IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JUANA RUEDA,	)	
	)	
Plaintiff,	)	Civ. No. 1:20-cv-01102-ELH
	)	
v.	)	
	)	
JANET YELLEN, *et al*.,	)	
	)	
Defendants.	)	
	)	

UNITED STATES' REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS

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Juana Rueda has failed to demonstrate that her lawsuit, which seeks a declaration that she is constitutionally entitled to an additional $500 refund of her 2020 tax liability, is permitted under the coterminous Anti-Injunction Act ("AIA") or Declaratory Judgment Act ("DJA"). She is mistaken when she argues that equitable relief would not restrain the assessment or collection of her taxes, since Rueda seeks a finding that the Constitution requires the IRS issue to her an additional $500 tax refund. She also fails to show that "under no circumstances could the Government ultimately prevail," *Enochs v. Williams Packing & Nav. Co*., 370 U.S. 1, 7 (1962), such that jurisdiction is allowed. Moreover, she still does not state a claim that her ineligibility for an additional $500 of credit – primarily on account of her son's age – substantially interferes with her right to marriage, free speech, or association. Accordingly, this lawsuit should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

ARGUMENT

I. The AIA and DJA preclude jurisdiction because Rueda seeks declaratory and injunctive relief restraining the assessment or collection of her taxes.

A litigant cannot proceed with a suit for injunctive or declaratory relief if an alternative remedy is available through a tax refund claim. *See South Carolina v. Regan,* 465 U.S. 367, 374 (1984). That is true even ignoring the AIA and DJA. *See Watson v. Sutherland*, 72 U.S. 74, 79 (1866) ("The absence of a plain and adequate remedy at law affords the only test of equity jurisdiction"). But here, the AIA and DJA also bar jurisdiction, and their meaning and application are straightforward. The AIA broadly 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). If a suit is barred by the AIA, then it also is barred by the tax exception to the DJA. *In re Leckie Smokeless Coal Co*., 99 F.3d 573, 583 (4th Cir. 1996). Except for certain

statutory exceptions not applicable here, Congress limited the United States' waiver of sovereign immunity for pre-enforcement challenges in tax disputes to actions under 26 U.S.C. § 7422. *See CIC Servs., LLC v. IRS*, 141 S. Ct. 1582, 1593 (2021). The AIA is "merely intended to require taxpayers to litigate their claims in a designated proceeding." *Regan,* 465 U.S. at 374. Because this is a dispute about Rueda's tax liability for which she can seek relief through a refund claim, the Court lacks jurisdiction.

The Supreme Court has given the AIA's divestiture of subject matter jurisdiction "almost literal effect," *Bob Jones University v. Simon*, 416 U.S. 725, 737 (1974) – "without regard to the harshness of the result." *Inv. Annuity, Inc. v. Blumenthal*, 609 F.2d 1, 5 (D.C. Cir. 1979); *see also Williams Packing*, 370 U.S. at 6 (AIA applies even if collection would cause "irreparable injury, such as the ruination of the taxpayer's enterprise"). Unless the narrow exceptions of *Williams Packing* or *Regan* apply, a district court lacks subject matter jurisdiction and the complaint must be dismissed. *Judicial Watch, Inc. v. Rossotti,* 317 F.3d 401, 407-08 (4th Cir. 2003).

The AIA's extensive bar reflects Congress' "overarching objective of protecting 'the Government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference.'" *McKenzie-El v. IRS*, 2020 WL 902546, at *8 (D. Md. Feb. 24, 2020) (Hollander, J.) (quoting *Judicial Watch, Inc.,* 317 F.3d at 409). Rejecting attempts to narrow the terms "assessment or collection" in a manner similar to that proposed by Rueda, the Fourth Circuit "has interpreted the AIA to extend broadly 'beyond the mere assessment and collection of taxes to embrace other activities … that are intended to or may culminate in the assessment or collection of taxes.'" *O'Meara v. Waters*, 464 F. Supp. 2d 474, 478 (D. Md. 2006) (quoting *Judicial Watch, Inc.*, 317 F.3d at 405). Here, Rueda's lawsuit falls within the AIA's ambit – she seeks a declaration that she is owed an additional $500 refund on her 2020 income

tax return and an order enjoining the IRS from denying her that amount. *See* Dkt. No. 62 at 21.

The equitable relief sought here would restrain the assessment or collection of tax, as it would require the IRS to credit the additional $500 overpayment to Rueda's 2020 tax liabilities. A challenge to the denial of a tax credit *is* a claim that the taxpayer overpaid the amount of tax owed. *See* Dkt. 73-1 (citing *R. Edwin Brown, P.A. v. United States*, 1991 WL 288907, at *4 (D. Md. Sept. 27, 1991)). Indeed, section 6428(a) creates a "credit against [2020] tax" and section 6428(f)(1) treats the refundable credit as a tax overpayment. This suit – ultimately seeking a partial income tax credit – challenges the assessment or collection of tax because "there is no target for an injunction other than the command to pay the tax; there is no non-tax legal obligation to restrain." *CIC Servs.,* 141 S. Ct. at 1593. It is a request for "reimbursement for wrongly paid sums," *Amador v. Mnuchin*, 476 F. Supp. 3d 125, 144 (D. Md. 2020), because Rueda contends that the IRS unlawfully holds a $500 overpayment to which she is entitled.

Rueda's attempts to distinguish *Bob Jones University* and *Americans United* are unavailing. Those cases enforced the AIA where a third party sought an injunction that would restrain the IRS's assessment of taxes on their contributors. *See Alexander v. Americans United Inc*., 416 U.S. 752, 759 (1974); *Bob Jones*, 416 U.S. at 736-37 (1974). But the cases' application extends beyond their specific facts; the AIA broadly prohibits injunctive suits that interfere with the IRS's expeditious tax administration. As the Supreme Court recently explained,

> [T]he plaintiffs' reasons for suing did not matter: It was, for example, irrelevant that Bob Jones University objected to the IRS's "attempt to regulate the admissions policies of private universities." 416 U.S. at 739. Nor did it matter that the tax ruling was in truth an effort to change those policies. Regardless of those facts, the suits sought to prevent the levying of taxes, and so could not go forward.

CIC Servs., LLC, 141 S. Ct. at 159. That this case considers an injunction that may restrain the IRS from collecting, rather than assessing, tax is of no consequence. Rueda seeks equitable relief when her sole remedy lies in a refund claim under section 7422. Accordingly, her suit is barred.

Rueda's argument that these cases do not apply because they "involved an across-the-board rule and not a rule that targets one type of taxpayer for different treatment," also is without merit. Dkt. No. 74 at 4. As this Court has explained, "[n]ot even the presence of constitutional claims affects the AIA's preclusive force." *McKenzie-El*, 2020 WL 902546, at *8 (citing *Americans United*, 416 U.S. at 758-59); *see United States v. Clintwood Elkhorn Min. Co.,* 553 U.S. 1, 10 (2008). "Regardless of how the claim is labelled, the effect of an injunction" must be examined when applying the broad contours of the AIA. *Int'l Lotto Fund v. Va. State Lottery Dep't*, 20 F.3d 589, 591 (4th Cir. 1994). No matter the type of classification challenged, an injunction here would improperly interfere with the IRS's ability to assess or collect the taxes Rueda owes. *See id*. The declaration she requests is pre-enforcement judicial interference with tax administration that is prohibited by the AIA. *See Bob Jones*, 416 U.S. at 736-37.

Rueda misconstrues out-of-circuit precedent to suggest that her lawsuit challenges a "process" or "procedure" of the IRS, such that the AIA does not apply. *See* Dkt. No. 74 at 5-6 (citing *Cohen v. United States*, 650 F.3d 717, 720, 725 (D.C. Cir. 2011) & *Marcello v. Regan*, 574 F. Supp. 586, 594 (D.R.I. 1983)). But section 6428 does not subject Rueda to a different administrative process – it allegedly denies her part of a tax credit because her son turned 17 in 2020. She may challenge that denial under section 7422, as may anyone who contends that they are due a refund for overpaid income taxes. It is therefore quite unlike the "one-time exclusive mechanism for taxpayers to obtain a refund for excise taxes erroneously collected between February 28, 2003, and August 1, 2006" considered by the D.C. Circuit in *Cohen*. 650 F.3d at 720. Rueda's challenge to her 2020 tax liability also is dissimilar to the federal tax refund intercept mechanism examined by the District of Rhode Island in *Marcello*, because that suit was brought after "assessment and collection [were] ancient history." 574 F. Supp. at 594. Rueda

is not being asked to participate in a separate administrative proceeding to challenge the constitutionality of 26 U.S.C. § 6428 and seek the $500 additional credit, but instead to assert her claim through the standard refund process for aggrieved taxpayers established by Congress.

II. No exceptions to the AIA or DJA apply in this case.

The Supreme Court has recognized two narrow exceptions to the AIA. Rueda only relies upon the first, set forth in *Williams Packing*, which permits a suit for injunction despite the AIA when a plaintiff can show that (1) "under no set of circumstances could the Government ultimately prevail," and (2) "equity jurisdiction otherwise exists." *McKenzie-El*, 2020 WL 902546, at *8 (quoting *Williams Packing*, 370 U.S. at 7). Rueda misinterprets the *Williams Packing* exception as permitting a suit simply because she allegedly "adequately pleaded" a claim for relief and will prevail. *See* Dkt. No. 74 at 7-8 (citing *Amador*, 476 F. Supp. at 152-53). But the *Williams Packing* exception is far narrower – it applies only where "under the most liberal view of the law and facts, the United States cannot establish its claim." *Williams Packing*, 370 U.S at 7; *see also Int'l Lotto Fund,* 20 F.3d at 592 n.3 (quoting *United States v. Am. Friends Serv. Comm.,* 419 U.S. 7, 10 (1974)) (recognizing that AIA destroys jurisdiction unless it is "clear that the government could in no circumstances ultimately prevail on the merits").

Here, the United States plainly *can* prevail on the merits. Indeed, this Court explained that its denial of the Government's motion to dismiss in *Amador v. Mnuchin* was a "close question." Conf. Call, 9/16/20. Moreover, the United States obtained Rule 12(b)(6) dismissal of similar claims that the prior 26 U.S.C. § 6428 violated the right to marriage, free speech, and association. *See Doe v. Trump,* 2020 WL 5076999, at *8 (C.D. Cal. July 8, 2020); *Doe v. Trump*, 2020 WL 5492994, at *4 (C.D. Cal. Sept. 2, 2020), *appeal dismissed*, 2021 WL 1238571 (9th Cir. Jan. 12, 2021). The dismissal of *Doe v. Trump* shows that the United States can ultimately

prevail defending the constitutionality of section 6428. And Rueda's ineligibility for an additional $500 tax credit is not an "irreparable injury" that requires equitable relief. *See, e.g., Sampson v. Murray*, 415 U.S. 61, 90 (1974) (loss of money is not irreparable if compensation may be available at a later date). Accordingly, the *Williams Packing* exception cannot apply.

Rueda does not rely upon the *Regan* exception, which stands for the proposition that the AIA does not foreclose actions "where ... Congress has not provided the plaintiff with an alternative legal way to challenge the validity of the tax." *McKenzie-El*, 2020 WL 902546, at *8 (quoting *Regan*, 465 U.S. at 373). She thus tacitly concedes that a refund suit *is* a remedy available to her. The *Regan* exception applies where Congress has not provided "an alternative avenue for an aggrieved party to litigate its claims on its own behalf." 465 U.S. at 381. Rueda contends only that a section 7422 refund claim "would be an arduous, expensive and long process that serves none of the goals underlying the tax refund suit." Dkt. No. 74 at 7. Neither of the two narrow AIA exceptions permit jurisdiction simply because a refund suit allegedly would be burdensome. *See Williams Packing,* 370 U.S. at 6. Rueda plainly may seek relief by way of a refund suit, and thus the AIA and DJA apply.

III. Rueda has failed to state any valid claim for relief.

A. Section 6428 does not substantially burden Rueda's right to marriage.

Rueda argues at length that her ineligibility for an advance refund, or the reduction of her tax refund by $500, means that "her marriage continues to be treated differently than other marriages[.]" Dkt. No. 74 at 9. But she does not establish that any classifications contained within the amended section 6428 "significantly interfere with decisions to enter into the marital relationship," *Zablocki v. Redhail*, 434 U.S. 374, 386 (1978), or the "decisions, obligations, and benefits adjunct to marriage," *Amador*, 476 F. Supp. 3d at 149, to warrant rigorous scrutiny.

The challenged provisions of section 6428 do not themselves distinguish between married and unmarried individuals. *No* 17-year-old may be taken into account under 26 U.S.C. § 6428(a), so Rueda is treated the same as any eligible individual who has a child 17 years of age or older – no matter whether she is married or to whom she is married. To the extent that section 6428 results in a differential *effect* on Rueda – making her ineligible for an advance refund due to the fact that she filed a joint 2019 tax return with her husband who lacks an SSN –that treatment does not itself constitute the type of "significant" interference that requires heightened scrutiny. *See Zablocki*, 434 U.S. at 386. It is not enough for Rueda to argue that she "is unable to receive the same tax credit for her son that other parents received." Dkt. No. 74 at 9. She must also establish that any alleged interference with her fundamental rights was "significant."

In recognizing the fundamental right to marriage, the Supreme Court has consistently explained that "reasonable regulations that do not significantly interfere with decisions to enter in the marital relationship may be legitimately imposed." *Zablocki*, 434 U.S. at 387. "A classification based on marital status is fundamentally different from a classification which determines who may lawfully enter into the marriage relationship." *Id.* at 403-04 (Stevens, J., concurring). Congress "in enacting discrete statutes, can make determinations that bear on marital rights and privileges." *United States v. Windsor,* 570 U.S. 744, 764 (2013). The crucial consideration is whether the "injury and indignity" caused by the law "is a deprivation of an essential part of the liberty protected by the Fifth Amendment." *Id.* at 768.

Here, the combined effect of the provisions of section 6428 does not substantially burden Rueda's ability to enter into marriage or significantly impact the decisions, benefits, and obligations of marriage. Rueda plainly is not placed into "an unstable position of being in a second-tier marriage," *id.* at 772, simply on account of her ineligibility for part of a tax credit.

Rueda also fails to satisfy her burden to negate "every conceivable basis" that could support the distinctions Congress made. *See Heller v. Doe*, 509 U.S. 312, 320 (1993). Section 6428, like all federal statutes, "is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related" to a legitimate interest. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Here, Congress reasonably could have determined that the IRS would not be able to calculate and issue payments to newly eligible individuals like Rueda in the four days that remained before the December 31, 2020 deadline for advance refunds to issue. It might have chosen to deny advance refunds to those taxpayers since they would be able to assert their claim on their 2020 returns when tax filing season began. It could have decided to forego issuing additional advance refunds since only those eligible individuals whose children turned 17 in 2020 and who did not receive an advance refund would be impacted. Even if "the Constitution recognizes higher values than speed and efficiency," Dkt. No. 74 at 13 (quoting *Frontiero v. Richardson*, 411 U.S. 677, 690 (1973)), those interests certainly are rational for Congress to consider in making distinctions. *See Doe*, 2020 WL 5492994, at *4 (earlier version of § 6428 was rationally related to Congress's interest in efficiency). And the "principal purpose" of section 6428 obviously was not to "impose inequality," *Windsor*, 570 U.S. at 722, or "harm a politically unpopular group," *Cleburne Living Ctr.*, 473 U.S. at 447.

B. Section 6428 does not violate Rueda's First Amendment rights.

Rueda also fails to state a claim that the provisions that combine to reduce her CARES Act Credit by $500 violate her freedoms of speech and association under the First Amendment.

Rueda does not acknowledge, much less distinguish, this Court's determination that the earlier version of section 6428 – which entirely denied a tax credit to certain joint filers – did not penalize any individual for expressing her views on marriage or impinge on her ability to convey

beliefs concerning marriage. *Amador*, 476 F. Supp. 3d at 156-57. The Court explained that the exclusion "bar[red] plaintiffs from receiving an impact payment based on conduct, specifically marrying and filing a joint tax return with an individual lacking legal status." *Id.* at 157. It thus "does not implicate speech" at all. *Id.* The statute also did not prevent the plaintiffs from expressing their marriage on their income tax returns, since "filing a tax return as 'married filing separately' is not inconsistent with proclaiming oneself married." *Id.* Even if Rueda believes that her joint 2019 income tax return was "an expression of her marriage and the unity of her family," Dkt. No. 74 at 15, section 6428 has no more than an incidental effect on, and does not impermissibly burden, Rueda's speech. Accordingly, Rueda fails to state a claim for violation of her freedom of speech. *See, e.g., Cohen v. Cowles Media Co.,* 501 U.S. 663, 669 (1991) (laws with only an incidental effect on speech do not usually draw First Amendment scrutiny).

Rueda also fails to state a claim for relief regarding her associational rights. Crediting her allegation that she "expresses her intimate association with her spouse" through jointly filed tax returns, Rueda still cannot establish that any interference caused by section 6428 is "direct and substantial" or "significant," as required for heightened First Amendment inquiry. *See Amador*, 476 F. Supp. 3d at 157 (quoting *Lyng v. Int'l Union*, 485 U.S. 360, 367 (1988) & *Bd. Dirs. of Rotary Int'l v. Rotary Club*, 481 U.S. 537, 548 (1987)). Here, the challenged parts of section 6428 obviously do not "directly" penalize intimate association – they indirectly make Rueda ineligible for an additional $500 tax credit because (1) she filed a joint tax return in 2019; (2) her husband did not include an SSN on that return; and (3) her son turned 17 in 2020. Also, the burden on Rueda's First Amendment rights cannot reasonably be deemed "substantial." Rueda alleges only that she is unable to receive part of a tax credit that might have been advanced to her if she had chosen a different filing status for tax year 2019. The challenged provisions cannot

plausibly impact Rueda's association with her husband in the future, since they rely only on her 2019 filing status. Rueda's freedom of association is not directly or substantially impacted by a tax provision that looked to a past filing status to determine eligibility for an advance refund.

Rueda's novel theory of the First Amendment would require heightened scrutiny for any provision of tax law that has a differential impact on married filers, no matter the extent of the burden. At its logical conclusion, her argument would require a compelling governmental interest for *any* term that disadvantages a married individual, an individual who selects the filing status "married filing jointly," or an individual who selects the filing status "married filing separately." Courts have routinely rejected such arguments, instead giving substantial deference to Congress in enacting tax statutes. *See e.g., Druker v. Comm'r,* 697 F.2d 46, 51 (2d Cir. 1982) (declining to find so-called "marriage penalty" unconstitutional); *see also Mueller v. Allen*, 463 U.S. 388, 396 (1986); *Barclay & Co. v. Edwards*, 267 U.S. 442, 450 (1924).

CONCLUSION

The Court lacks jurisdiction because the relief requested by Rueda would restrain the assessment or collection of tax and section 7422 creates an adequate alternative remedy. Moreover, Rueda fails to state a claim for a violation of the First or Fifth Amendments. Accordingly, the Court should dismiss this lawsuit and direct judgment in favor of Defendants.

Respectfully submitted,

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