APPENDIX

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APPENDIX A

[DO NOT PUBLISH]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-14023

Non-Argument Calendar

[Filed: August 25, 2022]

WILLIAM R. TINNERMAN,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:19-cv-01429-TJC-PDB

Before BRANCH, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

William R. Tinnerman, a counseled plaintiff, appeals the dismissal of his amended complaint against

the government in which he sought judicial review of and relief from a certification that he had seriously delinquent tax debts for certain years. The government, in turn, moves to dismiss the appeal in part, and for summary affirmance in part. It also moves to stay the briefing schedule. Tinnerman has, in response, filed three motions for sanctions regarding the motions for partial dismissal, partial summary affirmance, and the motion to stay the briefing schedule. Because we agree with the government that two of Tinnerman's claims have been mooted by the government's recent write-off of his tax liabilities and its reversal of the certification of seriously delinquent tax debt, we grant the government's motion to dismiss those claims. And because we agree that Tinnerman's last two claims are barred by sovereign immunity, we summarily affirm the district court's decision on those claims as well.

I. Background

In 2019, Tinnerman filed the present counseled action against the United States in the Middle District of Florida. Ultimately, Tinnerman alleged that he was entitled to: (1) judicial review of the actions the IRS took with respect to his liabilities for tax years 1999 through 2002, and a request that the district court void or reverse decisions made by, *inter alia*, the U.S. Tax Court; (2) a refund of taxes that were allegedly assessed erroneously and collected by the Internal Revenue Service ("IRS") for tax years 1999 and 2000; and (3) a determination that the IRS's Notice of Certification of Seriously Delinquent Tax Debt to the State Department was erroneous and reversal of that certification.

Tinnerman raised four claims for relief. In the first ("Claim I"), he alleged that the IRS violated his due process rights when officials denied him an appeal hearing for decisions it made on the 1999–2002 tax years, relied on incorrect filings to determine that he owed taxable income, and denied him the opportunity to challenge the incorrect filings before the agency, meaning he had to challenge them before the tax court.[1] In his second ("Claim II"), Tinnerman alleged that the IRS erroneously certified that his tax debt was seriously delinquent for the years 1999–2002, as he did not have legally enforceable tax debt; the notice of certification of the delinquency to the State Department[2] was untimely, unauthorized, and invalid; and the notice violated his due process rights,

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[1] According to court records, the Tax Court case Tinnerman referred to resolved two petitions he had previously filed concerning certain IRS determinations for the years 1999–2002. *See Tinnerman v. Comm'r of Internal Revenu*e, T.C. Memo. 2006-250, 2006 WL 3299074 (November 14, 2006). The Tax Court ultimately issued a decision for the IRS and found that: (i) he had committed tax fraud for 1999, 2000, and 2001, and was liable for the deficiencies in his income tax for those years; (ii) he fraudulently intended to understate his income on his taxes for 1999–2001; (iii) he was liable for additions to his tax liability (5% of the taxes owed for each month he failed to pay with a 25% cap) for failure to file an income tax return for 1999 through 2002; and (iv) he was subject to penalties for filing a frivolous petition. *Id.* at *4–*7.

[2] The IRS can certify seriously delinquent tax debt to the State Department so the Department knows to deny the renewal of or revoke a debtor's passport. *See* IRS, *Revocation or Denial of Passport in Case of Certain Unpaid Taxes* (Aug. 22, 2022), https://www.irs.gov/businesses/small-businesses-self-employed/revocation-or-denial-of-passport-in-case-of-certain-unpaid-taxes

especially considering it was issued without statutory authority. In his third ("Claim III"), Tinnerman alleged that he was not required to file returns for 1999 or 2000 and was not notified otherwise, and he erroneously self-assessed $2,449.00 in taxes in 1999, meaning that he did not owe taxes for that year and should have had that amount refunded. For his fourth claim ("Claim IV"), Tinnerman alleged that he had made the same mistake in 2000 and was owed a $2,629.00 refund of the amount he paid.

The government responded by moving to dismiss Tinnerman's amended complaint. It argued that the district court lacked jurisdiction over Counts I, III, and IV based on the Anti-Injunction Act, 26 U.S.C. § 7421, Declaratory Judgment Act, 28 U.S.C. § 2201 and because Tinnerman had not established that the government had waived sovereign immunity for tax suits, 29 U.S.C. § 1346(a)(1). Additionally, the government argued that Count II failed to state a claim upon which relief could be granted under 26 U.S.C. § 7345 because, even taking his allegations as true, Tinnerman's debt to the IRS qualified as "seriously delinquent tax debt" under 26 U.S.C. § 7345. After a series of replies and responses, the district court agreed with the government, dismissing all four claims, and denying Timmerman's request for leave to file a second amended complaint. Tinnerman timely appealed.

The government moved to dismiss the appeal for lack of subject-matter jurisdiction as to Claims I and II, for summary affirmance as to Claims III and IV, and to stay the briefing schedule. With regard to Claims I and II, the government contended that the claims were

moot and should be dismissed because, following the district court's dismissal, the IRS wrote off Tinnerman's tax liabilities for 1999 through 2002 due to the expiration of the statutory deadlines to collect them. The IRS also reversed the certification of seriously delinquent tax debt to the State Department.[3]

After responding to the government's motions, Tinnerman responded with three separate motions for sanctions.

For ease of reference, we will first address the government's motion to dismiss in part, then its motion for summary affirmance in part or to stay the briefing schedule, and finally Tinnerman's motions for sanctions.

I.

For its motion to dismiss the appeal for lack of subject-matter jurisdiction, as to Claims I and II, the government argues that the appeal is moot as to those claims. The government asserts that Claims I and II both relate to Tinnerman's challenge to his income tax liabilities for 1999 through 2002, with (a) Claim I challenging the validity of those liabilities and seeking a declaration regarding past actions of the IRS and Tax Court and (b) Claim II challenging the related notice to the State Department regarding Tinnerman's

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[3] The government attached the transcripts reflecting these developments to its motion to dismiss. We exercise our equitable authority to supplement the record with the transcripts "in aid of making an informed decision." *Schwartz v. Millon Air, Inc.*, 341 F.3d 1220, 1225 n.4 (11th Cir. 2003).

certification as an individual having a seriously delinquent tax debt. Because these liabilities were written off and the State Department notice reversed, the government argues these claims are moot and therefore, we lack jurisdiction to adjudicate those claims. We agree.

While Tinnerman opposes the government's motion on various procedural grounds, he does not provide a substantive response concerning whether his appeal still presents an active case or controversy as to Claims I and II.

"Article III of the Constitution limits the jurisdiction of the federal courts to the consideration of 'Cases' and 'Controversies.'" *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335 (11th Cir. 2001) (quoting U.S. Const. art. III, § 2). "The doctrine of mootness derives directly from the case-or-controversy limitation because an action that is moot cannot be characterized as an active case or controversy." *Id.* (quotation omitted). "[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969). "Put another way, a case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief." *Fla. Ass'n of Rehab. Facilities, Inc. v. State of Fla. Dep't of Health and Rehab.*, 225 F.3d 1208, 1217 (11th Cir. 2000) (alteration adopted) (quotation omitted).

"If events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed." *Al Najjar*, 273

F.3d 1336; *see also United States v. Sec'y, Fla. Dep't of Corr.*, 778 F.3d 1223, 1228 (11th Cir. 2015) ("An appeal is moot 'when, by virtue of an intervening event, a court of appeals cannot grant any effectual relief whatever in favor of the appellant.'" (quoting *Calderon v. Moore*, 518 U.S. 149, 150 (1996))). "Indeed, dismissal is required because mootness is jurisdictional." *Al Najjar*, 273 F.3d at 1336.

Here, we grant the government's motion to dismiss the appeal in part for lack of subject-matter jurisdiction because the appeal is moot as to Claims I and II. There is no longer a live controversy. Count I involves a claim for an appeal of a tax assessment for the 1999–2002 tax years that the IRS wrote off because the collection deadline of I.R.C. § 6502(a) expired. Count II is a request for reversal of a certification that the State Department has already removed. There is no meaningful relief we can grant because the relief requested—to appeal to change and contest a tax assessment and to remove the "seriously delinquent" classification from Tinnerman's passport—has already been granted. Because we lack jurisdiction, dismissal is required.

II.

For its motion for summary affirmance relating to Claims III and IV, the government argues that the court lacks jurisdiction because Tinnerman did not meet the requirements to qualify for a sovereign immunity waiver under 28 U.S.C. § 1346(a)(1) because

Tinnerman had not made full payment of income taxes for the years 1999 and 2000.[4]

Tinnerman opposes the government's motion on various procedural grounds. He also argues in his initial brief that Claims III and IV sought to recover the sums paid for 1999 and 2000 that were erroneously assessed, and the district court erred by finding there was no subject-matter jurisdiction, as he was proceeding under the Administrative Procedure Act (APA) and not under 28 U.S.C. § 1346. He also asserts that rather than dismissing his case, the district court should have given him the opportunity to file a second amended complaint.

Summary disposition is appropriate where, among other things, "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).[5]

We review *de novo* a district court's dismissal of a complaint for lack of subject-matter jurisdiction. *Center v. Sec'y, Dep't of Homeland Sec.*, 895 F.3d 1295,

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[4] Alternatively, the government argues for the first time on appeal that the district court lacked jurisdiction under 26 U.S.C. § 6512(a). We need not discuss this alternative grounds for dismissal because we affirm the district court's dismissal on sovereign immunity grounds.

[5] Fifth Circuit decisions issued prior to October 1, 1981, are binding on the Eleventh Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

1299 (11th Cir. 2018). A federal court is obligated to inquire into subject-matter jurisdiction *sua sponte* whenever it may be lacking. *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999). We review *de novo* the district court's decision to deny leave to amend based on futility. *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1236 (11th Cir. 2008).

We grant the government's motion for summary affirmance as to the dismissal of Claims III and IV because its position is clearly correct as a matter of law. "The United States, as sovereign, is immune from suit save as it consents to be sued." *United States v. Sherwood*, 312 U.S. 584, 586 (1941). "Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." *JBP Acquisitions, LP v. U.S. ex rel. F.D.I.C.*, 224 F.3d 1260, 1263 (11th Cir. 2000). In 28 U.S.C. § 1346(a)(1), the government has expressly waived its sovereign immunity for tax refund suits. 28 U.S.C. § 1346(a)(1) (authorizing "[a]ny civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws"). However, the Supreme Court has held that the waiver of sovereign immunity provided for in § 1346(a)(1) only applies when a taxpayer has paid to the IRS the full amount of the contested tax liability. *See Flora v. United States*, 362 U.S. 145, 150–51, 177 (1960) ("Reargument has but fortified our view that s 1346(a)(1), correctly construed, requires full payment

of the assessment before an income tax refund suit can be maintained in a Federal District Court.").

Tinnerman asserts he was not seeking to recover under § 1346 and was instead proceeding under the APA, 5 U.S.C. § 702, which provides for the right of judicial review of an agency action and operates as a general waiver of sovereign immunity for suits against the United States seeking nonmonetary relief, even if the claim does not arise under the APA. *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1555 (11th Cir. 1985) ("The defense of sovereign immunity is waived in actions against federal government agencies seeking nonmonetary relief if the agency conduct is itself subject to judicial review.").

However, § 702's waiver did not apply because Tinnerman sought monetary relief and because § 702 states that "[n]othing herein . . . confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." 5 U.S.C. § 702. Section 1346 authorizes tax refund suits but only when the plaintiff has paid their tax liability in full, which Tinnerman had not, and the APA does not create a cause of action when another "statute that grants consent to suit expressly"—§ 1346—would bar relief for failure to comply with its jurisdictional requirements.

Accordingly, because Tinnerman did not pay in full what he owed before filing a claim for recovery, the district court lacked subject-matter jurisdiction to hear his claims for recovery and properly dismissed these claims.

Additionally, the district court did not err in denying Tinnerman leave to amend his complaint a second time because doing so would have been futile. Regardless of any amendment he might make, Claims III and IV (for a refund of monies paid) would still be barred by sovereign immunity because he did not pay the total tax liability. *Burger King Corp. v. Weaver*, 169 F.3d 1310, 1320 (11th Cir. 1999) ("This court has found that denial of leave to amend is justified by futility when the complaint as amended is still subject to dismissal." (quotations omitted)). Thus, the government's position is correct as a matter of law, and we grant the government's motion for summary affirmance as to Claims III and IV and deny as moot its motion to stay the briefing schedule. *Groendyke Transp., Inc.*, 406 F.2d at 1162.

We **GRANT** the government's motion to dismiss this appeal as to Claims I and II. Moreover, because the government's position concerning Claims III and IV is clearly correct as a matter of law, we **GRANT** the government's motion for summary affirmance as to those claims and **DENY AS MOOT** its motion to stay the briefing schedule. We also **DENY** Tinnerman's motions for sanctions.[6]

DISMISSED IN PART AND AFFIRMED IN PART.

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[6] As noted above, Tinnerman has filed three separate motions for sanctions relating to the government's motion to dismiss the appeal, the motion for summary affirmance, and the motion to stay the briefing schedule. These motions are frivolous and we deny them.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-14023

[Filed: November 7, 2022]

WILLIAM R. TINNERMAN,	)
	)
Plaintiff-Appellant,	)
	)
versus	)
	)
UNITED STATES OF AMERICA,	)
	)
Defendant-Appellee.	)
	)

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:19-cv-01429-TJC-PDB

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: August 25, 2022

For the Court: DAVID J. SMITH, Clerk of Court

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:19-cv-1429-TJC-PDB

[Filed: September 27, 2021]

WILLLIAM R. TINNERMAN,	)
	)
Plaintiff,	)
v.	)
	)
UNITED STATES OF AMERICA,[1]	)
	)
Defendant.	)
	)

O R D E R

This tax case is before the Court on the United States' Motion to Dismiss plaintiff William R. Tinnerman's First Amended Complaint (Doc. 30). Tinnerman responded (Doc. 31), the government filed a reply (Doc. 34), and Tinnerman filed an amended

[1] The Court rejects as frivolous Tinnerman's effort to claim that he is suing "the United States," not "the United States of America." See, e.g., Doc. 31 at n.1. Nonetheless, the Court uses the terms interchangeably in this order (as well as "the government" or "the IRS") and no meaning should be taken from that.

sur-reply (Doc. 39). The Court has determined that oral argument is not necessary.

In his first amended complaint (Doc. 29), Tinnerman raises four counts. In his first count, Tinnerman seeks judicial review under the Administrative Procedure Act ("APA") of the IRS's decision to deny his requests for an administrative appeal and for a hearing to contest determinations related to his 1999, 2000, 2001 and 2002 tax returns. In his second count, Tinnerman seeks declaratory, injunctive, and mandamus relief from a certification that he has a "seriously delinquent tax debt." In his third count, Tinnerman seeks to recover sums "illegally assessed as taxes" for 1999. And in his fourth count, Tinnerman seeks to recover sums "illegally assessed as taxes" for 2000.[2] The government moves to dismiss the first, third, and fourth counts for lack of subject matter jurisdiction under Rule 12(b)(1) and moves to dismiss the second count for failure to state a claim under Rule 12(b)(6).[3]

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[2] Tinnerman's amended complaint improperly incorporates into each count all preceding factual allegations. See, e.g., Weiland v. Palm Beach Cnty. Sheriff's Off., 792 F.3d 1313, 1320-24 (11th Cir. 2015) (describing varieties of "shotgun pleadings"). However, the legal theories supporting each count are sufficiently distinct such that the government and the Court have not been hindered by this defect.

[3] The government alternatively moved to dismiss Counts I, III, and IV for failure to state a claim. Because the Court finds it has no subject matter jurisdiction to decide those claims, it does not reach this alternative ground.

I. Analysis

The government's Rule 12(b)(1) challenge is a facial attack, meaning the government is "challeng[ing] whether [Tinnerman] has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." Kennedy v. Floridian Hotel, Inc., 998 F.3d 1221, 1230 (11th Cir. 2021) (quotation and citation omitted). With the government's Rule 12(b)(6) challenge for failure to state a claim, the Court accepts all well-pleaded factual allegations as true, drawing all reasonable inferences in the plaintiff's favor. Bickley v. Caremark RX, Inc., 461 F.3d 1325, 1328 (11th Cir. 2006). "To survive a [12(b)(6)] motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

A. Count I

In Count I, Tinnerman alleges that IRS agents proposed deficiencies of his 1999, 2000, 2001 and 2002 tax returns; Tinnerman protested the proposed deficiencies and requested a hearing; his requests were denied; the agents presented him with substitute returns; he refused to sign them; the IRS certified substitute returns; the IRS issued statutory notices of deficiency for 1999, 2000, 2001 and 2002; Tinnerman sought review in the United States Tax Court and lost,[4]

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[4] See Tinnerman v. Comm'r, 2006-250, 2006 WL 3299074, at *7 (Nov. 14, 2006) (finding Tinnerman liable for the deficiencies for

resulting in a deficiency judgment, which he did not appeal. Tinnerman alleges the IRS was without authority to take each of these actions because he did not owe the underlying taxes and the Tax Court therefore lacked subject matter jurisdiction over the deficiency case. He seeks judicial review under the APA.

The government argues the Court has no subject matter jurisdiction because the United States has not waived its sovereign immunity, and because the Anti-Injunction Act (26 U.S.C. § 7421) and the Declaratory Judgment Act (28 U.S.C. §§ 2201-02) bar the relief Tinnerman seeks. Tinnerman, as the plaintiff, bears the burden of showing that the government has waived sovereign immunity. Zelaya v. United States, 781 F.3d 1315, 1322 (11th Cir. 2015); see also United States v. Sherwood, 312 U.S. 584, 586 (1941) ("[T]he terms of [the government's] consent to be sued in any court define that court's jurisdiction to entertain the suit."). "If there is no specific waiver of sovereign immunity as to a particular claim filed against the Government, the court lacks subject matter jurisdiction over the suit." Zelaya, 781 F.3d at 1322.

Tinnerman alleges the Court has subject matter jurisdiction as to Count I under 28 U.S.C. § 1331 (federal question jurisdiction) and alleges the government has waived its sovereign immunity via the APA, 5 U.S.C. § 702. See Amended Complaint (Doc. 29)

1999 through 2002, and imposing a $10,000 penalty for Tinnerman's "persist[ence] in raising frivolous tax protester arguments").

at ¶¶ 3, 4. The relief Tinnerman seeks is judicial review of a decision by the Tax Court related to the assessment and collection of Tinnerman's tax liabilities for 1999, 2000, 2001 and 2002. Tinnerman can only succeed on this count if the Court voids that court decision. But the Anti-Injunction Act (which prohibits suit to restrain the assessment or collection of taxes) and Declaratory Judgment Act (which likewise bars relief in suits involving federal tax matters) both preclude the Court from taking that action. See Alexander v. Americans United Inc., 416 U.S. 752, 760 (1974) (discussing "sweeping" prohibitions of Anti-Injunction Act which deprives federal courts from hearing any suit for the purpose of restraining the assessment or collection of any tax); Gulden v. United States, 287 F. App'x 813 (11th Cir. 2008) (holding court lacked subject matter jurisdiction under Anti-Injunction Act to hear taxpayer suit alleging IRS unlawfully filed substitute tax returns and made assessments thereon); Mobile Republican Assembly v. United States, 353 F.3d 1357, 1362 n.6 (11th Cir. 2003) (explaining that "the federal tax exception to the Declaratory Judgment Act is at least as broad as the prohibition of the Anti-Injunction Act"); Hancock Cnty. Land Acquis., LLC v. United States, ___ F. Supp. 3d ___, 2021 WL 3197336, at *10 (N.D. Ga. July 7, 2021) (holding Anti-Injunction Act and Declaratory Judgment Act deprived court of jurisdiction to hear suit for review of appeals office decision which would ultimately restrain activities affecting the assessment or collection of taxes), appeal docketed, No. 21-12508 (11th Cir. July 22, 2021); Slayman v. U.S. I.R.S., No. 4:19-cv-74, 2021 WL 1187081, at *2 (S.D. Ga. Mar. 29, 2021) (dismissing claims where both Anti-Injunction Act and Declaratory

Judgment Act deprived court of subject matter jurisdiction, explaining that "taxes ordinarily may be challenged only after they are paid, by suing for a refund") (quoting In re Walter Energy, Inc., 911 F.3d 1121, 1136 (11th Cir. 2018)).

The Anti-Injunction Act bars this claim regardless of Tinnerman's effort to frame it as a due process issue. See United States v. Clintwood Elkhorn Mining Co., 553 U.S. 1, 9-10 (2008) (explaining that taxpayer constitutional claims are subject to the prohibition against tax injunctions); Alexander, 416 U.S. at 760-61 ("[D]ecisions of [the Supreme Court] make it unmistakably clear that the constitutional nature of a taxpayer's claim . . . is of no consequence under the Anti-Injunction Act"). Nor is the Anti-Injunction Act avoided by Tinnerman's effort to mold this claim into an exception under Enochs v. Williams Packing & Nav. Co., 370 U.S. 1 (1962), which permits an exception if the taxpayer establishes both that (1) "under no circumstances could the Government ultimately prevail" and (2) equity jurisdiction exists because there is no adequate remedy at law and irreparable harm will otherwise ensue. 370 U.S. at 6-7. Here, the Tax Court has already upheld the very decision Tinnerman seeks to undo in Count I. Thus, he cannot meet the Williams Packing exception. See Gulden, 287 F. App'x at 817-18 (affirming dismissal where Williams Packing exception did not apply because the government would likely prevail in light of IRS's statutory authority to issue substitute returns). Additionally, Tinnerman has an adequate remedy at law in that he can pay his disputed tax liabilities and sue for a refund under 28

U.S.C. § 1346.[5] Because the Anti-Injunction Act and the Declaratory Judgment Act present a bar to this claim, section 702 of the APA does not permit a waiver of the government's sovereign immunity.[6] See, e.g., Smith v. Booth, 823 F.2d 94, 97 (5th Cir. 1987) (finding Anti-Injunction Act and Declaratory Judgment Act barred APA review in suit challenging IRS interpretation of statute which led to IRS filing tax lien against property); Cypress v. United States, No. 14-cv-22066-WILLIAMS, 2014 WL 11268558, at *2-4 (S.D. Fla. Dec. 15, 2014) (explaining that APA's waiver of sovereign immunity is expressly excepted for statutes, like the Anti-Injunction Act and Declaratory Judgment Act, which forbid the requested relief). Accordingly, Tinnerman has not shown that the government waived its sovereign immunity to pursue this claim and Count I must be dismissed for lack of subject matter jurisdiction.[7]

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[5] The Court also rejects Tinnerman's late effort in his sur-reply to recast this count as falling under 26 U.S.C. § 6213(a), a statutory exception to the Anti-Injunction Act for claims that the taxpayer has not received notice of the deficiency and the opportunity for review in the Tax Court. See Flynn v. United States ex rel. Eggers, 786 F.2d 586, 589 (3d Cir. 1986) (explaining the § 6213(a) statutory exception to the Anti-Injunction Act). The Tax Court provided review. Tinnerman lost and did not appeal.

[6] Likewise, section 706 of the APA does not result in a waiver of the government's sovereign immunity because Tinnerman has an adequate remedy at law.

[7] In the alternative, the Court further agrees with the government that Count I is barred by res judicata. In addition to the 2006 Tax Court decision cited above (2006 WL 3299074), Tinnerman filed a second Tax Court case challenging the validity of the IRS's tax lien

B. Counts III and IV

As to Counts III and IV, the government likewise argues that the Court lacks subject matter jurisdiction. In these two claims, Tinnerman seeks restitution of $2,449 plus interest for taxes paid in 1999 (Count III) and $2,629 plus interest for taxes paid in 2000 (Count IV), sums which Tinnerman alleges were erroneously assessed and collected. While a taxpayer can bring a suit under 28 U.S.C. § 1346 for the recovery of taxes alleged to be erroneously assessed and collected, the taxpayer must satisfy two prerequisites: first, the taxpayer must make "full payment" of the assessed tax; and second, a claim for refund must first be filed with the IRS. Lawrence v. United States, 597 F. App'x 599, 602-03 (11th Cir. 2015) (citing Flora v. United States,

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based on the 1999-2002 tax years. See Tinnerman v. Comm'r, T.C. Memo. 2010-150, 2010 WL 2766784 (July 13, 2010) (finding no abuse of discretion in filing of tax lien with respect to tax deficiencies for 1996-2002, rejecting argument that notice of deficiency was invalid, issuing warning to Tinnerman's present counsel for reckless disregard of facts and frivolous arguments, and imposing $25,000 penalty on Tinnerman for his refusal to accept the judgment of the court); aff'd, 448 F. App'x 73 (D.C. Cir. Jan. 3, 2012) (imposing additional joint $8,000 sanction against Tinnerman and his present counsel for pursuing a frivolous appeal). Tinnerman also attempted to challenge the assessment of his 1999-2002 tax liabilities through a quiet title action, which the court dismissed, in part, for lack of subject matter jurisdiction. See Tinnerman v. United States, 3:09-cv-652-J-34JBT, 2011 WL 13175593, at *10; aff'd, 460 F. App'x 892 (11th Cir. 2012). The elements of res judicata are satisfied as to Count I. See, e.g., Borrero v. United Healthcare of N.Y., Inc., 610 F.3d 1296, 1308 (11th Cir. 2010) (discussing elements of res judicata, including "an evaluation of any commonality in the nucleus of operative facts of the actions") (internal quotation and citations omitted).

357 U.S. 63, 68-70 (1958), aff'd on reh'g, 362 U.S. 145 (1960); 26 U.S.C. § 7422(a)). Here, Tinnerman did not make "full payment" of the amount the IRS says he owed; rather, he paid (and seeks restitution of) the amount he decided he owed. See Doc. 3, Ex. J (showing account balance for 1999 in amount of $248,513.76 (plus accrued interest) and account balance for 2000 in amount of $203,618.57 (plus accrued interest)).[8] Thus, Tinnerman fails to satisfy the prerequisites to file suit under 26 U.S.C. § 1346 and both Counts III and IV are due to be dismissed for lack of subject matter jurisdiction. See Flora, 357 U.S. at 68-70; Lawrence, 597 F. App'x at 602.

C. Count II

In Count II, Tinnerman seeks reversal of the IRS's certification of him as having a "seriously delinquent tax debt" for the years 1999, 2000, 2001 and 2002.[9] This designation is reported to the Secretary of State who uses it with respect to decisions regarding the taxpayer's passport. See 26 U.S.C. § 7345(a). Judicial review of this designation is permitted by statute, but is limited to determining "whether the certification was

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[8] Tinnerman attached only an excerpt of these documents to his amended complaint, but the full account transcripts (filed by Tinnerman as exhibits to his original complaint) reflect the amounts the IRS has determined he owes.

[9] The designation is reserved for taxpayers whose tax liability is greater than $50,000, but is adjusted for inflation beginning in tax years after 2016. 26 U.S.C. §§ 7345(b)(1)(B) and (f). The notice Tinnerman received stated his tax debt for the tax years 1999-2002 was $799,551.84.

erroneous or whether the Commissioner has failed to reverse the certification." 26 U.S.C. § 7345(e). And relief is limited to ordering the Secretary of the Treasury to notify the Secretary of State that the certification was erroneous. Id. Tinnerman alleges the designation must be reversed because the IRS released the lien that was supported by the tax debt and because the tax debt is no longer legally enforceable based on the lapse of time.

The government moves to dismiss this count for failure to state a claim under Rule 12(b)(6), arguing that the removal of the lien does not mean the unpaid tax debt is no longer enforceable, and because the 10-year statute of limitations for collection following assessment was tolled while Tinnerman litigated the debt in Tax Court.

While the statute does require the filing of a notice of lien (and that the taxpayer's administrative rights as to such filing have been exhausted or have lapsed), 26 U.S.C. § 7345(b)(1)(C)(i), the statute does not state that the certification of a seriously delinquent tax debt is contingent on the lien remaining in place. Rather, the exceptions to certification involve the taxpayer engaging with the IRS to make payment on the debt or have a hearing, and reversal of the certification is warranted where the debt is paid in full or is legally unenforceable. 26 U.S.C. §§ 7345(b)(2) and (c). The removal of the lien does not trigger any of these and is

therefore not a basis to reverse the certification.[10] Cf., McNeil v. United States, No. 20-329(JDB), 2021 WL 1061221, at * 5 (D.D.C. Mar.18, 2021) (dismissing complaint on 12(b)(6) motion and rejecting argument that actual notice was a prerequisite to certification for seriously delinquent tax debt because § 7435 does not include that as an element), appeal docketed, No. 21-5161 (D.C. Cir. filed July 14, 2021); Kaebel v. Comm'r of Int. Rev., T.C. Memo. 2021-109, 2021 WL 4101702, at * 5 (Sept. 9, 2021) (holding there was "nothing erroneous in the certification" where record showed taxpayer met each criteria for certification—"That is all that was required for [the IRS] to have certified [the taxpayer] as having a seriously delinquent tax debt").

The Court further rejects Tinnerman's argument that the IRS assessments are unenforceable based on a ten-year statute of limitations. That period was tolled while Tinnerman was seeking relief in the Tax Court and remain enforceable at this time. See 26 U.S.C. §§ 6503(a)(1), 6330(e)(1); Doc. 3, Exs. J, M (exhibits filed by Tinnerman in support of his original complaint).[11] See also Rowen v. Comm'r, 156 T.C. No. 8, 2021 WL 1197663 (Mar. 30, 2021) (rejecting

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[10] The government states the purpose of the lien notice is to ensure the taxpayer has an opportunity to seek collection alternatives, which Tinnerman has done.

[11] Even on a Rule 12(b)(6) motion, the court may consider extrinsic documents if they are central to the plaintiff's claim, and their authenticity is not challenged. United States ex rel. Osheroff v. Humana, Inc., 776 F.3d 805, 811 (11th Cir. 2015) (citation omitted). Here, plaintiff supplied the documents.

challenge to certification of seriously delinquent tax debt where record confirmed limitations period had not expired). Count II is dismissed with prejudice for failure to state a claim.

II. Conclusion

The four counts of Tinnerman's Amended Complaint are due to be dismissed. Although Tinnerman response to the motion to dismiss seeks leave to again amend his complaint in the event the Court grants the motion, the Court finds further amendment is not warranted. Tinnerman filed his amended complaint after the government moved to dismiss his original complaint so was well aware of the arguments against his positions. Further amendment would be futile.

Accordingly, it is hereby

ORDERED:

1. The United States' Motion to Dismiss (Doc. 30) is **granted**.

2. Counts I, III, and IV of Tinnerman's amended complaint are **dismissed without prejudice** for lack of subject matter jurisdiction and Count II is **dismissed with prejudice** for failure to state a claim.

3. The Clerk shall enter judgment in favor of the United States and close the file.

DONE AND ORDERED in Jacksonville, Florida this 27th day of September, 2021.

[SEAL] /s/ Timothy J. Corrigan
TIMOTHY J. CORRIGAN
United States District Judge

s.
Copies:
Counsel of record

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:19-cv-1429-TJC-PDB

[Filed: September 28, 2021]

WILLIAM R. TINNERMAN,	)
	)
Plaintiff,	)
	)
v.	)
	)
UNITED STATES OF AMERICA,	)
	)
Defendant.	)
	)

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

That pursuant to the Court's order judgment is hereby entered in favor of the

United States.

Date: September 28, 2021

ELIZABETH M. WARREN,
CLERK

s/Kerri Hatfield, Deputy Clerk

Copy to:

Counsel of Record

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-14023-CC

[Filed: October 28, 2022]

WILLIAM R. TINNERMAN,

Plaintiff - Appellant,

versus

UNITED STATES OF AMERICA,

Defendant - Appellee.

Appeal from the United States District Court
for the Middle District of Florida

BEFORE: BRANCH, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Appellant William R. Tinnerman is DENIED.

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