No. 2022-1564

In The

United States Court Of Appeals

For The Federal Circuit

ALAN C. DIXON,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

APPEAL FROM THE UNITED STATES COURT OF FEDERAL CLAIMS

ORIGINATING CASE NO.: 1:20-CV-01258-DAT

HONORABLE DAVID A. TAPP

CORRECTED BRIEF OF APPELLANT

Tiffany Michelle Hunt
Hunt Tax Law, PLLC
PO Box 4099
Dallas, TX 75208
Tel. (305) 619 - 9157

Counsel for Appellant

CERTIFICATE OF INTEREST

Pursuant to Fed. Cir. R. 47.4(a) and Fed. R. App. P. 26, counsel for Petitioner-Appellant Alan C. Dixon certifies the following:

1. The full name of every party represented by me is Alan C. Dixon.

2. There are no other real parties in interest represented by me.

3. All parent corporations and any publicly held companies that own 10% or more of the stock of the parties I represent are as follows:

None.

4. The names of all law firms and the partners or associates that appeared for the parties now represented by me in the trial court or that are expected to appear in this court are:

Magan Law, PLLC: Kathryn Hernandez

5. 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:

None.

6. 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): Not Applicable.

Dated: June 22, 2022 /*s*/ Tiffany Michelle Hunt

Tiffany Michelle Hunt

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Cases (continued)

Cases (continued)

Statutes

Regulations

STATEMENT OF RELATED CASES

Pursuant to Rule 47.5, counsel for Plaintiff-Appellant, Alan C. Dixon, states that (i) no other appeal in or from the proceeding in the lower court or body was previously before this or any other appellate court, and (ii) there is no case known to counsel to be pending in this or any other court or agency that will directly affect this Court's decision in the pending appeal.

STATEMENT OF JURISDICTION

The petition arises from the memorandum opinion and order issued by the Honorable David A. Tapp in *Dixon v. United States*, 158 Fed. Cl. 80 (2022). On January 18, 2022, the Court of Federal Claims ("Claims Court") granted the United States' motion for judgment on the pleadings. The Claims Court entered its final judgment on January 19, 2022.

The Claims Court had jurisdiction under 28 U.S.C. § 1346(a)(1) and 28 U.S.C. § 1491(a)(1). This Court has jurisdiction to review the judgment under 28 U.S.C. § 1295(a)(3). Appx1. Dixon timely filed his Notice of Appeal on March 17, 2022. Appx385.

STATEMENT OF THE ISSUE

The Supreme Court established the informal claim doctrine in *United States v. Kales*, 314 U.S. 186 (1941). Under the informal claim doctrine, a claim for tax refund that is considered too general or does not comply with formal requirements will be treated as a valid claim by the Internal Revenue Service ("IRS") if the taxpayer remedies the formal defects or lack of specificity by filing an amended claim for refund after the statute of limitations expired. *Kales,* 314 U.S., at 194. The Claims Court committed clear error by holding that "valid informal claims are

only those that "[have] not misled the [IRS] and [have been] *accepted and treated* by the IRS as valid claims." Appx.8 (emphasis in original). Further, the Claims Court committed reversible error when dismissing Dixon's claim for lack of subject matter jurisdiction, or alternatively for failure to state a claim upon which relief can be granted when holding that the informal claim needs to be considered as duly filed under Treas. Reg. § 301.6402-2(b)(1) and ultimately conflating the informal claim doctrine with the *Angelus Milling* doctrine. *See generally, Angelus Milling Co. v. C.I.R.*, 325 U.S. 293 (1945). The Claims Court ultimately erred in dismissing Dixon's net investment income tax claim for lack of subject matter jurisdiction, or alternative, for failure to state a claim for which relief can granted.

STATEMENT OF THE CASE

I. Factual Background

Dixon, the managing member and CEO of Dixon Advisory USA, is an Australian national who was a United States taxpayer in previous years, including tax years 2013 and 2014. Appx134-135. Dixon filed his Form 1040 U.S. Income Tax Return for tax years 2013 and 2014 on October 14, 2014, and October 6, 2015, respectively. Appx134. In 2016, it

came to Dixon's attention that he needed to request an Employer Identification Number ("EIN") from the IRS for the Australian company titled Dixon Advisory Group Pty Ltd, which is the parent company of Dixon Advisory USA. Dixon filed Form SS-4 to request the EIN and to elect to treat the entity as a partnership for federal income tax purposes. The filed Form SS-4 indicated that the start date for Dixon Advisory Group Pty Ltd was May 30, 1986. The IRS approved Form SS-4 on February 9, 2016. Appx135.

After approval of Form SS-4, Dixon amended his previous refund claims. On or about April 10, 2017, Dixon, through his tax preparer, filed 2013 and 2014 Form 1040X. The 2013 and 2014 Form 1040X did not contain Dixon's original signature. Appx136.

Dixon's 2013 Form 1040X sought a tax refund in the amount of $137,656.00. Appx149. His 2014 Form 1040X sought a tax refund in the amount of $1,588,653.00. Appx153. For both years, Dixon sought the additional tax due to increased foreign tax credits and an adjustment to the net investment income tax. Appx149, Appx157.

On or about May 9, 2018, the IRS selected Dixon's 2014 Form 1040X for audit and later expanded the audit to include 2013. Appx136. Dixon,

through his tax preparer, participated in the audit and supplied documents to the IRS. The IRS denied the additional foreign tax credits, the adjustment to the net investment income tax, and assessed an additional tax based on the additional reported business income. Appx3. After the IRS ceased communication for several months, Dixon filed a suit in the Claims Court. The suit was dismissed for lack of subject matter jurisdiction due to the lack of Dixon's original signatures on the IRS forms. Appx136. *See Dixon v. United States*, 147 Fed. Cl. 469 (2020).

Dixon submitted his 2013 and 2014 Forms 1040X for a second time on or about February 25, 2020. This time, Dixon signed the amended refund claims personally. Besides the signature, the resubmitted claims for refund were identical to the ones submitted previously. Appx136, Appx158, Appx205.

The IRS did not respond to Dixon's 2013 and 2014 refund claims submitted in 2020. After waiting six months since the submission of his amended refund claims as required by I.R.C. § 6511(d)(3)(A), Dixon filed suit in the Claims Court. Appx136.

II. Procedural Background

Dixon filed his suit in the Claims Court under the Tucker Act, 28 U.S.C. § 1346(a)(1), which waives sovereign immunity and provides the court with jurisdiction "of [any] civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected" on September 24, 2020. *See* 28 U.S.C. § 1346(a)(1). For 2013, Dixon sought a full tax refund of $326,985.96, which included the additional assessed tax liability of $189,329.96 plus interest as authorized under I.R.C. § 6611. For 2014, Dixon sought to recover his full refund of $1,588,653.00 plus interest. Appx137.

The United States filed its answer and additional defenses on January 21, 2022. Appx243-251. A day later, the United States filed its motion for judgment on the pleadings. Appx252-305.

In regards to the net investment income tax claim, the only claim at issue on appeal, the United States argued that Dixon failed to file valid refund claims within the three years statute of limitations. Appx267. The United States further argued that the original filed Forms 1040X could not form the basis of the informal claim doctrine because Dixon did not sign these forms personally. Appx269-270. The United States concluded

that "unsigned returns cannot constitute informal refund claims as a matter of law." Appx269.

In his response, Dixon pointed out the fatal flaw in the United States' argument by stating that if a claim for refund needs to abide by all formalities to form the foundation of the informal claim doctrine, the informal doctrine would be rendered superfluous. Appx313. Dixon supported his statement by citing *United States v. Kales*' holding that the IRS could not reject a refund claim that does not comply with formal requirements of the *statute or regulations* if the taxpayer remedies the defect by filing a perfected claim for refund after the statute of limitations expired. *Kales,* 314 at 194. Appx313-314.

The United States offered no new argument in its reply and continued to contend that because the original Forms 1040X were unsigned, they could not form a foundation for the informal claim doctrine. Appx362-363.

The Claims Court ruled in favor of the United States, finding that Dixon did not file valid administrative claims for refund within the statute of limitations. Appx7. The Claims Court dismissed Dixon's net investment income tax claim for lack of subject-matter jurisdiction or,

alternatively for failure to state a claim upon which relief can be granted. Appx13. The Claims Court entered the final judgment against Dixon on January 19, 2022. Appx1.

SUMMARY OF THE ARGUMENT

The present decision, *Dixon v. United States,* incorrectly applies the informal claim doctrine by confusing it with the *Angelus Milling* doctrine. Both judicial doctrines begin with an informal claim. An informal claim is a claim for refund that does not abide by the formalities of the statute and treasury regulations but provides the IRS with sufficient information for it to investigate the claim. Dixon submitted informal claims in 2017 when filing Forms 1040X that lacked his signature. Dixon cured the informalities by resubmitting the amended claims for refund in 2020, this time, with his original signature.

The Claims Court dismissed the suit and stated that to invoke the informal claim doctrine, the informal claim has to meet the signature and verification requirement under Treas. Reg. § 301.6402-2(b)(1). Further, per the Claims Court, the IRS must accept and treat the informal claim as a valid claim for refund. The holding contradicts the premise of the informal claim doctrine, which is rooted in the taxpayer's failure to

submit a claim for refund that abides by the statute and regulations; an important aspect that the Claims Court failed to realize.

Because the signature and verification requirement on tax refund claims are rooted in statute, the Claims Court found that the IRS could not have waived the requirement to treat his 2017 amended returns as valid refund claims. However, the informal claim doctrine is not a waiver doctrine. Dixon never argued that the IRS waived the signature and verification requirement. Under the *Angelus Milling* doctrine, a court finds that the IRS waived and decided not to enforce its own treasury regulations. The IRS's waiver of the requirements renders the informal claims duly filed.

In contrast, Dixon argued that the informal claim doctrine applies. Under this doctrine, the informal claim is a notice that contains sufficient information to justify the tolling of the statute of limitations. Here, the IRS's action cannot render the informal claim duly filed. For a taxpayer to rely on the equitable relief of this doctrine, the taxpayer needs to perfect the informal claim by filing a claim for refund that abides by the statute and regulations. Until the taxpayer submits such a valid claim to

the IRS, the statute of limitations is waived. If the taxpayer fails to perfect the claim, the informal claim doctrine is inapplicable.

The Claims Court failed to realize the distinction between the two separate judicial doctrines and incorrectly found that Dixon did not submit "duly filed" returns pursuant to I.R.C. § 7422(a).

STANDARD OF REVIEW

This Court reviews the Claims Court's legal determinations *de novo* and its factual findings for clear error. *Palladian Partners, Inc. v. United States*, 783 F.3d 1243, 1252 (Fed. Cir. 2015).

ARGUMENT

This appeal raises the question of what can constitute the foundation of the informal claim doctrine.

The informal claim doctrine was explained in great detail in *United States v. Kales*. In *Kales,* the taxpayer sold 525 Ford Motor Company shares for $12,500.00 each. She reported the sale of the shares on her 1919 tax return and paid a tax of $1,216,086.00 on the profits. She rendered the payment in 1920. Prior to selling the shares, the taxpayer obtained an IRS ruling stating that each share was worth $9,489.00 in 1913, the year she acquired the shares. *Kales*, 314 U.S. at 190.

In 1925, the IRS assessed additional tax on her profits, claiming that the taxpayer overstated the 1913 value of her shares. *Id.* at 191. The taxpayer sent a protest letter to the IRS, arguing the IRS is without authority to reduce the 1913 stock valuation. The protest letter also stated that if the IRS, Board of Tax Appeals, or any court sets aside or reopens the IRS's determination of the 1913 stock valuation, she will insist that the IRS greatly undervalued the stock and will claim the right to a refund of the excess tax collected. After paying the jeopardy assessment, the taxpayer filed a refund claim for the same amount and subsequently brought suit in the district court. *Id.* The taxpayer obtained a favorable judgment which was confirmed by the Sixth Circuit and satisfied in November 1928. *Id.*

In 1928, which was after the statute of limitations expired, the Board of Tax Appeals, in an unrelated case (*James Couzens v. C.I.R.*, 11 B.T.A. 1040 (1928)), found that in 1913, the value of Ford Motor Company shares was $10,000 each, which was $511 higher than the valuation the IRS provided to the taxpayer in *Kales*. The taxpayer filed another claim for refund, requesting a tax refund on the overpaid tax based on the higher valuation. In 1929, the IRS considered the amended claim on its

merits at a hearing, and in 1933, the IRS advised the taxpayer's attorney that an informal claim was timely filed. Nevertheless, in 1935, the IRS informed the taxpayer that they would not consider the claim because it was merged into the subsequent judgment, and she is therefore barred from further amending her 1925 amended refund claim. *Id.* at 191-93.

The Sixth Circuit held that her claim was not barred by the judgment because her 1925 protest letter formed the foundation of the informal claim doctrine and that she subsequently satisfied the doctrine by filing a perfected claim for refund in 1928. *Id.* The Supreme Court affirmed the ruling on those grounds. *Id.* at 200.

The Supreme Court explained:

> "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 amendments filed after the lapse of the statutory period."

Id. at 194 (emphasis added) (citing *United States v. Memphis Cotton Oil Co.*, 288 U.S. 62 (1933), *United States v. Factors & Fin. Co.*, 288 U.S. 89 (1933); *Bemis Bros. Bag Co. v. United States*, 289 U.S. 28 (1933); *Moore Ice Cream Co. v. Rose*, 289 U.S. 373 (1933)).

The Supreme Court further clarified that "[t]his is especially the case where such a claim has not mislead the Commissioner and he as accepted and treated it as such." *Id.* (citing *Bonwit Teller Co. v. United States*, 283 U.S. 258 (1931); *Memphis Cotton Oil Co.*, supra, 288 U.S. at 70).

An interesting aspect of the informal claim doctrine, as explained in *Kales* is the Supreme Court's broad and liberal application of the doctrine. The taxpayer could not have foreseen the 1928 claim for refund in 1925. The 1925 protest letter was premised on the IRS decreasing her stock and stated that if the value of the stock was being altered, she would file a claim. The possibility that she is entitled to an even lower tax bill did not even form until after the statute of limitations expired. Nevertheless, the Supreme Court held that by simply notifying the IRS within the statute of limitations that she would take action upon any change of the stock valuation, her 1928 refund claim related back to 1925.

The broad application of the doctrine has been adopted by various courts throughout. Courts have not only applied the informal claim doctrine in cases where the taxpayer could not file a timely claim because the underlying information has not been determined yet, like in *Kales*

but also in scenarios where the taxpayer used the wrong form and filed the correct form outside the statute of limitations. *Palomares v. C.I.R.*, 691 Fed. Appx. 858, 858 (9th Cir. 2017) (holding that Form 8379, Injured Spouse Allocation, was an informal claim for a later-filed Form 8857, Request for Innocent Spouse Relief). Courts have also held that submitting a letter signed by a taxpayer's counsel can constitute an informal claim if a proper claim for refund is subsequently filed. *United States v. Com. Nat. Bank of Peoria*, 874 F.2d 1165, 1172 (7th Cir. 1989).

The Federal Circuit stated in *Computervision Corp* that to properly submit an informal claim, such claim must contain a written component that adequately notifies the IRS that a refund is being sought and for which years. *Computervision Corp. v. United States*, 445 F.3d 1355, 1365 (2006). The Federal Circuit further explained that "formal compliance with the statute and regulations is excused when the informal claim doctrine is applicable." *Id* at 1364 (citing *Am. Radiator & Standard Sanitary Corp. v. United States*, 318 F.2d 915, 920 (Ct.Cl. 1963)).

In an unpublished opinion, the Federal Circuit emphasized again in *Langley* that a written component fairly apprising the IRS that a

refund is sought for certain years is the foundation of the informal claim doctrine. *Langley v. United States*, 716 Fed. Appx. 960, 963 (2003).

The purpose of the informal claim is to put the IRS on notice that a claim is being made and such notice will toll the statute of limitations until the deficiencies are corrected in a subsequent refund claim. *Kaffenberger v. United States*, 314 F.3d 944, 954 (8th Cir. 2003).

I. The IRS does not need to accept and treat an informal claim as a valid claim for the application of the informal claim doctrine.

To adequately illustrate the Claims Court's misapplication of the informal claim doctrine, the analysis needs to begin with the Supreme Court's holding that the informal claim doctrine is applicable "*especially* [in a] case where such a claim has not misled the [IRS] and [the IRS] has accepted and treated it as such." *Kales*, 314 U.S. at 194 (emphasis added). Despite the Supreme Court clearly using the world *especially*, the Claims Court blatantly misstated the holding by stating that "the [Supreme] Court elaborated on the scope of the informal claim doctrine by emphasizing that valid informal claims are *only* those that "[have] not misled the [IRS] and [have been] *accepted and treated*" by the IRS as valid claims. *Kales*, 314 U.S. at 194 (emphasis added)." Appx6. (emphasis

in original). By changing the word "especially" to "only," the Claims Court turned a heightened requirement into a perquisite. This is not in accordance with controlling case law. The Supreme Court clearly stated that if the IRS accepts a claim that does not abide by statute or regulations, the courts and the IRS must *especially* give deference to the informal claim doctrine provided that the other requirements of the doctrine are met. However, the Supreme Court has not held that accepting and treating the informal claim as a valid claim is a prerequisite for the application of the informal claim doctrine. The Supreme Court clarified that if it is doubtful whether the informal claim doctrine applies, consistent administrative treatment of the informal claim followed by a perfected claim can aid the courts in making the determination. *Id.* at 195.

More importantly, the Claims Court's holding is not even reconcilable with *Kales*. In *Kales*, the taxpayer stated in the future tense that upon the happening of a contingency, she would file a claim for refund. The IRS would not have been in a position to accept and treat such letter as a valid claim for refund independently. *Id.* at 195-96.

In fact, the Supreme Court specified that the informal claim doctrine applies when the filed claim "does not comply with formal requirements of the statute and regulations[.] *Kales*, 314 U.S. 194. The Claims Court holding that a claim must be duly filed to invoke the informal claim doctrine is in direct conflict with the Supreme Court's explicit statement in *Kales*.

Various circuits have found that a variety of letters, petitions, or extension forms can serve as an informal claim. None of the examples below could have been considered duly filed because they stray far away from the requirements under Treas. Reg. § 301.6402-2(b)(1).

The Seventh Circuit accepted a lower court's ruling that the taxpayer's court petition constituted an informal claim for a refund. The Court ultimately ruled that the taxpayer failed to meet the requirements of the informal claim doctrine because the taxpayer did not cure the deficiencies by filing a perfected claim for refund. *Greene-Thapedi v. United States*, 549 F.3d 530, 532 (7th Cir. 2008).

The Eighth Circuit found that a Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, can also serve as the foundation of the informal claim doctrine.

Kaffenberger, 314 F.3d at 955. If a petition and an extension request can serve as the foundation for the informal claim doctrine, the Claims Court's assertion that only informal claims that are accepted and treated by the IRS as valid claims can form the foundation of this doctrine is further invalidated.

The Claims Court misstated the Supreme Court's application of the informal claim doctrine. The Supreme Court never held that the informal claim doctrine is *only* applicable in cases where the IRS accepted and treated the informal claim as a valid claim; in fact, the Supreme Court stated the opposite. Based on the foregoing, the Claims Court's misapplication of the doctrine should not bar Dixon's net investment income claim.

II. The Claims Court conflated the informal claim doctrine with the *Angelus Milling* waiver doctrine when determining that an amended return containing technical deficiencies cannot serve as an informal claim tolling the statute of limitations.

Premised on the unfounded holding that the informal claim needs to be treated and accepted as a formal claim, the Claims Court held that the lack of Dixon's signature on the original amended returns bars the application of the informal claim doctrine. Appx7.

The Claims Court stated that a refund claim that does not contain the taxpayer's signature cannot ever be considered a valid claim under Treas. Reg. § 301.6402-2(b)(1). The Claims Court concluded that Dixon could not rely upon a waiver exception because the signature requirement is statutory and, therefore, the IRS cannot waive the requirement and treat the refund claim as valid. However, Dixon, neither in his pleading nor in his response to the United States' motion, has ever attempted a waiver argument in this case. It is apparent that by reaching such a conclusion, the Claims Court is conflating the informal claim doctrine with the *Angelus Milling* doctrine.

A. An informal claim does not need to meet the requirements under Treas. Reg. § 301.6402-2(b)(1).

As a way of background, I.R.C. § 7422(a) provides that to maintain a suit for the recovery of tax, the taxpayer must first duly file a claim for refund or credit with the IRS. A tax return that complies with the provision of the law and treasury regulation is considered "duly filed". *See* 26 U.S.C. § 7422(a).

Treas. Reg. § 301.6402-2(b)(1) requires that any tax refund claim before the IRS "must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the [IRS] of the exact

basis thereof" and "must be verified by a written declaration that is made under the penalty of perjury." *See* Treas. Reg. § 301.6402-2(b)(1). It further states that "a claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund." *Id.* The Claims Court accepted the unsupported argument by the United States that the phrasing "for any purpose" includes an informal claim. Appx8, Appx269. On that basis, Claims Court found that because Dixon did not sign his amended returns filed in 2016 and 2017, they cannot serve as informal claims that were subsequently perfected by the valid amended claims for refund filed in 2020. Appx8.

The Claims Court's interpretation of the informal claim doctrine is inconsistent with the purpose of the doctrine. The informal claim is a claim which fails to abide by provisions of the law ("statutory requirements") and regulations and is therefore not considered a claim for refund. The informal claim is treated as a notice that provides the IRS with sufficient information about a subsequent claim for refund to justify the tolling of the statute of limitations. The Eight Circuit in *Kaffenberger* pointed out that per Treas. Reg. § 301.6402-2(b)(1) a claim for refund containing technical deficiencies cannot constitute a valid refund claim

but the Supreme Court endorsed such informal claims filed within the statutory period of limitations "as long as valid refund claim is subsequently made after the period of limitations." *Kaffenberger*, 414 F.3d at 954. The Eighth Circuit summarized the application of the informal claim doctrine by stating that "an informal claim that puts the IRS on notice that a claim is being made tolls the statute of limitations until the deficiencies are corrected in a subsequent refund claim." *Id.* (citing *Com. Nat'l Bank of Peoria*, 874 F.2d at 1170-76). An informal claim must be filed within the statutory period and notify the IRS with sufficient particularity that the taxpayer believes an erroneous tax has been assessed. The facts contained in the informal claim must contain enough details for the IRS to investigate the claim. *Id.* (citing *PALA, Inc. Emps. Profit Sharing Plan and Trust Agreement,* 234 F.3d 873, 877 (5th Cir. 2000). Court must look at the individual facts of each case to determine whether the taxpayer provided sufficient information. *Id.*

The entire premise of the informal claim doctrine is that the claim filed within the statute of limitations cannot constitute a valid claim for refund under U.S. tax law or treasury regulation. But if a subsequently amended claim for refund is filed outside the statute of limitations that

cures all defects, the subsequent return is treated akin to an amended pleading in a suit: it cures the deficiencies and relates back to the original date of the deficient informal claim. *PALA, Inc. Emps. Profit Sharing Plan and Trust Agreement,* 234 F.3d at 878 (citing. *Memphis Cotton Oil Co.*, 288 U.S. at 72-73).

The issue of whether the taxpayer needs to sign the informal claim has already been addressed by the Seventh Circuit in *Commercial National Bank of Peoria*. In that case, the taxpayer's counsel sent a letter to the IRS on behalf of the taxpayer requesting that the IRS recalculates the computations as they did not reflect his understanding of an earlier agreement. *Com. Nat'l Bank of Peoria*, 874 F.2d at 1169. The Seventh Circuit agreed that a refund claim must be submitted by the taxpayer who is entitled to the refund; however, the written component of an informal claim does not. *Id*. at 1172.

The Seventh Circuit provided the following illustration when explaining the essence of the informal claim doctrine in a different 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."

BCS Fin. Corp. v. United States, 118 F.2d 522, 524 (1997) (internal citations omitted).

The Claims Court's holding that an informal claim has to meet the verification requirements under Treas. Reg. § 301.6402-2(b)(1) cannot be reconciled with the purpose of the informal claim doctrine or with the rulings of the Seventh Circuit. If a taxpayer submits a valid claim for refund that complies with all requirements of Treas. Reg. § 301.6402-2(b)(1), a subsequent claim for refund would be gratuitous.

B. The IRS's inability to waive statutory requirements under the Angelus Milling doctrine does not prevent the application of the informal claim doctrine.

The Claims Court explains that the IRS legally cannot accept an unsigned claim as duly filed and because Dixon did not sign the originally amended claims for refund, the original filed returns cannot be the foundation of the informal claim doctrine. Appx8. The Claims Court emphasizes that the IRS would be legally barred from paying a claim that has not been duly filed. The Claims Court then supports its finding by stating that "[b]ecause the taxpayer signature requirement derives from statute, the IRS cannot waive those requirements. *See Angelus Milling*

Co., 325 U.S. at 296 (1945)." Appx8. The Claims Court concluded that Dixon could not rely upon a waiver exception because the signature requirement is statutory. As mentioned previously, neither party brought the doctrine of waiver argument.

Both doctrines are invoked with an informal claim. An informal claim is a claim, which lacks compliance with the provision of the law and regulations, "filed within the statutory period [that] puts the IRS on notice that the taxpayer believes an erroneous tax has been assessed, and…describes the tax and year with sufficient particularity to allow the IRS to undertake an investigation. *See, e.g., PALA, Inc. Emps. Profit Sharing Plan & Trust Agreement,* 234 F.3d at 876–77.

But that is precisely where the similarities between the doctrines end. Under the *Angelus Milling* doctrine, the IRS can waive its own regulatory requirements and examines the claim within the statute of limitations. The *Angelus Milling* doctrine only applies to informal claims that do not abide by regulatory requirements. An informal claim that does not abide by statutory requirements cannot seek equitable relief under this doctrine. *See generally, Brown v. United States,* 22 F.4th 1008 (Fed. Cir. 2022). When applying the *Angelus Milling* doctrine, courts

determine whether the IRS understood the claim despite the lack of specificity and unmistakable dispenses with its own requirements by examining the claim. *Computervision Corp.*, 445 F.3d at 1366 (citing *Angelus Milling*, 325 U.S. at 297). Through its own action, the IRS converts the informal claim to a "duly filed" refund claim by waiving compliance with regulatory requirements, which then permits the taxpayer to maintain a suit per I.R.C. § 7422(a). The *Angelus Milling* doctrine does not hinge on taxpayer's subsequent actions to cure an informal claim.

Under the informal claim doctrine, the invalid claim is treated as a notice to the IRS. The informal claim provides the IRS with enough information despite the lack of compliance with statute and regulations. The information provided eliminates the element of surprise when the taxpayer perfects the claim after the limitations period. At no point does the IRS waive the lack of formalities with the statute and regulations through its own action. Under the informal claim, the statute of limitations is tolled, and the taxpayer is provided with more time to bring a formal claim. A successful assertion of the informal claim doctrine is contingent on the taxpayer perfecting the claim and curing all

informalities in accordance with statute and regulations. If the taxpayer fails to do so, the informal claim alone does not meet I.R.C. § 7422(a).

In essence, under the *Angelus Milling* doctrine, the IRS *waives* formalities and under the informal claim doctrine, the IRS has to *wait* on the formalities.

The Federal Circuit has previously considered whether the IRS can waive statutory requirements such as the taxpayer's signature under the *Angelus Milling doctrine* and found that the *Angelus Milling* doctrine does not apply in such scenarios. *See generally*, *Brown v. United States*, 22 F.4th 1008 (Fed. Cir. 2022). *Brown* involved different taxpayers but the same tax preparer. The tax preparer signed the amended claim for refund on behalf of the taxpayers but failed to attach the proper authorization (Form 2848). This Court held that the IRS cannot waive the requirement of the taxpayer's signature under penalty of perjury under the *Angelus Milling* doctrine. *Id*.

Dixon's case differs in one indispensable aspect: Dixon is not arguing that a waiver applies. Dixon filed imperfect amended refund claims and subsequently cured the defects by filing perfected amended refund claims that contained his original signature.

An informal claim under the informal claim doctrine serves as a notice to the IRS that a perfected claim will follow; it does not ask the IRS to waive a statutory requirement. As this Court explained in *Computervision*, the doctrines are distinct and separate; they do not apply in the same manner. *Computervision Corp.*, 445 F.3d at 1364. The fact that Dixon cannot rely on the *Angelus Milling* doctrine to render his original 2013 and 2014 Form 1040X as "duly filed" claims for refund does not govern the applicability of the informal claim doctrine.

III. Dixon established that he meets the informal claim doctrine, and therefore, dismissal for lack of subject matter jurisdiction or, alternatively for failure to state a claim upon which relief can be granted, was improper.

The informal claim doctrine provides equitable relief to a taxpayer who made a good-faith attempt to file a claim for refund but failed to adhere to formal requirements. *Kikalos v. United States*, 479 F.3d 522, 526 (2007). To invoke the informal claim doctrine, the taxpayer must perfect the claim by filing a valid claim for refund after the expiration of the statute of limitations. *Id.* If a taxpayer files the perfected claim, the insufficient refund claim is treated as adequate. *Id.* There are no set rules for evaluating what constitutes an informal claim, and each case must be evaluated on its own particular facts to determine whether, under the

given facts, the IRS knew or should have known that the taxpayer is submitting a claim. *Gustin v. United States, I.R.S.*, 875 F.2d 485, 488-89 (5th Cir. 1989).

The Courts are in agreement that the informal claim doctrine requires a written component. *See Yuen v. United States*, 825 F.2d 244, 245 (9th Cir. 1987) (finding that taxpayer's verbal notice is insufficient to constitute an informal claim).

There are, however, no set rules on the type of format of the written component. *See Kaffenberger*, 314 U.S. at 956 (holding that IRS Form 4868, Automatic Extension Request was an informal claim), *The Estate of Hale v. United States*, 876 F.2d 1258, 1259 (6th Cir. 1989) (finding that a protest letter requesting an abatement and extension to pay gift tax is a valid informal claim); *Palomares*, 691 Fed. Appx. at 858 (holding that Form 8379, Injured Spouse Allocation, was an informal claim for a later-filed Form 8857, Request for Innocent Spouse Relief), *Com. Nat. Bank of Peoria*, 874 F.2d at 1172 (letter signed and sent by taxpayer's counsel constitutes an informal claim).

The only requirement for the written component dictates that it should adequately inform the IRS that a refund is being sought for

specified years. *Arch Eng'g Co. v. United States*, 783 F.2d 190, 192 (Fed. Cir. 1986) (citing *Am. Radiator & Standard Sanitary Corp.,* 318 F.2d at 920). Notably, the written component does not need to be the exclusive source of sufficient information, and a taxpayer may rely on other documents, conversations, or correspondence to adequately inform the IRS of the claim and tax year. *Com. Nat. Bank of Peoria*, 874 F.2d at 1171.

And lastly, the informal claim doctrine "is predicated on an expectation that these formal deficiencies will at some point be corrected." *PALA, Inc. Emps. Profit Sharing Plan & Tr. Agreement*, 234 F.3d at 879.

Dixon fulfills all the above requirements. The 2013 and 2014 informal claims were filed on Form 1040X, which courts have found that proper IRS forms can constitute informal claims. For each year, Dixon clearly stated that he was requesting a refund and included the requested amounts in Column B. For 2013, Dixon requested $84,417.00, and for 2014, he requested $251,866.00. Appx149-150, Appx153-154. Dixon provided an explanation on both forms for the basis of the claim. *Id.* And

lastly, Dixon perfected his claims when he filled the 2013 and 2014 claims for refund containing his original signature in 2020.

Because Dixon meets all the elements set forth by various courts to properly invoke the informal claim doctrine, the Claims Court holding that the informal claim doctrine is inapplicable should be reversed and remanded. On that basis, the dismissal on the alternative ground for failure to state a claim for which relief can be granted should be reversed. The dismissal based on lack of subject matter jurisdiction should also be reversed on the additional ground that the Federal Circuit recently held that I.R.C. § 7422(a) is not jurisdictional. *Brown v. United States*, 22 F.4th 1008 (Fed. Cir. 2022) ("We conclude that the "duly filed" requirement in § 7422(a) is more akin to a claims-processing rule than a jurisdictional requirement.").

CONCLUSION

For the reasons stated above, Dixon respectfully requests this Court to (1) reverse the Claims Court decision dismissing the net investment income claim for lack of subject matter jurisdiction, (2) reverse the Claims Court alternative decision dismissing the net investment income claim for failure to state a claim for which relief can be granted, (3) hold

that an informal claim lacking the signature and verification requirement can serve as the foundation of the informal claim doctrine, and (4) hold that Dixon met all the requirements to invoke the informal claim doctrine.

Dated: June 30, 2022

/s/ Tiffany Michelle Hunt

Tiffany Michelle Hunt
Hunt Tax Law, PLLC
PO Box 4099
Dallas, TX 75208
Telephone: (305) 619 - 9157

Counsel for Appellant

ADDENDUM

ADDENDUM INDEX

In the United States Court of Federal Claims

No. 20-1258 T
Filed: January 19, 2022

ALAN C. DIXON

v. **JUDGMENT**

THE UNITED STATES

Pursuant to the court's Memorandum Opinion and Order, filed January 18, 2022, granting defendant's motion for judgment on the pleadings,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff's assessed additional income tax claim is dismissed for lack of subject-matter jurisdiction; plaintiff's net investment income tax claim is dismissed for lack of subject-matter jurisdiction, or alternatively, as stated in the Court's analysis [in the above-referenced memorandum opinion and order], for failure to state a claim upon which relief can be granted; and plaintiff's foreign tax credit claim is dismissed for failure to state a claim upon which relief can be granted.

Lisa L. Reyes
Clerk of Court

By: s/ Debra L. Samler

Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is $505.00.

In the United States Court of Federal Claims

No. 20-1258T
Filed: January 18, 2022

ALAN C. DIXON,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Tiffany Michelle Hunt, Barnes & Hunt, PLLC, Dallas, TX, for Plaintiff.

Patrick Phippen, Trial Attorney, Tax Division, *David A. Hubbert*, Deputy Assistant Attorney General, *David I. Pincus*, Chief, Court of Federal Claims Section, *Marry M. Abate*, Assistant Chief, United States Department of Justice, Washington, D.C., for Defendant.

MEMORANDUM OPINION AND ORDER

TAPP, Judge.

Plaintiff, Alan C. Dixon ("Mr. Dixon"), challenges the Internal Revenue Service's ("IRS") denial of his tax refund. Mr. Dixon's Complaint asserts three claims: refund based on application of foreign tax credit, refund for "assessed additional tax," and refund based on adjustment of net investment income tax. The United States seeks judgment on the pleadings. The Court finds it lacks subject-matter jurisdiction over Mr. Dixon's assessed additional tax claim because Mr. Dixon never filed any administrative claims for that tax. Likewise, Mr. Dixon's net investment tax claim was not properly presented to the IRS and is, therefore, dismissed for lack of jurisdiction or, in the alternative, for failure to state a claim upon which relief can be granted. Finally, Mr. Dixon did not follow the applicable IRS rules for classifying his business as a partnership, and therefore, is not entitled to foreign tax credits. Accordingly, the Court grants the United States' Motion for Judgment on the Pleadings.

I. Background

At this stage, the Court assumes that Mr. Dixon's factual allegations are true. *Crusan v. United States*, 86 Fed. Cl. 415, 418 (2009). Mr. Dixon is the CEO and managing member of Dixon Advisory, USA, a New York-based subsidiary of an Australian company formerly known as Dixon Advisory Group Pty Ltd. (Compl. at 1–3, ECF No. 1). On October 23, 2014 and October 13, 2015, Mr. Dixon filed his original 2013 and 2014 tax returns, respectively. (Def.'s App. ("DA") at 15, 19, ECF No. 18-1). The largest share of Mr. Dixon's income during those years included dividends from Dixon Advisory Group Pty Ltd. (Compl. Ex. F at 4–5, 12). In

2016, Mr. Dixon then realized that Dixon Advisory Group could be recognized as a partnership for U.S. federal income tax purposes, entitling Mr. Dixon to certain tax benefits. (Compl. at 3). Mr. Dixon believed that, should Dixon Advisory Group be treated as a partnership for tax purposes, the entity's income would flow through to Mr. Dixon as business income. (*Id.*) This would increase Mr. Dixon's reported business income and therefore his tax liability. (Pl.'s Resp. at 19, ECF No. 21). Yet, since Mr. Dixon paid Australian taxes on that income, he would be entitled to a foreign tax credit, reducing his American tax burden overall. (*Id.*). Consequently, Mr. Dixon could be entitled to a tax refund. (*Id.*; Compl. at 3).

In 2016, Mr. Dixon filed an Application for Employer Identification Number (Form SS-4) for Dixon Advisory Group Pty Ltd. with the IRS. (Compl. at 3). Soon after, the IRS formally notified Dixon Advisory Group of its new employer identification number ("EIN") by issuing a Notice CP575D. (DA at 11–13).

Subsequently, Mr. John Anthony Castro prepared, signed, and filed Mr. Dixon's amended tax returns (Form 1040X) for tax years 2013 and 2014. (Compl. at 3–4). Aside from seeking foreign tax credits, the amended tax returns included another separate tax refund claim. Portions of Mr. Dixon's income involved assets held in an Australian privatized social security fund, also known as the Australian superannuation fund. (Compl. Ex. F at 4). Mr. Dixon believed those funds to be exclusively taxable in Australia, and therefore, he asserted entitlement to a refund for that portion of his taxes. (*Id.*). Application of the foreign tax credit, in conjunction with an amendment to Mr. Dixon's net investment income tax, could have resulted in a net tax refund. (Compl. at 5–6). These 2013 and 2014 amended tax returns sought refunds in the amount of $137,656 and $1,588,653, respectively, each made up of a foreign tax credit claim and a net investment income tax claim. (Compl. Ex. F at 2, Ex. G at 2).

In 2017, the IRS audited Mr. Dixon's 2013 taxes related to the additional business income reported in the amended tax return. (Compl. at 4). As a result of that audit, the IRS assessed additional tax, along with a failure-to-pay penalty and additional interest. (DA at 16). On August 6, 2018, the IRS deducted those assessments from Mr. Dixon's 2017 tax year credit. (*Id.*).

In February of 2019, Mr. Dixon challenged both the IRS's denial of tax refunds and the assessment of additional tax. *See Dixon v. United States*, 147 Fed. Cl. 469 (2020). The Court dismissed all of Mr. Dixon's claims for lack of subject-matter jurisdiction because Mr. Dixon had not signed his amended tax returns, thereby failing to file a valid administrative refund claim with the IRS prior to filing the lawsuit. *Id.* The Court also found that Mr. Dixon's additional assessment claim was unreviewable because he had not filed an administrative claim before the IRS to challenge the collection of that tax. *Id.*

Four days after the Court dismissed Mr. Dixon's claims, Mr. Dixon submitted the same amended tax returns to the IRS again, this time after signing them. (Compl. at 4). These signed returns were identical to the unsigned returns in that they only sought refunds for the foreign tax credit and the net investment income tax and did not reference the assessed additional tax. (Compl. Ex. F at 2, Ex. G at 2). After the IRS did not respond to the signed amended tax returns, Mr. Dixon filed this lawsuit. (Compl. at 4).

II. Analysis

"After the pleadings are closed," a party may move for judgment on the pleadings. RCFC 12(c). A motion for judgment on the pleadings should be granted when "there are no material facts in dispute and the [moving] party is entitled to judgment as a matter of law." *Forest Labs., Inc. v. United States*, 476 F.3d 877, 881 (Fed. Cir. 2007); *see also Jacqueline R. Sims, LLC v. United States*, 600 F. App'x 760, 764, 2015 WL 328224, at *4 (Fed. Cir. 2015) ("A fact is material if it could 'affect the outcome of the suit under the governing law.'") (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986)). Therefore, at this stage, the Court accepts Mr. Dixon's factual allegations as true. *Crusan*, 86 Fed. Cl. at 418. A plaintiff's legal assertions, conversely, do not receive this deference. *Garner v. United States*, 85 Fed. Cl. 756, 758–59 (2009).

The United States has waived sovereign immunity and given this Court jurisdiction, concurrent with district courts, to entertain tax refund suits under 28 U.S.C. §§ 1346(a)(1), 1491. This grant of jurisdiction to the Court is limited by other provisions of the Internal Revenue Code. *RadioShack Corp. v. United States*, 566 F.3d 1358, 1360 (Fed. Cir. 2009) (citing *United States v. Clintwood Elkhorn Mining Co.*, 553 U.S. 1, 4 (2008)).

First, a plaintiff must satisfy the full payment rule, which requires that the principal tax deficiency be paid in full. *See Shore v. United States*, 9 F.3d 1524, 1526–27 (Fed. Cir. 1993). Additionally, before seeking relief from the Court, the taxpayer must have "duly filed" a valid claim for refund with the IRS in accordance with the "the provisions of [internal revenue] law" and "the regulations of the Secretary established in pursuance thereof." 26 U.S.C. § 7422(a). In addition, 26 U.S.C § 6511(a) imposes a timeliness requirement for tax refund administrative claims, requiring that all refund claims be filed "within 3 years from the time the return was filed or 2 years from the time the tax was paid," whichever is later. The Supreme Court has held that the statutory period for filing refund claims may not be tolled for equitable reasons. *United States v. Brockamp*, 519 U.S. 347 (1997).

A. Assessed Additional Tax

The Court cannot review Mr. Dixon's claim for assessed additional tax because Mr. Dixon did not file any valid administrative refund claims with the IRS for that tax, either formal or informal. It is undisputed that Mr. Dixon never filed a formal claim with the IRS for the assessed additional tax claim. (Def.'s Mot. for J. ("MJOP") at 9; Pl.'s Resp. at 18). Mr. Dixon filed his unsigned amended tax returns in April 2017 *before* the IRS assessed additional taxes in August 2017. (DA at 15–16, 20). Therefore, those unsigned returns only stated claims for the net investment income tax and the foreign tax credit. Likewise, in submitting signed amended

returns in 2020, Mr. Dixon only asserted entitlement to the net investment income tax refund and the foreign tax credit.[1] (Compl. Ex. F at 2, Ex. G at 2).

Mr. Dixon asserts that, despite the absence of a valid and timely formal administrative claim for the assessed additional tax before the IRS, the Court has jurisdiction to entertain the assessed additional tax claim under the informal claim doctrine. (Pl.'s Resp. at 13). Under this doctrine, administrative claims that are timely filed but defective will nonetheless be treated as valid claims if they adequately notify the IRS of the nature of a taxpayer's refund claim and are later perfected. *United States v. Kales*, 314 U.S. 186, 194 (1941). In essence, in some circumstances, the filing of an informal claim tolls the statute of limitations under § 6511 until the filing of a valid formal claim. The determination of whether a taxpayer has satisfied the requirements for an informal claim is determined on a case-by-case basis and is based on the totality of the facts. *See Newton v. United States*, 143 Ct. Cl. 293, 300 (1958); *Donahue v. United States*, 33 Fed. Cl. 600, 608 (1995).

Mr. Dixon urges that the unsigned tax returns in this case adequately notified the IRS of the assessed additional tax claim, and that the lack of formality in submitting that claim—namely, lack of the taxpayer's signature—was later perfected by submission of signed amended tax returns in 2020. (Pl.'s Resp. at 21). Mr. Dixon relies on the Supreme Court's decision in *Kales* in arguing that informal claim doctrine applies when the defective filing "has not misled the Commissioner and he has accepted and treated it as such." *Kales*, 314 U.S. at 194.

Mr. Dixon asserts that the IRS's only basis for assessing additional taxes in August 2017 was Mr. Dixon's unsigned amended tax returns. (Pl.'s Resp. at 18–21). Those returns reported revised income in the form of additional flow-through business income from Dixon Advisory. (*Id.*). Mr. Dixon contends that, because IRS used the information within the unsigned amended tax returns to initiate an audit of the income reported and assess the additional tax, the unsigned amended tax returns should constitute informal claims for the assessed additional tax. (*Id.*).

The Court grants Mr. Dixon the presumption that the unsigned amended tax returns formed the sole basis for the IRS's decision to assess additional taxes. However, even with that presumption, 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. *See Martti v. United States*, 121 Fed. Cl. 87, 99 (2015) (A return filed before payment of taxes cannot be a refund claim because until the disputed taxes are paid, there is "no amount to be refunded."). In other words, Mr. Dixon could not have filed an administrative refund claim with the IRS related to the assessed additional taxes, formal or informal, until he had first fully paid the assessed additional taxes. *Rock Island, Ark. & La. R.R. Co. v. United States*, 54 Ct. Cl. 22, 34 (1918) (finding that the cause of action for erroneous

[1] In fact, in the interim period between the filing of the two administrative claims, Mr. Dixon asserted before the Federal Circuit that there was "no need for [him] to submit an additional administrative claim to litigate the additional tax assessment," a testament to Mr. Dixon's costly misunderstanding of the applicable law. *Dixon v. United States*, No. 20-1584, Doc. No. 15 (Fed. Cir. July 20, 2020); *See Higgins v. Mississippi*, 217 F.3d 951, 954–55 (7th Cir. 2000) (judicial admissions in one case may be evidentiary admissions in another case).

assessment or collection of taxes does not accrue before payment of said taxes and claims for refund can "only be made after payment of the amount sought to have refunded"). Whether the unsigned amended tax returns caused the IRS to impose the assessed additional tax is immaterial. Mr. Dixon does not allege that he has filed any other administrative claims for a refund of the assessed additional tax after paying that tax. Without an administrative refund claim, and without opportunity for the IRS to review such claim, the Court lacks jurisdiction.[2]

Therefore, because Mr. Dixon did not pay the assessed additional tax before filing the unsigned refund claim with the IRS in 2017, the Court lacks subject-matter jurisdiction over Mr. Dixon's cause of action related to assessed additional tax irrespective of the informal claims doctrine.

The IRS had sent Mr. Dixon a "Notice of Additional Tax Due" and a subsequent "Notices for the Amount Due". (Pl.'s Resp. at 19). Mr. Dixon admits that neither notice "shed[s] light on the grounds for the additional assessed tax." (*Id*.). Mr. Dixon misapprehends the weight of this important admission. Before asking the Court to review the IRS's grounds for the assessed additional tax, Mr. Dixon was obligated to pay, *then* dispute those taxes. The purpose of that sequence is *precisely* to allow the IRS to "shed light on" their reasoning *before* Mr. Dixon asks the Court to review IRS's reasoning. The requirement that a tax refund suit be initiated only after the taxpayer timely files a formal or informal administrative claim is intended to "to limit the scope of any ensuing litigation to those issues which have been examined [by the IRS] and which [the IRS] is willing to defend." *Union Pac. R.R. v. United States*, 182 Ct. Cl. 103, 109 (1968).

Even if Mr. Dixon were correct that the unsigned amended tax forms caused the IRS to assess the additional tax, those returns, at best, could have notified the IRS that Mr. Dixon may, in the future, challenge any additional tax assessment related to those returns. Perhaps, because Mr. Dixon reported the additional income in order to receive tax credits, the IRS could have anticipated that assessing additional taxes as opposed to granting the requested refund could result in a tax refund claim by Mr. Dixon in the future. Yet, to satisfy the informal claim doctrine, it is not enough to show that the taxpayer provided the IRS with adequate notice that a potential claim for refund might someday ensue. *Barenfeld v. United States*, 194 Ct. Cl. 903, 912 (1971) (rejecting the application of the informal claim doctrine where the IRS could have known from "circumstantial evidence" that the taxpayer would ask for a tax refund in the future); *Angelus Milling Co. v. Commissioner*, 325 U.S. 293, 293 (1945) (it is not enough that the facts before the IRS might have notified it "in some roundabout way" that a potential future refund

[2] Claims before the IRS, formal or informal, preceding payment of the disputed tax can at best be viewed as claims for an abatement and not a refund. *Ertle v. United States*, 118 Ct. Cl. 57, 59 (1950) (claims for tax abatement, prior to full payment of the tax are insufficient to confer jurisdiction for the Court of Claims). The Court only has jurisdiction to review IRS's denial of claims for credit or refund of "an overpayment," not a mere assessment of additional taxes. *See* 26 U.S.C. § 7421(a) (barring the Court from hearing tax claims that involve restraining assessment or collection of taxes); *Shore*, 9 F.3d at 1525–27 (holding that "full payment" rule requires that taxpayer pay taxes assessed by IRS before bringing a tax refund claim in court); *accord Simmons v. United States*, 127 Fed. Cl. 153, 155 (2016).

claim can materialize); *American Rad. & Standard San. Corp. v. United States*, 162 Ct. Cl. 106, 114 (1963) (same).

Instead, the taxpayer can invoke the informal claim doctrine when the taxpayer not only notified the IRS of a claim but also adequality informed the IRS of the exact grounds for such claim. Even if the IRS accepted and processed the unsigned amended returns in order to assess the additional tax, Mr. Dixon still needed to pay them, then dispute the collection of those taxes and notify the IRS of his basis for seeking a refund. The mere fact that the IRS assessed the additional tax in response to forms submitted by Mr. Dixon is not enough to justify inaction by Mr. Dixon in failing to file an administrative claim for a refund of those additional taxes. *American Rad.*, 162 Ct. Cl. at 114 (finding that to satisfy the informal claim doctrine "[i]t is not enough that the [IRS] have in its possession information from which it might deduce that the taxpayer is entitled to, or might desire, a refund"). Mr. Dixon has not filed either a valid formal or an informal claim for refund of assessed additional tax, and therefore, the Court lacks subject-matter jurisdiction to hear that claim.

B. Net Investment Income Tax

Mr. Dixon failed to file a valid administrative claim with the IRS for his net investment income tax claim, and, therefore, that claim also should be dismissed for lack of jurisdiction or, in the alternative, for failure to state a claim upon which relief can be granted. Mr. Dixon admits that the IRS never received a formal claim for the net investment income tax claim, but he asserts that the unsigned amended tax returns should qualify as informal claims. (Pl.'s Resp. at 21).

Mr. Dixon's unsigned returns cannot form the foundation of an informal claim before the IRS. The Internal Revenue Code bars a taxpayer from filing a suit for tax refund until a claim for refund has been "duly filed" with the IRS according to the regulations set out by the Secretary of Treasury. 26 U.S.C § 7422. These regulations expand on what it means for an administrative tax refund claim to be "duly filed." Treasury Regulations require that tax refund claims before the IRS "must be verified by a written declaration that is made under the penalty of perjury." 26 C.F.R. § 301.6402-2(b)(1). The regulation further mandates that a tax refund claim that does not comply with this requirement will not be considered "*for any purpose* as a claim for refund or credit." *Id*. (emphasis added). The United States argues that, by incorporating the phrase "for any purpose," the plain text of the regulation bars any unsigned tax refund claims from being considered for the purposes of the informal claim doctrine. (MJOP at 18). The Court agrees.

Mr. Dixon relies on the Supreme Court's decision in *Kales*, 314 U.S. 186, in arguing that the unsigned amended tax returns qualify as valid informal claims. (Pl.'s Resp. at 13–16). *Kales* involved a taxpayer who submitted a timely informal letter, rather than the correct IRS form, to request a tax refund. *Kales*, 314 U.S. at 191–193 The taxpayer later filed an untimely amendment that complied with the regulation and remedied that error. *Id*. In describing the tenets of the informal claim doctrine, the Supreme Court stated that "a [timely] notice fairly advising the Commissioner of the nature of the taxpayer's claim, which . . . does not comply with formal requirements of the statute and regulations, will nevertheless be treated as a claim," if the "formal defects" are later remedied by another filing. *Id*. at 194. Mr. Dixon claims that because his unsigned amended tax returns provided the IRS with notice that he sought a tax refund, and because the amended tax returns laid out the legal and factual basis for that refund, his returns

qualify as informal claims under *Kales*, though unsigned. (Pl.'s Resp. at 13–16). That particular deficiency, Mr. Dixon claims, was later remedied by submitting the signed amended tax returns in 2020. (*Id.*).

A more careful reading of the Supreme Court's guidance in *Kales* undermines Mr. Dixon's reliance on that case. Most importantly, the Court elaborated on the scope of the informal claim doctrine by emphasizing that valid informal claims are *only* those that "[have] not misled the [IRS] and [have been] *accepted and treated*" by the IRS as valid claims. *Kales*, 314 U.S. at 194 (emphasis added). Tax returns that are unsigned, and therefore not made under the penalty of perjury, can never be accepted and treated as valid claims by the IRS and, as such, they cannot constitute informal claims under *Kales*. To be legally valid, a claim must be "duly filed" with the IRS, "according to the regulations" established by the Secretary of Treasury. 26 U.S.C. § 7422(a); *see also Clintwood Elkhorn Min. Co.*, 553 U.S. at 4 (2008) (to seek a tax refund "the taxpayer must comply with the tax refund scheme established in the [Internal Revenue] Code"). Those regulations state that any declaration that is not "verified" and is not "made under the penalties of perjury," is not "duly filed." *Hall v. United States*, 148 Fed. Cl. 371, 379 (2020) (addressing the requirements of Treas. Reg. § 301.6402-2(b)(1)). Because unsigned claims can never be deemed "duly filed" under Section 7422(a), the IRS would be prohibited from "accepting and treating as valid claims," requests not made under the penalty of perjury. *Sicanoff Vegetable Oil Corp. v. United States*, 149 Ct. Cl. 278, 285 (1960) (when the IRS is "not permitted by law" to pay a claim, it cannot "enlarge [its] legal authority" by considering that claim.); *see also Mobil Corp. v. United States*, 52 Fed. Cl. 327, 337 (2002) (citing *Finn v. United States*, 123 U.S. 227 (1887)) (finding that the IRS cannot waive the requirements of § 7422 or its regulations because it cannot "require the Government to make a payment that legally it was not obligated to pay").

Because the taxpayer signature requirement derives from statute, the IRS cannot waive those requirements. *See Angelus Milling Co.*, 325 U.S. at 296 (1945) (finding that although IRS could waive regulatory requirements in reviewing informal claims, it cannot waive "statutory requirements"). In other words, unsigned tax returns present a more serious deficiency than garden-variety technical deficiencies that are normally protected under the informal claim doctrine. *Barenfeld v. United States*, 194 Ct. Cl. at 908–9 (1971); *Wilson v. United States*, No. 18-408, 2019 WL 988600, at *4 (Fed. Cl. Feb. 27, 2019).[3]

Finally, Mr. Dixon asserts that even if the Court finds that he never adequately filed either a formal or informal claim, it should still review his claim because Section 7422(a)'s requirement that a tax refund claim be "duly filed" with the IRS prior to filing a lawsuit is not a "jurisdictional" provision. (Pl.'s Resp. at 21–26). As background, statutory provisions that are deemed "jurisdictional" divest the Court of the power to review claims that have not met statutory limitations. *Fort Bend Cnty v. Davis*, 139 S. Ct. 1843, 1849 (2019). If the provision is instead read to be a "claims-processing rule," the same statutory limitations are viewed as

[3] *See also* 26 U.S.C. § 6065 ("[e]xcept as otherwise provided by the Secretary, any return … shall contain or be verified by a written declaration that is made under the penalties of perjury."); 26 U.S.C. § 6061(a) ("[A]ny return, statement or other document required to be made . . . shall be signed in accordance with forms or regulations prescribed by the Secretary.").

"prudential perquisites." (*Id.* at 1845). With claims-processing rules, courts may still review claims that do not meet statutory limitations if they find that certain equitable principles such as waiver, forfeiture, estoppel, or equitable tolling apply.[4] *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133 (2008). Mr. Dixon asserts that for Section 7422(a) to be jurisdictional the text of the provision needs to include "jurisdictional language" or in the alternative be supported by "a long line of [Supreme] Court decisions" holding it to be jurisdictional. *Union Pac. R.R. v. Bhd. of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment*, 558 U.S. 67, 81 (2009).

As Mr. Dixon notes, the Supreme Court recently applied this standard to hold that many administrative exhaustion provisions are not jurisdictional and should instead be treated as claims-processing rules. *See Gillespie v. United States*, 670 F. App'x 393, 395 (7th Cir. 2016) (collecting Supreme Court cases that construed similar provisions as claims-processing rules); (*see also* Pl.'s Resp. at 25). The United States, in turn, argues that treating Section 7422(a) as non-jurisdictional cannot be reconciled with the Supreme Court's decision in *United States v. Dalm*, 494 U.S. 596, 609 (1990), which found that Section 7422(a) divests the courts of subject-matter jurisdiction over untimely tax refund claims. *See also Sun Chem. Corp. v. United States*, 698 F.2d 1203, 1206 (Fed. Cir. 1983) ("It is a well-established rule that a timely, sufficient claim for refund is a jurisdictional prerequisite to a refund suit.").

There is reason to believe that Section 7422(a) should be deemed jurisdictional. The cases cited by Mr. Dixon involve the Supreme Court's review of administrative exhaustion requirements in modern administrative schemes, outside of the context of tax and revenue collection. To this end, so far, none of the statutes held to be non-jurisdictional under the Supreme Court's administrative exhaustion jurisprudence implicate an administrative program with such a lengthy lineage in administrative claim requirements as tax and revenue collection. The Supreme Court's treatment of administrative tax claims as jurisdictional far pre-dates the current codification of that rule at 26 U.S.C. § 7422(a). *See Nichols v. United States*, 74 U.S. 122, 129–30 (1869) (finding that public interest behind "prompt collection of the revenue" bars the Court of Claims from ruling on tax refund claims when the "alleged errors and mistakes" were not communicated to the tax collector). For over 100 years, the Court in addressing the predecessor to Section 7422(a) has held that "[n]o suit can be maintained for taxes illegally collected unless a claim therefor has been made" with the tax collector "within the time *and in*

[4] "[H]arsh consequences" attend the jurisdictional brand, including the Court's duty to dismiss the case sua sponte at any stage should it find that the jurisdiction is not met. *United States v. Kwai Fun Wong*, 575 U. S. 402 (2015). Claims-processing rules, on the other hand, only "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011).

the manner pointed out by law []."[5] *Kings County Savings Institution v. Blair*, 116 U.S. 200, 205 (1886) (citing *Cheatham v. United States*, 92 U.S. 85 (1875)) (emphasis added).

Regardless, the Court need not determine this issue, given that Mr. Dixon's claims fail even if, as he urges, the signature requirement was merely a claims-processing rule. If Section 7422(a) is viewed as a claims-processing rule, that only means that its requirements are subject to equitable exceptions. *Bowles v. Russell*, 551 U.S. 205, 213 (2007) (claims-processing rules are subject to equitable exceptions and jurisdictional limits are not). Importantly, Mr. Dixon has not established that equitable exceptions apply in this case. The only equitable exception indirectly relied upon by Mr. Dixon is the waiver exception. As the Court has already addressed, because the signature requirement is a statutory requirement, the IRS could not have waived this requirement. Therefore, even if the Court were to find the requirements of Section 7422(a) to be a claims-processing rule, because the waiver exception cannot apply, Mr. Dixon's claim still should be dismissed for failure to state a claim upon which relief can be granted. RCFC 12(b)(6).

In summary, the Court need not decide whether the signature requirement of § 7422(a) is jurisdictional or a claims-processing rule. Under either doctrine the result is the same: Mr. Dixon's claim for refund of investment income tax must be dismissed.

C. Foreign Tax Credit

Mr. Dixon also asserts entitlement to a tax refund based on his qualifications for the foreign tax credit. This claim also fails. Mr. Dixon would only be entitled to foreign tax credits

[5] The argument that Section 7422(a) should be viewed as jurisdictional also finds supports in a litany of cases from this Court's predecessor, the Court of Claims and the Federal Circuit. As early as 1917, the Court of Claims, relied upon the Supreme Court's decision in *Kings County Savings Institution*, to hold that complying with the specific statutory requirement to file an administrative tax refund claim before filing a lawsuit was "essential" and had been so "frequently held [to be] now practically an uncontroverted proposition." *Rand v. United States*, 52 Ct. Cl. 72, 74 (1917); *see also Factors' & Finance Co. v. United States*, 73 Ct. Cl. 707, 717 (1932) (taxpayer must file administrative claim for refund if "he desires to protect right to a judicial review"); *Morristown Knitting Mills, Inc. v. United States*, 95 Ct. Cl. 552, 553 (1942) (Court of Claims "is without jurisdiction" when no proper administrative claim filed pursuant to the revenue laws). The Court of Federal Claims has continued to adhere to this long line of binding precedence. *See e.g.*, *Speck v. United States*, 28 Fed. Cl. 254 (1992) ("to vest jurisdiction" in the United States Court of Federal Claims, plaintiff must first file administrative claim for refund with IRS). And finally, the Federal Circuit has also held that failure to comply with certain regulations promulgated under Section 7422(a) strips the courts of subject-matter jurisdiction. *See e.g.*, *Waltner v. United States*, 679 F.3d 1329, 1332 (Fed. Cir. 2012); *Stephens v. United States*, 884 F.3d 1151, 1156 (Fed. Cir. 2018); *but see Walby v. United States*, 957 F.3d 1295, 1299–301 (Fed. Cir. 2020) (Federal Circuit indicated receptiveness to revisit the question of whether Section 7422(a) is jurisdictional). Given this history, if the Court were to find Section 7422(a) to be jurisdictional, then Mr. Dixon's net investment income tax claim should be dismissed for lack of subject-matter jurisdiction because Mr. Dixon never properly filed a tax refund claim with the IRS for that tax.

on his business income if Dixon Advisory Group qualified as a partnership for tax purposes. Because Dixon Advisory Group could not qualify as a partnership at the time Mr. Dixon filed his administrative claim for foreign tax credit, his claim for a refund related to the foreign tax credit must be dismissed under RCFC 12(b)(6).

Prior to seeking foreign tax credits, Mr. Dixon submitted an Application for Employer Identification Number, or Form SS-4, to the IRS. (Compl. at 3). Mr. Dixon claims that by submitting the form he intended to "elect to treat" Dixon Advisory Group as a partnership. (*Id.*). While this may have been his belief, submission of Form SS-4 does not achieve this result.

Under Treasury Regulation § 301.7701-2(a), business entities with one owner are classified as corporations for tax purposes; those with more than one owner are classified as either a corporation or a partnership. *Id.* To determine whether a business entity with more than one owner should be treated as a corporation or partnership, the Treasury Regulations first set out a list of categorical definitions for entities that are immutably corporations. 26 C.F.R § 301.7701-2(b); *see e.g.,* § 301.7701-2(b)(8)(i) (any business entity based in Australia that is labeled "public limited company" is defined as a corporation). Business entities that are not covered by the categorical definitions of Section 301.7701-2(b) receive a "default classification" as either a corporation or partnership for tax purposes. The business entities can then elect to change that default classification. 26 C.F.R § 301.7701-3(a). Dixon Advisory Group is a "proprietary limited" company, a business formation not subject to the categorical definitions of § 301.7701-2(b). Therefore, the Court looks to Section 301.7701-3 to determine the default classification for Dixon Advisory Group.

In Australia, all members of a propriety limited company, such as Dixon Advisory Group Pty Ltd., enjoy limited liability. *See* Companies in Australia, State Library Victoria, https://guides.slv.vic.gov.au/companies/structures (last visited Jan. 13. 2021). Under Section 301.7701-3(b), if all members of a foreign entity have limited liability, that entity is classified as an "association," § 301.7701-2(b)(2), and every such association is, by default, a corporation, unless and until it elects to change that default classification to a partnership. §§ 301.7701-2(b)(2), -3(b)(2)(B); *see also* § 301.7701-3(a).

Treasury Regulations require entities to file Form 8832 to make a proper entity-classification election. § 301.7701-3(c). That regulation further states that an entity classification election "will not be accepted unless all of the information required by [Form 8832] and instructions, including the taxpayer identifying number of the entity, is provided on Form 8832." *Id*. (emphasis added). Form SS-4 is used to obtain the taxpayer identifying number referenced in this regulation. *See also* Reg. § 301.6109-1(d)(2)(i).

However, Mr. Dixon did not follow this process. In lieu of submitting Form 8832, Mr. Dixon avers he submitted a Form SS-4 to "elect to treat" Dixon Advisory Group as a partnership. (Compl at 3; Compl. Ex. C). The IRS received this form and corresponded in turn by assigning Dixon Advisory Group an employer identification number in accordance with the intent of the form. (DA at 11–13; Compl. Ex. C). Mr. Dixon operated under the understanding that merely filing the Form SS-4 would suffice in categorizing Dixon Advisory Group as a partnership for tax purposes. (Compl. at 3). Accordingly, Mr. Dixon proceeded to submit amended tax returns to request foreign tax credit without ever submitting a Form 8832. (Pl.'s Resp. at 29; *see also*

Compl. at 3 ("In accordance with his accepted IRS Form SS-4 treating Dixon Advisory Group as a Partnership, Plaintiff prepared [] amended tax returns for tax years 2012, 2013 and 2014 to reflect Dixon Advisory Group's corrected taxable status.")). Unsurprisingly, the IRS did not grant Mr. Dixon the requested foreign tax credit.

The Treasury Regulations and the guidance imprinted on Form SS-4 itself plainly require submission of Form 8832 as a necessary step for effectuating an entity classification. 26 C.F.R. § 301.7701-3(c)(1)(i)–(iii); *see also* DA at 4–7, Copy of Form 8832 (rev. Dec. 2013) (indicating that an entity "uses Form 8832 to elect how it will be classified for federal tax purposes.")). After receiving the Form SS-4, the IRS sent back a Notice CP575D confirming assignment of a new employer identification number. (Compl. at 3). Mr. Dixon's assumption that this correspondence effectuated a change in classification is misguided.

First, the content of that notice itself clearly communicated to Mr. Dixon that submitting Form SS-4 did not effectuate an entity-classification election. The Notice CP575D clearly communicated that "[c]ertain tax classification elections can be requested by filing Form 8832, Entity Classification Election. See Form 8832 and its instructions for additional information.". (DA at 11, Copy of Notice CP575D). To elect partnership tax treatment for Dixon Advisory Group, several additional (and significant) steps were required. For example, for business entities that are made up of numerous members, Form 8832 "must be signed" by each member "who is an owner at the time the election is filed," or a member with proper authorization on behalf of other members to apply for an entity-classification. 26 C.F.R. § 301.7701-3(c)(2). Mr. Dixon did not comply with that requirement.

In its response to the United States' Motion for Judgment on the Pleadings, Mr. Dixon attempts to provide alternative legal theories for why the company should be treated as a partnership under the plain language of 26 U.S.C § 701. (Pl.'s Resp. at 30–31). First, Mr. Dixon argues that Congress, in enacting a specific definition for "corporation" in Section 701(a)(3), unambiguously intended "every other kind of group of persons" to be considered as a partnership. (*Id.*). Mr. Dixon therefore asserts that the Treasury Regulations promulgated under Section 701 are invalid because they expand the definition of corporation beyond the statute's plain language. (*Id.*). Second, Mr. Dixon argues that, even if language of Section 701 was ambiguous, the Treasury Regulations do not reasonably interpret Section 7701. (*Id.*). *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984). Not to leave any stones unturned, the last two pages of Mr. Dixon's Response introduce yet another new legal theory as to why he should be entitled to relief: that the regulations violate the Non-Discrimination Article of the U.S.-Australia Income Tax Treaty. (Pl.'s Resp. at 32–34). Mr. Dixon asserts that under Treasury Regulation § 301.7701-3(b), even if all members of an entity have limited liability, the default classification of certain domestic and foreign business entities can differ. (*Id.*). Mr. Dixon argues that this stands in contravention of the Non-Discrimination Article of the U.S.-Australia Income Tax Treaty. (*Id.*); *see also* Article 23(1)(a), Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income, U.S.-Aust., Aug. 6, 1982, 35 U.S.T. 1999.

None of these theories—that Mr. Dixon was entitled to a tax refund under the plain language of Section 701 or by application of the U.S.-Australia Income Tax Treaty—were presented to the IRS. To the contrary, Mr. Dixon actively submitted forms and applications for

approval, such as Form SS-4, that were required pursuant to the same regulations he now labels as invalid. In fact, those claims never even appeared in Mr. Dixon's Complaint before this Court. It is well-established that the substantial variance rule bars taxpayers from presenting claims in a tax refund suit that "substantially vary" the legal theories and factual bases for the claim from those originally presented to the IRS. *Lockheed Martin Corp. v. United States*, 210 F.3d 1366, 1371 (Fed. Cir. 2000). Not only did Mr. Dixon fail to explicitly raise these challenges, but his conduct did not notify the IRS that his refund request would rest on these legal theories. *Edde v. United States*, 217 Ct. Cl. 690 (1978) ("It is not sufficient to put all the operative facts [of a refund claim] before the [IRS], if the claim fails to show the legal conclusion the taxpayer" intends to rely on); *Commercial Solvents Corp. v. United States*, 192 Ct. Cl. 339 (1970), *cert. denied*, 400 U.S. 943 (1970) ("imposition on the [IRS] of the burden of anticipating all grounds which taxpayer might ultimately advance in a judicial forum is contrary to the rationale underlying the variance rule."). Therefore, the substantial variance doctrine dictates that Mr. Dixon is barred from raising these challenges for the first time before this Court. *Burlington N. Inc. v. United States*, 231 Ct. Cl. 222, 224–5 (1982) ("Any ground for refund not expressly or impliedly contained in the application for refund cannot be considered by a court in which a suit for refund is subsequently initiated.").

Mr. Dixon attempts to use his response to the United States' Motion for Judgment on the Pleadings as an opportunity to achieve the same goal as amending his Complaint. In addition to suffering from the same flaws that bar Mr. Dixon from amending his Complaint at this stage, Mr. Dixon's informal attempt at injecting these claims through responsive briefing runs afoul of the Court's other long-standing standard: new arguments that are raised for the first time in a response brief should be disregarded by the Court, "[a]s a matter of litigation fairness." *Novosteel SA v. United States*, 284 F.3d 1261, 1274 (Fed. Cir. 2002). Accordingly, the Court need not address the merits of these significantly different theories for relief.

III. Conclusion

For the stated reasons, the United States' Motion for Judgment on the Pleadings (ECF No. 18) is **GRANTED**. Mr. Dixon's assessed additional income tax claim is **DISMISSED** for lack of subject-matter jurisdiction. Mr. Dixon's net investment income tax claim is **DISMISSED** for lack of subject-matter jurisdiction, or alternatively as stated in the above analysis, for failure to state a claim upon which relief can be granted. Mr. Dixon's foreign tax credit claim is **DISMISSED** for failure to state a claim upon which relief can be granted. The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

s/ David A. Tapp
DAVID A. TAPP, Judge

CERTIFICATE OF COMPLIANCE

1. This corrected brief complies with the type-volume limitation of Fed. R. App. P. 32(f) and Fed. Cir. R. 32(b)(1) because this brief contains 5,987 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fed. Cir. R. 32(b)(2).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally space typeface using Microsoft Word in 14-point Century Schoolbook.

Dated: June 30, 2022

/s/ Tiffany Michelle Hunt

Tiffany Michelle Hunt
Hunt Tax Law, PLLC
PO Box 4099
Dallas, TX 75208
Telephone: (305) 619 - 9157

Counsel for Appellant

CERTIFICATE OF FILING AND SERVICE

I hereby certify that, on June 30, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notice of such filing to all registered users.

I further certify that, upon acceptance and request from the Court, the required paper copies of the foregoing will be deposited with United Parcel Service for delivery to the Clerk, UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, 717 Madison Place, N.W., Washington, D.C. 20439.

Dated: June 30, 2022

/s/ Tiffany Michelle Hunt

Tiffany Michelle Hunt
Hunt Tax Law, PLLC
PO Box 4099
Dallas, TX 75208
Telephone: (305) 619 - 9157

Counsel for Appellant