other adequate remedy is available. *Power v. Barnhardt*, 292 F.3d 781 (D.C. Cir. 2002).

88. Defendants have a plainly defined, ministerial duty to provide taxpayers access to impartial review with the Independent Appeals Office.

89. Pursuant to the plain language of Code § 7803(e), and further clarified by its legislative history, Congress intended to end Defendants' abuse of taxpayer rights by: (1) obligating Defendants to create an Independent Appeals Office for the purpose of providing a process for resolving tax controversies without litigation; and (2) making the Independent Appeals Office's resolution process "generally available to all taxpayers."

90. Defendants have failed to satisfy their statutory obligations under Code § 7803(e)(4) to provide Plaintiffs access to review with the Independent Appeals Office, in part because Defendants have failed to countersign the Form 872-P executed by Rocky Branch.

91. Plaintiffs have no other adequate remedy and are entitled to relief in the form of mandamus relief, ordering Defendants to comply with their statutory obligations to provide Plaintiffs access to impartial review with the Independent Appeals Office.

92. By refusing to grant Plaintiffs review with the Independent Appeals Office, Defendants have and continue to deprive Plaintiffs of their statutorily guaranteed rights. Further, if such abuses continue until such time as Defendants issue the FPA, Defendants will have successfully evaded the law by forever depriving Plaintiffs of the statutory right to a review of its case by the Independent Appeals Office.

93. Here, Plaintiffs voluntarily undertook every effort within their control to protect Defendants' rights to assess and collect any potential tax deficiencies by signing and submitting the Form 872-P extending the statutory period to assess and collect any potential tax deficiency until December 31, 2022.

94. Defendants violated the law by refusing to grant Plaintiffs administrative review by the Independent Appeals Office as required by Code § 7803(e)(4).

95. Defendants also violated the law by failing to provide a written explanation for the denial and failing to inform Plaintiffs of their right to protest the denial of review by the Independent Appeals Office in violation of Code § 7803(e)(5)(A)(ii).

96. The effect of these violations was exacerbated by the IRS' ongoing abdication of its statutorily mandated obligation to create regulations providing an administrative process by which taxpayers in Plaintiffs' position are able to protest Defendants' failure to provide an impartial review by the Independent Appeals Office — a dereliction of duty which necessitates this action because as no administrative processes exist to protest that failure, Plaintiffs' only course of action is a Complaint with this Court.

97. If Defendants' violations of Plaintiffs' rights are allowed to stand, then Plaintiffs will be forever deprived of its pre-litigation right to an impartial review by the Independent Appeals Office and Defendants will have a Court sanctioned method of circumventing and undermining the effect and intent of Code § 7803(e)(4) enabling future abuse of the rights of other taxpayers.

98. Plaintiffs have no other adequate remedy and are entitled to relief in the form of mandamus relief, ordering Defendants to comply with their statutory obligations to provide Plaintiffs access to an administrative review by the Independent Appeals Office and if denied procedures to protest that agency action.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court provide relief to as follows:

A) Enter judgement declaring that:

1. Plaintiffs have the statutory right to the independent review of its case by the Independent Appeals Office under Code § 7803(e);
2. Defendants' refusal to grant such an independent review is a violation of Plaintiffs' right to due process;
3. Defendants are required to comply with all of the legal requirements imposed by Code § 7803(e), including but not limited to implementing procedures for protesting the denial of independent review;

B) Issue an order providing mandamus and injunctive relief, which:

1. Compels Defendants to complete the purely ministerial act of countersigning the Form 872-P, which Plaintiffs previously signed and filed with Defendants;
2. Compels Defendants to provide Plaintiffs with the requested review of Defendants' examination by the Independent Appeals Office in compliance with Code § 7803(e);
3. Enjoins Defendants from abusing Plaintiffs' due process rights by engaging in repeated and ongoing violations of Code § 7803(e); and

4. Temporarily enjoins Defendants from issuing an FPAA on Plaintiffs' tax year ended December 31, 2017 until after Defendants have provided Plaintiffs with an administrative review of its case by the Independent Appeals Office as required by Code § 7803(e)(4);

C) That Plaintiffs be awarded attorney's fees and reasonable expenses of litigation; and

D) That the Court grant Plaintiffs such other, further and additional relief as the Court deems just and proper.

This is the 27th day of June 2021.

Respectfully submitted,

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