

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 12 2015

<p>ELIZABETH BOARDMAN,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>COMMISSIONER OF INTERNAL REVENUE,</p> <p>Defendant - Appellee.</p>
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No. 13-15022

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

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).

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:

http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf.

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

Form fields for case name, v., and 9th Cir. No.

The Clerk is requested to tax the following costs against:

Table with columns: Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1; REQUESTED (Each Column Must Be Completed); ALLOWED (To Be Completed by the Clerk). Rows include Excerpt of Record, Opening Brief, Answering Brief, Reply Brief, Other**, and TOTAL.

* Costs per page: May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** Other: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees cannot be requested on this form.

Continue to next page

Form 10. Bill of Costs - Continued

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By: , Deputy Clerk