

No. 23-382

**In The
Supreme Court of the United States**

PHYLLIS CARR, IN PRO SE,

Petitioner,

v.

UNITED STATES INTERNAL
REVENUE SERVICE, ET AL.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

SUPPLEMENTAL BRIEF FOR PETITIONER

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SUPPLEMENTAL BRIEF FOR PETITIONER
INTRODUCTION

1. Petitioner Phyllis Carr hereby submits the foregoing addendum to the appendix submitted with the Petition for Certiorari in the above-named case. The addendum is an excerpt from the transcript of the summary judgment hearing, appendix item 12.
2. At the hearing, the Court inquired about the validity of the IRS Letter 570 appendix item 5, accepting Carr's claim from Internal Revenue Service Planning and Special Programs (IRS/PSP) Section Chief Peggy Archer. The defense claimed the Letter 570 was a mistake. The court, relying upon the defense expert witness declaration from Lulu Nicozi agreed, assuming Archer lacked sufficient information to accept Carr's claim.
3. Nicozi is one of the IRS auditors who closed the audit yet issued a refund to Carr based upon Carr's 2012 form 1040x and IRS file containing Carr's income and deduction information.
4. Nicozi is also the auditor whose improper conduct was addressed by Archer pursuant to Carr's request for assistance to the IRS Taxpayer Advocate Service, (TAS). Nicozi in violation of IRS and evidentiary rules testified about Archer's thought process.
5. At lines 14 through 24 of the excerpt, the court asked the deputy US Attorney Blair Hlinka if she spoke with Archer, the author of the Letter 570 to confirm Archer's thought process in issuing the

Letter 570, which was the final administrative decision to accept Carr's claim.

6. Hlinka admitted she did not speak with Archer.
7. Notwithstanding, the court assumed Archer lacked sufficient information and ignored the final administrative decision of the IRS Letter 570.
8. The issue of notice and IRS guidance and, validity of a final administrative decision are being heard by this court in *Moore v. United States*, Docket # 22-800 on December 5, 2023, and *Rudisill v. McDonough*, Docket # 22-888 on November 8, 2023. The foregoing cases involve IRS guidance a taxpayer is entitled to and binding effect of a final administrative decision as relied upon for authority by the trial court in this case.

◆

ARGUMENT

- I. **Federal Rule of Civil Procedure 60 allows for corrections due to mistakes, oversights and omissions.**
 - a. **The court may make a correction on request.**

As explained above, the IRS made a final administrative decision addressing conduct by IRS in refusing to communicate and inform a taxpayer of what was transpiring on their case. While the IRS claims the taxpayer did not meet the requirements of 26 USC Section 7422 by making a refund claim, the IRS auditors, and IRS expert witness who closed the audit even after

their improper conduct caused the issuance of a refund to the taxpayer. However, the IRS now claims the taxpayer requested an abatement and did not make a refund claim. After 3 years of administrative review, Peggy Archer, the IRS section chief tasked with resolving IRS actions after the Taxpayer Advocate Service presented Carr's claim specifically drafted a notice of a final administrative decision accepting Carr's claim. App. p. 15, lines 6-25. It was not appealed and has never been challenged by IRS which had the authority to do so. TAS submitted the claim and IRS acted on it. The attached addendum makes Carr's point clear and helps the Court.

◆

CONCLUSION

In light of the foregoing, the Petitioner herein respectfully requests the Court consider the supplement to the appendix at p. 13, lines 14-24, p. 15, lines 6-25, and p. 16, lines 1-5.

Respectfully submitted,
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Date: November 6, 2023

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Before The Honorable William H. Orrick, Judge

PHYLLIS CARR,)	
Plaintiff,)	
vs.)	NO. C 20-00744 WHO
UNITED STATES)	
OF AMERICA,)	
Defendant.)	

San Francisco, California
Wednesday, November 10, 2021

**TRANSCRIPT OF REMOTE ZOOM
VIDEO CONFERENCE PROCEEDINGS**

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REPORTED REMOTELY BY:

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CSR No. 7445, Official U.S. Reporter

* * *

[13] entitled to. And that's not happened in this case.

THE COURT: So, Ms. Hlinka, I appreciate that discussion, but it didn't answer my question, which is: How was it that this letter in January of 2019 came out telling Ms. Carr that she was entitled to a refund?

MS. HLINKA: Your Honor, the only thing that I am aware of is that this letter was sent in error. Unfortunately, the United States has multiple agencies and the IRS has multiple divisions, and occasionally, mistakes happen.

But what I can tell you is that the records and transcripts in this matter, with Ms. Nicozi's personal knowledge based on her being the individual who actually closed the case, is that the letter shouldn't have been sent.

THE COURT: Did you go back to the author of the letter to find out what was going on in that person's mind in sending this letter that you say was inaccurate?

MS. HLINKA: Did I go back to the author of the letter? Are you referring to Ms. Archer or the IRS individual?

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THE COURT: The IRS individual who signed the letter.

MS. HLINKA: The letter is a form letter that was signed by Ms. Archer. She's – it is my understanding that these types of letters are drafted by other individuals at the IRS and then Ms. Archer's signature is affixed to it.

I did not personally go speak with that individual. I did ask IRS counsel to go speak with that individual, and that

* * *

[15] the taxpayer the opportunity to appeal. And just because it's not listed in the records or they don't see it doesn't mean it didn't happen, because in this case, it did. It was a three-year administrative process that went through several different states and different people.

I'd also like to address the fact that she never spoke to Ms. Archer. She knew about the letter when the case was filed in early 2020. It is not a form letter. I don't believe that. The first sentence in that letter says (reading):

“We are pleased to tell you that we've accepted your claim.”

Apparently, this doesn't happen very often because they're fighting it tooth and nail. I don't believe for a second that it's a form letter.

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I do not believe it was sent in error because an error means it's something that was unintended, conduct that is unintended. They can't tell us what Ms. Archer intended to do. I'm looking at the face of the letter. It looks like this is what she wanted to send me.

I'd also like to address the fact that Ms. Nicozi closed the file improperly because they were still in the middle of an ongoing dispute. And Ms. Archer got the file later in time, who is a section chief, who made a different decision. And Ms. Nicozi closed the file unagreed, without any notice to the taxpayer, in violation of the Taxpayer Bill of Rights. I was [16] unaware that Ms. Nicozi had closed the file until I took her deposition.

So there's some things that she didn't do properly, and that was one of them, closing the file unagreed, not noticing the taxpayer.

THE COURT: Okay. Thank you.

All right. So I'm going to review the record again to make sure that I understand all the facts. I'm bound by what has been provided to me that's admissible. And then I will try to get an order out promptly.

We do have a trial date in early January, and I'm aware of that. So I'm going to try to get this order out quickly so that everybody knows how to proceed.

MS. CARR: Your Honor, I just want to say one more thing before closing.

THE COURT: Sure.

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MS. CARR: Regarding underreported income, it's too late for the Government to even try to do anything about that. There's a statute on underreported income. I was never warned about it. I got no notice of it. And for them to make an issue of it now, they couldn't collect it anyway because of the statute of limitations on it.

MS. HLINKA: Your Honor, may I address that?

THE COURT: Yes. Please, go ahead.

MS. HLINKA: The purpose of the underreported income was

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