No. 22-1564

IN THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ALAN C. DIXON,

Plaintiff-Appellant

v.

UNITED STATES,

Defendant-Appellee

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES COURT OF FEDERAL CLAIMS No. 1:20-cv-01258-DAT; JUDGE David A. Tapp

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BRIEF FOR THE APPELLEE

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September 21, 2022

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STATEMENT OF RELATED CASES

No prior appeal in or from this action in the Court of Federal Claims has been before this Court or any other appellate court. But as discussed below, the appellant filed an appeal to this Court in a closely related case in the Court of Federal Claims involving a claim for an income tax refund for the same years at issue in this appeal. *See Dixon v. United States*, No. 2020-1584 (Fed. Cir.). This Court granted Mr. Dixon's motion to voluntarily dismiss that appeal. We are unaware of any case pending in this or any other court that will directly affect or be directly affected by this Court's decision in this appeal.

GLOSSARY

Acronym	Definition
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service

JURISDICTIONAL STATEMENT

Alan C. Dixon filed suit in the Court of Federal Claims seeking a refund of federal income taxes for 2013 and 2014. (Appx3.) Mr. Dixon advanced three claims: entitlement to refund based on application of foreign tax credits; entitlement to refund of assessed additional tax; and entitlement to refund based on adjustment of net investment income tax. (Appx2.) In this appeal, Mr. Dixon abandons the first two claims and pursues only the net investment income tax claim. (Br. 5 (stating that the net investment income tax claim is "the only claim at issue on appeal").) The Court of Federal Claims dismissed the portion of the refund suit that depended on that claim for lack of jurisdiction or, alternatively, for failure to state a claim upon which relief can be granted because it determined that the refund claim was not duly filed for purposes of I.R.C. § 7422(a). (Appx7-10.) This Court recently held that the "duly filed" requirement of I.R.C. § 7422(a) is not jurisdictional. *See Brown v. United States*, 22 F.4th 1008, 1011-12 (Fed. Cir. 2022)), Under that holding, the Court of Federal Claims had jurisdiction over this case under the Tucker Act, 28 U.S.C. §§ 1346(a)(1) & 1491(a)(1), and I.R.C. § 7422(a).

The Court of Federal Claims entered a judgment on January 19, 2022, dismissing all of Mr. Dixon's claims. (Appx1.) Mr. Dixon filed a timely notice of appeal on March 17, 2022. (Appx385.) *See* 28 U.S.C. § 2522; Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction to decide the appeal under 28 U.S.C. § 1295(a)(3).

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BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUE

Whether the Court of Federal Claims correctly determined that Mr. Dixon's initial amended returns – which were signed not by him but were instead signed illegibly on the taxpayer signature line by the person who prepared the forms – are not informal refund claims and, therefore, correctly dismissed Mr. Dixon's claim for a refund of net investment income tax.

STATEMENT OF THE CASE

1. Overview of the case and proceedings below

Alan C. Dixon filed Forms 1040X claiming refunds of $137,656 and $1,588,653 for 2013 and 2014 based on asserted entitlement to foreign tax credits and reduced net investment income tax. (Appx3.) He filed a refund suit based on those forms. *Dixon v. United States* (*Dixon I*), 147 Fed. Cl. 469, 472 (2020). But while the suit was pending it emerged that the person who prepared the forms (John Anthony Castro) had signed them illegibly on the taxpayer signature line. *Id.* at 473. Mr. Dixon had not signed them. *Id.* The government contended the forms were not valid refund claims and moved to dismiss the suit. *Id.* at 474. The Court of Federal Claims agreed and granted the motion. *Id.* at 477. After the suit was dismissed, but before the time to appeal had expired, Mr. Dixon submitted new Forms 1040X that he signed for himself. (Appx157-158, Appx204-205.) He then appealed the dismissal of his refund suit based on the initially filed Forms 1040X. *Dixon v. United States*, No. 2020-1584 (Fed. Cir.) He later moved to dismiss that appeal, and this Court granted the motion. *Dixon v. United States*, No. 2020-1584, 2020 WL 8918515 (Fed. Cir.).

After his appeal of the first refund suit was dismissed, Mr. Dixon filed this new refund suit. (Appx15.) He contended that the first set of Forms 1040X he filed were informal refund claims and that the second set (signed by him) perfected those informal claims. (Appx7.) The Court of Federal Claims rejected the informal-claim-doctrine argument and thus dismissed Mr. Dixon's net investment income tax claim as untimely. (Appx7-10, Appx13.) The court considered Mr. Dixon's foreign tax credit claim on the merits because a ten-year statute of limitations applied to that claim. (Appx10-13.) The court determined that Mr. Dixon was not entitled to the credits because his company's purported election of partnership tax treatment – which was the basis for the credit – was ineffective. (Appx11-12.)

Mr. Dixon now appeals the dismissal of his net investment income tax claim; he does not challenge the dismissal (for failure to state a claim) of his foreign tax credit claim. (Br. 5; *see also* Br. 29.)

2. Legal framework

Before a taxpayer may sue for an income tax refund, an administrative claim for the refund must be "duly filed with the Secretary, according to the provisions of law in that regard, and the

regulations of the Secretary established in pursuance thereof." I.R.C. § 7422(a). To be "duly filed" an administrative refund claim must, among other things, be "verified by a written declaration that it is made under the penalties of perjury." Treas. Reg. § 301.6402-2(b)(1).

Under I.R.C. § 6061(a), "any return . . . or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary." Similarly, under I.R.C. § 6065, "[e]xcept as otherwise provided by the Secretary, any return . . . or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury." These Tax Code provisions "impose a default rule that individual taxpayers must personally sign and verify their income tax refund claims." *Brown v. United States*, 22 F.4th 1008, 1012 (Fed. Cir. 2022). "Otherwise, the documents are invalid or of no legal effect." *Id.*

The administrative refund claim must be filed within the time limits set by I.R.C. § 6511. The general rule is that a refund claim must be filed within three years of the time the taxpayer filed his tax return

or two years of the time the tax was paid, whichever period expires later. I.R.C. § 6511(a); *see United States v. Dalm*, 494 U.S. 596, 602, 609-10 (1990). "Under the informal claim doctrine, a timely claim with purely formal defects is permissible if it fairly apprises the IRS of the basis for the claim within the limitations period." *Computervision Corp. v. United States*, 445 F.3d 1355, 1364 (Fed. Cir. 2006). Such an informal claim will be treated as a timely refund claim if the formal defects are remedied by amendment filed after the lapse of the statutory period. *Id.*; *see United States v. Kales,* 314 U.S. 186, 194 (1941). The Court of Federal Claims here stated that "[i]n 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." (Appx5.). *See Kaffenberger v. United States*, 314 F.3d 944, 954 (8th Cir. 2003).

3. Facts

This case is about two sets of amended income tax returns (Forms 1040X) for 2013 and 2014 on which Mr. Dixon claimed refunds. The first set of amended returns was filed within the general three-year limitations period under I.R.C. § 6511(a), *i.e.*, within three years after

he filed his original income tax returns. The second set was filed long after that limitations period expired. The amounts reported and refunds claimed in the two sets of amended return forms are identical. The key difference between them is: Mr. Dixon signed the second set; the first set was signed with an illegible signature that the government discovered, during Mr. Dixon's first refund suit, was not Mr. Dixon's signature. *See Dixon I*, 147 Fed. Cl. at 472-73 (comparing the two different signatures).[1] That illegible signature turned out to be the signature of Mr. Castro, the person who prepared Mr. Dixon's returns, though there was no indication of that on the form. The first set of amended returns was not accompanied by a power-of-attorney form authorizing anyone to sign them on Mr. Dixon's behalf. And Mr. Dixon does not argue that the signatures on the first set of amended returns were legally valid.

The relevant timeline of events concerning Mr. Dixon's attempts to claim income tax refunds for 2013 and 2014 are as follows:

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[1] The versions of the first Forms 1040X attached to Mr. Dixon's complaint in this suit are unsigned. (Appx150, Appx154.) They are not copies of the filed forms, one of which is reproduced, in relevant part, in the Court of Federal Claims' opinion in Mr. Dixon's prior refund suit. *Dixon*, 147 Fed. Cl. at 473.

- October 23, 2014, and October 13, 2015 – Mr. Dixon filed his original 2013 and 2014 income tax returns. (Appx2.)

- April 9, 2017 – Forms 1040X for 2013 and 2014 seeking refunds for Mr. Dixon were submitted; the forms were illegibly signed by Mr. Castro (not Mr. Dixon) on the taxpayer signature line. *Dixon I*, 147 Fed. Cl. at 473.

- February 2019 – Mr. Dixon filed his first refund suit, based on the refund claims Mr. Castro signed. (Appx3.)

- February 21, 2020 – The Court of Federal Claims granted the government's motion to dismiss Mr. Dixon's refund suit, holding that the refund claims signed by Mr. Castro instead of Mr. Dixon are invalid. *Dixon I*, 147 Fed. Cl. at 477.

- February 24, 2020 – The Court of Federal Claims entered a judgment of dismissal. Court of Federal Claims Docket No. 19-270C.

- February 25, 2020 – Mr. Dixon submitted the second set of Forms 1040X for 2013 and 2014 requesting the same refunds, but this time Mr. Dixon, not Mr. Castro, signed the forms on the taxpayer signature line. (Appx157-158, Appx204-205; *see* Appx3, Appx136.)

- March 4, 2020 – Mr. Dixon appealed the Court of Federal Claims' dismissal of his refund suit to this Court. *See Dixon v. United States*, No. 2020-1584 (Fed. Cir.).

- September 21, 2020 – This Court granted Dixon's motion to voluntarily dismiss his appeal. *Dixon*, No. 2020-1584, 2020 WL 8918515.

- September 24, 2020 – Mr. Dixon filed this refund suit in the Court of Federal Claims based on his untimely but signed 2013 and 2014 refund claims. (Appx15.)

The amended tax returns sought to make a key change in Mr. Dixon's tax position from which (he asserted) two favorable outcomes flow. Most of Mr. Dixon's income in 2013 and 2014 came from dividends paid by an Australian company, Dixon Advisory Group Pty Ltd. (Appx2-3.) The change Mr. Dixon tried to make to his 2013 and 2014 returns was to treat Dixon Advisory Group as a partnership rather than a corporation. (Appx3.) The amended returns reported that he did not receive any dividends from Dixon Advisory Group and instead reported his share of Dixon Advisory Group's income as business income, increasing his personal tax liability over the amounts he reported on his original returns. (Appx3.) But Mr. Dixon believed that the change would improve his overall tax position in two ways.

First, Mr. Dixon contended that, once the business was treated as a partnership, he should get a foreign tax credit for the Australian taxes he paid on the income. (Appx159, Appx161 (line 47), Appx168-169, Appx206, Appx208 (line 48), Appx218-219.) The amended returns asserted that Mr. Dixon was entitled to $520,891 and $2,458,683

foreign tax credits for 2013 and 2014. (Appx161 (line 47), Appx208 (line 48).)

Second, Mr. Dixon contended that the recharacterization of dividend income as business income contributed to a reduction of his net investment income tax under I.R.C. § 1411. For 2013, the amended return reported an elimination of $2,151,328 in dividend income. (*Compare* Appx141 (line 9a) *with* Appx 160 (line 9a).) This was the main reason for the elimination of almost all of Mr. Dixon's originally reported net investment income tax for 2013. (Appx157 (line 9); *see also* Appx142 (line 60); Appx161 (line 60); Appx179.) For 2014, the amended return reported an elimination of $6,541,890 in dividend income. (*Compare* Appx144 (line 9a) *with* Appx207 (line 9a).) This was the main reason for the elimination of almost all of Mr. Dixon's originally reported net investment income tax for 2014. (Appx204 (line 10); *see also* Appx145 (line 62); Appx208 (line 62), Appx225.)

In response to the first set of amended tax returns (the ones Mr. Castro signed illegibly) the IRS assessed additional tax based on the increase in Mr. Dixon's reported business income for 2013. (Appx3.) This amount was later paid via the IRS's application of an overpayment

by Dixon of his tax liability for another year. (Appx3.) The IRS did not apply the foreign tax credit that the amended returns asserted entitlement to, nor did it recognize the reduction in net investment income tax.

4. Court of Federal Claims decisions

As the above timeline shows, Mr. Dixon has challenged the IRS's position on his 2013 and 2014 taxes in two successive suits in the Court of Federal Claims:

1. In the first suit, after discovering that the illegible signature on what purported to be Dixon's 2013 and 2014 amended returns was not Dixon's signature, the government moved to dismiss, asserting that those returns were not valid refund claims. *Dixon I*, 147 Fed. Cl. at 471. Mr. Dixon conceded that the signature on the amended returns was Mr. Castro's and not his own. *Id.* at 472. But he did not then attempt to amend the amended returns by signing them for himself. He instead argued that the documents signed by Mr. Castro were valid refund claims. *Id.* at 474. The Court of Federal Claims rejected Mr. Dixon's arguments and granted the government's motion. *Id.* at 474-77. It determined that the documents signed by Mr. Castro were not duly

filed in compliance with applicable regulations as I.R.C. § 7422(a) requires. *Id.* at 474-75; *see* Treas. Reg. § 301.6402-2. It also concluded that the regulation was valid and that the IRS did not waive the signature requirement. *Id.* at 476-77.

On appeal to this Court, Mr. Dixon focused on his argument that the IRS waived the signature requirement, relying on *Angelus Milling Co. v. Commissioner*, 325 U.S. 293 (1945). Dixon Opening Br., No. 2020-1584, Doc. Entry 10 (Fed. Cir.). The government responded by arguing, mainly, that the signature requirement is a statutory requirement that IRS personnel cannot waive. Gov't Answering Br., No. 2020-1584, Doc. Entry 14 (Fed. Cir.). This Court did not decide that question in the context of Mr. Dixon's appeal because this Court granted his motion to voluntarily dismiss the appeal under Fed. R. App. P. 42(b). *Dixon*, No. 2020-1584, 2020 WL 8918515, at *1.

This Court did, however, rule on the government's argument that the signature requirement is statutory, and thus not waivable, in a different appeal – also involving Mr. Castro. That case, *Brown v. United States*, 22 F.4th 1008 (Fed. Cir. 2022), also involved documents purporting to be refund claims signed without legal authorization by

Mr. Castro rather than the taxpayer. In *Brown*, this Court explained that I.R.C. §§ 6061(a) and 6065 "impose a default rule that individual taxpayers must personally sign and verify their income tax refund claims" and that "[o]therwise, the documents [*i.e.*, the purported refund claims] are invalid or of no legal effect." *Id.* at 1012. And this Court ruled that "[b]ecause the taxpayer signature and verification requirements derive from statute, the IRS cannot waive those requirements" and thus "had no authority to accept the [taxpayers'] improperly executed refund claims." *Id.* at 1013.

2. In this case, the Court of Federal Claims addressed the three bases for Mr. Dixon's refund claims.[2] First, the court rejected Mr. Dixon's claim to the additional tax the IRS assessed for 2013 after the first documents purporting to be refund claims were filed. It explained that Mr. Dixon never filed any claim for a refund of that amount. (Appx6-7.) At most, the documents that he did file "could have notified the IRS that Mr. Dixon may, in the future, challenge any additional tax

[2] Though we describe for context the Court of Federal Claims' resolution of all three claims, Mr. Dixon's net investment income tax claim – the second of the three – is "the only claim at issue on appeal." (Br. 5; *see also* Br. 29.)

assessment related to those returns." (Appx6.) Because "Mr. Dixon has not filed either a valid formal or an informal claim for refund of assessed additional tax" the court held that it "lacks subject matter jurisdiction to hear that claim." (Appx7.)

Second, the Court of Federal Claims held that Mr. Dixon did not file a valid claim for a refund based on reduced net investment income tax for 2013 and 2014. The court determined that "unsigned returns cannot form the foundation of an informal claim before the IRS." (Appx7.) The court reasoned that the applicable regulation states that a refund claim that breaches the requirements set forth therein "will not be considered '*for any purpose* as a claim for refund or credit.'" (Appx7 (quoting Treas. Reg. § 301.6402-2(b)(1).) The court also concluded that "[b]ecause unsigned [refund] 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." (Appx8 (citing cases for the proposition that the IRS may not enlarge its statutory authority by regulation).)[3]

[3] The Court of Federal Claims also discussed whether I.R.C. § 7422(a) imposes jurisdictional or claims-processing requirements. (continued…)

Third, the Court of Federal Claims addressed on the merits and rejected Mr. Dixon's claim to a tax refund based on foreign tax credits. Because a ten-year statute of limitations applies to refund claims based on assertions of entitlement to foreign tax credits (I.R.C. § 6511(d)(3)), the second set of refund claims (signed by Mr. Dixon) was timely, valid refund claims for his asserted entitlement to the foreign tax credits.[4] The court explained that Mr. Dixon's claimed entitlement to the foreign tax credit depended on his assertion that Dixon Advisory Group qualified as a partnership for tax purposes. (Appx10-11.) That contention, in turn, depended on Dixon's assertion that his submission of "an Application for Employer Identification Number, or Form SS-4, to

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(Appx9-10.) But the court determined that the point was academic because Mr. Dixon failed to establish the applicability of any equitable exception that could apply to a claims-processing rule. (Appx10.) As noted above, this Court has held in *Brown* that the "duly filed" requirement of Section 7422(a) is a claims-processing rule, not a limitation on a court's jurisdiction. 22 F.4th at 1011-12.

[4] The Court of Federal Claims' differing treatment of the foreign tax credit claim and the net investment income tax claim reflects a correct understanding of the various limitations periods that apply here. The assertion of Mr. Dixon's amicus that this differing treatment reflects an "inconsistency" (Amicus Br. 3 n.3) is wrong.

the IRS" was an election to treat Dixon Advisory Group as a partnership. (Appx11.)

The court rejected that assertion. (Apx10-13.) Under the applicable regulations, Dixon Advisory Group was classified as a corporation for tax purposes. (Appx11.) To change that default classification, Dixon Advisory Group would have needed to file Form 8832, the form designed for that purpose, not Form SS-4, the form used to apply for an employer identification number needed to complete Form 8832. (Appx11.) The court noted that "[t]he 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." (Appx12 (citations omitted).)[5] Finally, the court declined to consider Mr. Dixon's arguments that, any election aside, treatment of Dixon Advisory Group as a partnership was required by I.R.C. § 701 and the U.S.-Australia Income Tax Treaty. (Appx12-13.)

[5] The court's ruling that Dixon Advisory Group failed to elect partnership tax treatment – which Mr. Dixon does not challenge in this appeal – would dispose of the bulk of his net investment income tax claim on the merits. It appears that most of Mr. Dixon's claimed reduction of net investment income tax flows from the asserted partnership election and resulting recharacterization of Dixon Advisory Group dividends as business income. *See* p. 9, *supra*.

The court determined that these theories were not presented in his administrative claim to the IRS and thus are barred under the "substantial variance" rule. (Appx12-13; *see also* Appx382-84 (denying motion for leave to amend complaint).)

Mr. Dixon now appeals only the denial of his claim to a refund based on a reduction of net investment income tax. (*See* Br.5.)

SUMMARY OF ARGUMENT

The Court of Federal Claims correctly rejected Mr. Dixon's contention that the Forms 1040X signed by Mr. Castro on the taxpayer signature line are informal refund claims that were "perfected" when Mr. Dixon filed untimely signed forms. The informal-claim-doctrine argument fails for four reasons:

First, the signature requirement for refund claims is a statutory requirement that the IRS has no power to dispense with. This Court has already ruled that the signature requirement is statutory. And the Supreme Court has ruled that IRS officials have no power to forgive noncompliance with statutory requirements. Those rulings together resolve the question.

Second, even if unsigned Forms 1040X could be informal refund claims, they need not be considered as informal claims especially if they mislead the IRS. The Mr. Castro-signed Forms 1040X that Mr. Dixon contends are informal refund claims seem to have been calculated to (and did) mislead the IRS. In these circumstances, the Court of Federal Claims did not err in declining to treat the forms as informal claims.

Third, Treas. Reg. § 301.6402-2(b)(1) makes plain that a purported refund claim that does not comply with two core requirements cannot be considered a refund claim "for any purpose." One of these requirements is that the claim "must be verified by a written declaration that it is made under the penalties of perjury." A document that fails to meet this core requirement cannot be considered a refund claim even under the informal claim doctrine.

Fourth, the out-of-time filing that "perfects" the initial deficient refund claim must be filed while the IRS still has jurisdiction over the claim. Mr. Dixon eliminated the IRS's jurisdiction over the initial claim (and transferred it to the Department of Justice) when he filed his first refund suit. Thus, when he later filed his signed Forms 1040X, the IRS

had no jurisdiction over the initial Mr. Castro-signed Forms 1040X and so could not use the later filed forms to "perfect" the initial forms.

ARGUMENT

The Court of Federal Claims correctly determined that Mr. Dixon's initial amended returns – which he did not sign, and which were instead signed illegibly by Mr. Castro – are not informal refund claims and, therefore, correctly dismissed Mr. Dixon's claim for a refund of net investment income tax

Standard of review

This Court reviews the Court of Federal Claims' findings of fact for clear error and its legal conclusions de novo. *Rasmuson v. United States*, 807 F.3d 1343, 1345 (Fed. Cir. 2015).

This Court should affirm the Court of Federal Claims' ruling that Mr. Dixon's claims for refunds of net investment income tax are invalid. The Court of Federal Claims' final decision in Mr. Dixon's first refund suit established that the set of documents purporting to be refund claims (but signed by Mr. Castro instead of Mr. Dixon) are not valid refund claims. Mr. Dixon elected to drop his appeal of that decision. So he cannot contest it now. Conceding this, Mr. Dixon advances a new theory in this second refund suit. He argues that, although the first

documents were not formal refund claims, they were informal refund claims. (Br. 14-22.) And he contends that they were "perfected" by the second set of amended returns that, by including Mr. Dixon's signature, remedied the defect of the first set of documents. (Br. 22-29.)

In essence, Mr. Dixon and his amicus assert that the informal claim doctrine allows him to: (1) file what looked like signed refund claims but were signed by the person who prepared the claim (Mr. Castro) and not the taxpayer (Mr. Dixon); (2) take the position in court that those documents were valid refund claims even with no valid signature; and (3) after the Court of Federal Claims rejected that argument and dismissed the suit, "perfect" the Mr. Castro-signed claim by submitting a claim signed by Mr. Dixon long after the limitations period expired. This Court should reject Mr. Dixon's position for any of four independent reasons.

1. Because the signature requirement for a refund claim is statutory it cannot be dispensed with upon an untimely "correction"

First, a taxpayer's failure to sign a refund claim is not the sort of formal defect that can be remedied by a later correction made after the statutory limitations period has run. The informal claim doctrine

delineates one of several circumstances in which "a taxpayer's claim is not barred by the statute of limitations even though the taxpayer did not timely file the formal, detailed claim required by the regulations." *Computervision Corp. v. United States*, 445 F.3d 1355, 1363 (Fed. Cir. 2006) (citing cases). This Court views the informal claim doctrine as one of the "aggregation of rules [that] has come to be known as the substantial variance doctrine." *Id.* at 1363-64. And the substantial variance doctrine "permits consideration of a claim for refund despite failure to timely file detailed formal claims with the IRS when a substantial variance from the requirements of the regulation is not involved." *Id.* at 1364.

"Under the informal claim doctrine, a timely claim with purely formal defects is permissible if it fairly apprises the IRS of the basis for the claim within the limitations period." *Computervision*, 445 F.3d at 1364. The paradigmatic application of the informal claim doctrine is the situation at issue in *United States v. Kales*, 314 U.S. 186 (1941). There the taxpayer, within the limitations period, filed a written claim for a refund but without filing the form required by the applicable regulations. *See Computervision*, 445 F.3d at 1364 (discussing *Kales*).

Then, after the expiration of the limitations period, the taxpayer filed the correct form. *Id.* The Supreme Court held that, in this situation, "where formal defects and lack of specificity have been remedied by amendment filed after the lapse of the statutory period," the claim will be treated as a valid refund claim." *Kales*, 314 U.S. at 194.

In *Brown v. United States*, 22 F.4th 1008 (Fed. Cir. 2022), this Court considered the applicability of a different member of the family of doctrines that can excuse a taxpayer's failure to "file the formal, detailed claim required by the regulations" *Computervision*, 445 F.3d at 1363) – the *Angelus Milling* waiver doctrine. In *Angelus Milling Co. v. Commissioner*, 325 U.S. 293 (1945), the Supreme Court held that, under certain circumstances, the IRS can waive regulatory requirements for a refund claim. *Id*. at 296-98; *see Computervision*, 445 F.3d at 1365-67. In *Brown*, this Court held that this waiver doctrine does not apply to statutory requirements for a refund claim because statutory requirements "unlike regulations, 'must be observed and are beyond the dispensing power of Treasury officials.'" 22 F.4th at 1012 (quoting *Angelus Milling Co. v. Commissioner*, 325 U.S. 293, 296 (1945)). This Court concluded that the signature requirement for refund claims is

statutory. The relevant statutes (I.R.C. §§ 6061(a) and 6065) impose a signature requirement and, if that requirement is not met, "the documents are invalid or of no legal effect." *Brown*, 22 F.4th at 1012. Thus, a document that does not comply with the signature requirement is not a "duly filed" refund claim. *Brown*, 22 F.4th at 1013 (quoting I.R.C. § 7422(a)). This Court held that, because the taxpayer's refund claim violated the statutory signature requirement, "the IRS had no authority to accept [it]." *Brown*, 22 F.4th at 1013.

The logic of this Court's decision in *Brown* compels the conclusion that the informal claim doctrine cannot be applied to excuse Mr. Dixon's conceded violation of the statutory signature requirement. *Brown* unequivocally (and correctly) holds that an unsigned refund claim is not duly filed under I.R.C. § 7422(a) because it violates I.R.C. §§ 6061(a) and 6065. *Angelus Milling* waiver is one way that the IRS can accept a return that does not satisfy formal requirements – when it understands the claim being made, examines the claim, and acts on the claim. *See Brown*, 22 F.4th at 1013 (citing *Angelus Milling*, 325 U.S. at 297-98). The informal claim doctrine is another. Through the informal claim doctrine, the IRS essentially accepts a defective original refund claim

because a correction was made outside the limitations period – as when the necessary information was communicated to the IRS but on the wrong form and the correct form is later filed. That may work if the defect is a failure to follow applicable regulations. *But see BCS Fin. Corp. v. United States*, 118 F.3d 522, 525 (7th Cir. 1997) (observing that a doctrine that allows the IRS to waive regulatory requirements "is in considerable tension with the principle that while the executive branch can change an executive-branch regulation, it is bound by it until it is changed") (citation omitted).

But accepting an untimely correction to a defective refund claim cannot be an option available to the IRS when the defect is statutory. That would mean that IRS personnel are empowered to excuse statutory noncompliance. *Brown* holds (correctly) that they are not. 22 F.4th at 1013. In short, the informal claim doctrine cannot apply to excuse failure to timely file a refund claim that meets the minimum statutory requirements. The Court of Federal Claims, therefore, correctly concluded that "[b]ecause the taxpayer signature requirement derives from statute, the IRS cannot waive those requirements"

(Appx8), and that "unsigned returns cannot form the foundation of an informal claim before the IRS" (Appx7).

To be sure, Mr. Dixon can marshal dictum (Br. 13, 16) suggesting that the informal claim doctrine applies to failure to comply with statutory requirements. In *Kales*, the Supreme Court described the doctrine as applicable to refund claims that do not "comply with formal requirements of the statute and regulations." 314 U.S. at 194. And this Court said similarly in *Computervision* that "formal compliance with the statute and regulations is excused when the informal claim doctrine is applicable." 445 F.3d at 1364. But neither of those cases held that a statutory violation is excused when the taxpayer makes an out-of-time correction. The first case that *Kales* cites after the sentence containing the suggestion that the informal claim doctrine can excuse noncompliance with a formal statutory requirement is *United States v. Memphis Cotton Oil Co.*, 288 U.S. 62, 71 (1933). *Memphis Cotton* recognized that executive branch officials *cannot* excuse noncompliance with a statute: "The line of division must be kept a sharp one between the function of a statute requiring the presentation of a claim within a given period of time, and the function of a regulation making provision

as to form." *Memphis Cotton*, 288 U.S. at 71. That more considered statement matches the Supreme Court's later recognition in *Angelus Milling* that "explicit statutory requirements . . . are beyond the dispensing power of Treasury officials." 325 U.S. at 296. And it aligns with this Court's recognition in *Brown* that "the IRS has no authority to accept" a refund claim that does not meet the minimum statutory requirements. 22 F.4th at 1013.

The best authority for Mr. Dixon is *BCS Financial*. (*See* Br. 21-22.) There the Seventh Circuit posited a hypothetical case in which a taxpayer files a refund claim lacking a signature on the last day of the limitations period and then "repairs the omission" two days later. 118 F.3d at 524. That court labeled as "absurd rigorism" the idea that such a mistake would be "a basis for forfeiting a claim conceded to be substantively valid." *Id.* But scratching the surface reveals this to be simply a poorly chosen hypothetical. The Seventh Circuit understood the informal claim doctrine to apply to a claim "that does not satisfy all the requirements of the *regulation* [that is, Treas. Reg. § 301.6402-2(b)]." *Id.* (emphasis added). In fact, the Seventh Circuit saw the informal claim doctrine as "a gloss on the text of a Treasury regulation,

specifying the form and contents of a claim for a refund." *Id.* at 527. Context shows that the Seventh Circuit intended its signature hypothetical as a scenario about failure to formally comply with a *regulatory* rule. In fact, the decision reveals recognition that the informal claim doctrine can only apply to regulatory requirements. Thus, if it had recognized that the signature requirement is statutory, the Seventh Circuit likely would have either realized that a different result is compelled or (perhaps more likely) found a different hypothetical.

Mr. Dixon contends that *United States v. Commercial Nat. Bank of Peoria*, 874 F.2d 1165, 1172 (7th Cir. 1989), addressed "whether the taxpayer needs to sign the informal claim." (Br. 21; *see also* Br. 13.) But that case does not discuss the taxpayer signature requirement at all. It simply determined that a communication from the taxpayer's attorney sufficed as the written component of an informal claim where (unlike here) it was clear that the claim was made on behalf of the taxpayer. *Commercial Nat. Bank of Peoria*, 874 F.2d at 1172. Mr. Dixon's amicus cites (Amicus Br. 17-18) other cases for the proposition that courts have "found repeatedly that claims for refund not signed

under penalty of perjury are valid informal claims." Yet in some of the amicus's examples, including *Kales*, the informal claim very likely was signed by the taxpayer and quite possibly under penalty of perjury. *See* 314 U.S. 190-91 (describing the taxpayer's written protest of a deficiency assessment); *see also Night Hawk Leasing Co. v. United States*, 18 F. Supp. 938, 939-40 (Ct. Cl. 1937) (determining notations on the back of checks submitted by the taxpayer, which presumably were signed, counted as informal refund claims). More to the point, none of the proffered cases discusses whether the taxpayer's signature is a statutory requirement for a refund claim and whether, if so, the informal claim doctrine can apply to a claim in which there is no taxpayer signature.

Other authorities suggest that signature by the taxpayer under penalty of perjury is required for an informal claim. In *Kaffenberger v. United States*, 314 F.3d 944, 955 (8th Cir. 2003), the court of appeals accepted the taxpayers' extension request as an informal claim in part because it contained the taxpayers' "signatures and declarations under penalties of perjury." *See also id.* (citing *Tobin v. Tomlinson*, 310 F.2d 648, 651 (5th Cir.1962), for the proposition that a "letter did not

constitute informal claim because it was not verified to be under penalty of perjury"); *Libitzky v. United States*, No. 18-CV-00792-JD, 2021 WL 3471175, *5 (N.D. Cal. Aug. 6, 2021) (concluding that a document was an "especially good candidate for a potential informal claim" because it contained the taxpayers' "signatures and declarations under penalties of perjury that the information was correct") (citing *Kaffenberger)*; *Chenette v. United States*, No. 19-CV-02998-JCS, 2019 WL 5212885, at *5 (N.D. Cal. Oct. 16, 2019) (determining that a taxpayer's letter to the IRS qualified as an informal claim in part because the taxpayer "signed the letter under penalty of perjury").

But the authorities that really matter are this Court's decision in *Brown* and the Supreme Court's decisions in *Memphis Cotton* and *Angelus Milling*. Those precedents establish (1) that the signature requirement for refund claims is statutory and (2) that Treasury officials cannot dispense with statutory requirements. Mr. Dixon and his amicus appear to concede these points but argue that the Court of Federal Claims erred in viewing the informal claim doctrine as a dispensation by Treasury officials. (Br. 22-26; Amicus Br. 12-14.) But what else can it be? This Court held in *Brown* that a purported refund

claim not signed by the taxpayer is "invalid" and "of no legal effect" and thus fails to meet the minimum statutory requirements for a "duly filed" refund claim that can support a refund suit under I.R.C. § 7422(a). 22 F.4th at 1012. And, as relevant here, a refund claim must be filed "within 3 years from" the filing of the original return. I.R.C. § 6511(a). In short, under the applicable statutes, Mr. Dixon's purported refund claim is a nullity and thus his refund suit cannot be maintained. If Treasury officials were to accept an invalid refund claim that had no legal effect because the statutory infirmity rendering it a nullity was corrected after the expiration of the statutory limitations period, they would be dispensing with statutory – not regulatory – requirements. And if the informal claim doctrine can be viewed as allowing an entity other than the IRS to dispense with statutory requirements – such as a court – the result is no less problematic. The logical consequence of this Court's (correct) ruling in *Brown* that an unsigned refund claim is of no legal consequence is that its statutory infirmity cannot be excused by any means.

2. The informal claim doctrine is inapplicable because the original Forms 1040X misled the IRS

Even if in some cases it was permissible for a taxpayer to file an out-of-time correction of a statutorily defective refund claim *this would not be one of them*. In *Kales*, the Supreme Court noted that application of the informal claim doctrine is "especially" appropriate when the deficient initial claim "has not misled the Commissioner." 314 U.S. at 194. That indicates, at a minimum, that a deficient initial claim that *has misled* the Commissioner need not be treated as an informal claim. In *Brown*, this Court explained that "there is no evidence that the IRS knew that the Browns had not personally signed their refund claims or verified their accuracy under the penalty of perjury" and that "[n]othing in the Browns' refund claims hinted that someone else had executed them, and Castro's signature on the claims is in fact illegible." 22 F.4th at 1013. The same is true here. *See Dixon I*, 147 Fed. Cl. at 477 ("[T]he IRS processed Mr. Dixon's 2013 and 2014 amended returns that were apparently valid due to the illegible signatures on those returns. The IRS could not be said to be on notice that these returns were not valid due to the illegible signatures."). When the deficiency in the purported refund claim appears calculated to mislead the IRS (and did mislead

the IRS), the informal claim doctrine should not apply. So, even if an unsigned Form 1040X could be an informal claim, the Court of Federal Claims did not err in determining that the Mr. Castro-signed Forms 1040X were not.

3. The applicable regulation bars a Form 1040X not signed by the taxpayer from being considered as an informal refund claim

The Court of Federal Claims correctly determined that Treas. Reg. § 301.6402-2(b)(1) precludes a claim that is not "verified by a written declaration that it is made under the penalties of perjury" from being considered an informal claim. (Appx7.) Under the regulation, "[a] claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit." Treas. Reg. § 301.6402-2(b)(1). The Court of Federal Claims interpreted "any purpose" to include "for purposes of the informal claim doctrine." (Appx7.) Mr. Dixon and his amicus do not proffer an alternative interpretation of the regulation. Rather, they argue – in essence – that it cannot be interpreted literally because interpreting it literally would undermine the informal claim doctrine. (Br. 18-22; Amicus Br. 18-19.) We think not.

A careful parsing of the regulation reveals that it accords with the informal claim doctrine. The inability to qualify as a refund claim only applies to "[a] claim that does not comply with this paragraph" – that is, a document that does not comply with Treas. Reg. § 301.6402-2(b). That paragraph *does not* set forth the various technical requirements for refund claims such as which form is required. Those requirements are described elsewhere. *See* Treas. Reg. §§ 301.6402-2(c), 301.6402-3. Section 301.6402-2(b) sets out two fundamental requirements: (1) "The Claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof"; and (2) "The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury." It is only those requirements (in "this paragraph"), and not the technical requirements the regulations describe elsewhere, that must be satisfied for the claim to "be considered for any purpose as a claim for refund." Treas. Reg. § 301.6402-2(b).

This Court has made clear that an informal claim must "fairly apprise[] the IRS of the basis for the claim within the limitations

period." *Computervision*, 445 F.3d at 1364; *see also Kales*, 314 U.S. at 194 (recognizing that a claim must "fairly advis[e] the commissioner of the nature of the taxpayer's claim" to qualify as an informal claim). The first of the two fundamental requirements set out in Treas. Reg. § 301.6402-2(b) describes what it takes to fairly apprise the IRS of the basis of a claim. Thus, both Treas. Reg. § 301.6402-2(b) and this Court's precedent (as well as that of other courts) recognize that a claim that does not adequately apprise the IRS of the basis of the claim cannot be considered a refund claim "for any purpose" – even for purposes of the informal claim doctrine.

It stands to reason that a document that violates the other fundamental refund claim requirement that Section 301.6402-2(b) sets out – the signature requirement – also cannot be considered a refund claim even for purposes of the informal claim doctrine. This Court has not directly addressed whether a refund claim not signed by the taxpayer can be an informal claim. But this Court's precedent fits with the regulatory determination that it cannot.

4. Regardless, the informal claim doctrine does not apply because the corrected Forms 1040X were filed after Mr. Dixon had eliminated the IRS's jurisdiction over the original Forms 1040X by filing suit

Even if the Mr. Castro-signed Forms 1040X could be informal refund claims, the informal claim doctrine is inapplicable here. The informal claim doctrine does not apply when a taxpayer's attempted correction comes after the IRS no longer has jurisdiction over the deficient initial claim. That is the case here because Mr. Dixon eliminated the IRS's jurisdiction over the initial deficient claim when he filed his first refund suit.

The Supreme Court and this Court both view the informal refund claim doctrine as dealing with the situation in which a timely but deficient refund claim is still pending with the IRS. The conceptual theory that undergirds the informal claim doctrine is that where the Commissioner "holds [a deficient refund claim] without action until the form has been corrected, and still more clearly if he hears it, and hears it on the merits, what is before him is not a double claim, but a claim single and indivisible, the new indissolubly welded into the structure of the old." *Memphis Cotton*, 288 U.S. at 71. But an initial deficient claim

and a later corrected claim cannot merge into one "indissolubly welded" together claim if the first claim is no longer within the IRS's reach.

This Court said as much in *Computervision*. It explained that an amendment to a refund claim may be permitted in some cases but "if filed after the expiration of the limitations period, must be filed while the original claim is still being considered by the IRS." *Computervision*, 445 F.3d at 1371. *Computervision* was discussing germaneness – yet another member of the family of doctrines that can excuse a taxpayer's failure to "file the formal, detailed claim required by the regulations." *Computervision*, 445 F.3d at 1363. But it cited *Memphis Cotton*'s observation – about the informal claim doctrine – that an amendment to the claim filed after the IRS rejected the initial claim "was too late." *Computervision*, 445 F.3d at 1372 (quoting *Memphis Cotton*, 288 U.S. at 72). This Court then determined that "[t]he same rule necessarily applies where the taxpayer elects to terminate the IRS's jurisdiction by filing a suit for refund." *Id.* at 1372. This Court explained that "[w]hile the taxpayer has the right to file a refund suit if the IRS has not acted on the claim for six months," filing a refund suit deprives the IRS of jurisdiction over the claim and thus of the power to resolve it. *Id.* In

disagreeing with disparate rulings of the Second and Eleventh Circuits, which suggested that claims could be amended after the IRS no longer had jurisdiction over them, *Computervision* stated that the approach of those other courts "is untenable since it would allow amendments submitted after filing the refund suit to extend the limitations period indefinitely." *Id.* (citing *Mutual Assurance Inc. v. United States*, 56 F.3d 1353 (11th Cir. 1995); *St. Joseph Lead Co. v. United States*, 299 F.2d 348 (2d Cir. 1962)). Thus, *Computervision* was not saying that the ability to correct a deficient claim is merely suspended during a refund suit based on the deficient refund claim. Rather, *Computervision* makes plain that a taxpayer's ability to alter a timely refund claim *ends* when the taxpayer chooses to file a refund suit based on that refund claim.

Now, apply these principles here: Mr. Castro signed and submitted the first set of Forms 1040X on April 9, 2017. *Dixon I*, 147 Fed. Cl. at 473. Mr. Dixon filed his first refund suit based on those purported refund claims in February 2019. (Appx3.) At that point, the jurisdiction over his refund claim was transferred from the IRS to the Department of Justice. *Computervision*, 445 F.3d at 1372 (*citing* Exec.

Order No. 6166, § 5 (1933), *reprinted in* 5 U.S.C. § 901 app.). Thus, Mr. Dixon's attempt to perfect his initial Mr. Castro-signed claims a year later (by submitting a second set of Forms 1040X on February 25, 2020 (Appx3)) came well after he deprived the IRS of jurisdiction over those initial claims by filing his refund suit.

Computervision establishes that the filing of a refund suit "terminates" rather than suspends the IRS's jurisdiction over the underlying refund claim. But no theory of the IRS's regaining jurisdiction would be supportable here anyway. The outcome of the first refund suit was that the Court of Federal Claims determined that the refund claim was invalid and dismissed the suit. *Dixon*, 147 Fed. Cl. at 477. It would make no sense to suggest that that action revived the IRS's jurisdiction over the claim. In any event, when Mr. Dixon submitted his "corrected" refund claims on February 25, 2020, the time for filing an appeal had not yet run. *See* 28 U.S.C. §§ 2107(b), 2522. And, indeed, Mr. Dixon did file a notice of appeal soon after, on March 4, 2020. Thus, jurisdiction over Mr. Dixon's initial purported refund claims remained with the Department of Justice from the time the suit was filed until the appeal was dismissed. In short, under any view of

the situation, Mr. Dixon's attempted correction of his deficient initial claims occurred when the IRS lacked jurisdiction to consider those claims.[6]

[6] Mr. Dixon does not challenge the Court of Federal Claims' rejection of his claim for the assessed additional tax (Appx6-7, Appx13) or its rejection of his foreign tax credit claim (Appx10-13). He thus waives any such challenges. *See, e.g.*, *Communications Test Design, Inc. v. Contec, LLC*, 952 F.3d 1356, 1363 n.4 (Fed. Cir. 2020) ("It is well established that an issue not raised by an appellant in its opening brief is waived."). His amicus attempts to challenge the court's resolution of the assessed additional tax claim. (Amicus Br. 19-21.) But an amicus cannot raise on behalf of the party it supports an issue that the party has waived. *See, e.g.*, *Amoco Oil Co. v. United States*, 234 F.3d 1374, 1377-78 (Fed. Cir. 2000) (concluding that an appellant waived an issue by not raising it in its opening brief even though the issue was raised in an amicus brief filed in support of the appellant).

CONCLUSION

The judgment of the Court of Federal Claims should be affirmed.

Respectfully submitted,

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SEPTEMBER 21, 2022

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system on September 21, 2022. Counsel for the appellant was served electronically by the Notice of Docket Activity transmitted by the CM/ECF system.

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FOR THE FEDERAL CIRCUIT

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