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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ELIZABETH BOARDMAN,

Plaintiff,

v.

COMMISSIONER OF INTERNAL REVENUE, Douglas H. Shulman,

Defendant.

Case No. 2:12-cv-639-MCE-GGH

UNITED STATES' REPLY IN SUPPORT OF ITS MOTION TO DISMISS

Hearing Date: August 23, 2012
Time: 2:00 p.m.
Courtroom: 7

The Defendant United States of America ("United States"), by and through its undersigned counsel, hereby submits this reply to Plaintiff Elizabeth Boardman's Memorandum in Opposition to Motion to Dismiss of Defendant United States, (Doc. No. 11) (hereafter "Opposition"), in support of the United States' Motion to Dismiss, (Doc. No. 6) (hereafter "Motion to Dismiss"), seeking that this action be dismissed with prejudice pursuant to FED. R. CIV. P. 12(b)(1) for lack of subject matter jurisdiction and pursuant to FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which relief may be granted. In support of its motion, the United States replies as follows:

INTRODUCTION

Plaintiff's Opposition does not remedy any of the failures of her Complaint and Claim for Injunctive Relief (Free Exercise of Religion; Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*), (Doc. No. 1) (hereafter, "Complaint'). Plaintiff's case is barred by the Anti-

Injunction Act, notwithstanding Plaintiff's erroneous interpretation of cases factually dissimilar from the one presented by the Plaintiff. By the same token, Plaintiff has not established subject-matter jurisdiction to assert a claim based upon injuries she has not suffered, including "implied threats" of penalties that have been neither proposed nor assessed.

In addition, Plaintiff has failed to state a claim upon which relief may be granted, despite Plaintiff's assertions that the IRS's enforcement of the Internal Revenue Code is unconstitutional. Plaintiff asserts that her ability to obtain an administrative hearing to assert legally frivolous arguments is protected, basing her position on a misinterpretation of dicta in a Ninth Circuit case from 1985, and extrapolates far beyond to conclude that Congress envisioned a "safe harbor" for conduct that is mentioned nowhere in the statute. Plaintiff further misconstrues the usage of the term "frivolous" in the legal context, and ascribes a discriminatory and repressive motive to the IRS, even though the designation of certain arguments as frivolous does not implicate the religious content of her views, nor is such a designation at all contingent on whether the individual advancing the argument is religious. And even though the statutory scheme and its implementation by the IRS are facially neutral and in no way conditioned on religious affiliation, Plaintiff asserts that the IRS has violated her free exercise rights by "blocking" or "obstructing" her access to all available administrative remedies. However, Plaintiff has had access to all administrative channels to which she is entitled, as determined by Congress. As a result, Plaintiff has failed to state a claim upon which relief may be granted.

ARGUMENT

A. Plaintiff Has Failed to Establish Subject-Matter Jurisdiction Because Her Suit Plainly Seeks to Restrain the Collection of Federal Taxes.

Plaintiff's Opposition misconstrues the case law concerning the applicability of the Anti-Injunction Act as a bar to her maintaining the present action. Contrary to Plaintiff's assertions, her lawsuit has the explicit "purpose of restraining the . . . collection of any tax." *See* 26 U.S.C. § 7421(a). By seeking to obtain an injunction that would require the IRS to entertain arguments that have already been roundly rejected by the Courts and Congress as meritless, the IRS's ability to collect outstanding taxes would plainly be restrained, and Plaintiff's complaint is affirmatively

barred. Plaintiffs' citations to case law regarding the Administrative Procedure Act does not alter the true nature of her lawsuit. As more fully described in the United States' Memorandum in Support of its Motion to Dismiss, (Doc. No. 11) (hereafter " United States' Memorandum"), this action should be dismissed pursuant to FED. R. CIV. P. 12(b)(1) because the Court lacks subject-matter jurisdiction over a complaint seeking to restrain the assessment or collection of taxes pursuant to the Anti-Injunction Act, 26 U.S.C. § 7421(a) (hereafter, the "AIA"). The AIA is an explicit bar against suits like Plaintiff's, which cannot be circumvented by merely citing to the Administrative Procedure Act. (*See* 11). The fact that her Complaint raises constitutional issues does not affect the fact that it is so barred. *U.S. v. Clintwood Elkhorn Min. Co.*, 553 U.S. 1, 10 (2008) ("The 'decisions of this Court make it unmistakably clear that the constitutional nature of a taxpayer's claim . . . is of no consequence' to whether the prohibition against tax injunctions applies." (quoting *Alexander v. "Americans United" Inc.*, 416 U.S. 752, 759 (1974))).

Plaintiff's suit is barred by the AIA because Plaintiff seeks to require the IRS to provide additional administrative channels to Plaintiff for her to advance arguments prior to collection that have been deemed by the Courts and Congress to be legally meritless. Plaintiff most particularly seeks access to the Tax Court, even in instances where there is no deficiency to contest. (*See* Opposition, 18[1]). Plaintiff further admits that relief, if granted, would encourage her and other taxpayers to advance similar arguments in order to delay and prevent the collection of federal tax liabilities. (*See* Opposition, 20 ("A favorable decision of this Court will lift a cloud that hangs over Boardman's practice and will strengthen her capacities to persuade others to join her in it.")). As such, Plaintiff's requested relief, if granted, would delay and restrain the collection of taxes. (Complaint, Prayer for Injunctive Relief, ¶ 1).

Plaintiff asserts that the AIA should not bar her case because "[t]he reasons underlying § 7421(a) apply with little force here. Illegal and unconstitutional acts of the Service do not further

[1]Because Plaintiff's Opposition is paginated differently from the Court-assigned page numbers, the United States herein refers to the page numbers assigned by the Court's CM/ECF system for the sake of convenience and clarity.

'efficient and expeditious collection of taxes with "a minimum of pre-enforcement judicial interference."'" (Opposition, 14) (citations omitted). Yet Plaintiff seeks to impose a whole new regulatory regime upon the IRS, and requests that the IRS entertain arguments that have no legal merit before collecting taxes from Plaintiff. This relief is an inherent restraint on the collection of taxes. Indeed, it is difficult to conceive of a more literal "restraint" than the relief Plaintiff requests.

Despite this plain contradiction, Plaintiff cites to various cases where the AIA did not bar suit on the grounds that those cases did not seek to restrain the assessment or collection of taxes. Plaintiff misconstrues the cases cited as standing for the proposition that the AIA is not a bar where the effect on the overall fisc is negligible, and therefore ignores the AIA's prohibition against suits that would only impair or restrain the expeditious collection of taxes by the IRS. For example, Plaintiff cites to *Cohen v. U.S.*, 650 F.3d 717 (D.C. Cir. 2011),(s*ee* Opposition, 13), even though the *Cohen* court premised its decision on the grounds that it was a refund suit, the taxes had already been paid, and the sought-after relief would only implicate refund procedures, not prospective assessment or collection of taxes. *Cohen*, 650 F.3d at 724-25. The *Cohen* court specifically reached its holding after distinguishing the case before it with *Snyder v. Marks*, 109 U.S. 189, 192-93 (1883), wherein the plaintiff had sought to challenge the collection of a tax on the grounds that the tax was invalid or illegal. *Cohen*, 650 F.3d at 725-26. As such, the *Cohen* court explicitly found that the purpose of the AIA would not be thwarted because the suit only concerned the IRS's procedures after taxes have already been collected. In this case, by contrast, Plaintiff seeks to require the IRS to entertain additional superfluous arguments *before* collecting her outstanding tax liabilities. That is the kind of restraint on the collection of taxes prohibited by the AIA.

By the same token, Plaintiff also cites to *McGlotten v. Connally*, 338 F. Supp. 448, 453-54 (D.D.C. 1972), (*see* Opposition, p. 13), in which the plaintiff specifically sought an injunction that would result in the IRS collecting additional taxes from groups that might lose their tax-exempt status. *See McGlotten*, 338 F. Supp. at 454. Such relief would not have the effect of restraining or hampering the collection of taxes, and therefore *McGlotten* is also distinguishable from Plaintiff's action. Furthermore, Plaintiff's citation to *Hibbs v. Winn*, 542 U.S. 88, 102 (2004), is inapposite for

the same reason. That case only had to do with whether or not the AIA would proscribe a suit that sought to require the IRS to collect additional taxes. *Id*. The present case does not present any such question regarding the collection of additional taxes, and any relief, if granted, would only restrain and hamper the IRS's ability to collect taxes that are due and owing.

Moreover, the *McGlotten* court specifically recognized that there was no jurisdictional bar to that plaintiff's suit on the grounds that "the preferred course of raising his objections in a suit for refund is not available." *McGlotten*, 338 F. Supp. at 454. That is not the case here. Plaintiff could file a suit for refund if she wished to raise arguments required by her religious convictions, and does not dispute that this procedure is available to her.

In addition, the various other cases cited by Plaintiff as examples of religious challenges under RFRA where subject-matter jurisdiction was not an impediment to resolution by a court, (*see* Opposition, 20), are not applicable here. In *Droz v. C.I.R.*, 48 F.3d 1120, 1122-24 & n. 2 (9th Cir.1995), the plaintiff had petitioned for a Tax Court redetermination of a deficiency issued by the IRS pursuant to 26 U.S.C. § 6213. In *Adams v. C.I.R.*, 170 F.3d 173, 179 (3d Cir. 1999), the IRS had determined deficiencies and penalties against plaintiff that were the subject of the lawsuit, which the plaintiff had challenged in the Tax Court, again pursuant to 26 U.S.C. § 6213. And in *U.S. v. Philadelphia Yearly Meeting of Religious Society of Friends,* 322 F. Supp. 2d 603, 608 (E.D. Pa. 2004), the United States, authorized by 26 U.S.C. § 7402, had brought suit to collect the tax liability.

The fact that a challenge is brought under RFRA does not remove the bar imposed by the AIA. *See Bob Jones University v. Simon*, 416 U.S. 725, 759 (1974) ("[D]ecisions of this Court 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 Anti-Injunction Act."). As a result, Plaintiff's assertions that this Court should exercise subject-matter jurisdiction over this action irrespective of the bar of the AIA are mistaken.

Finally, as discussed more fully in the United States' Memorandum, Plaintiff cannot show that "under no circumstance could the Government ultimately prevail" on the merits for purposes of establishing an exception to the AIA. *See Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1,

7 (1962); *Church of Scientology of California v. U.S.*, 920 F.2d 1481, 1484 (9th Cir. 1980). Plaintiff simply has not alleged an injury requiring redress, nor has the government acted unconstitutionally.

B. Plaintiff Asserts that Her Conduct is Protected By a "Safe Harbor" That Neither Congress nor the Courts Have Ever Recognized as Such.

Plaintiff contends that in enacting § 6702, Congress created a "safe harbor" from penalties under § 6702 for individuals who self-report the correct amount of taxes owed, but simply do not make full payment. (*See* Opposition, 23). Plaintiff further contends that this "safe harbor" was recognized in *Jenney v. U.S.*, 755 F.2d 1384 (9th Cir. 1985), even though neither Congress nor the Ninth Circuit Court of Appeals has ever used the phrase "safe harbor" to refer to § 6702, nor has any other court to examine the section. Instead, *Jenney* merely acknowledged that, as § 6702 existed at the time, penalties could only apply to frivolous positions taken on a tax return. *Jenney*, 755 F.2d at 1386. The United States agrees.

Congress statutorily contravened Plaintiff's view of the *Jenney* court's dictum in enacting the Tax Relief and Health Care Act of 2006, Pub. L. 109-432, 120 Stat. 2922 (2006) (hereafter "TRHCA") (adding 26 U.S.C. §§ 6330(c)(4)(B), (g) and amending § 6702), which put the statutory scheme challenged by Plaintiff into place. Plaintiff acknowledges that "Prior to TRHCA, any penalty [imposed pursuant to § 6702] required a defect in the 'substantial correctness of the self-assessment' of the tax. Statements of a taxpayer did not lead to a penalty if the return accurately reflected monetary facts." (Opposition, 8). However, Plaintiff ignores that TRHCA amended § 6702 to also impose penalties on "specified frivolous submissions." *See* 26 U.S.C. § 6702(b)(2). Plaintiff feebly contends that Congress "never closed the safe harbor," but Plaintiff is plainly incorrect that a safe harbor ever existed or that it remains.

Congress was well aware of both the Religious Freedom Restoration Act ("RFRA") and the case law that had held arguments akin to the one advanced by Plaintiff as legally frivolous, and therefore determined that such legally meritless arguments should be dealt with expeditiously in order to save time and resources in the administration of the tax system. *See Philadelphia Yearly Meeting of Religious Society of Friends,* 322 F. Supp. 2d at 610-11 (holding that the government's compelling interest in the prompt collection of outstanding tax liabilities justified even a substantial

burden on free exercise under RFRA).

C. The Use of the Term "Frivolous" is Not Unconstitutional.

Plaintiff mischaracterizes the nature of the term "frivolous," and its relevance as a term of art in the law as it has been used by Congress, the federal judiciary, and the Internal Revenue Service. "An individual's position meets the objective test for frivolousness under 26 U.S.C. § 6702(a)(2) when it has 'no basis in fact or law.'" *See Turner v. U.S.* 372 F. Supp. 2d 1053, 1056-57 (S.D. Ohio 2005)(quoting *Gillett v. United States*, 233 F.Supp.2d 874, 881 (W.D. Mi. 2002)). Plaintiff nonetheless insists that merely using the term "frivolous" connotes a pejorative meaning or intent, and "seeks relief from a label of 'frivolous' attached to her religious practice." (Opposition, 12). In spite of these conclusory assertions, that term has not been used by the IRS to describe any religious practice, even if that practice entails resisting the payment or collection of taxes. Instead, the term "frivolous" has only described the merits of her *legal position* that her opposition to war entitles her to decline to pay her federal taxes, regardless of whether they are motivated by either religious or secular reasons. *See* Rev. Rul. 2005-20, 2005-1 C.B. 821, 2005 IRB LEXIS 108.

The term "frivolous" has been interpreted and applied by numerous courts to the argument that a taxpayer may refuse to pay tax because of a religious or ethical objections to war. *See, e.g., Bradley*, 817 F.2d at 1404-05 ("Clearly the Internal Revenue Code does not permit taxpayers to refuse to pay tax because of their antiwar sentiments. Such a refusal is frivolous. . . . Section 6702 does not violate the right to free speech because it penalizes a taxpayer's conduct of filing a return based on a frivolous position, not the expression of views.") (citing *Jenney*, 755 F.2d at 1387). Moreover, the use of the label "frivolous" by the IRS and the courts is required by Congress pursuant to § 6702. Congress determined that the Secretary of Treasury shall prescribe and revise a list of frivolous positions. 26 U.S.C. § 6702(c). Pursuant to § 6702(c), the Secretary of Treasury "shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II)," meaning that the Secretary of Treasury may not identify a position as frivolous if "there is a reasonable basis for the tax treatment of such item by the taxpayer." *See* 26 U.S.C. § 6662(d)(2)(B)(ii)(II). As a result, the IRS promulgated Rev. Rul. 2005-20, which based its

determination that it is frivolous for a taxpayer to assert that his or her "religious or moral beliefs permit the avoidance of federal taxes" because "[c]ourts have repeatedly rejected these and similar arguments." *See* Rev. Rul. 2005-20 (citing *United States v. Lee*, 455 U.S. 252, 260 (1982); *Schehl v. Commissioner*, 855 F.2d 364, 367 (6th Cir. 1988); *Nelson v. United States*, 796 F.2d 164 (6th Cir. 1986); *Randall v. Commissioner*, 733 F.2d 1565, 1567 (11th Cir. 1984)).

If one reads the actual text of the relevant Revenue Rulings, the IRS has never asserted that Plaintiff's religious practice is frivolous, like the courts in the various cases to hold that similar legal positions are frivolous. Plaintiff's religious practice is not frivolous. Instead, advancing that position as a reason to refuse to pay taxes the amount and validity of which are not in dispute, constitutes a legally frivolous position, which simply means that it has no legal merit. *See Kahn v. U.S.*, 753 F.2d 1208, 1214 (3d Cir. 1985) ("a claim is frivolous when there is no argument on either the law or the facts to support it"). That has nothing to do with the religious merit of Plaintiff's beliefs or practices. *See Wall*, 756 F.2d at 53 ("the courts have clearly held that taxpayers assessed a penalty under section 6702 for claiming a 'war tax deduction' are not unlawfully penalized for expressing their moral or religious beliefs, but are penalized because they file returns containing substantially incorrect self-assessments based on a clearly unallowable credit").

In a similar vein of misapprehended motives, Plaintiff alleges:

> the IRS is seeking to "punish the expression of religious doctrines it believes to be false" and to "impose special disabilities on the basis of religious views." The IRS is attaching the label "frivolous" to a "refusal to file returns or pay taxes based on moral, religious or ethical objections," apparently seeking "to ban such acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display.

(Opposition, 16). Not only are these assertions unfounded, inflammatory, and unsupported by fact or law, Plaintiff's allegations are undermined by the plain language of the Revenue Ruling, IRS Notices, and case law discussing her argument. The IRS has stated that the refusal to pay tax on the basis of one's objection to war is a position that is legally frivolous, regardless of whether a taxpayer's rationale is based in moral, ethical, or religious reasoning. *See* Rev. Rul. 2005-20 ("*Any claim* that individuals may reduce their federal tax liability based on objections to the use of the taxes to support government programs or policies is frivolous and has no merit." (emphasis added));

IRS Notice 2010-33, 2010-17 I.R.B. 609, 2010 WL 1347082. The IRS would require the exact same treatment to a taxpayer who objects to the payment of taxes on grounds of conscious or moral beliefs as one who objects on the basis of religious reasoning. The fact that the Plaintiff's reasoning is religious in nature has nothing to do with whether or not the IRS would take the exact same position were her position based on a purely secular rationale. As a result, there is no discrimination on the basis of religion resulting from any designation of any argument as "frivolous," contrary to Plaintiff's assertions. *See Kahn v. U.S.*, 753 F.2d at 1214 (holding that § 6702 is neutral, requiring only that the taxpayer assert a position that is frivolous, *i.e.*, meritless, from the perspective of the tax laws, which includes a claimed "war tax credit").

Because positions like Plaintiff's have been identified by Congress, the Courts, and the IRS as legally frivolous regardless of whether a taxpayer's belief is based on moral, conscientious, or religious convictions, there is no question that the IRS is not "target[ing] religious conduct for distinctive treatment," as Plaintiff asserts. (*See* Opposition, 18, 19). As a result, Plaintiff's assertions that "[t]he Service appears to 'proscribe[] particular conduct only or primarily when religiously motivated,'" (Opposition, 18 (quoting *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F. 3d 144, 165 (3d. Cir. 2002)), are unfounded.

D. Plaintiff Has Not Suffered an Injury.

Even though Plaintiff alleges that her religious beliefs and conscience entitles her to protest her federal income tax liability by exercising every procedural mechanism provided by Congress–and even demands the creation of a procedural mechanism which does not now exist–Plaintiff has not been denied any process to which she is entitled. Plaintiff has in fact received all of the process she is due. Plaintiff does not dispute that the IRS failed to properly provide Plaintiff with a statutory notice of deficiency that could be contested in the Tax Court because she correctly reported the amount of her federal income tax due. Plaintiff does not argue that she should have received a collection due process hearing. As a result, Plaintiff has failed to articulate any injury that she has suffered, let alone one that entitles her to the relief she seeks.

Plaintiff has made no allegations to rebut the United States' assertion that she received all of

the relief to which she was entitled. Nothing in this statutory scheme precludes Plaintiff from protesting her payment of taxes in a judicial forum in the form of a suit for refund. *See* 26 U.S.C. § 7422(a); *Flora v. United States*, 357 U.S. 63 (1958). As a result, Congress has not deprived Plaintiff of access to the courts to vindicate her personal beliefs.

Plaintiff's arguments regarding whether or not the IRS has "blocked" her access to Tax Court, (*see* Opposition, 18), overlook the fact that it was Congress in the first instance that determines what administrative procedures to provide, and whether such administrative procedures are subject to exceptions. *See Adams*, 170 F.3d at 179. Congress determined that the Tax Court would be a specialized court designed for the resolution of certain, specific, qualifying tax disputes, and its jurisdiction is defined and limited by the Internal Revenue Code. *Estate of Branson v. C.I.R.,* 264 F.3d 904, 908 (9th Cir. 2001). Congress apparently decided that the Tax Court need not hear arguments that have no legal merit. *See* 26 U.S.C. § 6330(d). That determination is embedded in TRHCA, which was passed after RFRA as well as the aforementioned cases holding that arguments like Plaintiff's are legally frivolous. In TRHCA, Congress specifically expanded the purview of § 6702 to reach frivolous arguments included in "submissions" in connection with requests for collection due process hearings. *See* 26 U.S.C. § 6702(b)(2). Plaintiff has offered no reason to assume that Congress did not understand what it was doing in determining that frivolous arguments should not also be prohibited in collection due process submissions. As such, Plaintiff has not shown that Plaintiff was entitled to Tax Court review of her legally frivolous position before the IRS could commence collecting the liability reflected on her return.

Plaintiff also maintains that she faces the looming threat of a monetary fine or penalty by the IRS, even though Plaintiff does not plead that such a fine has ever been proposed or assessed against Plaintiff. As a result, to the extent that any of Plaintiff's claims are based on the imposition of any such penalty, Plaintiff does not have standing to raise those claims.

Regardless, even if Plaintiff did have standing to challenge the potential imposition of penalties pursuant to 26 U.S.C. § 6702, which she does not, courts have routinely upheld the imposition of penalties pursuant to § 6702 against individuals who have attempted to assert that their

opposition to war as a grounds for not paying their full tax liability. *See, e.g., Bradley v. U.S.*, 817 F.2d 1400, 1403-05 (9th Cir. 1987) ("We have repeatedly approved the assessment of a section 6702 penalty for purported tax returns which claim 'conscience' or 'war tax' deductions" . . . . Clearly the Internal Revenue Code does not permit taxpayers to refuse to pay tax because of their antiwar sentiments. Such a refusal is frivolous. . . . Section 6702 does not violate the right to free speech because it penalizes a taxpayer's conduct of filing a return based on a frivolous position, not the expression of views."); *Adams*, 170 F.3d at 179; *Schehl*, 855 F.2d at 367 ("Alleged vocal opposition to taxes for a particular reason, and refusal to pay taxes, even if all assertions were taken as true … are simply not a basis to challenge an assessment of taxes."); *Nelson*, 796 F.2d 164 (6th Cir. 1986) *Wall v. U.S.*, 756 F.2d 52 (8th Cir. 1985); *Randall*, 733 F.2d at 1567 (11th Cir. 1984) ("[A]rguments involving objections to the Government's military expenditures as a basis for non-payment of taxes have been raised by taxpayers many times, and in each instance the courts have rejected them.").

E. Congress Has Enacted a Statutory Scheme that Does Not Violate RFRA.

As described more fully in the United States' Memorandum, the statutory scheme put in place by the TRHCA is neutral and does not burden the free exercise of religion. Plaintiff's allegations that the IRS "'discriminates against religiously motivated conduct,'" (Opposition, 18 (quoting *Tenafly*, 309 F.3d at 165)), such that strict scrutiny applies is unfounded. Plaintiff cannot point to a single IRS rule or regulation that singles out an individual's religious belief as the grounds for distinctive treatment under §§ 6330 or 6702. As previously discussed, and based on the published guidance issued by the IRS and discussed herein, the IRS would act the same with respect to arguments of conscientious objection to war that were motivated by purely secular reasons. Plaintiff's conclusory allegations therefore fail to demonstrate any lack of neutrality.

Even if Plaintiff was correct that the statutory scheme she challenges did burden her rights to free exercise in a non-neutral way this statutory scheme would be a permissible burden on Plaintiff's religious beliefs because it furthers a compelling governmental interest through the least restrictive means. *See Bradley v. U.S.*, 817 F.2d at 1405 ("a first amendment interest can be overridden by an important government interest unrelated to the suppression of free expression. . . . In the context of

section 6702, the Government's compelling interest in maintaining a sound and administratively workable tax system justifies the alleged restriction on free expression."); *United States v. Indianapolis Baptist Temple*, 224 F.3d 627, 630 (7th Cir. 2000); *see also United States v. Lee*, 455 U.S. at 260 ("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.").

Plaintiff concedes that the "implementing the federal tax system in a uniform, mandatory way" is an interest "'of the highest order,'" and that such interest extends to "administering the tax system." (Opposition, 18 (citations omitted)). However, Plaintiff contends that the IRS has not employed the least restrictive means to achieve those compelling government interests because the IRS has disregarded a "safe harbor" that Congress implemented in enacting § 6702. (Opposition, 21). Again, Plaintiff's assertion that Congress intended a specific "safe harbor" is unfounded. There is no mention of a "safe harbor" in the statute or in a single case citing § 6702. Moreover, Congress was aware that, in enacting TRHCA, taxpayers would not have access to the Tax Court or a collection due process hearing if their sole basis for such administrative redress was an argument that had already been deemed legally frivolous. Congress thus determined, in the first instance, that no exceptions to the system of tax administration should be made for those who wish to argue that they should be entitled to refuse to pay their taxes. An individual may still simply refuse to pay his or her federal taxes without any burden or penalty imposed by TRHCA because §§ 6330 and 6702 are only implicated when an individual attempts to raise an argument that has been deemed legally frivolous, not when one simply refuses to pay one's taxes. As such, the statutory scheme enacted by Congress in TRHCA is the least restrictive means of achieving the compelling government interest of efficient tax administration.

Consistent with that Congressional intent, the courts that have heard religious challenges to § 6702 have held that such a section inherently satisfies the least restrictive means requirement. In *Adams*, the court instructively observed:

> The least restrictive means of furthering a compelling interest in the collection of taxes–a compelling interest that Adams has conceded–is in fact, to implement that system in a uniform, mandatory way, with Congress determining in the first instance if exemptions are to built into the legislative scheme. The question of

> whether government could implement a less restrictive means of income tax collection surfaced in pre-[*Employment Div. v. Smith*, 494 U.S. 872 (1990)] case law and was answered in the negative based on the practical need of the government for uniform administration of taxation, given particularly difficult problems with administration should exceptions on religious grounds be carved out by the courts.

Adams, 170 F.3d at 179. Because Plaintiff's requested relief directly implicates the need to avoid myriad exceptions to the system of tax administration, Plaintiff's action demonstrates exactly why the Congressional scheme under TRHCA is in fact the least restrictive means of achieving the compelling government interest of efficient tax administration. *See id.*; *Droz v. C.I.R.*, 48 F.3d 1120, 1122-24 (9th Cir. 1995), As a result, TRHCA does not violate either RFRA or the First Amendment of the Constitution, and Plaintiff's claims should be dismissed.

CONCLUSION

Because the well-established law demonstrates that the IRS has not violated RFRA in implementing neutral laws of general application that nonetheless further a compelling government interest by the least restrictive means, Plaintiff cannot possibly succeed on the merits of her action. For those reasons, not only must this action be dismissed pursuant to Fed. R. Civ. P. 12(b)(6), but it must it *certainly* cannot survive a motion to dismiss based on the AIA, since the judicial exception certainly does not apply, given that Plaintiff has not shown that "under no circumstance could the government prevail."

Respectfully submitted this 15th day of August, 2012.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 15th day of August, 2012, I filed the foregoing **UNITED STATES' REPLY IN SUPPORT OF ITS MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system, which sent notice of the foregoing via e-mail to:

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