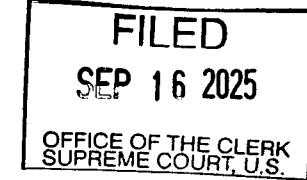


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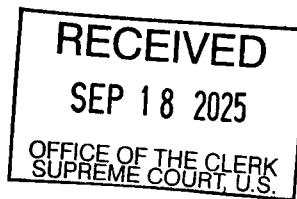
IN THE
SUPREME COURT OF THE UNITED STATES

NORMAN DOUGLAS DIAMOND - PETITIONER
v.
UNITED STATES AND UNKNOWN EMPLOYEES
OF THE UNITED STATES - RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Norman Douglas Diamond, *pro se*
5404 Alexander Crescent
Niagara Falls, Ontario, L2E 2T8
Canada
Tel.: 905-371-6494
e-mail: nxdiamond@gmail.com



QUESTIONS PRESENTED

1. The case of *Peretz v. US* (Fed. Cl. 2020 aff'd Fed. Cir. 2022) reveals a malicious pattern including cases of Peretz and petitioner Diamond. The IRS properly collects withholding without impediment. However, after collection is completed and the taxpayer timely submits a return, the IRS violates statutes by failing to credit the taxpayer, failing to issue a notice of mathematical or clerical error, and failing to verify information returns from withholding agents. The IRS assesses a penalty for a frivolous return but still disregards statutory requirements. When the IRS instructs the taxpayer on how to correct a return and the taxpayer complies, the IRS disregards existence of the timely original claim, fails to record information returns, and again disregards statutory requirements. When the taxpayer sues for refund, the DOJ "moves the goalposts" by asserting additional requirements which the IRS did not demand. When the taxpayer complies again and sues again, the court rules that after the DOJ once "moved the goalposts" the court will never accept jurisdiction no matter how much further the taxpayer complies.

In Diamond's case the court received TD Ameritrade's declaration of payment of withholding. As well, the government's own documents proved the government lied to courts, damaging Diamond.

Do taxpayers have a right to pay the correct amount of tax, and to be compensated for damage from illegal actions performed subsequent to the original lawful collection of withholding?

2. The ruling in *Cook v. Tait*, 265 US 47 (1924), that the benefit of US citizenship extends to the citizen and property wherever found, has now been rejected in two circuits. Should *Cook v. Tait* remain valid?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Diamond v. United States et. al., No. 1:23-cv-00326 (TNM), United States District Court for the District of Columbia. Judgment entered September 15, 2023. US's motion for reconsideration granted November 1, 2023.

Diamond v. United States and Unknown Employees of the United States, No. 23-5265, United States Court of Appeal for the District of Columbia Circuit. Judgment entered March 26, 2025. Diamond's motions for rehearing denied July 1, 2025.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner Diamond respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit appears at Appendix A to the petition and is not published in the Federal Register but is published by Google at https://scholar.google.com/scholar_case?case=12021073636172780059¹.

The opinion of the United States District Court for the District of Columbia appears at Appendix B to the petition and is not published in the Federal Register but is published by Google at https://scholar.google.com/scholar_case?case=2298302868011675313¹. A memorandum order appears at Appendix C to the petition.

JURISDICTION

The date on which the United States Court of Appeals decided petitioner's case was March 26, 2025.

Timely petitions for rehearing were denied by the United States Court of Appeals on July 1, 2025, and copies of the orders denying rehearing appear at Appendices D and E to the petition.

The jurisdiction of this Court is invoked under 28 USC section 1254(1).

¹ Diamond did not request nor contact Google regarding these publications.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

Fifth Amendment to the US Constitution:

...; nor shall any person be ...; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ...

United States - ... Income Tax Convention:

... Exchange of Information ...
... Assistance in Collection ...

28 USC section 610. Courts defined:

As used in this chapter the word "courts" includes the courts of appeals and district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Federal Claims, and the Court of International Trade.

28 USC section 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

28 USC section 1340. Internal revenue; customs duties:

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, ...

28 USC section 1346. United States as defendant:

(a) The district courts shall have original

jurisdiction, concurrent with the 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, 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.

28 USC section 1402. United States as defendant

(a) Any civil action in a district court against the United States under subsection (a) of section 1346 of this title may be prosecuted only:

(1) Except as provided in paragraph (2), in the judicial district where the plaintiff resides;

(2) In the case of a civil action by a corporation under paragraph (1) of subsection (a) of section 1346, in the judicial district in which is located the principal place of business or principal office or agency of the corporation; or if it has no principal place of business or principal office or

agency in any judicial district (A) in the judicial district in which is located the office to which was made the return of the tax in respect of which the claim is made, or (B) if no return was made, in the judicial district in which lies the District of Columbia. Notwithstanding the foregoing provisions of this paragraph a district court, for the convenience of the parties and witnesses, in the interest of justice, may transfer any such action to any other district or division.

(b) Any civil action on a tort claim against the United States under subsection (b) of section 1346 of this title may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred.

28 USC section 1500. Pendency of claims in other courts:

The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States ... *

28 USC section 1631. Transfer to cure want of jurisdiction:

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court (or, for cases within the jurisdiction of the United States Tax Court, to that court) in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the

court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

28 USC section 2680. Exceptions:

The provisions of this chapter and section 1346(b) of this title shall not apply to -

(c) Any claim arising in respect of the assessment or collection of any tax or ...

26 USC section 31. Tax withheld on wages:

(a) Wage withholding for income tax purposes

(1) In general

The amount withheld as tax under chapter 24 shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle.

26 USC section 1441. Withholding of tax on nonresident aliens:

(a) General rule

Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except as otherwise provided in regulations prescribed by the Secretary under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, ...

26 USC section 1462. Withheld tax as credit to recipient of income:

Income on which any tax is required to be withheld at the source under this chapter shall be included in the return of the recipient of such income, but any

amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

26 USC section 3406. Backup withholding:

- (b) REPORTABLE PAYMENT, ETC. For purposes of this section -
 - (1) REPORTABLE PAYMENT The term "reportable payment" means -
 - (A) any reportable interest or dividend payment, and
 - (B) any other reportable payment.

26 USC section 6013. Joint returns of income tax by husband and wife:

(a) Joint returns

A husband and wife may make a single return jointly of income taxes under subtitle A, even though one of the spouses has neither gross income nor deductions, except as provided below

26 USC section 6015. Relief from joint and several liability on joint return:

(a) In general

Notwithstanding section 6013(d)(3) -

- (1) an individual who has made a joint return may elect to seek relief under the procedures prescribed under subsection (b); ...

26 USC section 6201. Assessment authority:

(a) Authority of Secretary

(3) Erroneous income tax prepayment credits

If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary in the same manner as in the case of a mathematical

or clerical error appearing upon the return, except that the provisions of section 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph.

(d) Required reasonable verification of information returns

In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.

26 USC section 6213. Restrictions applicable to deficiencies; petition to Tax Court:

(b) Exceptions to restrictions on assessment

(1) Assessments arising out of mathematical or clerical errors

If the taxpayer is notified that, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical or clerical error, such notice shall not be considered as a notice of deficiency.... Each notice under this paragraph shall set forth the error alleged and an explanation thereof.

(2) Abatement of assessment of mathematical or clerical errors

(A) Request for abatement

Notwithstanding section 6404 (b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

26 USC section 6665. Applicable rules:

(a) Additions treated as tax

Except as otherwise provided in this title -

(1) the additions to the tax, additional amounts, and penalties provided by this chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes; and

(2) any reference in this title to "tax" imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by this chapter.

26 USC section 6671. Rules for application of assessable penalties:

(a) Penalty assessed as tax

The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.

26 USC section 6702. Frivolous tax submissions:

- (a) Civil penalty for frivolous tax returns
A person shall pay a penalty of \$5,000 if
 - (1) such person files what purports to be a return of a tax imposed by this title but which
 - (A) does not contain information on which the substantial correctness of the self-assessment may be judged, or
 - (B) contains information that on its face indicates that the self-assessment is substantially incorrect, and
 - (2) the conduct referred to in paragraph (1)
 - (A) is based on a position which the Secretary has identified as frivolous under subsection (c), or
 - (B) reflects a desire to delay or impede the administration of Federal tax laws.

(c) Listing of frivolous positions

The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection.

26 USC section 7212. Attempts to interfere with administration of internal revenue laws:

- (a) Corrupt or forcible interference
Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than \$5,000, or imprisoned not more than 3 years, or both, ...

26 USC section 7214. Offenses by officers and employees of the United States:

(a) Unlawful acts of revenue officers or agents

Any officer or employee of the United States acting in connection with any revenue law of the United States -

(2) who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or ... shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

26 USC section 7422. Civil actions for refund:

(a) No suit prior to filing claim for refund

No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

26 USC section 7433. Civil damages for certain unauthorized collection actions:

(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, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

26 USC section 7701. Definitions:

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof

(39) Persons residing outside United States

If any citizen or resident of the United States does not reside in (and is not found in) any United States judicial district, such citizen or resident shall be treated as residing in the District of Columbia for purposes of any provision of this title relating to -

(A) jurisdiction of courts, or ...

26 USC section 7803. Commissioner of Internal Revenue; other officials:

(a) Commissioner of Internal Revenue

(3) Execution of duties in accord with taxpayer rights

In discharging his duties, the Commissioner shall ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title, including -

(C) the right to pay no more than the correct amount of tax,

26 CFR 601.101. Introduction:

(a) General. The Director, Foreign Operations District, administers the internal revenue laws applicable to taxpayers residing or doing business abroad, ...

IRS Tax Topic 307:

Topic 307 - Backup Withholding

Payments subject to backup withholding: Backup

withholding can apply to most kinds of payments reported on Form 1099, including:

... Payments by brokers and barter exchange transactions (Form 1099-B (PDF)); ...

Credit for backup withholding: If you had income tax withheld under the backup withholding rule, report the federal income tax withholding (shown on Form 1099) on your return for the year you received the income.

STATEMENT OF THE CASE

28 USC sections 1340 and 1346, and 26 USC section 7433 confer jurisdiction on US District Courts. 26 USC section 7701(a)(39) treats Diamond as a resident of the District of Columbia for causes of action arising under title 26 USC, in all tax years at issue. US Court of Appeals for the District of Columbia Circuit had jurisdiction under 28 USC section 1291. Diamond's spouse Zaida Del Rosario has always been factually a non-resident alien but was treated as a US resident in all tax years at issue.

The case of *Peretz v. US*, No. 18-1699T (Fed. Cl. 2020 *aff'd* *Peretz v. US*, No. 2021-1831 (Fed. Cir. 2022)) reveals a malicious pattern including cases of Peretz and petitioner Diamond. The IRS properly collects withholding without impediment. However, after collection is completed and the taxpayer timely submits a return, the IRS violates 26 USC sections 31 and 1462 by failing to credit the taxpayer, violates 26 USC section 6201(a)(3) by failing to issue a notice of mathematical or clerical error, and violates 26 USC section 6201(d) by failing to verify information returns from withholding agents. The IRS assesses a penalty for a frivolous return but still disregards statutory requirements. When the IRS instructs the taxpayer on how to correct a return and the taxpayer complies, the IRS disregards existence of the timely original claim, fails to record information returns, and again disregards statutory requirements. When the taxpayer sues for refund, the DOJ "moves the goalposts" by asserting that a valid return must meet additional requirements which the IRS did not demand when the taxpayer complied with the IRS. When the taxpayer complies again by submitting a return complying with the DOJ's stated requirements

and sues again, the court rules that after the DOJ once "moved the goalposts" the court will never accept jurisdiction no matter how much further the taxpayer complies.

Congress enacted numerous statutes intending to make taxpayers pay the correct amount of tax. The system works well in cases where a taxpayer owes tax and gives a frivolous reason for refusing to pay. The system fails when the government owes a refund of overpayment and the government puts up roadblocks to prevent courts from taking jurisdiction. The IRS alternates between two kinds of transcripts which conflict with each other; one kind shows original returns timely filed but months later no longer on file while the other kind omits both the filings and disappearances. IRS motions and briefs contradict IRS transcripts. DOJ motions and briefs contradict IRS evidence. The government and courts reverse their positions from case to case. These actions harm the taxpayer by forcing payment of more than the correct amount of tax in violation of 26 USC section 7214(a)(2) and corruptly interfering with due administration in violation of 26 USC section 7212(a). Since these actions pertain to collected taxes and penalties they might be illegal collection actions under 26 USC section 7433 though not torts because of 28 USC section 2680(c); but if they are not collections of tax then they are torts under 28 USC section 1346. Illegal actions pertaining to penalties qualify as both illegal collection actions and torts because 26 USC sections 6665 and 6671 extend the definition of tax to include penalties throughout title 26 USC but do not extend to title 28 USC. The government and courts assert that the illegal collection actions pertain to collection of tax under 28 USC section 2680(c) but do not pertain to collection of

tax and penalties under 26 USC section 7433; but it is impossible for both to be true.

IRS Tax Topic 307 agrees with 26 USC section 31 that withheld money can be claimed on a return.

In *Diamond v. CIR*, No. 14482-10SL (USTC 2013), the IRS proved that Diamond timely filed joint returns for 2005 and 2006 with altered jurat, and agreed that the alterations were truthful, but it was frivolous to perform the alterations. The IRS and Tax Court agreed that Diamond properly allowed his spouse Del Rosario to rely on *US v. Sullivan*, 274 U.S. 259, 263-64 (1927) and *Garner v. US*, 424 U.S. 648, 661-63 (1976) by omitting protected information from the return, and the IRS held the information under protection equivalent to seal; see the Tax Court's order in Appendix H to this petition.

In *Diamond et al. v. US*, 107 Fed. Cl. 702 (2012) *aff'd* *Diamond et al. v. US*, No. 2013-5036, Dkt. 29-2 (Fed. Cir. 2013) *cert. denied*, the DOJ and courts proved that 28 USC section 1500 prevents reconsideration of whether the original return was frivolous but allows reconsideration of the reason. In both the original 2005 return submitted in 2006 and the corrected 2005 return in 2010 which complied with all IRS demands, and counter to the order in *Diamond v. CIR*, No. 14482-10SL (USTC 2013), it was determined that Del Rosario's reliance on US Supreme Court rulings demonstrated Diamond's lack of sincere and genuine effort to obey US law therefore Court of Federal Claims lacked jurisdiction. It was further determined that when the SSA has never granted nor rejected the only application ever made for an SSN for Del Rosario and the IRS consistently rejected applications for ITIN, and despite the existence of *US v. Silva-Chavez*, 888 F.2d 1481 (5th Cir. 1989), Diamond's failure to report an SSN for Del

Rosario also demonstrated Diamond's lack of sincere and genuine effort to obey US law therefore Court of Federal Claims lacked jurisdiction. Diamond submitted an amended 2005 return in 2014 complying by fabricating an SSN for Del Rosario and producing documents of the total amounts of income and tax paid in Japan. No one ever asserted any problem with the amended return, but the IRS still did not credit Diamond for US withholdings made under 26 USC sections 3406 and 1441.

In *Diamond et al. v. US*, 115 Fed. Cl. 516 (2014) *aff'd Diamond v. United States*, No. 2014-5088, (Fed. Cir. 2015) *cert. denied*, the DOJ and courts proved that Court of Federal Claims possessed jurisdiction over the corrected 2007 return submitted in 2010 which complied with all IRS demands, and it was not necessary for Diamond to fabricate an SSN for Del Rosario and it was acceptable for Del Rosario to rely on *US v. Sullivan* and *Garner v. US*.

At that point, Diamond learned that he needed jury trials for refund suits.

Had the IRS truthfully told in 2010 what corrections a return needed in order to obtain a refund, Diamond would have fully complied in 2010 instead of 2014. Since the IRS lied about what corrections a return needed, the statute of limitations is tolled (see *US v. Hohri et. al.*, 482 US 64 (1987) and *Hohri et. al. v. US*, 847 F. 2d 779 (Fed. Cir. 1988) and refund suits in 2014 and later were valid. In 2017 the government and courts taught Diamond that his suits in 2013, 2014, and 2017 were timely filed in the wrong forum.

In *Diamond v. US and Unknown Employees of the US*, No. 2:17-CV-06327-ODW (PJW) (CD California 2018) *aff'd Diamond v. US and Unknown Employees of the US*, No. 18-55376 (9th Cr. 2019) *cert.*

denied, Diamond did not know of 28 USC section 1402 and the district court lacked jurisdiction. In the 9th Circuit, the cause of action for a refund suit is 28 USC section 1346 therefore 26 USC section 7701(a)(39) does not apply because the latter definition extends to title 26 USC but not to title 28 USC. However, courts gave no reason for disregarding 28 USC sections 1631 and 610.

Now in *Diamond v. US et. al.*, No. 1:23-cv-00326 (TNM) (USDC District of Columbia 2023) *aff'd* *Diamond v. US and Unknown Employees of the US*, No. 23-5265, (DC Cir. 2025), the district court has jurisdiction but lacks venue under the same statute 28 USC section 1402. In the DC Circuit the cause of action for a refund suit is 26 USC section 7422 therefore 26 USC section 7701(a)(39) does apply. Since the court has subject matter jurisdiction the issue involves personal jurisdiction. 26 USC section 7701(a)(39) treats a non-resident citizen as a resident of the District of Columbia for the purpose of jurisdiction of courts, which must mean personal jurisdiction because it would be devoid of meaning to single out one district court for subject matter jurisdiction when all district courts have subject matter jurisdiction. The IRS agrees with Diamond's interpretation. Some IRS letters state that an IRS determination can be challenged in US Court of Federal Claims or the US District Court having jurisdiction.² The IRS must mean personal jurisdiction because it would be devoid of meaning to single out one district court for subject matter

² Some IRS letters fail to state that an IRS determination can be challenged in court, but Diamond did not know that this failure would toll the statute of limitations, which would have allowed Diamond to initiate a single refund suit for 2005, 2007, and other years.

jurisdiction when all district courts have subject matter jurisdiction. Therefore the meaning of "jurisdiction" in 26 USC section 7701(a)(39) and IRS letters must be the same as the meaning of "venue" in 28 USC section 1402. 26 USC section 7701(a)(39) appears to be Congress's effort to comply with the ruling in *Cook v. Tait*, 265 US 47 (1924), but at least two circuits have rendered it meaningless.

Most importantly, the 9th Circuit and now the DC Circuit have rendered meaningless both *Cook v. Tait*, 265 US 47 (1924) and *Bull v. US*, 295 US 247 (1935), without explanation.

In *Diamond v. CIR*, No. 14482-10SL (USTC 2013), *Diamond et al. v. CIR*, No. 5516-12SL (USTC 2013), and *Diamond v. CIR*, No. 5518-12SL (USTC 2012), the IRS told Tax Court that the penalties were for filing frivolous returns. In *Diamond v. CIR*, No. 4029-17 (USTC 2017) *aff'd Diamond v. Commissioner of Internal Revenue Service*, No. 17-1169 (D.C. Cir. 2018), the IRS reversed itself and stated that Diamond did not file any of the frivolous returns, Tax Court reversed itself and threatened sanctions against any party who asserts that Diamond filed the returns, and US Court of Appeals for the District of Columbia Circuit affirmed. Now in *Diamond v. US et. al.*, No. 1:23-cv-00326 (TNM) (USDC District of Columbia 2023) *aff'd Diamond v. US and Unknown Employees of the US*, No. 23-5265, (DC Cir. 2025), the US and Diamond agreed that Diamond did not file the frivolous returns but the judge *sua sponte* ruled that Diamond did file those returns – and US Court of Appeals for the District of Columbia Circuit affirmed. Since two panels disagreed on this crucial fact, Diamond petitioned for review *en banc*. If Diamond filed those returns then courts have jurisdiction over suits for refunds of actual taxes, but if Diamond did

not file those returns then courts have jurisdiction over suits for refunds of penalties which were not authorized by 26 USC section 6702(a). The appeals court serves the government's aims by refusing to resolve its inconsistency.

In *Diamond v. CIR*, No. 14482-10SL (USTC 2013), *Diamond et al. v. CIR*, No. 5516-12SL (USTC 2013), and *Diamond v. CIR*, No. 5518-12SL (USTC 2012), the IRS told Tax Court that the IRS had conducted Collection Due Process Hearings for notices of filings of federal tax liens and intents to levy. In *Diamond v. CIR*, No. 4029-17 (USTC 2017) *aff'd Diamond v. Commissioner of Internal Revenue Service*, No. 17-1169 (D.C. Cir. 2018), the IRS and Tax Court did not reverse themselves on this matter, and US Court of Appeals for the District of Columbia Circuit affirmed. In *Diamond v. US and Unknown Employees of the US*, No. 2:17-CV-06327-ODW (PJW) (CD California 2018) *aff'd Diamond v. US and Unknown Employees of the US*, No. 18-55376 (9th Cr. 2019) *cert. denied*, and again now in *Diamond v. US et. al.*, No. 1:23-cv-00326 (TNM) (USDC District of Columbia 2023) *aff'd Diamond v. US and Unknown Employees of the US*, No. 23-5265, (DC Cir. 2025), the US proved that the IRS did not engage in lien and levy actions and the 9th Circuit and DC Circuit affirmed. If the DOJ told the truth then the IRS injured Diamond by lying to Tax Court with fake notices of lien and levy actions. However, after petitioning for review *en banc*, The District Court's post-judgment order denying relief under 26 USC section 7433, Appendix C to this petition, is based on the DOJ's proof that the IRS did not engage in lien and levy actions. Diamond found a web site where Google and the government of the District of Columbia cooperate, where notices filings of federal tax liens were retrieved. Diamond

petitioned for panel review. In the event of the DOJ committing fraud on the courts and on Diamond, Diamond's complaint stated a valid tort claim against the DOJ. However, again the appeals court serves the government's aims by refusing to resolve the inconsistency.

When believing the DOJ's proof that the IRS did not engage in lien and levy action, the question arose of whether the IRS's use of falsified notices of lien and levy, deceiving both Tax Court and Diamond, were collection actions under 26 USC section 7433. However, this question appears moot because it appears the DOJ lied to two district courts.

The question arose whether the IRS's violation of a US Tax Court order thirteen months after the ruling in *Diamond v. CIR*, No. 5518-12SL (USTC 2012), using an offset not authorized by any statute for a penalty not assessed, was a collection action under 26 USC section 7433. It still appears to be a tort because the extended meaning of the word tax in 26 USC sections 6665 and 6671 does not extend to title 28 USC.

In *Diamond v. CIR*, No. 14482-10SL (USTC 2013), the IRS and Tax Court taught Diamond that in a collection case Tax Court lacks jurisdiction over withholdings; *see Greene-Thapedi v. CIR*, 126 TC 1 (USTC 2006). Normally a collection case takes place after the taxpayer has an opportunity for a deficiency case, where Tax Court would have refund jurisdiction in a deficiency case. However, when the IRS refuses to issue a Notice of Deficiency, and when the IRS refuses to issue a Notice of Mathematical or Clerical Error to prevent the taxpayer from demanding abatement and conversion to deficiency proceedings pursuant to 26 USC section 6213(b)(2)(A), assessment and collection are performed in the same manner as tax not in the

same manner as deficiency, *see* 26 USC sections 6665 and 6671. In *Diamond et al. v. CIR*, No. 5516-12SL (USTC 2013) and *Diamond v. CIR*, 5518-12SL (USTC 2012), Tax Court similarly lacked jurisdiction over withholdings.

The following cases were all dismissed without reaching the merits, without allowing witnesses to be called, and without considering the withholdings:

Diamond et al. v. US, 107 Fed. Cl. 702 (2012) *aff'd*
Diamond et al. v. US, No. 2013-5036, Dkt. 29-2 (Fed. Cir. 2013) *cert. denied*;

Diamond v. US, No. CV 13-8042-GHK (AGR) (CD California 2015) *aff'd* *Diamond v. US*, No. 15-55334 (9th Cir. 2017);

Diamond v. US, No. CV 14-9196-GHK (AGR) (CD California 2015) *aff'd* *Diamond v. US*, No. 15-56100 (9th Cir. 2017);

Diamond v. CIR, US Tax Court No. 4029-17 (USTC 2017) *aff'd* *Diamond v. Commissioner of Internal Revenue Service*, No. 17-1169 (D.C. Cir. 2018) *cert. denied*;

Diamond v. US and Unknown Employees of the US, No. 2:17-CV-06327-ODW (PJW) (CD California 2018) *aff'd* *Diamond v. US and Unknown Employees of the US*, No. 18-55376 (9th Cr. 2019) *cert. denied*.

The following case was dismissed because the IRS credited withholdings for years 2006 and later after suit was initiated:

Diamond et al. v. US, 115 Fed. Cl. 516 (2014) *aff'd*
Diamond v. US, No. 2014-5088, (Fed. Cir. 2015) *cert. denied*.

The following case was ruled in the IRS's favor because it was determined that Diamond did not file joint returns for 2002, 2005, 2006, 2007, and 2008; and the IRS had determined administratively that Diamond's spouse Del Rosario also did not file them:

Diamond et al. v. CIR, No. 14095-18 (USTC 2020)
aff'd Diamond et al. v. CIR, No. 21-1072 (DC Cir. 2021).

However, it was not clarified how the IRS was allowed to transfer penalties and credits pursuant to joint liability under 26 USC section 6013 while not allowing relief under 26 USC section 6015. Again Diamond was prevented from calling witnesses and the court did not consider withholdings.

Therefore the only way to put into court proceedings the statement of TD Ameritrade Inc. on withholding that it paid to the US Treasury is to make TD Ameritrade a defendant, in a case where the US participates meaningfully and can dispute TD Ameritrade's statement if it wishes. The only possible venue is a US district court. For reasons discussed earlier, for a non-resident US citizen, US District Court for the District of Columbia is the most suitable venue.³

Now in (USDC District of Columbia 2023) *aff'd Diamond v. US and Unknown Employees of the US*, No. 23-5265, (DC Cir. 2025), the District Court received a declaration hand-delivered by a messenger for TD Ameritrade, showing that Ameritrade withheld the amounts that Diamond declared on returns for 2005⁴ and paid them to the US Treasury. The District Court performed incredible manipulations to prevent filing of the declaration, by attaching it to one of Diamond's motions as ECF document 20-2 and then denying the motion. TD Ameritrade's messenger did not attach its declaration

³ Unfortunately there seems to be no way for a non-resident alien such as Peretz and another named Topsnik to get a withholding agent's into court at all.

⁴ Ameritrade later became TD Ameritrade, and later Charles Schwab.

to any other document. The court's "Received" stamp shows that the original declaration was not an attachment. As well, TD Ameritrade's counsel served copies of the declaration on the US's counsel by both postal mail and e-mail. Since the IRS is in privity with the DOJ, the IRS knows about the declaration. If the DOJ had a division aimed at enforcing the law, they would tell the IRS to obey the law and credit Diamond. But in fact they remain dedicated to evading the law. The IRS still refuses to comply with *US v. Kales*, 314 U.S. 186 (1941) because IRS employees erased records of the original return.

In Diamond's effort to "follow the money," he also made Fiserv Inc. a defendant, as the host of both government (.gov) and commercial (.com) web sites used for payments to the US Treasury, possibly subject to the same kind of corruption as performed by former IRS employee Monica Hernandez. Fiserv did not give a reason for renegeing on their proposal to make a declaration.

The US tried to get the case dismissed before other parties could submit their declarations and without Diamond's knowledge. Diamond learned about it with approximately 2 days to act, not enough time to respond properly. The US still has not served on Diamond a copy of its motion to dismiss.

REASONS FOR GRANTING THE WRIT

The case of *Peretz v. US*, No. 18-1699T (Fed. Cl. 2020 *aff'd* *Peretz v. US*, No. 2021-1831 (Fed. Cir. 2022)) reveals a malicious pattern including cases of Peretz and petitioner Diamond. The IRS properly collects withholding without impediment. However, after collection is completed and the taxpayer timely submits a return, the IRS violates 26 USC sections 31 and 1462 by failing to credit the taxpayer, violates 26 USC section 6201(a)(3) by failing to issue a notice of mathematical or clerical error, and violates 26 USC section 6201(d) by failing to verify information returns from withholding agents. The IRS assesses a penalty for a frivolous return but still disregards statutory requirements. When the IRS instructs the taxpayer on how to correct a return and the taxpayer complies, the IRS disregards existence of the timely original claim, fails to record information returns, and again disregards statutory requirements. When the taxpayer sues for refund, the DOJ "moves the goalposts" by asserting that a valid return must meet additional requirements which the IRS did not demand when the taxpayer complied with the IRS. When the taxpayer complies again by submitting a return complying with the DOJ's stated requirements and sues again, the court rules that after the DOJ once "moved the goalposts" the court will never accept jurisdiction no matter how much further the taxpayer complies.

WHY do the IRS and DOJ oppose allowing the taxpayer to pay the correct amount of tax, why do courts allow the government to escape their legal obligation, why do the government and courts oppose auditing taxpayers who need to be audited, why do the government and courts oppose contacting

withholding agents who made the payments? This malfeasance must be stopped.

Congress enacted numerous statutes intending to make taxpayers pay the correct amount of tax. The system works well in cases where a taxpayer owes tax and gives a frivolous reason for refusing to pay. The system fails when the government owes a refund of overpayment and the government puts up roadblocks to prevent courts from taking jurisdiction.

In fact statutes confer jurisdiction on courts even when returns are defective, when taxpayers and government act timely. If the government issues a valid notice of deficiency and the taxpayer timely petitions US Tax Court, Tax Court is required to determine the correct amount of tax even when the taxpayer and the IRS are incapable of doing so. If the government issues a valid notice of mathematical or clerical error and the taxpayer timely responds, the IRS is required to convert to deficiency proceedings. If the taxpayer timely filed a claim with the IRS then statutes sometimes confer jurisdiction on a US District Court and always confer jurisdiction on US Court of Federal Claims. When the taxpayer, IRS, and DOJ are all incapable of determining the correct amount of tax, the court has jurisdiction to compute the correct amount even when the court rules that it lacks jurisdiction. 28 USC section 1340 gives district courts jurisdiction to credit the taxpayer for payments even if not to refund overpayments; oddly it does not give Court of Federal Claims jurisdiction on these matters. *Bull v. US*, 295 US 247 (1935) states that although the role of plaintiff and defendant are reversed in tax cases, the taxpayer still has a right to due process. Why do courts other than Tax Court deny jurisdiction and deny due process?

Prior to enactment, of 26 USC section

7803(a)(3)(C), the IRS used to send taxpayers its own production of Taxpayer Bill of Rights, in which one item was the right to pay the correct amount of tax. The IRS did not obey it. Now that 26 USC section 7803(a)(3)(C) is law, the IRS still does not obey it and courts do not enforce it because courts assert that this statute only enumerates rights which already exist in accordance with other statutes. Yet Court of Federal Claims and sometimes District Courts assert that taxpayers do not have rights to due process to obtain rights to pay the correct amount of tax, whether the cause of action is 26 USC section 7422 as in the D.C. Circuit or 28 USC section 1346 as in the 9th Circuit. When a return is perfected after a court ruling adds requirements that the IRS did not impose, the government and courts refuse to comply with *US v. Kales*, 314 U.S. 186 (1941) and *Bull v. US*, 295 US 247 (1935). WHY?

Even when the Assistant Attorney General for Taxation and her delegates in *Diamond et al. v. US*, 107 Fed. Cl. 702 (2012) *aff'd Diamond et al. v. US*, No. 2013-5036, Dkt. 29-2 (Fed. Cir. 2013) *cert. denied*, successfully opposed letting petitioner Diamond and his spouse be made whole, the same Assistant Attorney General for Taxation testified to Congress that the IRS would make taxpayers whole; see appendix G to this petition.

If the withheld money remained in possession of the US Treasury, it is hard to imagine a reason why the government would be afraid to credit the taxpayer, to conduct an audit, and to contact payers. Even if the government does not believe that the taxpayer paid the claimed amount of withholding, it is difficult to imagine why the IRS refuses to issue a notice of mathematical or clerical error. However, if the government or court fears that an audit might reveal

some other place where the withheld money went to, then it is easy to see why the government so fiercely opposes complying with laws. Regardless of whether the government can stop this kind of malfeasance, statutes and due process guarantee that taxpayers should still be made whole.

The IRS alternates between two kinds of transcripts which conflict with each other; one kind shows original returns timely filed but months later no longer on file while the other kind omits both the filings and disappearances. Courts alternate between ruling that Diamond did or Diamond did not file the original returns. No court has been willing to make concrete rules to determine whether a return is filed or not. In the "Beard Test" one prong is that the taxpayer must make a genuine and sincere attempt to comply with the law; in Tax Court this prong means that the taxpayer does not defraud the government but in Court of Federal Claims this prong means that the US citizen fabricates a taxpayer identification number for their non-resident alien spouse and somehow overcome the spouse's reliance on US Supreme Court rulings -- but only for some tax years, not for others. It is absolutely necessary now to make rules to determine whether the taxpayer has or has not filed a return.

The government and courts reverse their positions from case to case. These actions harm the taxpayer by forcing payment of more than the correct amount of tax in violation of 26 USC section 7214(a)(2) and corruptly interfering with due administration in violation of 26 USC section 7212(a). The IRS used offset to partially collect a penalty which US Tax Court ruled shall not be collected, in *Diamond v. CIR*, No. 5518-12 (USTC 2012). Since these actions pertain to collected taxes and penalties

they might be illegal collection actions under 26 USC section 7433 though not torts because of 28 USC section 2680(c); but if they are not collections of tax then they are torts under 28 USC section 1346. Illegal actions pertaining to penalties qualify as both illegal collection actions and torts because 26 USC sections 6665 and 6671 extend the definition of tax to include penalties throughout title 26 USC but do not extend to title 28 USC. The government and courts assert that the illegal collection actions pertain to collection of tax under 28 USC section 2680(c) but do not pertain to collection of tax and penalties under 26 USC section 7433; but it is impossible for both to be true. It is absolutely necessary now to determine which statutes apply to illegal actions conducted subsequent to the original unimpeded lawful collection of withholdings.

The meaning of "jurisdiction" in 26 USC section 7701(a)(39) and IRS letters must be the same as the meaning of "venue" in 28 USC section 1402. 26 USC section 7701(a)(39) appears to be Congress's effort to comply with the ruling in *Cook v. Tait*, 265 US 47 (1924), but at least two circuits have rendered it meaningless.

Most importantly, the 9th Circuit and now the DC Circuit have rendered meaningless both *Cook v. Tait*, 265 US 47 (1924) and *Bull v. US*, 295 US 247 (1935), without explanation.

The IRS itself has made *Cook v. Tait* obsolete. 26 CFR 601.101 assigns responsibilities to the Director, Foreign Operations District, whose last known address was in the District of Columbia. Diamond's first registered letter to that address was delivered but brought no reply, and his second registered letter

was returned as undeliverable.⁵ The IRS used to have offices in US embassies and consulates where taxpayers could go for consultation but the IRS has closed them. The IRS used to have a web page where taxpayers worldwide could submit questions but the IRS has closed them. The IRS has a web page where taxpayers who pay preparers to file returns electronically are supposed to check if their returns are actually filed, but the IRS blocks non-residents from using that page. When the IRS tells taxpayers worldwide to make toll free telephone calls to the IRS, the IRS contracts with ATT to block the calls. When the IRS tells taxpayers to write to IRS offices, the IRS disregards taxpayers' letters. The IRS makes a list of Low Income Tax Clinics, but taxpayers must reside in geographical regions of one country and taxpayers' incomes must fall below limits set for geographical regions of one country. When an IRS letter sets a deadline of 10 days or 20 days or 30 days for a taxpayer to reply, the IRS mails its letters by methods reasonably calculated to take longer than 10 days or 20 days to be delivered in the first place, and despite taxpayers' prompt replies, the IRS ignores the replies. The government and courts (including US Supreme Court) often fail to affix proper postage to their letters. Around 1984, prior to the IRS's use of area code 800 phone numbers, an IRS letter told Diamond to call the IRS at a phone number listed in the blue pages of his local telephone directory, but the blue pages did not list any government agencies outside of Canada; Diamond sent a letter but the IRS did not reply. The IRS itself reported that it is impossible for honest taxpayers to comply honestly and are forced to

⁵ Obviously the Director delegates responsibilities, but she is the appropriate point of contact for taxpayers to remind her to instruct subordinates to obey the law.

renounce US citizenship (see Appendix I to this petition).

The Social Security Administration has also made *Cook v. Tait* obsolete. In 1994 the SSA agreed that Diamond was eligible for a new SSN to replace the one the IRS abused, but the SSA demanded Diamond's passport because Diamond's address was outside the US. Diamond tried to find another way because he could not wait months without his passport which contained his Japanese immigration stamps, but the SSA did not reply. The SSA would not have demanded a passport from a citizen whose address was in the US.

Diamond benefited from *Cook v. Tait* because, when US payers deducted US withholdings at the treaty rate between the US and Canada⁶, a US tax return brought refunds. The refunds only stopped when the US persuaded Canadian stockbrokers to join the Qualified Intermediary program, and IRS employees including Monica Hernandez embezzled US withholdings that were reported on Form 1099 (see Appendix F to this petition). Refunds properly ceased when Diamond became a non-resident alien (see Appendix I to this petition).

Despite Diamond's benefit from *Cook v. Tait*, evidence is overwhelming that the ruling is obsolete. Newer rulings from at least two circuits should be upheld, 26 USC section 7701(a)(39) should be overturned. Income taxes and refund suits should be based solely on source of income and residence of taxpayer, the way they are done in most countries of the world and in US possessions. Income taxes and refund suits should stop being based on citizenship,

⁶ When Diamond moved to Japan but maintained his account at a Canadian stockbroker, withholding continued at the rate set by the US - Canada treaty.

the way they have been done incompletely and incompetently by only two countries of the world, the US (except for US possessions) and Eritrea. Numerous complications and disastrous effects will come to an end (again see Appendix I to this petition). Evidence is overwhelming that Supreme Court should agree with at least two Appeals Courts that *Cook v. Tait*, 265 US 47 (1924) is obsolete.

CONCLUSION

Diamond has been injured to the point where even the sought compensation cannot return him to a normal life. But for the good of the United States and all taxpayers, the Court should make due process available in compliance with laws. For the good of the United States and its citizens, the Court should consider how the United States treats its non-resident citizens. The writ should be granted.

NOTIFICATION CONCERNING MAIL

It is beyond petitioner's control when the court mails a document by means normally calculated to take thirteen (13) days for delivery, or when the court mails a document without proper postage. Concurrent service by e-mail can alleviate delays.

Respectfully submitted,

Norman Douglas Diamond, *pro se*
5404 Alexander Crescent
Niagara Falls, Ontario, L2E 2T8
Canada
Tel.: 905-371-6494
e-mail: nxdiamond@gmail.com