Docket No. 13-15022

In the

UNITED STATES COURT OF APPEALS

for the

NINTH CIRCUIT

ELIZABETH BOARDMAN,

Plaintiff-Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Defendant-Appellee.

Appeal from a Decision of the United States District Court
for the Eastern District of California
No. 2:12-cv-00639-MCE-GGH
Chief Judge Morrison C. England, Jr.

PETITION FOR PANEL REHEARING AND FOR REHEARING EN BANC BY APPELLANT ELIZABETH BOARDMAN

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PETITION FOR REHEARING AND FOR REHEARING *EN BANC*

Pursuant to FRAP 35 and 40, Plaintiff-Appellant Elizabeth Boardman petitions for rehearing and/or rehearing *en banc* with respect to the Panel Decision filed on March 12, 2015. (Ex. A.) The Panel Decision affirmed *Boardman v. Shulman*, 110 A.F.T.R.2d (RIA) 2012-6987 (E.D. Cal. 2012). (Ex. B.)

Questions of exceptional importance affecting national IRS enforcement methods are presented by the Panel Decision's ruling that "the Anti-Injunction Act (AIA) precludes federal jurisdiction here" as to cases of unlawful IRS abuse directed at religious tax protestors, thus preemptively excluding traditional practices of Quaker war tax resistance from protections of Religious Freedom.

The Panel Decision conflicts with recent decisions of the Supreme Court (*Burwell v. Hobby Lobby, Holt v. Hobbs*) that hold that the Religious Freedom Restoration Act of 1993 (RFRA) requires government to accommodate religious practices or to show why it must impose burdens thereon. The Panel Decision conflicts with an authoritative decision of the D. C. Circuit (*Cohen v. U.S.* 650 F.3d 717 (D.C. Cir. 2011) (*en banc*)) that prescribes a fact-based inquiry into AIA issues when IRS violations of taxpayer rights are outside of lawful assessment or collection functions. The Panel Decision conflicts with decisions in this circuit (e.g., *Jenney v. U.S.*, 755 F2d. 1384 (9th Cir. 1985)) and other circuits that protect protestors who file correct tax returns and state religious reasons for refusal to pay.

FACTS AND STATUTORY FOCUS

Plaintiff seeks restoration of religious freedoms of Quakers that were established during the 1980's and that expressly include a right to refuse to pay income taxes voluntarily, if the taxpayer files a correct tax return. The IRS collects taxes by involuntary means, plus statutory penalties, interest and collection charges. Quakers who abhor participating in violence, even indirectly, have maintained such religious practices of "war tax resistance" since the 17th century. (AOB 11-16.)[1] In *U.S. v. American Friends Service Comm.*, 419 U.S. 7, 8 (1974), Quakers "wished to bear witness to their beliefs by reporting the amounts as taxes owed on their annual income tax returns but refusing to pay such amounts. They would thus compel the Government to levy in order to collect the taxes."

To constrain protests, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) imposed a $500 penalty for filing a return ***with incorrect information***, if such conduct was due to "a position that is frivolous" or if the return manifested a desire to impair or impede tax administration. (TEFRA statutory text at AOB 67.)

Some protest activity, on the other hand, was protected from punishment:

> In contrast, the penalty will not apply if the taxpayer shows the correct tax due but refuses to pay the tax. In such a case, of course, the Secretary can assess and collect the tax immediately. (S.Rep. No. 494, 97th Cong., 2d Sess. at 278.)

(*Jenney v. U.S.*, 755 F2d. 1384, 1385 (9th Cir. 1985); AOB 35-36).

[1] AOB denotes Appellant's Opening Brief (Dkt. 9-1); ER denotes Excerpts of Record (Dkt. 9-2); and ARB denotes Appellant's Reply Brief (Dkt. 22).

Statutory penalties are incurred by all who pay late (26 U.S.C. § 6651); but under TEFRA, protestors were not further penalized if they reported "the correct amount due and explained in their attached statement their refusal to pay because of their objection to war." (*Jenney*, supra, 755 F2d. at 1386-1387.)[2]

Plaintiff's Complaint herein quoted materials from the official IRS website that infringe on rights that should be protected under TEFRA and *Jenney*. Quoted text referred to Rev. Rul. 2005-20: "This revenue ruling describes as frivolous the refusal to file returns or pay taxes based on moral, religious or ethical objections to the government programs or policies for which the taxes will be used." (ER 34:23-25, emphasis modified.) The Complaint alleged, on information and belief, that the IRS targets religious war tax resisters for punishment. (ER-24:4-7, 41:2-4.) More recently, Plaintiff has identified Quaker Vickie Aldrich, punished by the IRS for "frivolous" conduct of enclosing a religious protest message with a tax return that lacked full payment, and Quaker Steve Leeds, threatened with punishment for similar conduct even though he owed no tax. (ARB, 7-8.)

Apparently, tax returns with enclosed religious protest messages may be flagged or labeled as "frivolous" and selected for adverse treatment; returns without full payment and without messages go to ordinary collections processing.

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[2] See also *Kahn v. U.S.*, 753 F. 2d 1208, 1216-17 (3rd Circuit 1985) ("The civil penalty statute does not prohibit her letter of protest."); *Eicher v. U.S.*, 774 F. 2d 27, 29-30 (1st Cir. 1985) ("…section 6702…penalizes only noncompliance with federal tax requirements, not taxpayers' freedom of expression"). (AOB 36-37.)

Plaintiff's case is more complex and involves the Tax Relief and Health Care Act of 2006 (TRHCA). Other than increasing the penalty for "frivolously" filing an incorrect tax return to $5000, TRHCA substantively maintained TEFRA provisions, now codified at 26 U.S.C. § 6702(a). Relevant TRHCA provisions are codified at 26 U.S.C. §§ 6702(b)-(e) and 6330(g). TRHCA authorizes exercises of discretion by the Secretary of the Treasury and IRS, e.g., imposition of a $5000 penalty for certain procedural offenses. (AOB 26-29, ARB 14, 20-21, 27.)

Here, Plaintiff filed a timely and correct 2008 tax return. In an enclosed letter, Plaintiff stated reasons of conscience and religious belief for refusal to pay part of the amount due. During interactions with the IRS over the ensuing 18 months, her conduct extended into areas of IRS discretion. The IRS apparently had authority to impose a $5000 penalty on Plaintiff for attempting to obtain a tax court hearing. No penalty was imposed; had it been, it would have entitled Plaintiff to pursue her claims.

The Complaint alleges that the IRS applied a "frivolous" label to Plaintiff, disregarded authorized procedures and used bureaucratic suppression, misdirection and misrepresentation against her, finally threatening to levy to collect. Having been denied the tax court hearing that she sought, Plaintiff paid the amount demanded on September 22, 2010. (ER-24:4-21; 36:5-7; 37:20-38:8; AOB 9-11.)

REASONS FOR REHEARING AND/OR REHEARING *EN BANC*.

A. Exceptional questions involving national IRS enforcement methods are presented by the Panel Decision's ruling that federal jurisdiction is precluded in cases of unlawful IRS abuse directed at religious tax protestors, thus preemptively excluding traditional Quaker religious practices of war tax resistance from protections of Religious Freedom.

Plaintiff, a lifelong Quaker and peace activist, alleges that the IRS acts unlawfully[3] to suppress religious practices of war tax resistance.

> Plaintiff claims that Defendant 'employs punitive procedures and/or policies against persons who fail or refuse to make full payment of taxes on grounds of religion or conscience.' [] Defendant's practices, according to Plaintiff, are discriminatory and seek to suppress conduct undertaken for religious reasons. [] In fact, Plaintiff alleges that Defendant intentionally frustrated her religious beliefs by depriving her of rights and procedures that would have been available had she not asserted a religious motive for withholding a portion of her taxes.
>
> (District Court Decision, Ex. B, 4:6-15.)

In specific cases of IRS misconduct, the IRS threatened Steve Leeds, who filed a correct return with no tax due but with a Quaker protest message attached to the return. (ARB 8, n.5.) IRS statements during the appeal (ARB 7-8) confirm wrongful punishment of Vickie Aldrich even while indicating some changes in IRS policy. Plaintiff's religious practice was burdened by discriminatory and unlawful IRS procedures and misrepresentations. (ER-36:5-38:8.)

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[3] The IRS appears to base punishments and threats on messages that accompany returns "only because of the religious belief that they display." (*Employ't Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 877 (1990) The IRS apparently "discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." (*Church of Lukumi Babalu Aye v. Hialeah*, 508 U. S. 520, 532-533 (1993).) (AOB 22-26.)

The Panel Decision ruled (Ex. A at 2): "the Anti-Injunction Act (AIA) precludes federal jurisdiction here." Preclusion apparently extends to all claims of unlawful IRS abuse of religious war tax resisters, so long as no penalty is actually imposed or if a penalty is abated when disputed, as in the Vickie Aldrich case.

Such preclusion is contrary to RFRA, which amended the AIA. (42 U.S.C. § 2000bb–3(a).)

An authoritative *en banc* decision of the District of Columbia Circuit (*Cohen v. U.S.*, discussed infra) rejects blanket preclusion of federal jurisdiction over IRS misconduct and prescribes a more careful inquiry. In recent cases of IRS misconduct directed at conservative political groups, district courts in diverse jurisdictions have followed the *Cohen* approach and allowed plaintiffs to proceed.

As stated in *Cohen*, the AIA prohibits suits only where the purpose is to restrain IRS assessments or collections. That is not the purpose here. Correct self-assessment and reporting of taxes is a premise of Plaintiff's claim. TEFRA and *Jenney* authorize immediate collections.

A rule of preclusion would enable the IRS to violate constitutional rights of taxpayers for indefinite periods of time, at least while violations are shielded by AIA functions of "assessment or collection" and monetary damage is delayed.

Even as an otherwise absolute bar, the AIA has an exception when plaintiff has no alternative remedy. (Ex. A, 2-3.) Here, facts end on September 22, 2010.

Plaintiff has no monetary claim and no alternative remedy. (ER-26:1-9, 41:19-21.) But the Panel Decision finds to the contrary. (Ex. A, 3.) Such finding and such preclusion, taken together, deny Plaintiff a ruling on the merits.

Consideration of merits and possible remedies suggests that a minimum RFRA accommodation or constitutional protection should define categories of fully protected protest conduct (correct return filed, no tax remains due), partially protected conduct (correct return filed, refusal to pay full tax for religious reasons) and unprotected conduct. Penalties and procedures, e.g., IRS exercises of discretion under TRHCA, should conform to rigid neutrality when dealing with religious protestors. Harsh IRS collection methods directed at partially protected religious protestors might require some limitations. Regardless of specific terms, an accommodation or constitutional protection would clarify relations between religious tax protestors and the IRS.

Any accommodation would be drafted by the IRS with oversight by the District Court, subject to possible objections, suggestions and appeal by Plaintiff. (AOB 45, n. 14.) Court approval of an accommodation would likely moot other issues. (ARB 9.)

For the foregoing reasons, Plaintiff requests a rehearing or rehearing *en banc*.

B. Preemptive exclusion of Quaker religious practices from protections of Religious Freedom conflicts with a recent decision of the Supreme Court (*Burwell v. Hobby Lobby*) that mandates the broadest possible application of the Religious Freedom Restoration Act of 1993 (RFRA).

In *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. __, 134 S. Ct. 2751, 2760 (2014), the Court held that the Religious Freedom Restoration Act of 1993 (RFRA) established a "very broad protection for religious liberty." Dissenters objected to "a decision of startling breadth." (134 S.Ct. at 2787.) Concurring, Justice Kennedy stated that all the Justices "do agree on the purpose" of RFRA, which "is to ensure that interests in religious freedom are protected." (134 S.Ct. 2785.)

The *Hobby Lobby* Court assimilated RFRA to the closely-related Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) (42 U.S.C. § 2000cc *et seq*.), in which Congress both defined "exercise of religion" and also "mandated that this concept 'be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.' § 2000cc-3(g)." (134 S.Ct. 2761-62.)

The *Hobby Lobby* Court found a standard for accommodation by the agency in regulations drafted for a class of similar organizations pursuant to Congressional enactment. (137 S.Ct. 2763-64, 2782.) Here, Plaintiff proposes a standard for accommodation based on Congress's intent in TEFRA, stated in *Jenney*, supra.

The plaintiff did not invoke RFRA in *Hansen v. Dep't of Treasury*, 528 F.3d 597 (9th Cir. 2007), on which the Panel Decision relies. In that case, plaintiff's

inchoate claims of religious discrimination based on "various treasury regulations" had no discernible substance. (528 F.3d at 602-603.) Here, Plaintiff does invoke RFRA and asserts specific facts of IRS misconduct, including unlawful threats and punishment directed at named Quaker practitioners. While holding that plaintiff's action was barred by the AIA, the *Hansen* court reviewed allegations of his claims and considered their merits, rather than precluding review altogether.

Therefore, Plaintiff requests a rehearing or rehearing *en banc*.

C. Preemptive exclusion of Quaker religious practices from protections of Religious Freedom conflicts with a recent decision of the Supreme Court (*Holt v. Hobbs*) that requires a ruling on the merits of a RFRA claim where government has been shown to burden religious practices.

In *Holt v. Hobbs*, 135 S. Ct. 853 (2015), the Supreme Court ruled that the Arkansas Department of Correction violated RLUIPA, supra, when it failed to accommodate an inmate, "a devout Muslim who wishes to grow a 1⁄2-inch beard in accordance with his religious beliefs." (135 S.Ct. 859.) The Court adopted a unified interpretation of RLIUPA and RFRA, noting an "expansive protection for religious liberty." (*Id*. at 860.)

Holt turned on facts. It seems that the outcome might have been different had the inmate's beard been unusually full and dense. The *Holt* Court cited the leading RFRA case, *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U. S. 418 (2006) and stated a basis for fact-finding that is grounded in Congressional enactments:

> RLUIPA, like RFRA, contemplates a "'more focused'" inquiry and " 'requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person"—the particular claimant whose sincere exercise of religion is being substantially burdened.'" *Hobby Lobby*, 573 U. S., at ___ (slip op., at 39) (quoting *O Centro*, supra, at 430–431 (quoting §2000bb–1(b))). RLUIPA requires us to "'scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants'" and "to look to the marginal interest in enforcing" the challenged government action in that particular context. *Hobby Lobby*, supra, [further citation]. (*Id*. at 863)

In this case, the preclusive approach of the Panel Decision prevents any focused inquiry, any consideration of effects on persons of challenged IRS enforcement actions and any scrutiny of asserted harms to the IRS were the Court to order exemptions from or limits to certain enforcement actions.

Without taking evidence, the District Court below found (Ex. B at 9:1-17):

> Here, while Plaintiff claims she does not wish to interfere with tax assessment and collection, … her complaint is actually a thinly-veiled attempt to force extensive and burdensome changes to Defendant's already complex taxation system. …The Court has no doubt that ruling in Plaintiff's favor would negatively impact Defendant's established methods of assessing taxes. It is also clear that compelling Defendant to adopt procedures catering to the religious or moral views of every taxpayer would significantly burden tax collection. Indeed, the costs of administering the tax system may become prohibitively expensive, threatening the system's integrity, if Defendant allocated tax revenue based on the individualized beliefs of each taxpayer.

Discussing a similar position, the *Holt* Court stated (*Id*. at 866):

> At bottom, this argument is but another formulation of the "classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions." *O Centro*, 546 U. S., at 436. We have rejected a similar argument in analogous contexts, [citations], and we reject it again today.

Plaintiff submits that *Holt* requires RFRA determinations to be made on the basis of evidence. Under *Holt*, a determination by a district court on the basis of "no doubt," "it is also clear" and "costs … may become prohibitively expensive" is insufficient when the federal government seeks to extinguish a religious practice.

In *O Centro*, supra, the Court held that: "Congress has determined that courts should strike sensible balances, pursuant to a compelling interest test that requires the Government to address the particular practice at issue." (546 U.S. at 439.) The Court reviewed cases where courts denied free-exercise claims for religious exemptions from tax laws (*United States v. Lee*, 455 U. S. 252 (1982) and *Hernandez v. Commissioner*, 490 U. S. 680 (1989)) and stated:

> These cases show that the Government can demonstrate a compelling interest in uniform application of a particular program by offering evidence that granting the requested religious accommodations would seriously compromise its ability to administer the program.
> (*Id*. at 435.)

A preclusive approach is in conflict with a standard requiring evidence. Under a preclusive approach, a religious practitioner of war tax resistance who is suffering heavy burdens from abusive IRS enforcement methods is barred from all relief, no matter how easily the IRS might put into effect a less punitive means of accomplishing its compelling governmental interests.

For the foregoing reasons, Plaintiff requests a rehearing or rehearing *en banc*.

D. The Panel Decision's ruling that "the Anti-Injunction Act (AIA) precludes federal jurisdiction here" conflicts with the plain text of RFRA that amends the AIA and that provides jurisdiction here.

> The Anti-Injunction Act provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421(a). This statute protects the Government's ability to collect a consistent stream of revenue, by barring litigation to enjoin or otherwise obstruct the collection of taxes. Because of the Anti-Injunction Act, taxes can ordinarily be challenged only after they are paid, by suing for a refund. (*National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566, 2582 (2012) ("*NFIB*").)

In *NFIB*, the Court held that the AIA did not bar the requested injunction because amounts involved were "penalties" rather than "taxes." The Court stated:

> The Anti-Injunction Act and the Affordable Care Act, however, are creatures of Congress's own creation. How they relate to each other is up to Congress, and the best evidence of Congress's intent is the statutory text.
>
> (*Id.* at 2583.)

Here, RFRA, enacted in 1993, expressly ***amended*** the AIA, which was most recently re-enacted in 1954. (42 U.S.C. § 2000bb–3(a).) Federal jurisdiction over a personal claim is expressly set forth in § 2000bb–1(c). (Text at AOB 71-72.)

Congress's intent to extend enhanced protections to all forms of religious practice could not be clearer. Every major case that has considered RFRA, e.g., *Hobby Lobby*, supra, has emphasized its comprehensive character. "RFRA is unusual in that it amends the entire United States Code." (*Rweyemamu v. Cote*,

520 F. 3d 198, 202 (2nd Cir. 2008).) As far as is known, prior to this case, no rule of preclusion has ever been suggested to bar a RFRA claim.

Protections for religious freedom under RFRA extend over the entire federal government. (*Guam v. Guerrero*, 290 F. 3d 1210, 1220-1221 (9th Cir. 2002).) No exception for the IRS or any other federal agency has been stated.

RFRA authorizes only equitable relief. (*Webman v. Fed. Bur. of Prisons*, 441 F. 3d 1022 (D.C. Cir. 2006).) Subordinating RFRA to the AIA would insulate and immunize the IRS from RFRA's provisions, uniquely among federal agencies.

Therefore, Plaintiff requests a rehearing or rehearing *en banc*.

E. The Panel Decision's ruling that the AIA precludes all relief from IRS violations of constitutional and taxpayer rights in a case where no tax assessment or collection is challenged conflicts with an authoritative *en banc* decision of the District of Columbia Circuit (*Cohen v. U.S.*) that prescribes a more careful inquiry.

The AIA provides: "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained…" (26 U.S.C. § 7421(a).) Here: "Plaintiff does not seek to restrain assessment or collection of any tax." (ER-26:1.)

> Plaintiff does not desire to impair or impede the administration of federal tax laws. Plaintiff is not attempting to reduce or eliminate her federal tax liability. Plaintiff is not contending in this proceeding that she has a right to avoid paying any amount of taxes or any penalty or interest imposed by Congress. Plaintiff asks the Court to enjoin actions by the Commissioner that violate the Constitution and/or to order compliance with RFRA. Plaintiff is informed, believes and thereon alleges that the Service can accommodate bona fide religious war tax resisters without negative impact upon tax collection and enforcement duties as defined by Congress. (ER-26:2-9.)

Minimum protections of legal and constitutional rights of religious tax protestors would start with informational postings that specify taxpayers' rights to protest and that also identify violations of law subject to punishment. Adverse IRS actions based on words like "Quaker" or "conscience" should be prohibited[4]

This case resembles *We the People Foundation, Inc. v. U.S.*, 485 F. 3d 140, 143 (D.C. Cir. 2007), where plaintiff had "a straight First Amendment Petition Clause claim. … By its terms, the Anti-Injunction Act does not bar that claim."[5]

Cohen v. U.S., 650 F.3d 717 (D.C. Cir. 2011) (*en banc*) involved disputes over IRS procedures for certain tax refunds. The court prescribed a fact-based approach for claims of alleged IRS violations of legal or constitutional taxpayer rights in cases where plaintiff does not challenge a tax assessment or collection.

In *Cohen*: "The Service argues the [Supreme] Court has construed the ***AIA to preclude suit*** in similar circumstances." (650 F.3d at 726, emphasis added.)

The *Cohen* court reviewed authorities, including referenced Supreme Court

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[4] Vickie Aldrich was initially punished by a $5000 penalty for refusing to pay taxes and enclosing a religious message with her return. The penalty was reduced to $500, but she had to sign a "a letter promising to not send them frivolous arguments. … The promise exacted was to not send words that explain or argue or support an act of conscience." Vickie Aldrich blog at http://mathewch5v9.blogspot.com entry for Aug. 11, 2012.

[5] See also *Jenkins v. Rucke*r, 95 A.F.T.R.2d 1182 (D.D.C. 2005) ("Plaintiff's claim that Defendants have placed her on a tax blacklist does not fall within the scope of the AIA"); *Life Science Church v. IRS*, 525 F.Supp. 399 (N.D. Cal. 1981) (AIA no bar to religious discrimination claim).

authorities, and rejected a preclusion approach.

> *We the People* … requires a careful inquiry into the remedy sought, the statutory basis for that remedy, and any implication the remedy may have on assessment and collection. This is in accord with the holdings of several other courts. [Citations.] …
>
> The principle the case law elucidates is therefore quite simple: The AIA, as its plain text states, bars suits concerning the "assessment or collection of any tax." It is no obstacle to other claims seeking to enjoin the IRS, regardless of any attenuated connection to the broader regulatory scheme. As Appellants' suit does not implicate assessment or collection, the AIA does not apply. (*Id*. at 727.)

Here, correct self-assessment of tax by the taxpayer is a premise of Plaintiff's claims. TEFRA and *Jenney* authorize immediate collections. Plaintiff prefers immediate collections to minimize penalty and interest charges. Surely the IRS can devise procedures that are consistent with legislation enacted subsequent to TEFRA and that respects rights established by the Constitution and Congress without damaging what *Cohen* calls "the broader regulatory scheme" — or, if not, the IRS can demonstrate that such procedures are impossible.

A preclusion argument was again rejected in *Z Street, Inc. v. Koskinen*, 113 A.F.T.R.2d (RIA) 2217, 2014 U.S. Dist. LEXIS 71638 (D.C. Dist. Ct., 5/24/14), where plaintiff's tax status application was allegedly subjected to a discriminatory "Israel Special Policy."

> Z Street alleges not that the IRS unlawfully denied it a preferred tax status, but only that the IRS subjected it to unconstitutional viewpoint discrimination… there is nothing in the record to suggest that Z Street brought this action for the purpose of resolving the matter of its own tax liability.

IRS selections of conservative political groups for employment of methods of bureaucratic suppression were revealed in May, 2013, shortly after the AOB herein was filed. Allegations in complaints filed by such groups against the IRS resemble those stated herein, with a "BOLO" (Be On the Look Out) keyword list playing a role like the "frivolous" label here, flagging a file for adverse action by means of an unlawful test. The approach to the AIA of *Cohen* and *Z Street* has been applied in such cases with results favorable to the plaintiffs. (*NorCal Tea Party Patriots v. IRS*, 2014 U.S. Dist. LEXIS 97229 (S.D. Ohio 7/17/14); *Freedom Path v. Lerner*, 2015 U.S. Dist. LEXIS 22025 (N.D. Tex. 2/24/15).)

Undertaking a *Cohen* inquiry in this case reveals a solid statutory basis for remedies (TEFRA) and a range of possible remedies, where minimal informational remedies have no negative implications for lawful tax assessment or collection and where the IRS and the District Court can shape any stronger remedy to reduce "any attenuated connection to the broader regulatory scheme." (*Cohen*, supra.)

CONCLUSION

For the foregoing reasons, Plaintiff requests a rehearing or rehearing *en banc*.

Dated: March 26, 2015

Respectfully submitted,

/s/ Robert L. Kovsky
Robert L. Kovsky, Attorney at Law
Attorney for Plaintiff
Elizabeth Boardman

Form 6. Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This petition complies with the type-volume limitation of Circuit Rules 40-1(a) and 35-4(a) because:
this petition contains 4164 words, excluding the parts of the petition exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:
this petition has been prepared in a proportionally spaced typeface using Microsoft Word for Mac 2011 and a 14 point Times New Roman font.

Signature /s/Robert L. Kovsky, Esq.
Attorney for Plaintiff-Appellant Elizabeth Boardman
Date March 26, 2015

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2015, I electronically filed the foregoing petition for the appellant with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.
I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature /s/Robert L. Kovsky, Esq.
Attorney for Plaintiff-Appellant Elizabeth Boardman
Date March 26, 2015

EXHIBIT A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 12 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ELIZABETH BOARDMAN, Plaintiff - Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Defendant - Appellee.	No. 13-15022 D.C. No. 2:12-cv-00639-MCE-GGH MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., Chief District Judge, Presiding

Submitted March 10, 2015**
San Francisco, California

Before: BYBEE, CALLAHAN, and OWENS, Circuit Judges.

Plaintiff-Appellant Elizabeth Boardman appeals the district court's dismissal of her complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The complaint asserts claims under the Free Exercise Clause and the Religious

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

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

Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb et seq., and seeks an injunction ordering the Internal Revenue Service to "put into operation procedures for processing disputes, claims, collections and litigation adverse to taxpayers who refuse to pay taxes because of conscience or religion that are respectful, efficient, transparent and minimally burdensome and that lead to Tax Court determinations upon taxpayer request." We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court correctly determined that the complaint is barred by the Anti-Injunction Act, 26 U.S.C. § 7421(a). The complaint seeks an injunction that would enjoin the government from following certain tax collection procedures—in particular, procedures designed to allow the government to expeditiously resolve taxpayer claims lacking legal merit—and therefore falls within the scope of the Anti-Injunction Act. *See Hansen v. Dep't of Treasury*, 528 F.3d 597, 601 (9th Cir. 2007).

Accordingly, the Anti-Injunction Act precludes federal jurisdiction here unless Appellant can satisfy the judicially created exception to the Act by demonstrating (1) irreparable injury if her case is not heard, and (2) certainty of success on the merits. *Bob Jones Univ. v. Simon*, 416 U.S. 725, 737 (1974). Appellant fails to satisfy either requirement. Appellant has a legal remedy in the

form of a suit for refund and thus will suffer no irreparable injury. *Hansen*, 528 F.3d at 601–02. Appellant also has not shown that she is certain to succeed on the merits of her claim that the government's listing of war tax resistance as a "frivolous" legal position for purposes of 26 U.S.C. § 6702 connotes discouragement of religion or otherwise violates her free exercise rights. *See Jenney v. United States*, 755 F.2d 1384, 1387 (9th Cir. 1985) (holding that a taxpayer's attempt to claim a war tax deduction is frivolous within the meaning of 26 U.S.C. § 6702 because "[t]here is no provision in the Internal Revenue Code for a war tax deduction or credit, and taxpayers have no constitutional right to refuse to pay federal taxes because of their anti-war sentiments").

Thus, the district court properly granted the Commissioner's motion to dismiss under Federal Rule of Civil Procedure 12(b)(1).[1]

AFFIRMED.

[1] Because we conclude that the district court correctly dismissed the complaint for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), we need not decide whether the complaint was also properly dismissed under Federal Rule of Civil Procedure 12(b)(6).

EXHIBIT B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ELIZABETH BOARDMAN,

Plaintiff,

v.

COMMISSIONER OF INTERNAL REVENUE, Douglas H. Shulman,

Defendant.

No. 2:12-cv-00639-MCE-GGH

MEMORANDUM AND ORDER

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Through this action, Plaintiff Elizabeth Boardman seeks a permanent injunction preventing Defendant Internal Revenue Service ("IRS") from using its tax collection procedures to infringe on her religious rights. Plaintiff alleges that Defendant's policies run afoul of the First Amendment's Free Exercise Clause and the Religious Freedom Restoration Act of 1993 ("RFRA").

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///

Presently before the Court is Defendant's Motion to Dismiss Plaintiff's complaint for lack of subject matter jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1).[1] Additionally, Defendant moves the Court to dismiss Plaintiff's complaint for failure to state a claim, pursuant to Rule 12(b)(6). Plaintiff filed her complaint on March 13, 2012. (ECF No. 1.) Defendant's motion to dismiss was filed on July 29, 2012. (ECF No. 6.) Plaintiff filed an opposition to Defendant's motion (ECF No. 11), and Defendant filed a timely reply (ECF No. 12). For the reasons set forth below, Defendant's motions are GRANTED.[2]

BACKGROUND[3]

As a lifelong Quaker and peace activist, Plaintiff "refuses voluntarily to pay the percentage of her federal income taxes that is directed towards war." (ECF No. 1 at 1.) In fact, Plaintiff takes the position that "paying for war is repugnant to her religion and to her conscience." (Id. ¶ 35.) "The religious practice of antiwar tax retention, often called 'war tax resistance,' is an established [Quaker] practice." (Id. ¶ 16.)

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[1] All further references to "Rule" or "Rules" are to the Federal Rules of Civil Procedure unless otherwise noted.

[2] Because oral argument would not be of material assistance, the Court ordered this matter submitted on the briefing. E.D. Cal. R. 230(g).

[3] The factual assertions in this section are based on the allegations in Plaintiff's complaint unless otherwise specified. (ECF No. 1.)

Quakers, like Plaintiff, suffer spiritual pain from war and adhere to a commandment against killing. (Id. ¶¶ 9, 29.) Plaintiff has held numerous leadership positions within Quaker organizations, and she has written several books and articles about Quaker customs and teachings. (Id. ¶ 6.) Plaintiff has also been involved in several forms of antiwar activism. (Id. ¶¶ 7-8.) These include writing letters, holding vigils, participating in marches and traveling to Iraq. (Id.)

When filing her federal tax returns for the 2007 and 2008 tax years, Plaintiff fully completed the returns with accurate information but remitted only about half of her federal income tax liability. (ECF No. 11 at 1.) In a letter attached to the tax returns, Plaintiff explained that "her conscience and religious beliefs would not allow her to pay the full amount due." (ECF No. 1 at 1-2.) Plaintiff's letter also offered evidence that the withheld funds were on deposit with a financial institution and maintained that she would pay the funds if they were allocated toward peaceful purposes. (Id. at 2.) Further correspondence between Plaintiff and Defendant resulted in Defendant stating that Plaintiff's justification was frivolous and not supported by law. (Id. ¶¶ 33, 36.) Once Plaintiff's argument was deemed "frivolous," the Tax Relief and Health Care Act of 2006 ("TRHCA") allowed Defendant to deny any additional administrative or judicial review. (Id. ¶ 30.) As a result, Plaintiff's demand for a Tax Court determination was unsuccessful. (Id. ¶¶ 39, 40.)

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Plaintiff also claims that Defendant misrepresented various aspects of the tax collection process and misconstrued Plaintiff's statements. (Id. ¶ 41.) Plaintiff further alleges that Defendant's threats of imminent seizure compelled Plaintiff to pay her outstanding liability for the 2008 tax year. (Id.)

Plaintiff claims that Defendant "employs punitive procedures and/or policies against persons who fail or refuse to make full payment of taxes on grounds of religion or conscience." (Id. at 2.) Defendant's practices, according to Plaintiff, are discriminatory and seek to suppress conduct undertaken for religious reasons. (ECF No. 11 at 17.) In fact, Plaintiff alleges that Defendant intentionally frustrated her religious beliefs by depriving her of rights and procedures that would have been available had she not asserted a religious motive for withholding a portion of her taxes. (ECF No. 1 at 2.)

Specifically, Plaintiff contends that Defendant's regulations and methods violate the First Amendment's Free Exercise Clause and the RFRA. (Id. at 3.) Plaintiff also takes offense to the word "frivolous" being used to describe a taxpayer's reliance on moral or religious grounds as a justification for refusing to pay their taxes. (Id.) Although Plaintiff claims that she does not challenge the tax system or "seek to restrain assessment or collection of tax," she does request a permanent injunction forcing Defendant to promulgate new procedures for collecting taxes. (Id. ¶¶ 4, 34, 54.) In doing so, Plaintiff "seeks to enforce the intent of Congress, which is to protect and preserve an established religious practice." (ECF No. 11 at 3.)

Plaintiff implicitly acknowledges that Defendant correctly calculated her taxes owed and any penalty due, and she does not request monetary damages. (Id. ¶ 55.) As indicated above, Defendant's motion is now before the Court for adjudication.

MOTION TO DISMISS PURSUANT TO 12(B)(1)

STANDARD

In moving to dismiss for lack of subject matter jurisdiction pursuant to Rule 12 (b)(1), the plaintiff bears the burden of demonstrating that the court has jurisdiction. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). The court presumes that jurisdiction is lacking until the plaintiff proves otherwise. Stock W., Inc., v. Confederated Tribes of the Colville Reservation, 873 F.2d 1221, 1225 (9th Cir. 1989). Furthermore, courts should grant the motion if the complaint, when considered in its entirety, fails to allege facts sufficient to establish jurisdiction. Savage v. Glendale Union High Sch., 343 F.3d 1036, 1039 n.2 (9th Cir. 1979), cert. denied, 541 U.S. 1009 (2004). "When considering a motion to dismiss pursuant to Rule 12(b)(1), the district court is not restricted to the face of the pleadings, but may review any evidence." McCarthy v. U.S., 850 F.2d 558, 560 (9th Cir. 1988). The party challenging jurisdiction may either make a "facial attack" on the allegations of jurisdiction contained in the complaint or can instead take issue with subject matter jurisdiction on a factual basis ("factual attack").

Thornhill Publishing Co. v. General Tel. & Elect. Corp., 594 F.2d 730, 733 (9th Cir. 1979); Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977).

If the motion constitutes a facial attack, the Court must consider the factual allegations of the complaint to be true. Williamson v. Tucker, 645 F.2d 404, 412 (5th Cir. 1981); Mortensen, 549 F.2d at 891. If the motion constitutes a factual attack, however, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." Thornhill, 594 F.2d at 733 (quoting Mortensen, 549 F.2d at 891).

If the Court grants a motion to dismiss a complaint, it must then decide whether to grant leave to amend. Generally, leave to amend should be denied only if it is clear that the deficiencies of the complaint cannot be cured by amendment. Broughton v. Cutter Labs, 622 F.2d 458, 460 (9th Cir. 1980).

ANALYSIS

The Anti-Injunction Act ("the Act") establishes that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421(a).

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"The Court has interpreted the principal purpose of [the Act] to be the protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference." Bob Jones Univ. v. Simon, 416 U.S. 725, 736 (1974). As such, the Act applies to all cases impacting tax collection, even if the complaint alleges constitutional violations. Alexander v. Ams. United Inc., 616 U.S. 752, 759 (1974). Furthermore, courts have relied on the Act when the complaint seeks injunctive relief. Uptergrove v. United States, 2009 WL 2244185, *2 (E.D. Cal. July 27, 2009).

Courts tend to broadly and strictly enforce the Act. Maxfield v. U.S. Postal Serv., 752 F.2d 433, 434 (9th Cir. 1984). If the Act applies to a particular lawsuit, the court lacks jurisdiction to entertain the claim or grant relief. Life Science Church v. IRS, 525 F. Supp 399, 404 (N.D. Cal. 1981). However, the Act "sets forth [a two-prong exception] which, if present, will support the granting of equitable relief." Church of Scientology of California v. United States, 920 F.2d 1481, 1484 (9th cir. 1990). "[A]n injunction may be obtained against the collection of any tax if [the plaintiff establishes that] (1) it is 'clear that under no circumstances could the government ultimately prevail' and (2) 'equity jurisdiction' otherwise exists, i.e., the taxpayer shows that he would otherwise suffer irreparable injury." Id. at 1485 (internal citations omitted).

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A. Whether the Act Applies

Plaintiff claims that the Act is not applicable in this case because she "does not seek to restrain assessment or collection of any tax." (ECF No. 1 at 4.) Moreover, Plaintiff states that she "does not contend herein that the amount of any determination of tax or penalty by [Defendant] was improper and she does not seek any monetary damages." (Id. at 19.) Instead, Plaintiff asks for "efficient and transparent collection of taxes" and asserts that her "requested restraints on abuse are extraneous to tax assessment and collection protected by the [Act]." (ECF No. 11 at 13-14.) Defendant asserts that although "Plaintiff candidly admits that she does not seek a refund of taxes paid," she "seeks an injunction requiring the government to reorganize the method it has chosen to assess and collect taxes." (ECF No. 7 at 10.) Thus, Defendant contends that Plaintiff's requested relief would hinder Defendant's "ability to avoid engaging in legally frivolous and ultimately meritless arguments advanced by taxpayers regardless of their religious or moral beliefs." (Id. at 11.)

In a similar case involving a plaintiff disputing the constitutionality of particular tax code statutes, the court held that "[a]lthough [plaintiff's] complaint does not specifically seek an injunction restraining the assessment or collection of tax, the relief he seeks . . . would 'necessarily preclude the Act's collection of' the challenged tax and therefore falls within the Act's scope." Hansen v. Dep't of Treasury, 528, 601 (9th Cir. 2007).

Here, while Plaintiff claims she does not wish to interfere with tax assessment and collection, she requests that Defendant implement new procedures and policies for collecting taxes. Contrary to Plaintiff's stated purpose, her complaint is actually a thinly-veiled attempt to force extensive and burdensome changes to Defendant's already complex taxation system. As such, granting relief to Plaintiff would certainly impede the collection of taxes.

The Court has no doubt that ruling in Plaintiff's favor would negatively impact Defendant's established methods of assessing taxes. It is also clear that compelling Defendant to adopt procedures catering to the religious or moral views of every taxpayer would significantly burden tax collection. Indeed, the costs of administering the tax system may become prohibitively expensive, threatening the system's integrity, if Defendant allocated tax revenue based on the individualized beliefs of each taxpayer. Thus, the Court agrees with Defendant that Plaintiff's suit challenges statutory framework pertaining to tax assessment and collection, and, if Plaintiff is successful, she would "impermissibly restrain and hamper [Defendant's] ability to assess and collect taxes." (ECF No. 7 at 11.) As a result, the Court finds that the Act does apply to the case at hand. Because the Act applies, the Court lacks jurisdiction unless Plaintiff demonstrates that she satisfies both prongs of the exception.

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B. Whether Plaintiff Satisfies the Act's Exception

A plaintiff bears the burden of demonstrating both that "the Government could not ultimately prevail" and that he will suffer an irreparable injury with no legal remedy. Church of Scientology of California, 920 F.2d at 1485.

1. Could the Government Ultimately Prevail

This first prong is satisfied "[o]nly if it is then manifest, under the most liberal view of the law and the facts, that the government cannot prove its claim." Thrower v. Miller, 440 F.2d 1186, 1187 (9th Cir. 1971). Although Plaintiff fails to provide an argument regarding the first prong, Defendant contends that "Plaintiff cannot establish that under no circumstance could [Defendant] ultimately prevail on the merits of the action." (ECF No. 7 at 11.) Specifically, Defendant responds to Plaintiff's Free Exercise claim by stating that "[n]eutral laws of general application (such as the federal tax laws in question) do not run afoul of the Free Exercise Clause of the First Amendment, even when they somehow burden religious practices." (Id. at 18.) Thus, Defendant argues that it could indeed prevail regarding whether existing tax administration framework violated Plaintiff's First Amendment rights. (Id. at 11.)

"[T]he necessities of revenue collection under enactments of general applicability raise governmental interests sufficiently compelling to outweigh the free exercise rights of those who find the tax objectionable on bona fide religious grounds."

Franklet v. United States, 578 F. Supp. 1552, 1556 (N.D. Cal. 1984). "[E]ven a substantial burden [on free exercise] would be justified by the 'broad public interest in maintaining a sound tax system,' free of 'myriad exceptions flowing from a wide variety of religious beliefs.'" Hernandez v. Comm'r Internal Revenue, 490 U.S. 680, 699-700 (1989) (internal citations omitted). Furthermore, previous Supreme Court decisions "make it unmistakably clear that the constitutional nature of a taxpayer's claim, as distinct from its probability of success, is of no consequence under the [Act]." Alexander, 416 U.S. at 759.

While Plaintiff's pleadings are somewhat unclear, Plaintiff apparently claims that the Tax Relief and Health Care Act of 2006 ("TRHCA"), which curtails the administrative appeals process for certain taxpayer claims, violates her free exercise rights. However, Plaintiff is unable to adequately demonstrate how the TRHCA is discriminatory or thwarting her religious practices. Moreover, the Court agrees with Defendant that the TRHCA advances the compelling government interest in efficiently collecting taxes by permitting the expedient disposal of meritless arguments. The TRHCA is also the least restrictive means of burdening religious freedom because the TRHCA only disregards arguments that have no legal basis. As a result, Plaintiff fails to establish that Defendant could not possibly prevail in regard to Plaintiff's Free Exercise claim.

Plaintiff also alleges that Defendant has violated the Religious Freedom Restoration Act of 1993 ("RFRA"), legislation reaffirming the right to practice religion without government interference.

In countering Plaintiff's argument, Defendant states that neutral laws substantially burdening religion in order to further a compelling government interest do not contravene the RFRA. (ECF No. 7 at 20-21.) Therefore, Defendant asserts that Plaintiff "cannot show that [Defendant] would not prevail under RFRA." (Id. at 20.) Even after Congress enacted the RFRA, the government's compelling interest in collecting taxes outweighs the burden imposed on an individual's religious freedom. Droz v. Comm'r Internal Revenue, 48 F.3d 1120, 1122-23 (9th Cir. 1995). Additionally, "[i]n the context of [the TRHCA], the Government's compelling interest in maintaining a sound and administratively workable tax system justifies the alleged restriction on free expression." Bradley v. United States, 817 F.2d 1400, 1403 (9thCir. 1987).

Once again, although Plaintiff's pleadings are convoluted, Plaintiff appears to allege that the TRHCA violates the RFRA. As discussed above, the TRHCA uses the least restrictive means possible to further a compelling Government interest. It is also a neutral law, equally impacting all religions and beliefs. As a result, Plaintiff fails to establish that Defendant cannot possibly prevail in regard to Plaintiff's RFRA claim. Because Defendant could succeed on the merits, Plaintiff is unable to fulfill the first prong of the Act's judicial exception.

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2. Jurisdiction Premised on Equity

"[T]he taxpayer must demonstrate that [he] is entitled to equitable relief." Church of Scientology of California, 920 F.2d at 1485. This entails establishing that "he has no adequate remedy at law and that the denial of injunctive relief would cause him immediate, irreparable harm." Jensen v. IRS, 835 F.2d 196, 198 (9th Cir. 1987). Plaintiff claims that she "has no alternative remedy" because "[n]one of the requested relief is available in any forum other than this one." (ECF No. 11 at 11-12.) Defendant disagrees and contends that "Plaintiff has an adequate remedy at law." (ECF No. 7 at 24.) According to Defendant, Plaintiff can provide her outstanding tax balance, and she "may then file an administrative claim for refund of taxes she believes she should not be required to pay, and then sue for a refund in a district court or the Court of Federal Claims." (Id.)

"A taxpayer cannot render an available review procedure an inadequate remedy at law by voluntarily forgoing it." Alexander, 416 U.S. at 762 n.13. Here, Plaintiff concedes that she declined to pay the assessed taxes and file a refund suit. Plaintiff also admits that she chose not to pursue all available administrative remedies. (ECF No. 1 at 15.) Plaintiff is not permitted to then claim that no satisfactory remedy exists simply because she would prefer to create her own remedy. Additionally, Plaintiff offers insufficient support for her allegations that she can obtain the requested relief only through the present action.

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The Court finds that Plaintiff has "an adequate remedy at law in an action for a refund." Church of Scientology of California, 920 F.2d at 1488. Furthermore, allowing taxpayers to pick and choose any remedy that they desire would significantly hinder the tax system.

The plaintiffs in United States v. American Friends Service Committee also claimed that they had "no alternative legal remedy available." 419 U.S. 7, 11 (1974). The court held that a refund suit provided the plaintiffs with ample opportunity to litigate their liability. (Id.) Similarly, Plaintiff in the present case cannot ignore the existing and adequate remedy of paying the tax liability and then suing for a refund. Moreover, "[e]ven though the remitting of [Plaintiff] to a refund action may frustrate [her] chosen method of bearing witness to [her] religious convictions, a chosen method which [she] insist[s] is constitutionally protected, the bar of the [Act] is not removed." (Id.) Because Plaintiff has a satisfactory remedy available, "equity jurisdiction" does not exist, and Plaintiff is unable to satisfy the second prong of the Act's judicial exception.

As discussed above, the Act applies to the instant action, and Plaintiff fails to demonstrate that she qualifies for an exception to the Act.[4] Therefore, Defendant's Motion to Dismiss pursuant to Rule 12(b)(1) is GRANTED.

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[4] Plaintiff put forth several additional arguments as to why the Act should not bar the Court's jurisdiction over this case. After examining Plaintiff's theories, the Court finds them unpersuasive.

MOTION TO DISMISS PURSUANT TO 12(B)(6)

STANDARD

On a motion to dismiss for failure to state a claim under Rule 12(b)(6), all allegations of material fact must be accepted as true and construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief" in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 554-55 (2007) (internal citations and quotations omitted). Though "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. at 555 (internal citations and quotations omitted).

A plaintiff's factual allegations must be enough to raise a right to relief above the speculative level. Id. (citing 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-36 (3d ed. 2004) ("The pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action")).

Moreover, "Rule 8(a)(2) . . . requires a 'showing,' rather than a blanket assertion of entitlement to relief.

Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirements of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests." Twombly, 550 U.S. at 555, n.3 (internal citations omitted). A pleading must contain "only enough facts to state a claim to relief that is plausible on its face." Id. at 570; see also Ashcroft v. Iqbal, 556 U.S. 662, 677-79 (2009). If the "plaintiffs . . . have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." Twombly, 550 U.S. at 570; Iqbal, 556 U.S. at 680.

A court granting a motion to dismiss a complaint must then decide whether to grant leave to amend. Rule 15(a) empowers the court to freely grant leave to amend when there is no "undue delay, bad faith[,] dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of . . . the amendment, [or] futility of the amendment. . . ." Foman v. Davis, 371 U.S. 178, 182 (1962). However, leave to amend is generally denied when it is clear the deficiencies of the complaint cannot be cured by amendment. DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992); Balistieri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990) ("A complaint should not be dismissed under Rule 12(b)(6) unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.") (internal citations omitted).

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ANALYSIS

"Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax." United States v. Lee, 455 U.S. 252, 260 (1982). Although Plaintiff's pleadings are confusing and, at times, contradictory, Plaintiff alleges that Defendant's tax policies and practices violate the Free Exercise Clause and the RFRA. (ECF No. 1 at 3.) Plaintiff also argues that Defendant's use of the word "frivolous" evidences Defendant's hostility toward Plaintiff's religious views.[5] (ECF No. 11 at 15.) Defendant contends that Plaintiff fails to state a claim "because the overwhelming weight of authority has held that the government's interest in maintaining a uniform, mandatory system of taxation is compelling, and sufficient to defeat any claim of a substantial burden on Free Exercise under either the First Amendment or RFRA." (ECF No. 7 at 24.)

"The Free Exercise Clause . . . does not afford an individual a right to dictate the conduct of the Government's internal procedures." Bowen v. Roy, 476 U.S. 693, 693 (1986).

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[5] There appears to be some confusion over Defendant's use of the word "frivolous." Plaintiff mistakenly believes that Defendant utilizes "frivolous" as a means of discouraging religion. The Court finds that Defendant uses "frivolous" in its legal context, referring to an argument lacking a legal or factual basis. (ECF No. 12 at 7.)

Thus, "[t]he fact that some persons may object, on religious grounds, to some of the things that the government does is not a basis upon which they can claim a constitutional right not to pay a part of a tax." Autenrieth v. Cullen, 418 F.2d 586, 588 (9th Cir. 1969). "The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief." Lee, 455 U.S. at 260. Moreover, "[t]he Supreme Court has made it clear that a federal taxpayer has no standing to maintain a purely religious objection to federal expenditures." Grove v. Mead School Dist. No. 354, 753 F.2d 1528, 1532 (9th Cir. 1985), cert. denied, 474 U.S. 826 (1985). Because Plaintiff claims she is willing to voluntarily remit her outstanding tax liability only upon assurance that the funds will be used for purposes she deems acceptable, she essentially objects to Defendant's method of allocating tax dollars. Her position also prescribes both the grounds on which she will pay the tax and how the government can use the revenue. Furthermore, Plaintiff repeatedly cites her religious convictions as the basis for withholding tax payments. As a result, the Court agrees with Defendant that "the overwhelming weight of authority" clearly demonstrates that Plaintiff fails to state a claim.[6]

In an analogous case decided after Congress enacted the RFRA, a plaintiff sought a court order preventing the IRS from allocating his tax dollars to war-related programs.

[6] Although the Court has duly considered Plaintiff's various arguments opposing the Motion to Dismiss under Rule 12(b)(6), these arguments are insufficient to warrant further discussion.

Kennedy v. Rubin, 1995 WL 552148, *1 (N.D. Cal. Sept. 07, 1995). Additionally, the plaintiff wanted his payments distributed to programs that he did not consider "religiously objectionable." Id. In granting the defendant's motion to dismiss pursuant to Rule 12(b)(6), the court found that "a plaintiff cannot state a claim based upon a religious objection to paying taxes." Id. at *3. The court also noted that the plaintiff simply "attempts to elevate form over substance" when he endeavors to distinguish his lawsuit from past cases on the ground that "he is not opposed to paying his federal taxes, but rather, seeks Only to divert his taxes away from military programs." Id. The court held that Supreme Court and Ninth Circuit decisions attach "equally whether the taxpayer refuses to pay taxes or simply attempts to control the use of any taxes tendered to the Government."

Likewise, Plaintiff in the present case seeks to prevent Defendant from using her tax dollars for war-related programs. Plaintiff claims that she will pay the full extent of her tax liability only if the money is allocated to peaceful purposes. Plaintiff predicates her lawsuit on Defendant allegedly suppressing religion. However, Kennedy v. Rubin plainly demonstrates that Supreme Court and Ninth Circuit cases estop Plaintiff from bringing her lawsuit, a religious objection to the country's tax system, even if she does not dispute her overall tax liability. Moreover, Plaintiff claims that Defendant's tax procedures violate her Constitutional and statutory religious rights, but "nothing in the Constitution prohibits the Congress from levying a tax upon all persons, regardless of religion, for support of the general government." Autenrieth, 418 F.2d at 588.

Therefore, Plaintiff fails to state a claim, and Defendant's motion to dismiss pursuant to Rule 12(b)(6) is GRANTED.

CONCLUSION

As a matter of law, and for the reasons set forth above, Defendant's Motion to Dismiss (ECF No. 7) is GRANTED. Plaintiff's Complaint is accordingly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) and, alternatively, for failure to state a claim under Rule 12(b)(6).

Because the Court does not believe that the defects of Plaintiff's Complaint can be remedied though amendment, leave to amend is DENIED. The Clerk of the Court is directed to close the file.

IT IS SO ORDERED.

Dated: December 6, 2012

MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE