No. _____

In the Supreme Court of the United States

CHRISTOPHER HADSELL,

Petitioner,

–v–

UNITED STATES OF AMERICA, the Department of Treasury by its agency, the Internal Revenue Service,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Christopher Hadsell
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I. QUESTIONS PRESENTED

1. Can the U.S. Government, annually, take between $970 million and $4 billion in cash from over 1.25 million taxpayers by hiding behind computers that are programmed to circumvent the Fifth Amendment's substantive-due-process prohibition against illegal takings? The Ninth Circuit disallows such tax-intercept cases due to a lack of subject matter jurisdiction; by contrast, the Second and Tenth Circuits permit adjudication of tax-intercept cases.

2. When a taxpayer irrevocably elects to have a current-year tax overpayment become an estimated tax payment for his/her succeeding-year tax return; then

a. by operation of law, the estimated tax payment becomes an actual tax payment; and

b. the taxpayer files a succeeding-year tax return, relying on the actual tax payment;

c. Can the IRS subsequently:

i. recharacterize the actual, subsequent-year, tax payment back into a preceding-year overpayment; and then

ii. apply a tax-refund offset to the recharacterized overpayment?

II. PARTIES TO THE PROCEEDING

Petitioner is Christopher Hadsell ("**Hadsell**"). He was:

Plaintiff in the United States District Court, Northern District of California ("**District Court**").

Appellant in the United States Court of Appeals for the Ninth Circuit ("**9th Cir**").

Respondent is United States of America, the Department of Treasury by its agency, the Internal Revenue Service ("**IRS**"). It was:

Defendant in the District Court.

Appellee in the 9th Cir.

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Citations to the 9th Cir's opinions and orders (with appendix page numbers) are as follows:

Hadsell v. United States, 9th Cir. Oct. 20, 2023, No. 22-15760 (2023 U.S. App. LEXIS 34399.)

Hadsell v. United States, 9th Cir. Oct. 12, 2023, No. 22-15760 (2023 U.S. App. LEXIS 27130.)

Hadsell v. United States, 9th Cir. July 10, 2023, No. 22-15760 (2023 U.S. App. LEXIS 17307)

Citations to the District Court's opinions and orders (with appendix page numbers, if applicable) are as follows:

Hadsell v. United States (N.D.Cal. 2022, No. 20-cv-03512-VKD) Feb. 25, 2022.

Hadsell v. United States (N.D.Cal. 2022) 587 F. Supp. 3d 1002.

Hadsell v. United States (N.D.Cal, 2021, No. 20-cv-03512-VKD) U.S.Dist.LEXIS 224098.

Order Granting in Part and Denying in Part Defendant's Motion to Dismiss Complaint (2/3/21)..... Pet.App.1a.

Hadsell v. United States (N.D.Cal 2021, No. 20-cv-03512-VKD) U.S.Dist.LEXIS 21743.

VI. JURISDICTION

The 9th Cir issued its Mandate on10/20/23 (62a).

This Court's jurisdiction is timely invoked under 28 U.S.C. §1254.

VII. CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutional and statutory provisions that are not quoted in the text are at Pet.App.65a et seq.

VIII. STATEMENT OF THE CASE

A. BASIS FOR FEDERAL JURISDICTION IN DISTRICT COURT

The District Court had jurisdiction pursuant to 26 U.S.C.[1] §7433, 28 U.S.C. §§1346(a)(1), 1346(b)(1), 2401, 2416, and

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1 Subsequent undesignated section references shall be to Title 26 of the U.S. Code.

the Federal Tort Claims Act ("**FTCA**", 28 U.S.C. §§1346(b), and 2671-2680).

B. INTRODUCTION

The issues here: 1) involve fundamental constitutional issues, ***m***illions of taxpayers, ***b***illions of dollars, and 2) invoke important issues that are ongoing now, and if unchecked, recurring in the future.

These issues affect this case under two legal theories: 1) involving tax refunds, and 2) involving tax payments.

Question Presented 1 concerns tax refunds where IRS illegally takes taxpayers' refunds because IRS' computer systems fail to comply with the legal requirements that must be met before IRS is empowered to take such action.

Question Presented 2 concerns tax payments where IRS illegally applies tax-offset law (that applies only to overpayments) to tax payments.

C. IRS ILLEGALLY TAKES BILLIONS OF DOLLARS FROM MILLIONS OF TAXPAYERS

1. LEGAL REQUIREMENTS THAT MUST BE MET BEFORE IRS CAN TAKE A TAXPAYER'S REFUND

a. Legal Definitions

i. Overpayment

There are three situations where overpayments occur. Here, only one applies (in simplified terms): when tax credits exceed tax liabilities:

Overpayment = Tax Credits – Tax Liabilities, 26 U.S.C. §6401(b)(1).

ii. Refund, Succeeding-Year Tax Credit, Offset

For a lay taxpayer, a "Refund" is the IRS' payment to the taxpayer for the net of the taxpayer's Tax Credits that exceed the taxpayer's Tax Liabilities; the definition of Overpayment.

However, an Overpayment can potentially be reduced in two ways: 1) a taxpayer's "**Credit Election**" whereby a taxpayer "elects" to have a portion, or all, of the Overpayment amount applied to a succeeding year's tax liability ["**Succeeding-Year Tax Credit**", §6402(b)]; and 2) a "**Refund Offset**" pursuant to §§6402(c)-(f), of which, only §6402(c) applies here.

After an Overpayment is reduced by a Succeeding-Year Tax Credit or a Refund Offset, there is no defined term for the remaining Overpayment balance, if any. Instead, it is referred to as, inter alia, "The amount of any overpayment to be refunded…", "refund any balance…", etc.

b. Statutory Requirements Before IRS Can Offset an Overpayment

Here, there are at least eight requirements (circled, colored numbers, in the quoted statutes, in the order in which they are applied) that IRS must comply with before it is legally empowered to apply a Refund Offset to an Overpayment.

Section 6401(b)(1) states:

> ① If the amount allowable as credits... exceeds the tax imposed... such excess shall be considered an overpayment.

Section 6402(b) states (highlights and emphasis added):

> The Secretary is authorized to prescribe regulations providing for the (2) ***crediting against the estimated income tax for any taxable year*** of the amount determined by the taxpayer or the Secretary to be an overpayment of the income tax for a preceding taxable year.

Section 6402(c) provides three requirements directly, and three indirectly by reference to the Social Security Act, Title IV (42 U.S.C. §§601-679c) ("**Title IV**", highlights and emphases added):

> The amount of ***any*** overpayment ***to be refunded*** ... ***shall*** be reduced by (4) the ***amount*** of any past-due support (as defined in section 464(c) of the Social Security Act [42 U.S.C. §664]) owed by that person (3) ***of which the Secretary has been notified by [California]*** in accordance with section 464 of such Act [42 U.S.C. §664] .... The Secretary shall apply a reduction under this subsection first (5) to an amount ***certified by [California]*** as past due support under section 464 of the Social Security Act [42 U.S.C. §664] before any other reductions allowed by law.

42 U.S.C. §664(a)(1) states (highlights and emphasis added):

> Upon receiving notice from a [California] agency administering a plan approved under this part [42 U.S.C. §§651 et seq.] that a named individual owes (6) past-due support ***which has been assigned to such State*** pursuant to section 408(a)(3) or 471(a)(17) [42 U.S.C. §608(a)(3)] (assistance for

> families) or 671(a)(17)[2] (child receiving foster care maintenance payments)]...

42 U.S.C. §608(a)(3) states (highlights and emphasis added):

> A State to which a grant is made under section 403 [42 USCS § 603] ***shall*** require, as a condition of paying assistance to a family under the State program funded under this part, ⑦ that a member of the family ***assign to the State*** any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, ⑧ ***not exceeding*** the total amount of assistance so paid to the family...

Combining the five statutes yields the eight requirements (in the order in which they must be applied/considered) before IRS can apply a Refund Offset to Hadsell's Overpayment:

i. ① An Overpayment must exist.

It is undisputed that Overpayments exist.

ii. ② A Credit Election must ***not*** exist such that it creates Succeeding-Year Tax Credits that reduce any Overpayment to $0 because then there would be no refund balance to which a Refund Offset could apply.

Whether a Credit Election created Succeeding-Year Tax Credits is the issue in Question Presented 2.

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[2] Inapplicable in this case.

For Question Presented 1, arguendo, it is assumed that a refund amount exists.

iii. ③ California must notify ("**Cal. Notice**") the Treasury Secretary of the following:

iv. ④ Hadsell owes past-due support;

v. ⑤ of a ***certified*** amount; and

vi. the certified amount ⑥ must be assigned ("**Assigned Amount**") to California;

vii. ⑦ by a Hadsell family member; and

viii. ⑧ the Assigned Amount applicable cannot exceed the amount of family assistance that California paid (TANF[3] payments) to Hadsell's family.

Here, it is undisputed that Hadsell's family has never received a penny of TANF assistance payments. That is because Hadsell's family could not possibly qualify for TANF payments due to Hadsell's family-support payments of over $2 million and his additional trust funds of over $1.5 million given to his three children (over $500,000 each).

Thus, because it is an impossibility, it is undisputed that California has never produced a Cal. Notice that shows any certified amount of past-due support that has been assigned to California by a Hadsell family member. Even if California had produced such a notice, by law, it would be limited to $0

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[3] Temporary Assistance for Needy Families, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 110 Stat. 2105.

because Hadsell's family has never received a single penny of TANF assistance.

2. THE DISTRICT COURT ERRED WHEN IT RULED THAT IT LACKS SUBJECT MATTER JURISDICTION

Magistrate Judge Virginia DeMarchi quotes Hadsell's analysis that §6402(c) includes the legal requirements discussed *supra*, and that California could not possibly meet the statutory requirements, Pet.App.48a, ¶2.

Notwithstanding, Magistrate Judge DeMarchi claims IRS produced evidence that ***a*** notice exists—based upon, ***not*** an actual notice, but inadmissible computer database record printouts and a 2013 form letter about possible collections methods that ***California sent to Hadsell***, Pet.App.49a.

Further, although it is undisputed that it is impossible for ***any*** notice to comply with the legal requirements of the five separate statutes, mere "evidence" of a notice's possible existence is considered close enough for government work here because, "neither the statute nor the implementing regulation require[] the IRS or any other federal agency to investigate the merits of a state's certification.", Pet.App.49a.

With all due respect, that is error.

First, any California notice sent only to Hadsell is clearly ***not*** notice to the IRS.

Second, ***nothing*** in this case has suggested that investigation of "the merits" of any state notification is at issue. What is at issue is whether the notice contains the elements required by law because without them, IRS is not authorized to act.

Thus, Hadsell's property was taken into the public treasury in violation of his substantive due process rights. Additionally,

because his property was taken without just compensation, that additional substantive due process right was violated, U.S. Const. amend. V.

More importantly, he is not alone. In 2022, his case would represent only one of well over 1.25 million tax-refund-offset taxpayers, and his roughly $9,600 would be a pittance of the $1.6 ***b***illion IRS illegally took in 2022, and the over $9.4 ***b***illion it illegally took over the last five years.

3. FOR THE LAST FIVE YEARS, IRS OVERCOLLECTED TAXPAYER REFUND OFFSETS OF ABOUT $9.4 BILLON

a. Distributed Collections vs. Collections

As required by 42 U.S.C. §652(a)(10), the Office of Child Support Enforcement[4] ("**OCSE**") provides an annual report to Congress regarding financial and statistical data based upon reports from state and tribal child support agencies provided on forms OCSE-34 and OCSE-157.

Because there is a time lag between when funds are collected vs. when they are distributed[5], the OCSE reports focus upon Distributed Collections (collected funds that have been

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[4] Part of the Administration for Children & Families, a division within the U.S. Department of Health & Human Services.

[5] As defined in Office of Child Support Enforcement, Instructions for Completion of Form OCSE-34 (Expires 6/30/24) ("**Form OCSE-34 Instructions**"), p. 13, such delays include, "**Line 6**... resolution of... contested arrearage balances...". This is one reason why distributions can be held back for more than five years, *id.*, p. 15, "**Line 20. Collections Remaining Undistributed More Than 5 Years.**"

disbursed), and Undistributed Collections (collected funds, not yet disbursed).

Here, we wish to compare IRS's Refund Offsets with the corresponding year's collections.

Fortunately, one can derive a close approximation to collections from the equation:

Beginning Year's Undistributed Collections[6] + Collections – Distributions = Ending Year's Undistributed Collections.

Since every number is available except for Collections, the Collections amount can be calculated, see Exhibit 1, "**Collections-Calculated**", Pet.App.73a.

As Exhibit 2, "**Distributed/Calculated Collections Difference**", Pet.App.73a, shows, for the most part, the lag is less than one year because the difference between the two numbers is only a fraction of one percent[7]. Thus, Distributed Collections and Collections are essentially the same. Therefore, the more readily available Distributed Collections will be used in analyses regarding Collections.

b. Distributed Collections by Category

The OCSE Congressional Reports provide four separate categories comprising the total distributed collections.

The four categories are: i) Current Assistance, ii) Former Assistance, iii) Medicaid Never Assistance, and iv) Other Never Assistance.

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[6] Which is the prior year's ending Undistributed Collections.

[7] Except for 2020 that included the COVID tax rebates, §6428.

These categories are self-explanatory: i) currently receiving welfare payments, ii) formerly receiving welfare benefits, iii) receiving Medicaid benefits but never received welfare benefits, and iv) never received welfare or Medicaid benefits.

The formal definitions[8], quoted from Form OCSE-34 Instructions, p. 4, are as follows:

> **i. Current Assistance**
>
> ***Current [Title] IV-A Assistance.*** Collections received and distributed on behalf of children who are recipients of [TANF] under title IV-A... In addition, the children's support rights have been assigned to the State...
>
> ***Current [Title] IV-E Assistance.*** Collections received and distributed on behalf of children who are entitled to Foster Care maintenance assistance payments under title IV-E... the children's support rights have been assigned to the State....
>
> *Id.*

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[8] Which is fairly dry reading, but is provided because such step-by-step detail is required to provide bullet-proof support for such strong claims as billions of dollars involving millions of taxpayers. Because of the step-by-step detail, it may be fruitful to skim the material initially, and then revisit to fill in more detail as needed. The big picture is: careful reading of the statutes and the published materials of IRS and HHS unequivocally support the claims in this Petition. But to get there requires becoming familiar with the details. The issues are not complex or difficult to understand. But, it does require walking patiently through the materials to gain command over them.

ii. Former Assistance

> ***Former [Title] IV-A Assistance.*** Collections received and distributed on behalf of children who *formerly* received assistance through either the Aid to Families with Dependent Children Program (AFDC)[9] or [TANF] under title IV-A...
>
> ***Former [Title] IV-E Assistance.*** Collections received and distributed on behalf of children who *formerly* received assistance through the Foster Care Program under title IV-E....
>
> *Id.*

The distinction between current and former assistance (viz., Title IV assistance in the form of "aid and services to needy families with children and child-welfare services") is ***the*** public policy behind eliminating so-called "Welfare Queens" and "multigenerational welfare recipients". That public policy [with bi-partisan leadership from President Reagan, Speaker Gingrich ("Contract With America"), and signed into law by President Clinton who vowed, "To end welfare as we know it."] is the overarching policy that ***no*** government funds can be spent in relation to any family-welfare recipient beyond a lifetime support of 60 months. As 42 U.S.C. §608(a)(7)(A) requires (emphasis added):

> A State to which a grant is made under [42 U.S.C §603] ***shall not use any part of the grant to provide assistance to a family*** that includes an adult ***who has received assistance under any State program*** funded under [Title IV] ***attributable to funds provided by the Federal***

[9] Predecessor program prior to TANF.

> government, for 60 months (whether or not consecutive)...

As discussed *supra*, not only are States prohibited from collecting family-support funds when there has been no assignment of family-support payments (up to the amount of total prior welfare payments), but once a family has received 60 months of enforcement services of any kind, no further enforcement services are permitted.

Therefore, because, by definition, the Former Assistance category are recipients who have maxed out on 60 lifetime months of welfare, any amounts reflected in the Former-TANF/FC Recipients category would violate the law if they were collected in the form of tax-refund offsets.

iii. Medicaid Never Assistance

> ***Medicaid Never Assistance.*** Collections received and distributed on behalf of children who are receiving Child Support Enforcement services under title IV-D...
> Form OCSE-34 Instructions, p. 4.

Here again, because collections are received for, "children who are receiving Child Support Enforcement services", such services are limited to 60 months of total collections, 42 U.S.C. §608(a)(7)(A).

Additionally, the same as for child support discussed *supra*, Medicaid collections are only permitted when there has been a recipient's assignment (42 U.S.C. §1396k(a)(1)(A)) to the State, and reimbursement payments are limited to the total amount of actual welfare payments (42 U.S.C. §1396k(b)).

Here, the only evidence is that IRS: i) fails to provide any evidence of assignments, ii) fails to limit collections to a maximum of prior actual recipient payment amounts, and iii)

fails to cease utilizing funds on collection enforcement services after 60 months of lifetime services have elapsed.

Notwithstanding, assuming arguendo that IRS had complied with applicable law, any amounts reflected in the Medicaid Never Assistance category cannot count toward legitimate child-support collections because the analysis here is concerned solely with child-support collections, and these funds represent Medicaid collections. Therefore, any Medicaid Never Assistance amounts cannot qualify as legal child-support collections here.

iv. Other Never Assistance

> ***Other Never Assistance.*** Collections received and distributed on behalf of children who are receiving Child Support Enforcement services under title IV-D... but who are not currently receiving and have never formerly received either Medicaid payments... or... AFDC, TANF or Foster Care programs under either title IV-A or title IV-E...

Again, with no actual welfare payments of Medicaid, or family welfare, having been paid out to a needy family, it is impossible to have any legally compliant tax-refund offset in this category because even if there were an assignment, the maximum assignment would be $0 reflecting that no payments are available to be recovered.

Therefore, any Other Never Assistance amounts cannot be counted toward legal collections of child-support here.

Exhibit 3, "**Distributed Collections By Category**", Pet.App.73a, depicts the collection categories equaling total collections.

For the analysis here regarding child-support, comparing the child-support tax-refunds offsets to collections only

applicable to child support in Exhibit 3 (as discussed *supra*, Current-TANF/FC Recipients, Line 15) results in Exhibit 4, "**IRS Tax-Refund Offsets Overcollections**", Pet.App.73a.

Exhibit 4 shows that IRS, as provided in the OCSE's Congressional reports, violates the law by illegally overcollecting about $1 billion annually from taxpayers' refunds.

Shockingly, this is a best-case scenario because of a threshold issue. The issue is: there can be no legal collection if there is no obligor. And there is no obligor if there is no court order making a parent liable for his/her family's healthcare costs and family support.

As Exhibit 5, "**Current Recipients: Court Orders Analysis**", p. 74, Line 10, shows, about a third of all Current-TANF/FC Recipients are not legally collectible because they lack court orders. The same is true if there has been no assignment by the welfare recipient to his/her State.

If any of the Current-TANF/FC Collections are from such uncollectible recipients, that only increases the about $1 billion collected illegally each year.

Furthermore, as discussed *supra*, because 42 U.S.C. §608(a)(7)(A) prohibits ***any*** expenditure of welfare funds beyond 60 lifetime months (and "any" includes funds spent on Child Support Enforcement services), this means that all collections from Former TANF/FC Recipients are illegal. Moreover, since collections are limited to recovery of funds actually paid to a family, then ***all*** Other Never Assistance collections are illegal.

Therefore, as Exhibit 6, "**Minimum Illegal Collections**", Pet.App.74a, shows, about 2/3rds of all collections are

illegal. Again, this is a best-case scenario since it doesn't account for cases in which there is no court order.

Here, it is undisputed that, inter alia: i) Hadsell's family has never received a penny of welfare support, ii) there has never been an assignment of family-support payments to California, iii) it is therefore impossible for California to "certify" any amount of family-support arrearages that is subject to a tax-refund offset, iv) Hadsell is currently in litigation disputing that he owes any family-support arrearages, and v) Child Support Enforcement services have been ongoing for well over 120 months—more than twice the maximum months allowed.

So, if such egregious government actions have been ongoing for years, how is it that such actions haven't come to light?

Five simple reasons.

First, death by millions of small cuts. There are well over one million tax-refund offsets for Child Support Enforcement services annually. E.g., in 2022: 1,257,954, Office of Child Support Enforcement, *Preliminary Report, FY 2022*, (2022), Table P-96. The average offset amount is $1,816 ($2,283,929,167/1,257,954), *id.* Thus, for any one taxpayer, the amount is relatively small.

Second, without complying with due process, IRS takes the taxpayer's funds by simply holding onto cash it already has in hand. Thus, "collection" is somewhat of a misnomer.

Third, a taxpayer must exhaust all administrative remedies before s/he can be heard in court. Whether resolved or not, the administrative process can take up to two years.

Fourth, because of the typically small dollar amount of a claim, and the administrative exhaustion requirement (before

any possible court involvement), the cost of a lawyer immediately outstrips the claim amount.

Fifth, in the administrative phase, IRS hides behind its Automated Collection System ("**ACS**")—a computerized system that ignores ***all*** of the law discussed *supra*. In the court phase, IRS' lawyers continue to ignore the law by making the exact same ACS arguments and refusing to address the legal issues discussed *supra*. The ACS is discussed next.

4. IRS' AUTOMATED COLLECTION SYSTEM

The Taxpayer Advocate Service ("**TAS**") is an independent organization within the IRS. Thus, in IRS' own words, it describes ACS:

> Historically, when a taxpayer filed a return and signed it under penalties of perjury, the IRS assumed it was correct. Except in the case of clear mathematical errors (and inconsistencies evident on the face of the return), the IRS generally did not disturb the taxpayer's self-assessed liability unless it examined the return and identified a problem. Perhaps assuming the IRS would assess most deficiencies only after an examination, Congress granted taxpayers procedural rights in connection with that process. Thus, when conducting an examination, the IRS was required to follow legally-mandated procedures... designed to minimize burden, inform taxpayers of their rights, and ensure the determination was correct.... [T]hese procedures promoted accuracy and established important taxpayer rights.
>
> Today, when a taxpayer's return is inconsistent with information the IRS receives from third

parties, the IRS often assumes the return is wrong and the third-party data are correct—without conducting an actual examination. In fiscal year (FY) 2010, the IRS made over 15 million contacts that taxpayers might regard as examinations, but treated only about ten percent (1.6 million) as "real" examinations, subject to real examination procedures and taxpayer protections—and it conducted about 78 percent of the "real" examinations by correspondence in a highly-automated campus setting where it is more challenging for the taxpayer to communicate with the examiner....

Automating certain compliance checks makes sense. However, ***automated adjustments are often less accurate than face-to-face examinations, particularly when the third-party data is unreliable*** or either the IRS or the taxpayer has difficulty communicating.... [T]hus, as the IRS increases its reliance on automation to "protect revenue," it should appropriately balance these efforts by simultaneously increasing its efforts to protect taxpayers who are sincerely trying to comply as well as protecting longstanding taxpayer rights. As described in the MSPs [Most Serious Problems] that follow, the IRS's approach will be balanced only if:

- The IRS's automated systems use only the most reliable data;

- The IRS's letters reach taxpayers and clearly explain the discrepancy at issue...

> TAXPAYER ADVOCATE SERVICE, IRS, *2011 ANNUAL REPORT TO CONGRESS*, VOL. 1, 15-17 (2011), (emphasis added, footnotes elided).

The report further details IRS', 1913-2011 transformation, "From Tax Collector to Fiscal Automaton", *id.*, vol. 2, 4-62.

The Oxford English Dictionary 1190 (2d ed., CD-ROM ver. 4.0) defines automaton as, "A human being acting mechanically or without active intelligence in a monotonous routine."

If IRS' ACS were acting, "without active intelligence in a monotonous routine" in compliance with the law, that would be outstanding. But here, IRS' ACS violates the law by ignoring the legal requirements that must be met before IRS can legally act.

Aside from this case, Hadsell has never had an issue with his over 50 years of federal tax returns. Notwithstanding, he can attest to the "Fiscal Automaton" nature of IRS' ACS because its automated answers never addressed the legal issues he raised. While Kafkaesque[10], at least IRS' ACS responses invoked the topic of Refund Offsets.

Until recently, Hadsell's sister shared his history of over 50 years without a single issue with a federal tax return. Unfortunately, she now shares the same fate of dealing with IRS' ACS. However, if there is such a thing as beyond Kafkaesque, or a 10th circle of Hell beyond Dante's nine

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[10] In addition to failing to address the issues by only discussing inapplicable issues, IRS' ACS responses: i) involved mostly nameless, unsigned letters; ii) bounced around among eight different locations (Austin, TX; Birmingham, AL; Fresno, CA; Holtsville, NY; Kansas City, MO; Memphis, TN; Ogden, UT; and Philadelphia, PA); and iii) granted itself multiple extensions of time to respond.

circles, Exhibit 7, "**Actual IRS' ACS Response**" (personal information redacted, red rectangles added to highlight blank/absurd text), p. 75, is a true and accurate copy of it.

5. THE DISTRICT COURT ERRED ON STATUTORY INTERPRETATION AND POLICY GROUNDS

Magistrate Judge DeMarchi held, "§ 6402(b) simply refers to the amount determined by the taxpayer or the IRS 'to be an overpayment' for the preceding taxable year.", Pet.App.36a. With all due respect, that is error.

As discussed *supra*, Overpayment is defined in §6401(b)(1), "If... credits... exceed[] the tax imposed... such excess... [is] an overpayment." Additionally, §6402(b) just does ***not*** say that the taxpayer or IRS determine the amount of an Overpayment. It determines the amount of Credit Election (as discussed *supra*).

Moreover, titles are not always to be avoided in statutory construction. As *INS v. National Ctr. for Immigrants' Rights* (1991) 502 U.S. 183, 189 instructs, "[T]he title of a statute or section can aid in resolving an ambiguity in the legislation's text." Here, the title of §6401(b)(1) is, "**Excessive Credits.**" whereas the title of §6402(b) is, "**Credits against estimated tax.**". The titles indicate that the Office of the Law Revision Counsel was clear when it titled §6402(b) because it doesn't determine the Overpayment, it determines the amount of a Credit Election.

The order of the sections in the code also indicate that Congress was writing logically by defining Overpayment first before defining how a Credit Election applies to reduce an Overpayment since a Credit Election cannot be applied unless an Overpayment exists.

The reason for this discussion is because it appears Magistrate Judge DeMarchi fears that, "Hadsell's proffered statutory interpretation would, in effect, allow a taxpayer to bypass the Secretary's regulations promulgated under § 6402(b) simply by making a credit election."

Congress provides a plethora of "bypasses" in the tax code; e.g.: i) estimated tax payments safe harbors to "bypass" underwithholding penalties, ii) lower tax rates for certain income sources to "bypass" higher tax rates (e.g., wages vs. investments), iii) lower tax rates for certain investments to "bypass" higher tax rates (e.g., investments held long-term vs. short-term), etc.

There are two extremely strong policy reasons why Congress would create such a "bypass" here.

First, as discussed *infra*, p. 25, ¶ii, there are gargantuan benefits to the government with Credit Elections.

Second, putting the enormous benefits the government from Credit Elections aside, the only difference to the government from child-support Refund Offset vs. Credit Elections is: In which government pocket do the funds end up? With child-support Refund Offsets the funds are returned to the TANF program, ***not*** the TANF families[11]; and are tethered to any associated TANF program restrictions. Whereas with Credit Elections, the funds end up in the Treasury with no restrictions.

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[11] As discussed *supra*, while child-support Refund Offset collections are capped at reimbursing prior payments of welfare benefits, other ***State collection methods*** allow collections beyond prior welfare payments. For those programs, the States ***may*** distribute the additional funds to families, see 42 U.S.C. §657. However, since the passage of the "pass through" provisions in 2005, only 5 States have implemented pass throughs.

Finally, with all due respect, Magistrate Judge DeMarchi's fear about a "bypass" is misguided for practical purposes.

Under Hadsell's statutory interpretations, there remains the time between when a taxpayer files a tax return and makes a Credit Election, and when (typically a year later) the Credit Election funds become an actual succeeding-year tax payment on the filing date of the succeeding-year tax return. During the timeframe between filing the two returns, §6402(c) gives priority to Refund Offsets over Credit Elections as applied to an Overpayment. For every case cited in these proceedings, when IRS denied a taxpayer's Credit Election, IRS notified the taxpayer within 30-90 days of the tax return's filing date.

As IRS states, "The IRS issues more than 9 out of 10 refunds in less than 21 days.", https://www.irs.gov/refunds/what-to-expect-for-refunds-this-year (last visited January 16, 2024).

Thus, with actual data, IRS typically has 49 of the 52 weeks available pursuant to §6513(b)(2) in which to apply an "authorized" offset in over 90% of the refunds it processes.

Therefore, executing a Credit Election by no means guarantees a taxpayer can avoid offsets.

D. IRS ILLEGALLY REVOKES SUCCEEDING-YEAR TAX PAYMENTS AND THEN APPLIES REFUND OFFSETS

1. LEGAL REQUIREMENTS REGARDING CREDIT ELECTIONS

There are four legal issues regarding Credit Elections with respect to the tension among: i) who makes a Credit Election, ii) when a Credit Election becomes a Succeeding-Year Tax Credit by operation of law, iii) the irrevocability of a Credit

Election, and iv) the priority of a Credit Election or a Refund Offset when reducing an Overpayment.

a. Who Makes a Credit Election

Section 6402(b) (emphasis added) states that ***either***, "the taxpayer ***or*** the Secretary" can determine the amount of an overpayment that is "elected" to become a Succeeding-Year Tax Credit.

Generally, there are two mundane scenarios that determine who makes the election: the future tax liability is i) known, or ii) unknown.

A known future liability typically occurs when an IRS audit goes back several years. E.g., IRS audits a return from 3 years ago that results in an overpayment. But there remains an outstanding (known) tax liability from 1, and/or 2 years ago. In that case, just like anyone who is owed money, IRS "elects" to have the 3-years-ago overpayment (that's in hand) apply to the known succeeding-year(s) tax liability. The taxpayer cannot demand a refund instead because as §6402(b) states, IRS has as much right to make an irrevocable credit election as the taxpayer.

An unknown future liability typically occurs when a taxpayer elects to have an overpayment apply to the next year's estimated taxes (usually by writing the Credit Election amount on Form 1040). Since the next year's return is usually not due at the time of filing the current-year return, the tax liability is unknown.

The "unknown" scenario is what happened here.

On Hadsell's 2016 tax return, he elected to have his $9,547 overpayment apply to his 2017 estimated tax payment.

IRS also sent tax due notices due to errors IRS committed in processing Hadsell's 2017 and 2018 returns. Hadsell paid those amounts on condition that if IRS accepted payment (which it did), and it erred (which it did), the payment would not be refunded. Instead, it would be applied as an estimated succeeding-tax-year payment (viz., a credit election was made).

Hadsell's 5/26/20 Complaint, ¶12, pp. 15-17, detailed for 2016-2018 tax years, each tax return filed, tax liabilities, tax payments, and credit elections. IRS' 5/18/21 Answer, ¶12 (answer to Complaint ¶12), p. 2, admitted, "Admits that the acts [Hadsell] lists related to his filing of income tax returns and related documents are accurate." Thus, tax liabilities, taxes paid, and credit elections made are undisputed.

b. When a Credit Election Becomes a Tax Payment by Operation of Law

Section 6513(b)(2) states:

> Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

Therefore, when a credit election converts an overpayment into an estimated tax payment for a succeeding year, it becomes an actual tax payment on the date of the succeeding year's tax return filing date.

c. A Credit Election Is Irrevocable

As *Martin Marietta Corp. v. U. S.* (Ct. Cl. 1978) 572 F.2d 839, 842 provides, a Credit Election is irrevocable and binding on both the taxpayer and IRS, "If a taxpayer... elects

to credit an overpayment to its succeeding taxable year's estimated tax liability, that election is irrevocable and binding upon both the taxpayer and the Internal Revenue Service."

Additionally, §6513(d) also prohibits any credit or refund of a Credit Election:

> If any overpayment of income tax is... claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year... and no claim for credit or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises.

i. Credit Elections Provide Miniscule Taxpayer Benefits

Credit Elections provide taxpayers with the sole benefit of not having to make an estimated tax payment once a refund is received.

ii. Credit Elections Provide Massive Government Benefits

The benefits to the government from Credit Elections are at least threefold, and they are massive:

A) Use of Billions of Dollars Interest-Free

No interest is earned on Credit Election funds, 26 C.F.R. §301.6402-3(a)(5). Statistics are not readily available as to how many taxpayers elected to have an overpayment converted to Succeeding-Year Tax Credits. However, if only 1% of the $641.7 billion in refunds for tax year 2022 (IRS, 2022 IRS DATA BOOK, TABLE 8) equaled taxpayer Credit

Election funds, then billions of dollars are provided, interest free, for the government's use—a boon to the government.

B) Penalties, Lates Fees, Interest Paid to Government

If a taxpayer's return is later amended/adjusted to determine an additional tax liability, even though available tax payments were literally in the government's coffers, because the funds are irrevocably dedicated solely to the taxpayer's succeeding year tax, the additional tax liability results in not only additional tax payments (fair enough), but harshly, the taxpayer must pay any penalties, late fees, and ***interest earned*** for the time between when the tax was due and unpaid, and when the tax deficit payment is made, *Avon Products, Inc. v. United States* (2d Cir. 1978) 588 F.2d 342, 345. Since tax amendments/adjustments are generally years later than when payment was due, this represents years of interest earned for the government—a gift to the government.

C) Credit Election Funds Retained by IRS in Bankruptcy Cases

A prepayment is an asset, not a liability. Thus, the prepaid estimated taxes asset would be turned over to the debtor's estate for distribution to creditors. However, because of the irrevocability of Credit Election funds, even though the government is *not even a creditor*, the courts have ruled (e.g., *In re Block*, 141 B.R. 609) that IRS can keep ***all*** the ***Credit Election funds***—a windfall to government.

d. Priority of Credit Election vs. Child-Support Refund Offset When Reducing an Overpayment

Section 6402(c) provides, "This subsection [regarding child-support Refund Offsets] shall be applied to an overpayment

prior to its being credited to a person's future liability for an internal revenue tax."

Clearly, ***when there is an overpayment available***, a child-support Refund Offset reduces the available overpayment prior to a credit election establishing a succeeding-year-tax payment.

2. IRS' VIOLATIONS OF LAW REGARDING CREDIT ELECTIONS

a. There Is No Overpayment Left to Apply a Refund Offset Against

The issue for Question Presented 2 is that ***there is no available overpayment*** to apply a child-support Refund Offset against. That fact results from the following undisputed sequence of events:

- Hadsell filed his 2016 tax return on 4/17/17 and elected to have his 2016 $9,547 overpayment credited against his 2017 estimated tax payments.
- Hadsell filed his 2017 tax return on 4/16/18, relying upon his 2016 Credit Election funds of $9,547.
- The filing deadline for his 2017 tax return was 4/17/18.
    - Therefore, by operation of law (§6513(b)(2)), his 2016 credit-election-estimated-tax payment ***became*** an actual tax payment against his 2017 tax liability on 4/17/18.
- Therefore, as of 4/17/18, Hadsell's 2016 Overpayment was reduced to $0!

- On 5/18/18[12], with no legal authority, IRS "recharacterized" Hadsell's 2017 ***actual*** tax payment of $9,547 into a 2016 Overpayment of $7,152.52.

- On 5/18/18, a child-support Refund Offset of $7,152.52 was applied to the "recharacterized" 2016 Overpayment of $7,152.52 reducing the recharacterized Overpayment to $0.

- On 7/19/18 (61 days after IRS' 5/18/18 "recharacterization" of Hadsell's 2017 tax payment) IRS got around to mailing a notice to Hadsell that IRS' "recharacterization" resulted in a 2017 $7,519.41 tax deficit—including a $230.79 penalty for failure to pay proper estimated taxes, $106.48 in failure-to-pay penalty, and $83.14 in interest charges.

The U.S. Const. amend. V provides:

> No person shall... be deprived of... property, without due process of law; nor shall private property be taken for public use, without just compensation.

Because Hadsell's cash was taken without notice, nor an opportunity to be heard by an impartial decisionmaker (*Goldberg v. Kelly* (1970) 397 U.S. 254), his procedural due process rights provided by the U.S. Const. amend. V were violated. These are important issues, but would result in only remand so that procedural due process can be afforded.

More importantly (because it would result in reversal), is that because Hadsell's private property was taken into the public

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[12] 396 days after Hadsell's Credit Election; 31 days after Hadsell's 2016 Overpayment had been reduced to $0 by operation of law.

treasury for public use, and he was provided no just compensation, his substantive due process rights pursuant to the U.S. Const. amend. V were violated.

3. THE DISTRICT COURT ERRED WHEN IT RULED THAT IT LACKS SUBJECT MATTER JURISDICTION

a. FTCA Elements

F.D.I.C. v. Meyer (1994) 510 U.S. 471, 477 (circled colored numbers and color highlights added) provides six elements of an FTCA claim:

> Section 1346(b) grants the federal district courts jurisdiction over a certain category of claims for which the United States has waived its sovereign immunity and "render[ed]" itself liable. [Citation]. This category includes claims that are:
>
> "① against the United States, ② for money damages, ... ③ for... loss of property... ④ caused by the negligent or wrongful act or omission of any employee of the Government ⑤ while acting within the scope of his office or employment, ⑥ under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."
> 28 U.S.C. § 1346(b).
>
> A claim comes within this jurisdictional grant—and thus is "cognizable" under § 1346(b)—if it is actionable under § 1346(b). And a claim is actionable under § 1346(b) if it alleges the six elements outlined above.

28 U.S.C. §2675(a) provides two additional elements (color highlights added):

> An action shall not be instituted upon a claim against the United States for money damages for... loss of property... ⑦ unless the claimant shall have first presented the claim to the appropriate Federal agency and... ⑧ the failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section.

It is undisputed that all eight elements are met, Dkt 1, 28:1-34:27. Essentially, Hadsell deposited funds with the U.S. for the purpose of paying future tax liabilities. In violation of law, the U.S. failed to use the funds to pay future tax liabilities. Thus, if the U.S. were a person, it would be liable to Hadsell under California law for: conversion/embezzlement, negligence, and/or breach of contract.

Just as importantly, Hadsell's FTCA-Claim was ***not*** alleged upon, nor based upon, ***any*** harm from ***any*** tax assessment or ***any*** tax collection.

Therefore, Magistrate Judge Demarchi did ***not*** hold that the FTCA elements were unmet. Instead, she relied upon 28 U.S.C. §2680 that states:

> The provisions of [FTCA] shall not apply to—
>
> **(c)** Any claim arising in respect of the assessment or collection of any tax...

Notwithstanding no allegations of any incorrect tax assessments or any incorrect tax collection, with all due respect, Magistrate Judge DeMarchi erred in holding

(Pet.App.17a, emphasis added), the "alleged injury ***clearly arises out of*** the operation of the IRS's mechanism for assessing and collecting taxes..."

Notwithstanding that as discussed *supra*, 12 months later Magistrate Judge DeMarch held (Pet.App.51a, emphasis added), "the claim is ***not one that arises*** 'in connection with any collection of Federal tax.'"

In addition to contradicting herself, as discussed *infra*, the 2nd and 10th Circuits hold the contrary position that the Bureau of the Fiscal Treasury's Treasury Offset Program ("**TOP**") has nothing to do with the assessment or collection of taxes because such activities occur only after assessment and collection are completed; therefore, those courts do ***not*** create a lack of subject matter jurisdiction ("**SMJ**"), *Nelson v. Regan* (2d Cir. 1984) 731 F.2d 105, 109, *Rucker v. Secretary of Treasury* (10th Cir. 1984) 751 F.2d 351, 355-356.

IX. REASONS FOR GRANTING THE PETITION

A. THERE IS A CIRCUIT SPLIT BETWEEN THE 9TH CIRCUIT AND THE 2ND AND 10TH CIRCUITS REGARDING SUBJECT MATTER JURISDICTION FOR TREASURY OFFSET PROGRAM CASES

Because IRS' collection activities have murky boundaries, the U.S. Code and federal case law are barren on definitions as to what IRS activities constitute collections.

Therefore, guidance is vague on whether TOP[13] is part of IRS' collection activities.

TOP has darkened this Court's doors recently regarding student-loan debt collection (e.g., *Biden v. Nebraska* (2023) 600 U.S. 477 and *Dep't of Educ. v. Brown* (2023) 600 U.S. 551) and Congress has tapped IRS' operations to deepen IRS' engagement with our citizenry by having IRS issue stimulus payments via tax credits.

This case involves TOP regarding the misnomered child-support tax-refund offsets. It is misnomered because the collections primarily result in payments, ***not*** to needy families, but to reimburse the TANF program and the federal treasury. TOP does this by means of illegally collecting billions of dollars from millions of taxpayers—most of whom are the poorest in our country.

Although it is undisputed that IRS' ACS' computers are programmed to make these collections in violation of law, the 9th Circuit provides IRS with immunity pursuant to §6402(g). It accomplishes this by deeming TOP's activities part of IRS' collection activities; therefore, federal courts lack SMJ to hold IRS liable for its violations of law, *Oatman v. Dep't of Treasury-Irs* (9th Cir. 1994) 34 F.3d 787, 788[14].

This case is more egregious in that the District Court held, and the 9th Cir affirmed:

- Not only do they lack SMJ because the "alleged injury ***clearly arises out*** of the operation of the IRS's

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[13] Sometimes referred to as "tax intercept".

[14] However, as *Oatman* provides, the 9th Cir does carve out an innocent spouse exception for a child-support Refund Offset for joint tax returns.

mechanism for assessing and collecting taxes" (Pet.App.17a, emphasis added) and therefore §6402(g) applies; but

- When the alternative FTCA legal theory alleged that TOP's activities are ***not*** collection activities, the courts held, in the same case, that, "the claim is ***not one that arises*** 'in connection with any collection of Federal tax.'", Pet.App.51a, emphasis added. Therefore, because IRS' actions for the claim somehow magically involved "not collections", ***and*** simultaneously, "collections", 28 U.S.C. §2680(c) stripped the courts of SMJ.

In contrast, the 2nd Circuit holds that TOP does not involve IRS collection activities because TOP activities occur after assessment and collections activity are completed. As *Nelson v. Regan* (2d Cir. 1984) 731 F.2d 105, 109 states:

> [T]he intercept program does not involve a claim that a tax has been "erroneously or illegally assessed or collected"... There is no dispute as to the amount of the taxpayers' federal tax liability, nor as to the amount of refund to which they are entitled. As Judge Burns said, "the federal-state intercept program takes effect only after the assessment and collection of federal income taxes...."

The 10th Circuit holds likewise, *Rucker v. Secretary of Treasury* (10th Cir. 1984) 751 F.2d 351, 355-356:

> [T]he policies prohibiting judicial intervention in tax collection and assessment are not applicable to challenges to the intercept program. The intercept program operates only after tax assessment and collection... Judicial review at this point will not

> interfere with or thwart the government's ability to collect taxes or its need for steady and predictable tax revenues. [Citations.]"

A genuine conflict arises when courts have decided the same legal issue in opposite ways based on different holdings in cases with very similar facts. That is the case here.

The courts of appeals will not resolve the disagreement on their own—to the contrary, they expressly disagree with each other.

One of the primary purposes of certiorari jurisdiction is to create uniformity of decisions on tax law matters that must be enforced nationwide, *Knight v. Comm'r* (2008) 552 U.S. 181, 187.

B. THE ISSUES ARE IMPORTANT AND RECURRING

Over the last 5 years, IRS', self-described, "automaton" ACS has run mindlessly amok—illegally collecting about $1 ***b***illion annually from about 1.25 million taxpayers.

In the process, it is undisputed that IRS is violating taxpayers' substantive due process 5th Amend. rights against illegal takings of private property for public use and failing to provide just compensation.

However, despite all the ***federal*** legal requirements IRS must comply with discussed *supra*, IRS' position is that ***all*** due process requirements are provided for by the "certifying" States.

As the 5th Circuit reported, *Romero v. United States* (5th Cir. 1986) 784 F.2d 1322, 1324):

> [IRS] concedes that Romero's interest in his tax refund may not be taken without due process of law, but argues that all due process obligations rest with the "certifying" state (in the instant case, California). Thus, the IRS asserts that, while Romero may well be entitled to due process, [IRS] is not responsible for providing such process.

Fortunately, when IRS moved for dismissal because California had not been enjoined, the 5th Circuit held, id., 1325:

> [I]n "equity and good conscience," as defined by Rule 19(b), Romero should be allowed to proceed with his claim against [IRS]...

Fed. Rules Civ. Proc., rule 19(b) is far too slender a reed to ensure massive violations of taxpayers' 5th Amend. rights are prevented. Especially taxpayers who can't fight back because they are among our nations' poorest citizens, or won't fight back because the cost of fighting over $1,800 will be a Pyrrhic victory because the legal costs alone will be multiples larger than the possible recovery.

These issues involve important constitutional issues. They are large scale—annually involving ***b***illions of dollars, and over a million taxpayers. They are ongoing, and show no signs of abatement in the foreseeable future.

X. CONCLUSION

This case is certworthy because it involves a circuit split that only this Court can resolve.

The case involves important constitutional issues, and requires federal statutory interpretation of tax law that must be uniform because it is applied nationwide.

The issues involved are large scale—involving billions of dollars and millions of taxpayers.

The issues are ongoing and recurring. Yet the facts are undisputed. Indeed, the most concerning facts are published by IRS itself, and put on the record in prior cases.

The problems are only worsening as Congress relies more upon IRS to be a primary liaison between the citizenry and the federal government. The time to act is pressing.

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

Christopher Hadsell, Petitioner

February 11, 2024

Appendix A

District Court: Order Granting in Part and Denying in Part Defendant's Motion to Dismiss Complaint (2/3/21)

Case 5:20-cv-03512-VKD Document 22 Filed 02/03/21 Page 1 of 12

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CHRISTOPHER HADSELL, Plaintiff

v.

UNITED STATES OF AMERICA, the Department of Treasury by its agency, the Internal Revenue Service, Defendant.

Case No. 20-cv-03512-VKD

Order Granting in Part and Denying in Part Defendant's Motion to Dismiss Complaint

Re: Dkt. No. 13

Pro se[1] plaintiff Christopher Hadsell filed this action against the United States, asserting claims under 26 U.S.C. § 7433

and the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-80. In essence, Mr. Hadsell contends that he made valid credit elections to have overpayments of taxes applied to the following year's tax liability, but the Internal Revenue Service ("IRS") improperly treated his credit elections as refunds subject to offset. The United States now moves to dismiss, arguing that the Court does not have subject matter jurisdiction over Mr. Hadsell's claims. Upon consideration of the moving and responding papers, as well as the arguments presented at the motion hearing, the Court grants the motion in part and denies it in part.[2]

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[1] Mr. Hadsell advises that he passed the California bar exam but is not yet a member of the California bar or of the bar of this Court. Dkt. No. 8 at ECF 7.

[2] All parties have expressly consented that all proceedings in this matter may be heard and finally adjudicated by a magistrate judge. 28 U.S.C. § 636(c); Fed. R. Civ. P. 73; Dkt. Nos. 5, 15.

I. BACKGROUND

According to the complaint, Mr. Hadsell timely filed an income tax return for the tax year 2016 and reported an overpayment of $9,547, as to which he made a credit election and directed the IRS to apply it to his tax liability for the 2017 tax year. *See* Dkt. No. 1 at 15, 19.[3] The complaint further alleges that it was not until July 9, 2018 that the IRS

notified him that it was refunding his overpayment for the year 2016, rather than applying it to his 2017 tax liabilities. *Id.* at 22, 40. Mr. Hadsell says that this notice came well over a year after he filed his 2016 tax return and months after he says his $9,547 credit election should have been deemed paid against his 2017 tax liabilities. *Id.* at 15.

Further, the complaint indicates that by the time the IRS notified Mr. Hadsell that it was refunding, and not crediting, his $9,547 overpayment, he had already filed his 2017 tax return. *See id.* at 120. In preparing his 2017 tax return, the complaint alleges that Mr. Hadsell included the $9,547 credit against his 2017 tax liabilities. *Id.* at 15. Additionally, Mr. Hadsell says that he uses a tax preparation software program to calculate his taxes and was surprised to find that the program indicated he owed $2,448 under the Patient Protection and Affordable Care Act ("ACA"). *Id.* at 23. Although he believed no such tax was owed for the year 2017, Mr. Hadsell claims that he nonetheless erred on the side of caution in favor of overpaying, rather than underpaying, his taxes and therefore paid the $2,448 healthcare tax. *Id.* Even so, Mr. Hadsell says that he subsequently received a July 16, 2018 notice from the IRS advising that he owed $2,448 in healthcare tax for that same year. *Id.* at 23, 47. The complaint further alleges that on August 6, 2018, Mr. Hadsell responded to the IRS by disputing that he owed $2,448; but, to stop further collection efforts, Mr. Hadsell enclosed his payment of the $2,448, with a request that the IRS correct the issue and apply the enclosed payment toward his tax liabilities for the year 2018. *Id.* at 23, 51-52. Records appended to the complaint indicate that the IRS subsequently determined that Mr. Hadsell had overpaid $2,448, but diverted a portion of that sum to "an amount owed for 2017" and refunded the remainder to Mr. Hadsell. *Id.* at 24, 95, 97.

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[3] All pin citations to documents filed in this docket are to the ECF page number that appears in the header of the cited document.

Mr. Hadsell contends that any deficiencies in his 2017 and 2018 tax returns are solely the result of the IRS's failure to honor his 2016 credit election and his August 6, 2018 letter conditioning his $2,448 healthcare tax payment on application of that sum to his 2018 tax liabilities. *Id.* at 24. The complaint asserts a claim under 26 U.S.C. § 7433, which provides for civil damages for certain unauthorized tax collection actions, as well as a claim for violation of the FTCA. Mr. Hadsell seeks $13,253.13 in damages,[4] plus interest, fees and costs.

The United States moves to dismiss the complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction. It contends that the IRS properly exercised its authority to apply any overpayments to Mr. Hadsell's other outstanding debts and that this Court has no jurisdiction to review those decisions. Additionally, the United States argues that the FTCA expressly exempts Mr. Hadsell's claim and that he failed, in any event, to administratively exhaust his claim. For the reasons discussed below, the Court denies the motion with respect to Mr. Hadsell's § 7433 claim without prejudice, but grants the motion to dismiss Mr. Hadsell's FTCA claim.

II. LEGAL STANDARD

"Federal courts are courts of limited jurisdiction" and "possess only that power authorized by Constitution and statute[.]" *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "It is well settled that the United States is a sovereign, and, as such, is immune from suit unless it has expressly waived such immunity and consented to be sued." *Dunn & Black, P.S. v. United States*, 492 F.3d 1084, 1087-88 (9th Cir. 2007). "A waiver of sovereign immunity 'cannot be implied but must be unequivocally expressed.'" *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (quoting *United States v. King*, 395 U.S. 1, 4 (1969)); *see also Dunn & Black, P.S.*, 492 F.3d at 1088 (same). Where the United States has not consented to suit, the action must be dismissed because such consent is necessary for jurisdiction. *Dunn & Black, P.S.*, 492 F.3d at

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[1] The United States contends that Mr. Hadsell does not contest the application of a portion of his 2016 tax year overpayment to his shared responsibility owed under the ACA, inasmuch as that sum does not appear to be included in his claimed damages. Dkt. No. 33 at 2 n.1. Mr. Hadsell states that the present motion to dismiss was the first time he was made aware of any such assessment. Dkt. No. 17 at 5-6, 7 n.13. In any event, he notes that his complaint encompasses the entire $9,547 overpayment arising in 2016 and which he says should have been applied to his 2017 tax liabilities.

1088. "To confer subject matter jurisdiction in an action against a sovereign, in addition to a waiver of sovereign immunity, there must be statutory authority vesting a district court with subject matter jurisdiction." *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1016 (9th Cir. 2007).

A Rule 12(b)(1) motion to dismiss challenges a federal court's jurisdiction over the subject matter of a plaintiff's complaint. A jurisdictional challenge under Rule 12(b)(1) may be made either on the face of the pleadings (a "facial attack") or by presenting extrinsic evidence (a "factual attack"). *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). "In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

In the present matter, although the United States relies on declarations and other evidence outside the pleadings, it does not seriously challenge Mr. Hadsell's factual allegations, albeit the United States maintains that those allegations are insufficient, on their face, to invoke jurisdiction. *See* Dkt. No. 13 at 5. Accordingly, the Court construes the United States's motion as a facial attack on jurisdiction.[5] As such, the record is limited to the complaint and appended exhibits, as well as materials that may be judicially noticed.[6] *See Hyatt v. Yee*, 871 F.3d 1067, 1071 n.15 (9th Cir. 2017). Additionally, the Court must accept well-pled allegations of the FAC as true, draw all reasonable inferences in Mr. Hadsell's favor, and determine whether they are sufficient to invoke jurisdiction. *See id.* As the party asserting federal subject matter jurisdiction, Mr. Hadsell bears the burden of establishing its existence. *Kokkonen*, 511 U.S. at 377.

[5] As discussed at the motion hearing, the United States concedes certain deficiencies in the evidence submitted in support of its motion and agrees that the Court properly may resolve the present motion based solely on Mr. Hadsell's complaint and the exhibits appended to his pleading. The Court has not considered the evidence submitted by the United States and deems moot Mr. Hadsell's objections to that evidence.

[6] Neither side has submitted matters for judicial notice.

III. DISCUSSION

A. 26 U.S.C. § 7433

Mr. Hadsell's first claim for relief is brought pursuant to 26 U.S.C. § 7433, which provides for a civil action for damages "[i]f, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of [the Internal Revenue Code ("Code")], or any regulation promulgated under [the Code]." 26 U.S.C. § 7433(a). Additionally, 28 U.S.C. § 1346 provides that "district courts shall have original jurisdiction" over civil actions "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." 28 U.S.C. § 1346(a)(1). As discussed above, Mr. Hadsell claims that the IRS improperly failed to honor his 2016 credit election and his August 6, 2018 letter conditioning his $2,448 healthcare tax payment on application of that sum to his 2018 tax liabilities.

The United States contends that insofar as Mr. Hadsell challenges the IRS's decision to offset portions of his tax overpayments to other outstanding debts, this Court's jurisdiction to review such decisions is foreclosed by 26 U.S.C. § 6402. Section 6402 provides that in the case of any tax overpayment, the IRS "within the applicable period of limitations may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall," subject to certain offsets, "refund any balance to such person." 26 U.S.C. § 6402(a); 26 C.F.R. §§ 301.6402- 1. "That is, the IRS 'shall' refund any overpayment not otherwise credited, but the IRS 'may credit' an overpayment to another liability." *Weber v. Comm'r of Internal Revenue*, 138 T.C. 348, 356 (T.C. 2012). Additionally, the IRS may "prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the [IRS] to be an overpayment of the income tax for a preceding taxable year." 26 U.S.C. § 6402(b). A taxpayer who reports an overpayment of tax on his return may request that the sum be refunded or, alternatively, may make a credit election to have the overpayment applied to his

estimated income tax for the following tax year. 26 U.S.C. § 6402; 26 C.F.R. § 301.6402-2, 3(a)(5). If the taxpayer elects to have all or part of the overpayment applied to his estimated tax for the following year, "such indication shall constitute an election to so apply such overpayment, and no interest shall be allowed on such portion of the overpayment credited and such amount shall be applied as a payment on account of the estimated income tax for such year or the installments thereof." 26 C.F.R. § 301.6402-3(a)(5).

As noted, the IRS's authority to credit or refund any overpayments of tax are subject to offset for certain types of tax and non-tax obligations. Relevant to the discussion here, the United States points out that records appended to the complaint indicate that in May 2018 at least a portion of Mr. Hadsell's overpayment for the 2016 tax year, i.e., $7,152.52, was sent to the Department of Child Support Services in Martinez, California to pay past-due child support obligations, and that a similar transfer was made in April 2019 with respect to his 2017 tax return, resulting in an offset of $73.86. *See* Dkt. No. 1 at 37-38, 139. The United States argues that such offsets are required by § 6402(c)[7] and that pursuant to § 6402(g) "[n]o court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review" such reductions to a taxpayer's overpayment.[8]

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[7] Section 6402(c) provides:

> **(c) Offset of past-due support against overpayments.**—The amount of any overpayment to be refunded to the person making the overpayment shall be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of such Act. The Secretary shall remit the amount by which the overpayment is so reduced to the State collecting such support and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State. The Secretary shall apply a reduction under this subsection first to an amount certified by the State as past due support under section 464 of the Social Security Act before any other reductions allowed by law. This subsection shall be applied to an overpayment prior to its being credited to a person's future liability for an internal revenue tax.

[8] The United States also suggests that other offsets may have been made pursuant to § 6402(d) for the collection of debts owed to federal agencies. Dkt. No. 13 at 2, 6. However, it was unable to confirm whether any such offsets were made because at the time the present motion was briefed, counsel at the Department of Justice had not received the complete file concerning this matter.

As a general matter, the Court agrees that § 6402(g), on its face, precludes this Court's jurisdiction to review offsets made pursuant to the statute, including for past-due child support payments under § 6402(c). Additionally, the United States argues, persuasively, that insofar as child support payments are non-tax debts, they do not give rise to a claim under § 7433 for damages "in connection with any collection of Federal tax[.]" *See Ivy v. Comm'r of the Internal Revenue Serv.*, 197 F. Supp. 3d 139, 142 (D.D.C. 2016), *aff'd* 877 F.3d 1048 (D.C. Cir. 2017) (stating that "§ 7433 pertains to tax collection, and there is no allegation in the complaint that the IRS was collecting unpaid taxes from the plaintiff" when it made an offset for outstanding student loan debt). To the extent Mr. Hadsell might dispute the offsets for past-due child support, the statute further indicates that his remedy is to raise a challenge with the relevant agency, not the IRS. *See* 26 U.S.C. § 6402(g) ("This subsection does not preclude any legal, equitable, or administrative action against the Federal agency or State to which the amount of such reduction was paid or any such action against the Commissioner of Social Security which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act."); *Ivy*, 197 F. Supp. 3d at 143 (stating that for offsets made to pay outstanding student loan debts, the "plaintiff's remedy was to challenge the Department of Education's action, not that of the IRS.").

This does not, however, fully resolve the present motion because the United States's arguments concerning non-tax debts do not address the alleged erroneous assessment of the healthcare tax. Moreover, Mr. Hadsell contends that general principles concerning the § 6402 statutory framework and its implementing regulations are beside the point. He does not dispute that the IRS has the discretion to accept a taxpayer's credit election and is not obliged to do so. Nor does he appear to dispute that § 6402 authorizes the IRS to divert some or all of a tax overpayment to offset certain taxpayer obligations.

Rather, the gravamen of his claim appears to be based on timing—namely, that he filed his 2017 tax return in anticipation that his 2016 overpayment would be credited against his 2017 tax liabilities, and the IRS's apparent decision to

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The Court therefore does not address whether any of the offset(s) at issue were made pursuant to § 6402(d).

apply his 2016 overpayment to other obligations came too late, particularly with respect to any offsets of his overpayment for the year 2016 that apparently were not made until May 2018. Here, Mr. Hadsell's 2016 credit election appears to be the primary focus, inasmuch as he seems to contend that the IRS's deficiency notices are erroneous because they stem from its failure to properly honor the 2016 credit election, compounded by the later error in the assessment of the healthcare tax. Mr. Hadsell claims that, to his knowledge, the IRS accepted his credit election and having done so, it was obliged to apply his overpayments to the following year's tax liabilities as he directed. *See generally Martin Marietta Corp. v. United States*, 572 F.2d 839, 842 (Fed. Cl. 1978) ("If a taxpayer, such as plaintiff, elects to credit an overpayment to its succeeding taxable year's estimated tax liability, that election is irrevocable and binding upon both the taxpayer and the Internal Revenue Service.").

On this point, the Court finds the parties' briefing and argument insufficient to permit a proper assessment of the jurisdictional issues raised by the United States's motion. Neither side has pointed to any authority regarding the circumstances under which, as Mr. Hadsell contends, the IRS may be deemed to have irrevocably accepted a credit election, or explained how such acceptance might impact this Court's jurisdiction over Mr. Hadsell's § 7433 claim. Mr. Hadsell cites some authority suggesting that, absent any notices to the contrary, there may have been point(s) in time when he reasonably may have relied on the assumption that the IRS accepted his 2016 credit election. Here, Mr. Hadsell claims that he did not receive any interest payments on his 2016 overpayment that he says he might otherwise have expected under 26 U.S.C. § 6611 if the IRS were not going to credit his overpayment to the next year's tax liabilities. Additionally, 26 U.S.C. § 6513 indicates that Mr. Hadsell's 2016 credit election was deemed transferred to his 2017 tax account in April 2018, i.e., before Mr. Hadsell says he received any notice from the IRS that those sums had not actually been applied to his 2017 tax liability. *See* 26 U.S.C. § 6513(b)(2), (d). For its part, the United States conceded at oral argument that it is aware of no additional guidance on this issue, apart from what is cited in its motion papers. But *Ivy* (cited above), which is the United States's sole cited authority on this issue, is not particularly helpful as it does not concern a credit election.

The lack of helpful authority regarding the timing issue Mr. Hadsell raises is particularly concerning, as neither party addresses language in § 6402(a) and 26 C.F.R. § 301.6402-3(a)(6) stating that the IRS may credit overpayments to other obligations "within the applicable period of limitations." And in at least one decision examining § 6402 and related regulations with respect to a taxpayer's credit election, the Tax Court has stated that "[26 C.F.R.] section 301.6402-3(a)(6) makes it clear that the taxpayer's election to apply an overpayment to the succeeding year is *not* binding on the IRS[.]" *Weber*, 138 T.C. at 357 (emphasis added). "Thus, a taxpayer may request a credit elect overpayment, but the IRS has discretion whether to allow it or instead to credit the overpayment to another liability owed by the taxpayer or to refund it." *Id.* In *Weber*, the taxpayer complained that the IRS erred by failing to apply against his 2008 income tax liability his claimed credit election from 2007 (which in turn derived from a claimed credit election he made in 2006), or alternatively to credit to his 2008 liability an alleged overpayment of certain trust fund taxes. The Tax Court concluded that the IRS did not err in applying the taxpayer's credit election to an outstanding penalty, rather than to the following year's tax liabilities as he requested. *Id.* at 361-62. However, in *Weber*, the tax penalty in question was assessed before the taxpayer filed his 2006 tax return, and the IRS advised the taxpayer that his 2006 overpayment had been applied to that penalty well before he filed his 2007 tax return. *See id.* at 350-51. In the present matter, Mr. Hadsell seems to claim that the IRS did not advise him that his 2016 overpayment would be applied to other obligations until after he filed his 2017 tax return.

The parties have not adequately addressed how § 6402 and its implementing regulations apply to the particular circumstances alleged in the complaint. Moreover, as noted above, the present motion was briefed without the benefit of the complete IRS record concerning this matter. Accordingly,

the Court defers further consideration of its jurisdiction over Mr. Hadsell's § 7433 claim and denies the United States's motion without prejudice to renew the motion upon a more fully developed record.

B. FTCA

The FTCA waives sovereign immunity for certain damages claims arising from "the negligent or wrongful act or omission" of any federal employee "while acting within the scope of

his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1). However, that waiver of sovereign immunity is subject to exceptions set out in 28 U.S.C. § 2680. The United States argues that Mr. Hadsell's claim falls within two such exceptions—one under § 2680(c), which exempts "[a]ny claim arising in respect of the assessment or collection of any tax," and the other under § 2680(h), which exempts "[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights[.]" Additionally, the United States contends that Mr. Hadsell did not administratively exhaust any claims, which is a jurisdictional requirement under the FTCA. *See* 28 U.S.C. §

2675(a); *Brady v. United States*, 211 F.3d 499, 502 (9th Cir. 2000).

Turning first to the FTCA's exemption under § 2680(h), Mr. Hadsell's FTCA claim is based on negligence, conversion and breach of contract under California law. Dkt. No. 1 at 29-34. The United States's arguments concerning this exemption are cursory and do not clearly explain how such claims fall within the categories of exempted claims listed in § 2680(h). Accordingly, the Court finds that § 2680(h) does not apply.

More persuasive is the United States's argument that Mr. Hadsell's claim falls under § 2680(c), which as noted, exempts "[a]ny claim arising in respect of the assessment or collection of any tax[.]" Mr. Hadsell contends that his claim does not fall within this provision because he seeks funds that do not involve the assessment or collection of any taxes. Dkt. No. 17 at 12. This assertion appears to contradict allegations that for purposes of his § 7433 claim, this matter indeed involves the collection of taxes. *See* Dkt. No. 1 at 18. Nevertheless, the Court focuses here on Mr. Hadsell's argument that while this action "involves the use of the assessment-and-collectionof- taxes machinery," his FTCA claim concerns the IRS's alleged use of that machinery to violate the law, i.e., by "taking funds that ***must remain within*** that process, ***out*** of that process to violate the law." Dkt. No. 17 at 12.

While § 2680(c) is not limitless and "does not confer absolute immunity on the IRS," the provision nonetheless has been "'broadly construed'... to encompass actions taken during the

scope of the IRS's tax assessment and collection efforts." *Snyder & Assocs. Acquisitions LLC v. United States*, 859 F.3d 1152, 1155, 1157 (9th Cir. 2017). For example, the Ninth Circuit has held that "2680(c) barred not just claims based on literal collection activity, but also a taxpayer's claim that IRS agents wrongfully told his creditors of his purported tax liability during an audit of his business." *Id.* at 1157 (citing *Morris v. United States*, 521 F.2d 872, 874-75 (9th Cir. 1975)). Even assuming such discussions were "beyond the normal scope of authority and amounted to tortious conduct," the Ninth Circuit found that the discussions were sufficiently related to tax collection efforts such that the plaintiff's claim fell within the scope of § 2680(c). *Morris*, 521 F.2d at 874. In *Snyder*, however, the Ninth Circuit concluded that the IRS was not immune from suit related to an IRS "criminal sting operation" aimed at snaring fraudsters who filed fake tax returns "to claim 'refunds' wholly unconnected to payment of taxes." *Snyder*, 859 F.3d at 1158- 59. Such activity was deemed distinct from tax assessment and collection efforts such that § 2680(c) did not apply. *Id.*

Here, the Court concludes that § 2680(c) applies. Mr. Hadsell essentially contends that the funds in question should have been used to pay his future tax liabilities, but were improperly diverted to pay other obligations. Nevertheless, his alleged injury clearly arises out of the operation of the IRS's mechanism for assessing and collecting taxes, i.e., the filing of tax returns and the IRS's treatment of his credit elections. Accordingly, the Court concludes that the United States is immune under § 2680(c) from Mr. Hadsell's FTCA claim and that the claim must be dismissed for lack of subject matter jurisdiction.[9]

IV. CONCLUSION

Based on the foregoing, the United States's Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction is granted in part and denied in part as follows: The motion is denied without prejudice with respect to Mr. Hadsell's claim under 26 U.S.C. § 7433. The motion is

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[9] The Court does not reach the United States's argument that the FTCA claim is also barred for failure to administratively exhaust his claim.

granted with respect to Mr. Hadsell's FTCA claim, and that claim is dismissed without leave to amend.

IT IS SO ORDERED.

Dated: February 3, 2021

/s/ Virginia K. DeMarchi

VIRGINIA K. DEMARCHI

United States Magistrate Judge

Appendix B

District Court: Order Denying Plaintiff's Motion for Summary Judgment (11/19/21)

Case 5:20-cv-03512-VKD Document 56 Filed 11/19/21 Page 1 of 12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHRISTOPHER HADSELL, Plaintiff

v.

UNITED STATES OF AMERICA, the Department of Treasury by its agency, the Internal Revenue Service, Defendant.

Case No. 20-cv-03512-VKD

Order Denying Plaintiff's Motion for Summary Judgment

Re: Dkt. No. 41

Plaintiff Christopher Hadsell claims that he made valid credit elections to have overpayments of his personal income

taxes applied to the following year's tax liability, but the Internal Revenue Service ("IRS") improperly treated his credit elections as refunds subject to offset. He now moves for summary judgment on his sole remaining claim for violation of 26 U.S.C. § 7433.[1] The United States opposes the motion. With leave of court, the United States submitted a supplemental brief on legal issues bearing on the present motion,[2] and Mr. Hadsell filed a response. Dkt. Nos. 53, 54. Upon consideration of the moving and responding papers, as well as the oral arguments presented, the Court denies Mr. Hadsell's motion for summary

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[1] The Court granted the United States's prior motion to dismiss Mr. Hadsell's claim under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-80, for lack of subject matter jurisdiction. Dkt. Nos. 22, 35.

[2] Although the United States's supplemental brief was filed by a different attorney at the Department of Justice, the brief was filed with the Court's authorization. Dkt. No. 50. The filing attorney should have submitted a notice of appearance pursuant to Civil L.R. 5-1(c), but the failure to do so does not in any way implicate the Court's subject matter jurisdiction over this matter or its personal jurisdiction over the defendant.

judgment.[3]

I. BACKGROUND

The facts presented on Mr. Hadsell's motion for summary judgment are essentially the same as those presented on the United States's prior motion to dismiss. Except as otherwise noted, those facts are largely undisputed and are recited below:

According to the complaint, Mr. Hadsell timely filed an income tax return for the tax year 2016 and reported an overpayment of $9,547, as to which he made a credit election and directed the IRS to apply it to his tax liability for the 2017 tax year. *See* Dkt. No. 1 at 15, 19;[4] Dkt. No. 41 at 9, 59.[5] According to Mr. Hadsell's allegations, the IRS did not notify him until July 9, 2018 that it did not apply the credit election made in his 2016 tax return and instead treated his overpayment as a refund subject to offset. Dkt. No. 1 at 22, 40; *see also* Dkt. No. 41 at 22. Mr. Hadsell says that this notice came well over a year after he filed his 2016 tax return and months after he contends that his $9,547 credit election should have been deemed paid against his 2017 tax liabilities. Dkt. No. 1 at 15; Dkt. No. 41 at 22.

Further, Mr. Hadsell alleges that by the time the IRS notified him that it had not applied his $9,547 credit election, he had already filed his 2017 tax return. Dkt. No. 1 at 120; Dkt. No. 41 at 22. In preparing his 2017 tax return, Mr. Hadsell says he included the $9,547 credit against his 2017 tax liabilities. Dkt. No. 1 at 15; Dkt. No. 41 at 44, 48. Additionally, Mr. Hadsell says that he uses a tax preparation software program to calculate his taxes and was surprised to find that the program indicated he owed $2,448 under the Patient Protection and Affordable Care Act ("ACA"). Dkt. No. 1 at 23; Dkt. No. 41 at 51. Although he believed no such tax was owed for the year 2017, Mr. Hadsell claims that he nonetheless erred on the side of caution in favor of overpaying, rather than underpaying, his taxes and therefore paid the $2,448 healthcare tax. Dkt.

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[3] All parties have expressly consented that all proceedings in this matter may be heard and finally adjudicated by a magistrate judge. 28 U.S.C. § 636(c); Fed. R. Civ. P. 73; Dkt. Nos. 5, 15.

[4] Mr. Hadsell previously submitted a declaration with respect to certain matters asserted in his complaint. Dkt. No. 4.

[5] All pin citations refer to the ECF page number that appears in the header of the cited document.

No. 1 at 23; Dkt. No. 44 at 51-52. Even so, Mr. Hadsell says that he subsequently received a July 16, 2018 notice from the IRS advising that he owed $2,448 in healthcare tax for that same year. Dkt. No. 1 at 23, 47; Dkt. No. 41 at 52. Mr. Hadsell further alleges that on August 6, 2018, he responded to the IRS by disputing that he owed $2,448, but to stop further collection efforts, he enclosed his payment of the $2,448, with a request that the IRS correct the issue and apply the enclosed payment toward his tax liabilities for the year 2018. Dkt. No. 1 at 23, 51-52; Dkt. No. 41 at 52. Records appended to the complaint indicate that the IRS subsequently determined that Mr. Hadsell had overpaid $2,448, but diverted a portion of that sum to "an amount owed for 2017" and refunded the remainder to Mr. Hadsell. Dkt. No. 1 at 24, 95, 97.

Mr. Hadsell contends that any deficiencies in his 2017 and 2018 tax returns are the result of the IRS's failure to honor his 2016 credit election and his August 6, 2018 letter conditioning his $2,448 healthcare tax payment on application of that sum to his 2018 tax liabilities. *See* Dkt. No. 1 at 24. Asserting that the IRS's failure to apply his credit elections violates 26 U.S.C. § 7433, Mr. Hadsell seeks $13,253.13 in damages, plus interest, fees and costs. The United States maintains that the subject offsets were mandated by 26 U.S.C. § 6402(c) for past-due child support payments.

Mr. Hadsell now moves for summary judgment, arguing that the United States had no basis under 26 U.S.C. § 6402(c) to offset any of his credit election funds, and that the offsets in question were made too late in any event. For the reasons discussed below, the Court denies Mr. Hadsell's motion for summary judgment.

II. LEGAL STANDARD

A motion for summary judgment should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The moving party bears the initial burden of informing the court of the basis for the motion, and identifying portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits which demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In order to meet its burden, "the moving party must [produce either] evidence negating an essential

element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

If the moving party meets his initial burden, the burden shifts to the non-moving party to produce evidence supporting its claims or defenses. *See Nissan Fire & Marine Ins. Co., Ltd.*, 210 F.3d at 1102. The non-moving party may not rest upon mere allegations or denials of the adverse party's evidence, but instead must produce admissible evidence that shows there is a genuine issue of material fact for trial. *See id.* A genuine issue of fact is one that could reasonably be resolved in favor of either party. A dispute is "material" only if it could affect the outcome of the suit under the governing law. *Anderson*, 477 U.S. at 248-49.

III. DISCUSSION

A taxpayer may bring a civil action to recover damages caused by the IRS's disregard of any provision of Title 26 of the Internal Revenue Code in connection with the collection of federal taxes:

> If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the [IRS] recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as

> provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

26 U.S.C. § 7433(a). Thus, to establish liability under § 7433, a plaintiff must prove (1) the IRS recklessly, intentionally, or negligently disregarded part of Title 26 in connection with the collection of the plaintiff's federal tax liabilities; and (2) the plaintiff's resulting damages. The statute limits damages to the lesser of $1,000,000 for intentional and reckless violations and $100,000 for negligent violations; or the sum of actual, direct economic damages sustained by the plaintiff as a proximate result of the IRS's conduct and the costs of the action. *Id.* § 7433(b). Before bringing any such action, a plaintiff must exhaust his administrative remedies available within the IRS. *Id.* § 7433(d)(1).

In this case, Mr. Hadsell bases his § 7433 claim on alleged negligence by the IRS. *See*

Dkt. No. 41 at 17. He contends that the IRS violated 26 U.S.C. § 6402, which addresses the Secretary of the Treasury's authority to make credits or refunds, subject to offsets for certain kinds of tax and non-tax debts:

> **(a) General rule.**—In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in

> respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), (e), and (f), refund any balance to such person.

26 U.S.C. § 6402(a). At issue are mandatory offsets the United States says it made for past-due child support pursuant to § 6402(c).[6] Mr. Hadsell contends that there was no basis for the United States to make such offsets.

With respect to evidentiary matters, neither side has made a particularly compelling showing. Mr. Hadsell argues that in its answer (Dkt. No. 36), the IRS admits to allegations in paragraph 12 and paragraph 14 of his complaint that the IRS accepted his credit elections and that the alleged wrongful acts were committed by IRS employees, as well allegations concerning his claimed damages. *See* Dkt. No. 1, ¶¶ 12, 14.B.ii; Dkt. No. 41 at 9, 10. However, in the cited portions of its answer, the IRS admitted only that the acts listed in paragraph 12 of the complaint "related to [Mr. Hadsell's] *filing*" of income tax returns and related documents are accurate and

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[6] 26 U.S.C. § 6402(c) provides:

> **(c) Offset of past-due support against overpayments.**—The amount of any overpayment to be refunded to the person making the overpayment shall be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of such Act. The Secretary shall remit the amount by which the overpayment is so reduced to the State collecting such support and notify the person making the overpayment that so much of the overpayment as

was necessary to satisfy his obligation for past-due support has been paid to the State. The Secretary shall apply a reduction under this subsection first to an amount certified by the State as past due support under section 464 of the Social Security Act before any other reductions allowed by law. This subsection shall be applied to an overpayment prior to its being credited to a person's future liability for an internal revenue tax.

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that the complaint "contains allegations against IRS employees." Dkt. No. 36 at 2:15-16, 3:1 (emphasis added). The IRS otherwise denies that it applied the credit elections to Mr. Hadsell's 2017 income tax liabilities and denies that the alleged actions are improper. *Id.* at 2:15-17, 3:1-2. Thus, Mr. Hadsell's contentions regarding the scope and nature of the United States's purported admissions are not accurate.

For its part, the United States relies entirely on documents appended to the previously submitted declaration of IRS attorney Heather Wolfe (Dkt. No. 18-2), and argues that it never accepted Mr. Hadsell's credit elections and instead properly treated the sums as a refund subject to offset. *See* Dkt. No. 43 at 2-3. Mr. Hadsell disputes the dates and sums presented in the United States's opposition. The overarching issue, however, is an evidentiary one. The United States previously relied on the same Wolfe declaration in its prior motion to dismiss the complaint (Dkt. No. 13). In connection with that motion to dismiss, Mr. Hadsell raised several evidentiary objections based on authentication, relevance and hearsay, and renews his arguments concerning the admissibility of the Wolfe declaration and exhibits. Dkt. No.

44 at 2, 5. The United States did not, and still has not, addressed any of those objections.7 Moreover, at most, Ms. Wolfe attests that she printed the appended documents from databases she uses in the course of her work, but does not explain the substance or context of the appended documents. The United States has not provided a sufficient evidentiary basis for the Court to consider Ms. Wolfe's declaration or the appended exhibits on the present motion for summary judgment.

In any event, as noted above the material facts are largely undisputed. Thus, resolution of the present motion depends on whether Mr. Hadsell has met his burden in establishing that he is entitled to judgment as a matter of law. For the reasons discussed below, the Court concludes that he has not met that burden.

Mr. Hadsell's arguments are two-fold. First, he argues that there is no evidence that the United States received proper notice from the State of California certifying any amount of past-due support he reportedly owes, as he says is required by § 6402(c). Dkt. No. 41 at 11-13, 16-17.

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[7] The Court resolved the prior motion to dismiss without consideration of the Wolfe declaration. *See* Dkt. No. 22 at 4.

Indeed, he maintains that even if the IRS were to produce such documentation, any such notice would be invalid as a matter of law, in view of the status and nature of his child custody and support. *Id.* at 11-13. Insofar as Mr. Hadsell's arguments essentially challenge the validity of offsets made under § 6402(c), his remedy is to raise such a challenge with the relevant agency, not the IRS. *See* 26 U.S.C. § 6402(g) ("No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c), (d), (e), or (f)... This subsection does not preclude any legal, equitable, or administrative action against the Federal agency or State to which the amount of such reduction was paid or any such action against the Commissioner of Social Security which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act."); *Ivy v. Comm'r of the Internal Revenue Serv.*, 197 F. Supp. 3d 139, 143 (D.D.C. 2016), *aff'd* 877 F.3d 1048 (D.C. Cir. 2017) (stating that for offsets made to pay outstanding student loan debts, the "plaintiff's remedy was to challenge the Department of Education's action, not that of the IRS."). Any findings regarding the status and nature of his child custody and support are beyond the scope of what this Court is permitted to consider in evaluating his § 7433 claim. Moreover, although Mr. Hadsell contends that it is not his burden to prove a negative, he has not presented evidence showing that the State of California did not send a properly certified notice of overdue child support obligations to the United States; and, at the motion hearing, he acknowledged that he has not conducted discovery on this particular issue. Dkt. No. 48 at 9:2-17.

Mr. Hadsell's second argument is that the offsets at issue are untimely and were made at a time when his credit elections were irrevocable and binding. Dkt. No. 41 at 9-11 20-22. The parties do not dispute that the IRS is free to allow or reject a taxpayer's claim to credit an overpayment against the

following year's tax liabilities. Nor does there appear to be any disagreement that once the IRS allows a credit election, that credit election is binding on both the taxpayer and the IRS. *See Martin Marietta Corp. v. United States*, 572 F.2d 839, 842 (Fed. Cl. 1978) ("If a taxpayer, such as plaintiff, elects to credit an overpayment to its succeeding taxable year's estimated tax liability, that election is irrevocable and binding upon both the taxpayer and the Internal Revenue Service."). Rather, the parties' key dispute is *when* the United States

properly may offset an overpayment against a non-tax debt owed by the taxpayer. Mr. Hadsell contends that with respect to his 2016 credit election, at the very least, any offset should have been made before April 2018 when he filed his 2017 tax return. The United States contends that there is no specific legal limitation on the IRS's ability to effect an offset, but that depending on the circumstances of a particular case, provisions of the Internal Revenue Code and related regulations essentially give the IRS two years from the date of payment of a tax or three years from the date a return is filed in which to decide whether or not to allow a credit election. Dkt. No. 43 at 4; Dkt. No. 53 at 1-3, 4.[8]

As noted above, in the case of any tax overpayment the Secretary (through the Commissioner of the IRS) "*within the applicable period of limitations* may credit the amount of such overpayment, including any interest allowed thereon,

against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall," subject to certain offsets, "refund any balance to such person." 26 U.S.C. § 6402(a) (emphasis added); *see also* 26 C.F.R. § 301.6402-1 (same). "That is, the IRS 'shall' refund any overpayment not otherwise credited, but the IRS 'may credit' an overpayment to another liability." *Weber v. Comm'r of Internal Revenue*, 138 T.C. 348, 356 (T.C. 2012). Additionally, the Secretary has authority to "prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the [IRS] to be an overpayment of the income tax for a preceding taxable year." 26 U.S.C. § 6402(b). A taxpayer who reports an overpayment of tax on his return may request that the sum be refunded or, alternatively, may make a credit election to have the overpayment applied to his estimated income tax for the following tax year. 26 U.S.C. § 6402; 26 C.F.R. § 301.6402-2, 3(a)(5). However, "*[n]otwithstanding*" a taxpayer's credit election under "paragraph (a)(5) of this section, the Internal Revenue Service, *within the applicable period of limitations*, may credit any overpayment of individual... income

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[8] The United States also contends that the subject offsets are made by the Bureau of Fiscal Service, not the IRS, and that this Court therefore does not have jurisdiction over this matter. Dkt. No. 43 at 6. As the United States indicates that such arguments will be presented more fully in its own affirmative motion for summary judgment, the Court does not address those jurisdictional arguments at this time.

tax, including interest thereon, against" tax and non-tax debts and liabilities in the following order: (1) any outstanding tax liability; (2) past-due support assigned to a State; (3) past-due and legally enforceable debts owed to federal agencies; and (4) past-due support not assigned to a State. *Id.* § 301.6402-3(a)(6) (emphasis added). "Only the balance, if any, of the overpayment remaining after credits described in this paragraph (a)(6) shall be treated in the manner so elected." *Id.*

Mr. Hadsell argues that § 6402, when read together with other sections of the Internal Revenue Code—namely, § 6513(b)(2) and § 6513(d)—means that the IRS must either accept or reject a taxpayer's credit election by the time the taxpayer files his return for the succeeding tax year. With respect to prepaid income tax generally, section 6513(b)(2) provides that "[a]ny amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return)." 26 U.S.C. § 6513(b)(2).[9] With respect to an overpayment of income tax credited to estimated taxes, § 6513(d) provides:

> *If any overpayment of income tax is, in accordance with section 6402(b), claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year* (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be

> allowed for the taxable year in which the overpayment arises.

Id. § 6513(d) (emphasis added). Mr. Hadsell argues that by operation of § 6513(d), the overpayment he reported in his 2016 tax return was deemed credited against his 2017 tax liabilities, at the latest, by the April 2018 deadline when his 2017 tax return was filed.[10] Mr. Hadsell further suggests that it was reasonable for him to assume that his credit election had been

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[9] The referenced section 6012 of the Internal Revenue Code identifies persons required to file income tax returns. *See* 26 U.S.C. § 6012.

[10] Mr. Hadsell suggests that the Court already made findings to that effect in its prior order on the United States's motion to dismiss. *See* Dkt. No. 41 at 10; Dkt. No. 22 at 8:21-25. He is incorrect. In context, the cited portion of the Court's order addressed what the Court found to be insufficient briefing and argument by the parties, including on issues "regarding the circumstances under which, as Mr. Hadsell contends, the IRS may be deemed to have irrevocably accepted a credit election[.]" Dkt. No. 22 at 8:14-15.

allowed, citing § 6611(e)(1), which essentially provides that if any overpayment of taxes is refunded within 45 days after the return is filed, then no interest is allowed. *See* 26 U.S.C. § 6611(e)(1). Mr. Hadsell claims that after he filed his 2016 tax

return, he received neither a refund within 45 days (without interest) nor a refund after 45 days (with interest), and therefore the IRS must have accepted his 2016 credit election.

The United States contends that § 6513(d) does not itself impose any time limits for the IRS to decide whether or not to accept a taxpayer's credit election. Dkt. No. 53 at 6. But, even assuming that the statute were construed to automatically deem a credit election paid against the succeeding year's taxes, the United States correctly notes that § 6513(d) states that a credit election "shall be considered as a payment of the income tax for the succeeding taxable year" where an "*overpayment* of income tax is, *in accordance with section 6402(b)*, claimed as a credit against estimated tax for the succeeding taxable year." 26 U.S.C. § 6513(d) (emphasis added). Section 6402(b), as discussed above, is the provision authorizing the Secretary to "prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the [IRS] to be an overpayment of the income tax for a preceding taxable year." 26 U.S.C. § 6402(b). Thus, the United States contends that, at the very least, a valid credit election contemplated by § 6513(d) requires (1) an assessment to determine whether a taxpayer has, in fact, made an overpayment of taxes for the year in question; and (2) adherence to the Secretary's regulations for crediting overpayments to future estimated taxes.

No one disputes that a taxpayer's reported overpayment is subject to an assessment, or that when a taxpayer files a return, the IRS has three years from the filing of the return to make an assessment. 26 U.S.C. § 6501(a). This is consistent with the United States's contention that language in § 6402(a) providing that "the Secretary, *within the applicable period of limitations*, may credit the amount of such overpayment," is commensurate with the three-year assessment period. *See*

Dkt. No. 53 at 3, 4; *see also* Dkt. No. 54 at 6 ("As provided by Hadsell, the 'applicable period of limitations' refers solely to prohibit IRS from assessing a tax liability beyond the three-year statute of limitations period when IRS can assess a tax liability[.]"). Additionally, the United States correctly points out that regulations promulgated under § 6402(b) provide that

notwithstanding a taxpayer's credit election, the IRS "within the applicable period of limitations" may credit an overpayment of income tax against tax and non-tax debts in order of priority, including past-due support assigned to a State and past-due support not assigned to a State. 26 C.F.R. § 301.6402-3(a)(6). "Only the balance, if any, of the overpayment remaining after credits described in this paragraph (a)(6) shall be treated in the manner so elected." *Id.* Regulations pertaining to offsets for support payments, in turn, provide certain additional procedural requirements. *See, e.g.,* 26 C.F.R. § 301-6402-5(c) (requiring a State to provide by October 1 of each year notice of liability for past-due support, and requiring the Secretary of Health & Human Services to provide by December 1 of each year notice to the IRS of State notifications for pastdue support). In sum, the United States contends that § 6513 does not supply an absolute deadline for the IRS to act on a taxpayer's credit election or provide support for requiring the IRS to act on a credit election by the filing deadline for the succeeding year's tax return. *See* Dkt. No. 53 at 6.

Mr. Hadsell maintains that § 6402(a) has nothing to do with temporal limitations regarding a credit election. He contends that it is § 6402(b) that is key, arguing that § 6402(b) authorizes either the taxpayer or the IRS to "determine the amount of a tax overpayment *to be applied* to estimated taxes[.]" Dkt. No. 54 at 4 (emphasis added). As discussed above, however, the plain terms of § 6402(b) simply authorize the Secretary to promulgate regulations for crediting an overpayment against estimated income tax. Section 6402(b) does not, as Mr. Hadsell seems to suggest, give a taxpayer the authority to determine what amount of an overpayment will be credited against estimated taxes. Rather, § 6402(b) simply refers to the amount determined by the taxpayer or the IRS "to be an overpayment" for the preceding taxable year. Mr. Hadsell's proffered interpretation of § 6402 would essentially read the phrase "in accordance with section 6402(b)" out of § 6513(d). "Such a result is one [courts] must avoid, as it is not within the judicial province to read out of the statute the requirement of its words." *Tides v. The Boeing Co.*, 644 F.3d 809, 816 (9th Cir. 2011) (internal quotations and citations omitted); *see also U.S. v. Felt & Tarrant Mfg. Co.*, 283 U.S. 269, 273 (1931). Moreover, Mr. Hadsell's proffered statutory interpretation would, in effect, allow a taxpayer to bypass the Secretary's regulations promulgated under § 6402(b) simply by making a credit election. He has not provided any authority to support

a conclusion that that is what was intended by the relevant statutes and regulations. The Court therefore is not persuaded that § 6402, together with § 6513(b)(2), § 6513(d), and § 6611(e)(1), properly is construed to mean that a taxpayer's credit election becomes irrevocable and binding on the deadline for filing the succeeding year's taxes. Accordingly, Mr. Hadsell's motion for summary judgment is denied.

IV. CONCLUSION

Based on the foregoing, Mr. Hadsell's motion for summary judgment is denied.

IT IS SO ORDERED.

Dated: November 19, 2021

/s/ Virginia K. DeMarchi

VIRGINIA K. DEMARCHI

United States Magistrate Judge

Appendix C

District Court: Order Granting Defendant's Motion for Summary Judgment (2/25/22)

Case 5:20-cv-03512-VKD Document 76 Filed 02/25/22 Page 1 of 10

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CHRISTOPHER HADSELL, Plaintiff

v.

UNITED STATES OF AMERICA, the Department of Treasury by its agency, the Internal Revenue Service, Defendant.

Case No. 20-cv-03512-VKD

Order Granting Defendant's Motion for Summary Judgment

Re: Dkt. No. 55

Plaintiff Christopher Hadsell claims that he made valid credit elections to have overpayments of his personal income taxes

applied to the following year's tax liability, but the Internal Revenue Service ("IRS") improperly treated his credit elections as refunds subject to offset. The United States now moves for summary judgment on the sole remaining claim under 26 U.S.C. § 7433,[1] arguing that this Court lacks jurisdiction over Mr. Hadsell's claim and that the offsets in question did not, in any event, violate that statute or any related regulations. Mr. Hadsell opposes the motion. Upon consideration of the moving and responding papers,[2] as well as the oral arguments presented, the Court concludes that it lacks jurisdiction over Mr. Hadsell's § 7433 claim and therefore grants the United States's motion for summary judgment.[3]

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[1] The Court granted the United States's prior motion to dismiss Mr. Hadsell's claim under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-80, for lack of subject matter jurisdiction. Dkt. Nos. 22, 35.

[2] The Court addresses Mr. Hadsell's evidentiary objections only as necessary to the discussion below.

[3] All parties have expressly consented that all proceedings in this matter may be heard and finally

I. BACKGROUND

The pertinent facts are essentially the same as those presented on the United States's prior motion to dismiss and Mr.

Hadsell's prior motion for summary judgment. Except as otherwise noted, those facts are largely undisputed and are recited below:

Mr. Hadsell timely filed an income tax return for the tax year 2016 and reported an overpayment of $9,547, as to which he made a credit election and directed the IRS to apply it to his tax liability for the 2017 tax year. *See* Dkt. No. 1 at 15, 19;[4] Dkt. No. 41 at 9, 59; Dkt. No. 55 at 3.[5] Mr. Hadsell says that the IRS did not notify him until July 9, 2018 that it did not apply the credit election made in his 2016 tax return and instead treated his overpayment as a refund subject to offset.[6] Dkt. No. 1 at 22, 40; *see also* Dkt. No. 41 at 22. Mr. Hadsell says that this notice came well over a year after he filed his 2016 tax return and months after he contends that his $9,547 credit election should have been deemed paid against his 2017 tax liabilities. Dkt. No. 1 at 15; Dkt. No. 41 at 22.

Further, Mr. Hadsell alleges that by the time the IRS notified him that it had not applied his $9,547 credit election, he had already filed his 2017 tax return. Dkt. No. 1 at 120; Dkt. No. 41 at 22. In preparing his 2017 tax return, Mr. Hadsell says he included the $9,547 credit against his 2017 tax liabilities. Dkt. No. 1 at 15; Dkt. No. 41 at 44, 48. Additionally, Mr. Hadsell says that he uses a tax preparation software program to calculate his taxes and was surprised to find that the program indicated he owed $2,448 under the Patient Protection and Affordable Care Act ("ACA"). Dkt. No. 1 at 23; Dkt. No. 41 at 51. Although he believed no such tax was owed for

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adjudicated by a magistrate judge. 28 U.S.C. § 636(c); Fed. R. Civ. P. 73; Dkt. Nos. 5, 15.

[4] Mr. Hadsell previously submitted a declaration with respect to certain matters asserted in his complaint. Dkt. No. 4.

[5] All pin citations refer to the ECF page number that appears in the header of the cited document.

[6] The IRS contends it provided Mr. Hadsell with notice in July 2017 that it was unable to apply his credit election to a future tax year, as he requested. *See* Dkt. No. 55 at 2. While the IRS refers to a notation in Mr. Hadsell's file regarding that notice (Dkt. No. 55-1 ¶ 14, Ex. A), the IRS acknowledges it has been unable to locate the underlying record reflecting notice. *See* Dkt. No. 59 at 4; Dkt. No. 75 at 6:18-7:7. For purposes of resolving the present motion for summary judgment, the Court assumes that Mr. Hadsell did not receive notice until July 9, 2018.

the year 2017, Mr. Hadsell claims that he nonetheless erred on the side of caution in favor of overpaying, rather than underpaying, his taxes and therefore paid the $2,448 healthcare tax. Dkt. No. 1 at 23; Dkt. No. 44 at 51-52. Even so, Mr. Hadsell says that he subsequently received a July 16, 2018 notice from the IRS advising that he owed $2,448 in healthcare tax for that same year. Dkt. No. 1 at 23, 47; Dkt. No. 41 at 52. Mr. Hadsell further alleges that on August 6, 2018, he responded to the IRS by disputing that he owed $2,448, but "in keeping with his erring on the side of caution, he voluntarily paid" the $2,448, with a request that the IRS correct the issue and apply the enclosed payment toward his tax liabilities for the year 2018. Dkt. No. 1 at 23, 51-52; Dkt. No. 41 at 52. Records appended to the complaint indicate that

the IRS subsequently determined that Mr. Hadsell had overpaid $2,448, but diverted a portion of that sum to "an amount owed for 2017" and refunded the remainder to Mr. Hadsell. Dkt. No. 1 at 24, 95, 97.

Mr. Hadsell contends that any deficiencies in his 2017 and 2018 tax returns are the result of the IRS's failure to honor his 2016 credit election and his August 6, 2018 letter conditioning his $2,448 healthcare tax payment on application of that sum to his 2018 tax liabilities. *See* Dkt. No. 1 at 24. Asserting that IRS's failure to apply his credit elections violates 26 U.S.C. § 7433, Mr. Hadsell seeks $13,253.13 in damages, plus interest, fees and costs. The United States maintains that the subject offsets were mandated by 26 U.S.C. § 6402(c) for past-due child support payments.

The United States now moves for summary judgment, principally arguing that the Court lacks subject matter jurisdiction over Mr. Hadsell's § 7433 claim because the conduct at issue does not concern "the collection of Federal tax." For the reasons discussed below, the Court agrees that it lacks subject matter jurisdiction and the United States is entitled to judgment as a matter of law.

II. LEGAL STANDARD

A motion for summary judgment should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The moving party bears the initial burden of informing the court of the basis for the motion, and identifying portions of the

pleadings, depositions, answers to interrogatories, admissions, or affidavits which demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In order to meet its burden, "the moving party must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

If the moving party meets his initial burden, the burden shifts to the non-moving party to produce evidence supporting its claims or defenses. *See Nissan Fire & Marine Ins. Co., Ltd.*, 210 F.3d at 1102. The non-moving party may not rest upon mere allegations or denials of the adverse party's evidence, but instead must produce admissible evidence that shows there is a genuine issue of material fact for trial. *See id.* A genuine issue of fact is one that could reasonably be resolved in favor of either party. A dispute is "material" only if it could affect the outcome of the suit under the governing law. *Anderson*, 477 U.S. at 248-49.

"When the nonmoving party has the burden of proof at trial, the moving party need only point out 'that there is an absence of evidence to support the nonmoving party's case." *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (quoting *Celotex Corp.*, 477 U.S. at 325). Once the moving party meets this burden, the nonmoving party may not rest upon mere allegations or denials, but must present evidence

sufficient to demonstrate that there is a genuine issue for trial. *Id.*

III. DISCUSSION

"Federal courts are courts of limited jurisdiction" and "possess only that power authorized by Constitution and statute[.]" *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). As a sovereign, the United States "is immune from suit unless it has expressly waived such immunity and consented to be sued." *Dunn & Black, P.S. v. United States*, 492 F.3d 1084, 1087-88 (9th Cir. 2007); *see also United States v. Mitchell*, 445 U.S. 535, 538 (1980) ("A waiver of sovereign immunity 'cannot be implied but must be unequivocally expressed.'") (quoting *United States v. King*, 395 U.S. 1, 4 (1969)). Where the United States has not consented to suit, the action must be dismissed because such consent is necessary for jurisdiction. *Dunn & Black, P.S.*, 492 F.3d at 1088. "To confer subject matter jurisdiction in an action against a sovereign, in

addition to a waiver of sovereign immunity, there must be statutory authority vesting a district court with subject matter jurisdiction." *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1016 (9th Cir. 2007). As the party asserting federal subject matter jurisdiction, Mr. Hadsell bears the burden of establishing its existence. *Kokkonen*, 511 U.S. at 377.

Congress enacted a limited waiver of the United States's sovereign immunity in 26 U.S.C. § 7433, which allows a taxpayer to bring a civil action to recover damages as follows:

> If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the [IRS] recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

26 U.S.C. § 7433(a). In cases involving the government's sovereign immunity, "the statute in question must be strictly construed in favor of the sovereign and may not be enlarged beyond the waiver its language expressly requires." *Miller v. United States*, 66 F.3d 220, 222 (9th Cir. 1995). Claims under § 7433 are strictly limited to conduct in connection with the collection of federal taxes. A taxpayer cannot seek damages under § 7433 for the improper assessment or determination of tax liability. *Id.* at 223; *accord Shaw v. United States*, 20 F.3d 182, 184 (5th Cir. 1994) ("Therefore, based upon the plain language of the statute, which is clearly supported by the statute's legislative history, a taxpayer cannot seek damages under § 7433 for an improper assessment of taxes."); *Gonsalves v. Internal Revenue Serv.*, 975 F.2d 13, 16 (1st Cir. 1992) ("The legislative history of Section 7433 tells us that an action under this provision may not be based on alleged . . . disregard in connection with the determination of tax.") (internal quotations and citation omitted); *see also Buaiz v. United States*, 471 F.Supp.2d 129, 136 (D.D.C. 2007) (concluding that "§ 7433 waives the United States' sovereign immunity only with respect to claims arising from the

collection of income taxes. Claims that the IRS has incorrectly determined the amount of taxes owed, or that IRS agents acted improperly in the course of investigating a taxpayer, fall outside the limited waiver of sovereign immunity contained in § 7433.").

Mr. Hadsell's § 7433 claim is based on offsets made for past-due child support obligations

and the IRS's determination that he owed additional taxes under the ACA. The United States principally argues that Mr. Hadsell's claim falls outside the waiver of sovereign immunity under § 7433 because the challenged conduct did not occur in connection with any collection of federal taxes. For the reasons discussed below, the Court agrees.

A. Offsets Under § 6402(c)

The IRS's authority to credit or refund any overpayments of tax are subject to offset for certain types of tax and non-tax obligations. *See* 26 U.S.C. § 6402(a). To comply with these requirements, the Secretary of the Treasury has established the Treasury Offset Program ("TOP"), a centralized offset program administered by the Bureau of the Fiscal Service ("BFS"). *See* 31 C.F.R. §§ 285.1-285.8. Relevant to the discussion here, § 6402(c) requires the Department of the Treasury to apply an individual's overpayment to the amount of any past-due support:

> **(c) Offset of past-due support against overpayments.**—The amount of any overpayment to be refunded to the person making the overpayment shall be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of such Act. The Secretary shall remit the amount by which the overpayment is so reduced to the State collecting such support and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State. The Secretary shall apply a reduction under this subsection first to an amount certified by the State as past due support under section 464 of the Social Security Act before any other reductions allowed by law. This subsection shall be applied to an overpayment prior to its being credited to a person's future liability for an internal revenue tax.

26 U.S.C. § 6402(c).

In the present matter, there is no dispute that at least a portion of Mr. Hadsell's overpayment for the 2016 tax year was sent to the California Department of Child Support Services to pay past-due child support obligations. *See, e.g.,* Dkt. No. 1 at 37-38; Dkt. No. 55-2 ¶ 5, Exs. A, B.[7] The United States presents evidence that those offsets were made through the

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[7] To the extent Mr. Hadsell objects to the declaration of Ashleigh Edmonds based on hearsay and lack of foundation, those objections are overruled. Fed. R. Evid. 602, 701, 803(6). Although Mr. Hadsell argues that documents appended to the Edmonds declaration were not timely

provided (Dkt. No. 57 at 6-7), defense counsel avers that the documents were produced to Mr. Hadsell by

TOP, pursuant to a notice originally sent in 2013 by the State of California to the Department of Health and Human Service ("HHS") of a past-due child support obligation. Dkt. No. Dkt. No. 55- 2 ¶ 5, Exs. A, B; Dkt. No. 55-3 ¶¶ 6-8; Dkt. No. 55-4 & Ex. 1.[8] The United States argues that such offsets are required by § 6402(c) and that pursuant to § 6402(g) "[n]o court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review" such reductions to a taxpayer's overpayment.

While he does not dispute the statutory bases for the collection of past-due support obligations under § 6402, Mr. Hadsell nonetheless maintains that the jurisdictional bar under § 6402(g) presupposes offsets that are "authorized." *See* 26 U.S.C. § 6402(g) ("No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c), (d), (e), or (f)."). He argues that the offsets at issue here were not authorized because the State of California could not have validly certified any past-due child support in the first place. Here, Mr. Hadsell denies that there are any outstanding past-due support payments; and even if there were, he contends that there has not been, and could not be, any assignment of such payments to the State California as required by 42 U.S.C. §664(a)(1). *See* Dkt. No. 57 at 1-2.

As stated in its order on the United States's prior motion to dismiss (Dkt. No. 22 at 7), the Court agrees that § 6402(g) bars this Court's review of offsets made pursuant to the statute, including for past-due child support payments under § 6402(c). The United States has presented evidence indicating that it received notice from the State of California regarding past-due child support obligations regarding Mr. Hadsell. *See, e.g.,* Dkt. No. 55-2 ¶ 5, Exs. A, B; Dkt. No. 55-3 ¶¶ 6-8; Dkt. No. 55-4 & Ex. 1. While Mr. Hadsell vigorously disputes the validity of any such debt, neither the statute nor the implementing regulation requires the IRS or any other federal

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August 13, 2021, within the time period set by the Court for fact discovery. Dkt. No. 59-1 ¶¶ 2-4; *see also* Dkt. No. 40 (scheduling order).

[8] To the extent Mr. Hadsell objects to the declarations of Scott Hale and Joella Parra based on hearsay and lack of foundation, those objections are overruled. Fed. R. Evid. 602, 701, 803(6). Mr. Hadsell's objection based on the best evidence rule is overruled as Exhibit 1 to Ms. Parra's declaration. Fed. R. Evid. 1003.

agency to investigate the merits of a state's certification. Rather, to the extent Mr. Hadsell disputes the offsets for past-due child support, § 6402(g) indicates that his remedy is to raise a challenge with the State of California, not the IRS. *See* 26 U.S.C. § 6402(g) ("This subsection does not preclude any

legal, equitable, or administrative action against the Federal agency or State to which the amount of such reduction was paid or any such action against the Commissioner of Social Security which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act."); *Ivy v. Comm'r of the Internal Revenue Serv.*, 197 F. Supp. 3d 139, 143 (D.D.C. 2016), *aff'd* 877 F.3d 1048 (D.C. Cir. 2017) (stating that for offsets made to pay outstanding student loan debts, the "plaintiff's remedy was to challenge the Department of Education's action, not that of the IRS.").

Even assuming, without deciding, that Mr. Hadsell is correct that the State of California had no basis to certify any past-due child support to the federal government, the United States argues persuasively that, insofar as child support payments are non-tax debts, the application of an overpayment to a non-tax debt does not give rise to a claim under § 7433 for damages "in connection with any collection of Federal tax[.]" *See Ivy*, 197 F. Supp. 3d at 142 (stating that "§ 7433 pertains to tax collection, and there is no allegation in the complaint that the IRS was collecting unpaid taxes from the plaintiff" when it made an offset for outstanding student loan debt). Mr. Hadsell cites no authority that offsetting a tax overpayment against an improperly certified non-tax debt is conduct "in connection with any collection of Federal tax" within the ambit of § 7433. *Osijo v. Weiner*, No. CV 98-1880 CAS (BQR), 1999 WL 221840 (C.D. Cal. Feb. 24, 1999), on which he relies, does not compel a contrary conclusion.[9] While *Osijo* characterized the offsets at issue in that case as "collection activities," those offsets apparently were made to collect the plaintiff's federal tax liabilities. *See* 1999 WL 221840, at *5. Nothing in *Osijo* suggests that all offsets properly are deemed tax collection activities for purposes of § 7433's waiver of sovereign immunity.

[9] Although Mr. Hadsell did not address this particular issue in his opposition papers, he subsequently offered arguments concerning the Court's jurisdiction over his § 7433 claim in a separate filing. *See* Dkt. No. 66 at 7.

The Court concludes that Mr. Hadsell's claim challenging the offsets made pursuant to § 6402(c) do not fall within the scope of § 7433. The United States's motion for summary judgment as to that issue is granted.[10]

B. Timing of the Offsets

Mr. Hadsell does not appear to oppose the United States's summary judgment motion based on the timing of the offsets in question.[11] Even if the Court were to treat Mr. Hadsell's § 7433 claim as one based on the assertion that the offsets were untimely, that would not change the Court's conclusion that the claim is not one that arises "in connection with any collection of Federal tax."

C. ACA Tax Payments

Mr. Hadsell's § 7433 claim based on the IRS's determination that he owed additional taxes under the ACA similarly fails. As noted in the discussion of background facts (Section I, above), there is no dispute that the IRS notified Mr. Hadsell in July 2018 of its determination that he owed additional taxes under the ACA. Although Mr. Hadsell did not believe he owed such taxes, he elected to err on the side of caution

by paying the additional taxes in August 2018. The IRS later determined that he had, in fact, overpaid those taxes. Dkt. No. 1 at 23, 24, 47, 51-52, 95, 97; Dkt. No. 41 at 52.

As discussed above, a taxpayer cannot seek damages under § 7433 for the improper determination of tax liability. *Miller,* 66 F.3d at 223; *Shaw*, 20 F.3d at 184; *Gonsalves,* 975 F.2d at 16; *Buaiz,* 471 F.Supp.2d at 136. Moreover, courts have distinguished between enforced

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[10] At the motion hearing, Mr. Hadsell argued that in its order on the United States's motion to dismiss (Dkt. No. 22), the Court concluded that his claim was barred under the FTCA because it "involved collection." Dkt. No. 75 at 12:17-18. However, the FTCA exemption in 28 U.S.C. § 2680(c) is broader than the waiver of sovereign immunity under 26 U.S.C. § 7433 and bars "[a]ny claim arising in respect of the *assessment or collection* of any tax." 26 U.S.C. § 2680(c) (emphasis added). The Court concluded that Mr. Hadsell's FTCA claim was barred by 28 U.S.C. § 2680(c) because his alleged injury "arises out of the operation of the IRS's mechanism for *assessing and collecting* taxes." Dkt. No. 22 at 11 (emphasis added). For the reasons discussed above, the offsets at issue concern the assessment or determination of taxes and therefore are within the scope of 28 U.S.C. § 2680(c), but outside the scope of 26 U.S.C. § 7433.

[11] The Court addressed the issue of timing in its order denying Mr. Hadsell's motion for summary judgment. *See* Dkt. No. 56 at 7-12.

collection actions and voluntary taxpayer payments, with the latter falling outside § 7433's waiver of sovereign immunity. "Before resort may be had to actual collection procedures regarding a tax determined by the IRS to be owing, the IRS must issue a statutory notice of deficiency pursuant to 26 U.S.C. § 6212." *V-1 Oil Co. v. United States*, 813 F. Supp. 730, 731 (D. Idaho 1992). "Once issued, the taxpayer has 90 days within which to file a petition with the tax court for a redetermination of the deficiency, and, pursuant to 26 U.S.C. § 6213(a), no levy or proceeding in court for the collection of the tax may be initiated until the expiration of this 90 day period." *Id.* Here, Mr. Hadsell voluntarily paid the additional ACA tax the month after receiving notice of the IRS's determination that he owed such taxes and prior to the expiration of any statutory stay of collection period, any levy, and any collection attempt. Accordingly, the Court concludes that Mr. Hadsell's claim regarding the ACA tax relates to voluntary payments rather than any forced collection activity, and therefore does not fall within the ambit of § 7433. *See id.* at 731-32 (concluding that where the taxpayer's voluntary payment "was made during the period wherein [the taxpayer] had a statutory right to have the tax deficiency redetermined in the tax court, . . . this payment was made during the determination phase of the deficiency taxation process, not during the collection phase.").

The United States's motion for summary judgment is granted as to Mr. Hadsell's claim based on the ACA tax payments.

IV. CONCLUSION

Based on the foregoing, the Court concludes that it lacks subject matter jurisdiction over Mr. Hadsell's § 7433 claim

and therefore grants defendant's motion for summary judgment. The Clerk of Court shall enter judgment accordingly and close this file.

IT IS SO ORDERED.

Dated: February 25, 2022

/s/ Virginia K. DeMarchi

VIRGINIA K. DEMARCHI

United States Magistrate Judge

Appendix D

District Court: Judgment (2/25/22)

Case 5:20-cv-03512-VKD Document 77 Filed 02/25/22 Page 1 of 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHRISTOPHER HADSELL, Plaintiff

v.

UNITED STATES OF AMERICA, the Department of Treasury by its agency, the Internal Revenue Service, Defendant.

Case No. 20-cv-03512-VKD

Judgment

On February 25, 2022, the Court granted defendant's motion for summary judgment. Dkt. No. 76. Pursuant to Federal Rule of Civil Procedure 58, the Court hereby enters judgment in favor of defendant and against plaintiff. The Clerk of Court shall close the file.

Appendix E

9th Cir: Memorandum (7/10/23)

Case: 22-15760, 07/10/2023, ID: 12751520, DktEntry: 26-1,
Page 1 of 2

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUL 10 2023

CHRISTOPHER HADSELL, Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA, the Department of Treasury by its agency, the Internal Revenue Service, Defendant-Appellee.

No. 22-15760

D.C. No. 5:20-cv-03512-VKD

Northern District of California,

San Jose

MEMORANDUM*

Appeal from the United States District Court

for the Northern District of California

Virginia K. DeMarchi, Magistrate Judge, Presiding**

Submitted June 26, 2023***

Before: CANBY, S.R. THOMAS, and CHRISTEN, Circuit Judges.

Christopher Hadsell appeals pro se from the district court's summary judgment and dismissal order in his action brought under the Federal Tort Claims

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Act ("FTCA") and 26 U.S.C. § 7433, stemming from the

government's application of tax payments to offset Hadsell's past-due child support debt. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Snyder & Assocs. Acquisitions LLC v. United States*, 859 F.3d 1152, 1156 (9th Cir. 2017) (subject matter jurisdiction); *Sollberger v. Comm'r*, 691 F.3d 1119, 1123 (9th Cir. 2012) (summary judgment). We affirm.

The district court properly dismissed Hadsell's claims under the FTCA because the claims are premised on "actions taken during the scope of the IRS's tax assessment and collection efforts" and the district court therefore lacked jurisdiction over them. *Snyder & Assocs. Acquisitions LLC*, 859 F.3d at 1157; *see also* 28 U.S.C. § 2680(c) (excepting from the FTCA's waiver of sovereign immunity "[a]ny claim arising in respect of the assessment or collection of any tax"). The district court properly granted summary judgment on Hadsell's claims under 26 U.S.C. § 7433. To the extent that Hadsell challenged the offset of past-due support against overpayments as authorized by 26 U.S.C. § 6402(c), the district court lacked jurisdiction over the claims. *See* 26 U.S.C. § 6402(g) ("No court of the United States shall have jurisdiction to hear any action... brought to restrain or review a reduction authorized by subsection (c)[.]"

AFFIRMED.

Appendix F

9th Cir.: Order (10/12/23)

Case: 22-15760, 10/12/2023, ID: 12809013, DktEntry: 28,
Page 1 of 1

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

OCT 12 2023

CHRISTOPHER HADSELL, Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA, the Department of Treasury by its agency, the Internal Revenue Service, Defendant-Appellee.

No. 22-15760

D.C. No. 5:20-cv-03512-VKD

Northern District of California,

San Jose

ORDER

Before: CANBY, S.R. THOMAS, and CHRISTEN, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Hadsell's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 27) are denied.

No further filings will be entertained in this closed case.

Appendix G

9th Cir.: Mandate (10/20/23)

Case: 22-15760, 10/20/2023, ID: 12812809, DktEntry: 29,
Page 1 of 1

FILED

OCT 20 2023

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHRISTOPHER HADSELL, Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA, the Department of Treasury by its agency, the Internal Revenue Service, Defendant-Appellee.

No. 22-15760

D.C. No. 5:20-cv-03512-VKD

Northern District of California,

San Jose

MANDATE

The judgment of this Court, entered July 10, 2023, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

Appendix H

Constitutional Provisions and Statutes Involved in this Case

The pertinent constitutional provisions and statutes involved in this case are:

U.S. Constitution

U.S. Const. Amend. V:

No person shall be... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Statutes

26 U.S.C. §6401:

...**(b) Excessive credits.**

(1) In general. If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, D, and G, of such part IV), the amount of such excess shall be considered an overpayment.

26 U.S.C. §6402:

(a) General rule. In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), (e), and (f), refund any balance to such person.

(b) Credits against estimated tax. The Secretary is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary to be an overpayment of the income tax for a preceding taxable year.

(c) Offset of past-due support against overpayments. The amount of any overpayment to be refunded to the person making the overpayment shall be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act [42 USCS § 664]) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of such Act. The Secretary shall remit the amount by which the overpayment is so reduced to the State collecting such support and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State. The Secretary shall apply a reduction under this subsection first to an amount certified by the State as past due support under section 464 of the Social Security Act [42 USCS § 664] before any other reductions allowed by law. This subsection shall be applied to an overpayment prior to its being credited to a person's future liability for an internal revenue tax....

(g) Review of reductions. No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c), (d), (e), or (f). No such reduction shall be subject to review by the Secretary in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax. This subsection does not preclude any legal equitable, or administrative action against the Federal agency or State to which the amount of such reduction was paid or any such action against the Commissioner of Social Security which is

otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act.

26 U.S.C. §6513:

(b)(2) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

(d) Overpayment of income tax credited to estimated tax. If any overpayment of income tax is, in accordance with section 6402(b) [26 USCS § 6402(b)], claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises.

26 U.S.C. §7433:

(a) In general. If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432 [26 USCS § 7432], such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

28 U.S.C. §1254:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;...

28 U.S.C. §1346:

(a) The district courts shall have original jurisdiction, concurrent with the United States Claims Court [United States Court of Federal Claims], of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, 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;

(b)

(1) Subject to the provisions of chapter 171 of this title [28 USCS §§ 2671 et seq.], the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(2) No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence may bring a civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of title 18).

28 U.S.C. §2401:

(a) Except as provided by chapter 71 of title 41 [41 USCS §§ 7101 et seq.], every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) a [A] tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

28 U.S.C. §2475:

(a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it

is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

28 U.S.C. §2680:

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer, except that the provisions of this chapter [28 USCS §§ 2671 et seq.] and section 1346(b) of this title [28 USCS § 1346(b)] apply to any claim based on injury or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if—

(1) the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense;

(2) the interest of the claimant was not forfeited;

(3) the interest of the claimant was not remitted or mitigated (if the property was subject to forfeiture); and

(4) the claimant was not convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law.[.]

42 U.S.C. §608(a)(3):

No assistance for families not assigning certain support rights to the State. A State to which a grant is made under section

403 [42 USCS § 603] shall require, as a condition of paying assistance to a family under the State program funded under this part, that a member of the family assign to the State any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so paid to the family, which accrues during the period that the family receives assistance under the program.

42 U.S.C. §608(a):

(7) No assistance for more than 5 years.

(A) In general. A State to which a grant is made under section 403 [42 USCS § 603] shall not use any part of the grant to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part [42 USCS §§ 601 et seq.] attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part [42 USCS §§ 601 et seq.] commences, subject to this paragraph.

42 U.S.C. §664(a)(1):

Upon receiving notice from a State agency administering a plan approved under this part [42 USCS §§ 651 et seq.] that a named individual owes past-due support which has been assigned to such State pursuant to section 408(a)(3) or 471(a)(17) [42 USCS § 608(a)(3) or 671(a)(17)], the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount

equal to the past-due support, shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay such amount to the State agency (together with notice of the individual's home address) for distribution in accordance with section 457 [42 USCS § 657]. This subsection may be executed by the disbursing official of the Department of the Treasury.

1	**Exhibit 1 Collections-Calculated**						
2	Distributions and Collections	**2018**	**2019**	**2020**	**2021**	**2022**	**Table (1)**
3	Undistributed Collections-Beg.	567,891,645	543,911,778	564,879,414	1,098,120,176	853,931,666	P-16 (2)
4	Collections-Calculated	28,560,392,727	28,788,153,580	31,955,993,907	29,277,688,658	27,269,463,730	
5	Distributions	(28,584,372,594)	(28,767,185,944)	(31,422,753,145)	(29,521,877,168)	(27,404,108,381)	P-4
6	Undistributed Collections-End.	543,911,778	564,879,414	1,098,120,176	853,931,666	719,287,015	P-16
7							
8	**Exhibit 2 Distributed/Calculated Collections Difference**						
9		**2018**	**2019**	**2020**	**2021**	**2022**	
10	Distributed/Calculated Coll. Diff.	23,979,867	(20,967,636)	(533,240,762)	244,188,510	134,644,651	
11	% of Distributed Collections	0.1%	-0.1%	-1.7%	0.8%	0.5%	
12							
13	**Exhibit 3 Distributed Collections By Category**						
14		**2018**	**2019**	**2020**	**2021**	**2022**	**Table (1)**
15	Current-TANF/FC Recipients	681,064,947	653,052,118	794,706,970	709,139,025	615,529,138	P-6
16	Former-TANF/FC Recipients	8,444,542,443	8,322,310,341	9,590,679,936	8,775,895,325	7,573,577,342	P-7
17	Medicaid Never Assistance	8,724,415,062	9,079,684,065	9,950,403,623	9,653,903,176	9,415,178,767	P-8
18	Other Never Assistance	10,734,350,142	10,712,139,420	11,086,962,616	10,382,939,642	9,799,823,134	P-9
19	Total Distributed Collections	28,584,372,594	28,767,185,944	31,422,753,145	29,521,877,168	27,404,108,381	
20							
21	**Exhibit 4 IRS Tax-Refund Offsets Overcollections**						
22		**2018**	**2019**	**2020**	**2021**	**2022**	**Table (1)**
23	IRS Tax Refund TANF/FC Offset	1,644,557,485	1,622,095,522	4,798,368,612	2,581,083,987	2,217,877,259	P-29 (3)
24	Curr-TANF/FC Recipients Dist.	681,064,947	653,052,118	794,706,970	709,139,025	615,529,138	P-6 (3)
25	Overcollections	963,492,538	969,043,404	4,003,661,642	1,871,944,962	1,602,348,121	
26							
27	(1) Tables from OCSE's 2022 Congressional Report, except where noted.						
28	(2) 2018 Beginning Balance (2017 Ending Balance) from OCSE 2021 Congressional Report.						
29	(3) From each year's respecteive OCSE Congressional Report. 2020 abnormally high due to COVID Rebates.						

1	**Exhibit 5 Current Recipients: Court Orders Analysis**						
2	Current-TANF/FC Recipients	**2018**	**2019**	**2020**	**2021**	**2022**	**Table (1)**
3	Total Cases	1,238,490	1,160,203	1,101,490	940,451	944,762	P-55
4	Cases With No Jurisdiction	(6,434)	(6,450)	(6,105)	(5,223)	(5,149)	P-2
5	Subtotal: Potential Collections Cases	1,234,074	1,155,772	1,097,405	937,249	941,635	
6							
7	Cases With Support Orders	(815,662)	(764,543)	(709,162)	(629,594)	(618,568)	P-2
8	Total Uncollectible Cases	418,412	391,229	388,243	307,655	323,067	
9							
10	% Uncollectible Current Cases	34%	34%	35%	33%	34%	
11							
12	**Exhibit 6 Minimum Illegal Collections**						
13		**2018**	**2019**	**2020**	**2021**	**2022**	**Table (1)**
14	Total Distributed Collections	28,584,372,594	28,767,185,944	31,422,753,145	29,521,877,168	27,404,108,381	P-1
15	Less:						
16	Current-TANF/FC Recipients	(681,064,947)	(653,052,118)	(794,706,970)	(709,139,025)	(615,529,138)	P-6
17	Medicaid Never Assistance	(8,724,415,062)	(9,079,684,065)	(9,950,403,623)	(9,653,903,176)	(9,415,178,767)	P-8
18	Total Illegal Collections	19,178,892,585	19,034,449,761	20,677,642,552	19,158,834,967	17,373,400,476	
19							
20	% Illegal Collections	67%	66%	66%	65%	63%	
21							
22	(1) Tables from OCSE's 2022 Congressional Report.						

Exhibit 7: Actual IRS' ACS Response

IRS Department of the Treasury
Internal Revenue Service
3211 S NORTHPOINTE DR
FRESNO CA 93725

In reply refer to: [redacted]
Oct. 11, 2023 LTR 4514C
[redacted]
Input Op: [redacted]
BODC: NOBOD

[redacted]

Taxpayer identification number:
Tax periods:

Form: 202112

Dear [redacted]:

We received your reply on [redacted], to our notice about proposed changes to some of the items on your tax return.

We need additional time to complete our review of the information you provided on [redacted]. If we can't complete our review within 0830 days, we'll contact you again with an update on when you can expect our response. You don't need to respond to this letter. We apologize for the inconvenience.

Before we can resolve this matter, we need information from [redacted], and we haven't received it [redacted] yet. You should receive our complete response within days. We don't need any further information from you right now.

When you write, include a copy of this letter, and provide your telephone number and the hours we can reach you.

Keep a copy of this letter for your records.

Thank you for your cooperation.

Sincerely yours,

MARIA AGUIRRE
OPERATIONS MANAGER, AUR