

NO. 24-416

IN THE
Supreme Court of the United States

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

v.

JENNIFER ZUCH,

Respondent.

On Writ of Certiorari to the United States Court of
Appeals for the Third Circuit

BRIEF OF A. LAVAR TAYLOR AS *AMICUS*
CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS*¹

Amicus A. Lavar Taylor is a tax controversy practitioner with over 43 years of experience in handling judicial and administrative tax controversies. His experience includes working for the Department of Justice as an Assistant United States Attorney in the Tax Division of the United States Attorney's Office for the Central District of California, as a Senior Attorney for the Internal Revenue Service ("IRS") Office of Chief Counsel, and for taxpayers as an attorney in private practice. Mr. Taylor is an Adjunct Professor at the Chapman Fowler School of Law where he teaches Federal Tax Procedure, and has served as an Adjunct Professor of Law at the University of California, Irvine, School of Law. Mr. Taylor and his firm have represented taxpayers in many hundreds of Collection Due Process appeals at the administrative level and in many Collection Due Process cases at the judicial level. Mr. Taylor has been personally involved as a private practitioner in over 300 cases brought in the U.S. Tax Court ("Tax Court"), and has personally been involved in numerous additional tax-related cases in the U.S.

¹ No person other than the named *Amicus* or their counsel authored this Brief or provided financial support for this Brief.

District Courts (“District Courts”), U.S. Courts of Appeal, and this Court as a private practitioner.

Amicus is filing this brief in support of Respondent Jennifer Zuch.² The question presented in this case is important from the standpoint of tax administration, although the specific outcome of this appeal will affect only a narrow subset of taxpayers.

In 1998, Congress explicitly granted taxpayers the right to challenge the “existence or amount” of tax liabilities in administrative and judicial Collection Due Process proceedings brought pursuant to 26 U.S.C. §6330 if the taxpayer “did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.” *See, e.g., Montgomery v. Commissioner*, 122 T.C. 1 (2004) (taxpayer allowed to challenge the amount of an unpaid liability shown on a “balance due” personal income tax return).

This was a dramatic change from existing law. Prior to the enactment of §6330, taxpayers against whom the IRS assessed unpaid liabilities without first issuing a notice of deficiency could generally initiate a judicial challenge to a disputed liability

² *Amicus* regularly represents clients of the type whose interests could be affected by the outcome of this case, but *Amicus* has not been retained by any client (or by any third party) for the purpose of filing this Brief as *Amicus Curiae*.

only by paying the disputed liability in full, filing a claim for refund, and then filing suit for refund in Federal District Court or the Court of Federal Claims. *See generally Flora v. United States*, 362 U.S. 145 (1960). Under prior law, taxpayers such as the taxpayer in *Montgomery* would have had to pay the tax in full, file a claim for refund, and then file suit to recover the refund in District Court or the Court of Federal Claims to challenge the “existence or amount” of the unpaid tax debt. *Id.* That is no longer the case.

This significant new opportunity for taxpayers to judicially challenge the merits of a disputed liability was prompted by a Congressional perception that the IRS was treating taxpayers unfairly, forcing taxpayers to endure hardships in order to pay disputed liabilities that ultimately were not owed. See Brief for Respondent at pp. 9-10, 36-37. To remedy the perceived unfair treatment of taxpayers, Congress changed the law by giving taxpayers the right to judicially challenge the existence or amount of a tax liability in what are now called Collection Due Process appeals if the taxpayers did not receive a notice of deficiency or did not otherwise have an opportunity to challenge a disputed tax liability.

The IRS here improperly asks this Court to impose limitations on an important right granted to taxpayers by Congress. The limitations requested by IRS have no statutory basis and make no practical sense. Furthermore, the IRS agrees that the Tax

Court had jurisdiction to decide the dispute regarding the tax liability at issue at the time the Tax Court petition was filed and yet argues that the taxpayer's subsequent payment of the tax through offsets of tax refunds destroys the jurisdiction of the Tax Court to decide this dispute. This argument, if accepted by this Court, would require taxpayers to begin litigating the disputed issue anew, in a completely different forum, where the cost of litigation is typically far greater than the cost of litigation in the Tax Court.

In other words, the IRS's position in this case incentivizes taxpayers who prefer litigating in the Tax Court instead of litigating in a refund forum (which is most taxpayers) to refrain from paying a disputed tax liability while they are challenging "the existence or amount" of a disputed, previously unpaid, tax liability in Tax Court in a Collection Due Process case. It is strange indeed that the IRS would advocate for a result that *discourages* most taxpayers from paying a previously unpaid liability while they are litigating the merits of a disputed tax liability in Tax Court in a Collection Due Process case.

The IRS also claims the dispute here is "moot" despite the fact that the IRS and the taxpayer continue to disagree sharply as to whether the taxpayer is entitled to a withholding credit against the tax liability in question. It is not possible for a case to be "moot" where a taxpayer and the IRS remain in disagreement regarding the resolution of one of the

issues that caused the taxpayer to initiate the litigation.

Amicus supports Ms. Zuch in her efforts to prevent the IRS (and some lower courts) from taking away an important right granted to taxpayers by Congress merely because the taxpayer (involuntarily) pays a disputed tax liability while a Collection Due Process case is pending in Tax Court.

SUMMARY OF ARGUMENT

The IRS's argument that the Tax Court lost jurisdiction to resolve the dispute between Ms. Zuch and the IRS regarding the disputed estimated tax payments after that Court previously obtained jurisdiction over Ms. Zuch's case makes no sense. There is nothing in the statutory language that indicates that the Tax Court should lose the jurisdiction it obtained over the case earlier just because the IRS's refund offsets fully paid the disputed liability.

The IRS agrees that the Declaratory Judgment Act did not bar the Tax Court from granting relief to the taxpayer prior to full payment of the disputed liability. The Act likewise does not bar the Tax Court from granting relief after full payment of the disputed liability, as the effect of granting relief in either situation is the same, *i.e.*, to give the taxpayer the economic benefit of the disputed estimated tax credit..

A partial payment of the disputed liability through a refund offset while the case is pending in Tax Court does not cause the Tax Court to lose jurisdiction over the dispute, per the IRS. But such a partial payment does raise the question of whether the Tax Court can order a refund if the Tax Court later rules that the disputed tax liability against which the tax refund was offset is not owed. This issue arises whether the later refund offset pays the disputed liability in part or in full. Thus, the purported inability of the Tax Court to order a refund in this situation is irrelevant to the resolution of the question of whether a later refund offset that fully pays the disputed liability deprives the Tax Court of jurisdiction to resolve the disputed tax liability.

The Tax Court's jurisdiction in Collection Due Process cases is not as narrow as the IRS contends. The Tax Court has previously ordered the IRS to refund money to a taxpayer in a Collection Due Process case. The Ninth Circuit has held that the Tax Court has the authority to apply the full range of equitable principles generally granted to courts that possess judicial powers in Collection Due Process cases. In any event, the Tax Court in Collection Due Process cases can issue orders to the IRS that require the IRS to take steps that will generate refunds for taxpayers.

If the Tax Court does lack jurisdiction to order refunds to taxpayers in Collection Due Process cases,

taxpayers can take certain steps to protect their interests. But the potential absence of authority of the Tax Court to issue refunds in Collection Due Process cases has no relevance to the resolution of the present dispute.

The IRS's argument that the case is moot is meritless. A case cannot be moot when the parties still disagree about the resolution of an issue that has been raised in the litigation.

Section 6330 is a remedial statute and thus should be construed with its remedial purpose in mind. The position advocated by the IRS, if adopted by this Court, would create additional burdens on and costs to taxpayers who find themselves in the situation in which Ms. Zuch finds herself. Taxpayers could be required to "start over" in a new court after many years of litigating in Tax Court and in subsequent appeals. Taxpayers who owe taxes for multiple years could find themselves having to litigate in two different courts simultaneously because a refund offset fully pays only one of multiple tax liabilities.

The mere act of forcing taxpayers to litigate tax disputes in District Courts will impose significant burdens on taxpayers. District Courts, unlike the Tax Court (where most litigants are unrepresented), are not "taxpayer friendly." Unrepresented taxpayers unfamiliar with District Court procedures may

simply give up, particularly if they cannot afford representation in District Court. The cost of representation in District Court tax litigation is normally much higher than the cost of such representation in the Tax Court, making representing infeasible for taxpayers of modest means.

Statistics show that taxpayers overwhelmingly prefer to litigate tax disputes in the Tax Court.

The IRS fails to acknowledge that Congress changed the “pay first – litigate later” rule governing the litigation of the merits of tax liabilities for taxpayers who pursue Collection Due Process appeals. The IRS’s assertion that a ruling for Ms. Zuch will improperly open the floodgates to disputes regarding the merits of the underlying liability in Collection Due Process cases is completely without merit. The IRS’s use of incomplete statistics does not support their argument.

More importantly, because Congress has changed the “old rules” to allow taxpayers to challenge the merits of an unpaid tax liability in Collection Due Process cases, all taxpayers, including Ms. Zuch, who meet the requirements for challenging unpaid liabilities in Collection Due Process appeals should be allowed to bring such a challenge.

ARGUMENT

A. The IRS's Argument That the Tax Court Lost Jurisdiction That the IRS Agrees the Tax Court Had at the Start of the Tax Court Case Makes No Sense

The Tax Court undisputedly had jurisdiction to resolve all of the issues raised by Ms. Zuch in her administrative Collection Due Process Appeal, including the disputed estimated tax payment, at the time Ms. Zuch filed her Tax Court petition. Even the IRS agrees with this point.

Ms. Zuch filed a timely request for an administrative Collection Due Process hearing with the IRS's Office of Appeals in response to a Notice of Intent to Levy issued pursuant to 26 U.S.C. §6330(b). That request triggered the duty of the Office of Appeals to perform an independent verification process pursuant to §6330(b)(1) and to consider all issues raised by the taxpayer in their administrative appeal. 26 U.S.C. §6330(c)(2)(B).

Ms. Zuch raised the issue of whether she was entitled to the disputed withholding credit in her administrative Collection Due Process Appeal. Thus, the Office of Appeals was required to consider this argument in making its formal Determination. *Id.* Had the Office of Appeals failed to consider this issue in its determination, it would have constituted legal

error. *See, e.g., Loveland v. Commissioner*, 151 T.C. 78 (2018).

Ms. Zuch then filed a timely petition with the Tax Court, seeking review of the formal Determination by the Office of Appeals, a Determination which denied her request that the IRS credit her tax liability with the disputed withholding credit. §6330(d)(1) explicitly states that the Tax Court reviews the formal Determination by the Office of Appeals and has jurisdiction to do so. Because Ms. Zuch raised the issue of the disputed withholding credit in her administrative Collection Due Process Appeal, and because the Office of Appeals fulfilled its statutory duty to consider that issue in its formal Determination, the Tax Court acquired jurisdiction to review the issue of the disputed withholding credit once a timely Tax Court petition was filed.

That should be the beginning and the end the story. There is nothing in the text of the statute granting jurisdiction to the Tax Court the divests that Court of jurisdiction to decide whether Ms. Zuch is entitled to the disputed withholding credit merely because the “underlying liability” is paid in full through offsets of refunds owed to Ms. Zuch after the Tax Court acquired jurisdiction to decide this question.

The various arguments offered by the IRS in an effort to avoid the result mandated by the

straightforward language of the statute make no sense. For example, the IRS argues that it would be a violation of the Declaratory Judgment Act, 28 U.S.C. §2201, for the Tax Court to rule on the issue of disputed withholding credit after the refund offsets have reduced the balance owed to the IRS to zero.

This cannot be the case, though. A ruling by the Tax Court on the issue of the disputed withholding credit prior to any refund offsets is legally no different than such a ruling by the Tax Court after the refund offsets. It is the same issue, and will have the same legal effect, both before and after any refund offsets are made. In both situations, a ruling for the IRS will prevent Ms. Zuch from getting the economic benefit of the disputed withholding credits. And in both situations a ruling for Ms. Zuch will allow her to get the economic benefit of the disputed withholding credit. If a ruling by the Tax Court on this issue prior to the full payment of the disputed liability through refund offsets would not have been in violation of the Declaratory Judgment Act, a point the IRS appears to concede, there is no logical reason why a ruling by the Tax Court on this issue after the refund offsets occurred would violate the Declaratory Judgment Act.

The IRS's concession that a ruling by the Tax Court on the issue of the disputed withholding credit prior to any refund offsets does not violate the Declaratory Judgment Act is well-founded. It would make no sense to interpret §6330(d) in a manner that

prevents the Tax Court from exercising plenary review of all issues addressed in the Determination of the Office of Appeals, given that the language of §6330(d)(1) does not place any limitations upon the Tax Court's jurisdiction to review the Determination.

It makes no sense to interpret the language of §6330(d)(1) any differently merely because the IRS later grabbed multiple tax refunds of Ms. Zuch to pay the unpaid portion of the tax debt that the IRS claimed that she owed at the outset of the Tax Court litigation. In either scenario, the Tax Court has jurisdiction to decide the issue of the disputed withholding credit.

Curiously, it appears that the IRS does not contend that a mere *reduction* of the unpaid portion of the tax debt that existed at the outset of the Tax Court case through later refund offsets causes the jurisdiction of the Tax Court to disappear. Per the IRS, if there was a refund offset that left \$1.00 (one dollar) of the "underlying liability" unpaid, the Tax Court would still have jurisdiction to decide the issue of the disputed withholding credit.

This point illustrates the folly of the IRS's argument that this Court should rule against Ms. Zuch because the Tax Court allegedly lacks the authority to direct the IRS to issue refunds in Collection Due Process cases. If the purported inability of the Tax Court to order the IRS to issue a

refund in a Collection Due Process case where a refund offset *reduces* the “underlying liability” to a very small amount during the pendency of the Tax Court case is not a basis for causing the Tax Court’s jurisdiction to magically disappear, this purported inability to order a refund should not be a basis for causing the Tax Court’s jurisdiction to disappear merely because the refund offsets *fully pay* the liability.

While the complete scope of the Tax Court’s authority in Collection Due Process cases is not at issue in this case, the IRS’s cramped view of the scope of the Tax Court’s jurisdiction in Collection Due Process cases lacks merit. The Tax Court has previously directed the IRS to refund money to a taxpayer in a Collection Due Process case where the IRS took the taxpayer’s money via levy without first sending the taxpayer the statutorily required Notice of Intent to Levy under §6330(d)(1). *See Chocallo v. Commissioner*, T.C. Memo 2004-152 (2004).

The Tax Court has also ordered the IRS to credit a taxpayer’s liability for the amount of the decrease in value of stock seized by the IRS in a Collection Due Process case where the taxpayer requested the IRS to promptly sell the seized stock, due to a concern that the stock might become valueless, and the IRS failed to sell the stock as requested. *See Zapara v. Commissioner*, 652 F.3d 1042 (9th Cir, 2011), *affirming* 124 T.C. 223 (2005), *as*

supplemented, 126 T.C. 215 (2006). The Ninth Circuit stated that, in that Collection Due Process case, the “Tax Courts have ‘the authority to apply the full range of equitable principles generally granted to courts that possess judicial powers’ ” (citation omitted). 652 F.3d at 1045-46.

Even assuming, *arguendo*, that the Tax Court cannot issue an order directing the IRS to issue a refund pursuant to a final order in a Collection Due Process case, which is seemingly a dubious proposition, the Tax Court can clearly issue an order the IRS to take steps to implement the Court’s holding on an issue properly before the Court that result in the IRS issuing a refund. For example, the Tax Court could issue an order directing the IRS to credit Ms. Zuch’s account for the tax year at issue for the amount of the disputed withholding credit, if she prevails at trial in the Tax Court. Such an order, once it becomes final, would create a duty on behalf of the IRS to credit her account. That would generate a refund.

If the Tax Court’s power to order the IRS to issue a refund in a Collection Due Process case is limited, taxpayers, once they learn of refund offsets made while they are challenging the “existence or amount” of a previously unpaid liability in Tax Court in a Collection Due Process case, can protect their interests by filing formal refund claims pending a resolution of the Collection Due Process case. If they

fail to file a formal refund claim, they may be able to later argue that they previously submitted an informal refund claim. *See United States v. Kales*, 314 U.S. 186 (1941), *United States v. Commer. Nat'l Bank*, 874 F.2d 1165 (7th Cir. 1989)(Informal letter to IRS Appeals Officer sent during protracted dispute with the IRS constituted a valid informal refund claim).

Presumably the IRS would honor a final Tax Court order favoring the taxpayer. If not, in certain circumstances, the taxpayer might avail themselves of a suit under 28 U.S.C. §1361. *See Vishnevsky v. United States*, 581 F.2d 1249 (7th Cir. 1978).

None of this, however, provides any support for holding that the Tax Court loses jurisdiction to resolve a disputed tax liability in Collection Due Process case merely because the IRS collects the full amount of the previously unpaid liability through refund offsets while the Collection Due Process case is pending in the Tax Court.

The IRS's argument that Ms. Zuch's entire case became "moot" due to the offset of her tax refunds is self-evidently wrong. Ms. Zuch and the IRS still do not agree whether she is entitled to the disputed withholding credit. The fact that the "levy" issue was mooted by all of the refund offsets does not render the entire case moot and, as explained above, does not deprive the Tax Court of jurisdiction over the dispute under the relevant statutory scheme.

B. Section 6330 is a Remedial Statute and Should be Interpreted With Its Remedial Purpose in Mind

Section 6330, and its companion statute, 26 U.S.C. §6320, were enacted to provide additional remedies to taxpayers, due to perceived abusive conduct by the IRS. The Brief for Respondent, at pp. 9-10, 36-37, does an excellent job of laying this out. Given that the purpose of the enactment of the Collection Due Process provisions is to benefit taxpayers, these provisions should be interpreted in a manner consistent with that purpose.

The IRS espouses a position that, if adopted by this Court, would create additional difficulties, costs and burdens for taxpayers who were not able to pay their taxes in the first place and, who, during the course of litigating the existence or amount of a previously unpaid liability in a Collection Due Process case in Tax Court, find themselves in the unusual position of paying in full the previously unpaid taxes through refund offsets.

For example, suppose that a taxpayer prevails on a challenge to the existence or amount of a previously unpaid liability in Tax Court in a Collection Due Process case after a two year battle, and the IRS then appeals the Tax Court's holding. For taxpayers residing the in Ninth Circuit, this type of appeal will typically take 18 to 24 months from entry

of judgment in the Tax Court. Immediately after oral argument in the Court of Appeals, which could be 3 or 4 years after the start of the Tax Court case, the previously unpaid tax liability is paid in full through a refund offset.

According to the IRS, the pending appeal from the Tax Court must be dismissed for lack of jurisdiction, and the taxpayer must start all over again by pursuing a suit for refund, years after the start of the Tax Court case. This result is completely at odds with the purpose for which §6330 was enacted. This result also makes no sense from a practical standpoint.

Furthermore, consider a scenario where a taxpayer has unpaid tax liabilities for multiple years and is challenging the existence or amounts of those multiple liabilities in a single Collection Due Process case pending before the Tax Court. Suppose that the IRS then offsets a tax refund that pays in full only one of the multiple liabilities. According to the IRS, the Tax Court must dismiss the year that has been paid in full for lack of jurisdiction, while retaining jurisdiction over the years which have not been paid in full. Such a result has previously occurred. See *Amanda Iris Gluck Irrevocable Trust v. Comm'r*, 154 T.C. 259 (2020).

Such a result forces a taxpayer to start over for the dismissed tax year and to litigate in two

completely different fora. This result likewise is at odds with the purpose for which §6330 was enacted and makes no sense from a practical standpoint.

The additional burdens on, and disadvantages to, taxpayers in these scenarios under the IRS's proffered interpretation of §6330 is not limited to having to start over in a different court and possibly having to litigate in two different fora simultaneously. Requiring a taxpayer to litigate in District Court instead of Tax Court typically imposes significant practical and financial burdens on taxpayers, to the point where taxpayers may choose not pursue litigation against the IRS if they are not allowed to pursue litigation in Tax Court.

The Tax Court, unlike the District Courts, is a "taxpayer friendly" court. Roughly 75% of all taxpayers who litigate before the Tax Court are unrepresented. Discovery rules in Tax Court are very relaxed; formal discovery is prohibited unless the parties first engage in informal discovery. See, *Branerton Corp. v. Commissioner*, 61 T.C. 691 (1974).

District Courts, by contrast, are not at all "taxpayer friendly." Formal discovery is the norm, and an unrepresented taxpayer who is unfamiliar with the formal discovery rules and the motions practice associated with District Court litigation will often decide to forgo suing the IRS in District Court if they cannot afford representation.

Then there is the massive increase in the cost of representation in litigation when a taxpayer is required to litigate in District Court instead of Tax Court. In the experience of *amicus*, the cost to represented taxpayers of litigating in District Court is often three to four times the cost to represented taxpayers of litigating in Tax Court. The degree of this disparity in the cost of representation in litigation between the two different fora will vary depending on the issues being litigated, but the cost of litigating cases in District Court often makes it impractical for taxpayers to pay for representation in tax cases in District Court unless the amount at issue is hundreds of thousand dollars or more. For certain types of tax cases, it may not make economic sense for taxpayers to pay for representation in District Court unless the amount at issue is \$500,000 or more.

The IRS National Taxpayer Advocate has acknowledged that, for most taxpayers, the Tax Court is a far better litigation forum than the District Courts and, for that reason, has proposed that Congress expand the jurisdiction of the Tax Court to include refund jurisdiction traditionally exercised by the District Courts. *See National Taxpayer Advocate, 2023 Purple Book, Legislative Recommendation No. 43, 95-96 (Dec. 31, 2022)* located at https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_PurpleBook_07_StrengthTPR.pdf (last visited March 22, 2025).

Statistics regarding the number of pending court cases involving federal taxes confirm that taxpayers strongly prefer to litigate in Tax Court as opposed to litigating in District Court. As of September 30, 2023, IRS Chief Counsel statistics reflected that there were 25,653 cases pending in the Tax Court. (This number includes Tax Court cases of all kinds; Collection Due Process cases make up a small fraction of this total.) *See* SOI Tax Stats - Chief Counsel Workload: Tax Litigation Cases, by Type of Case - IRS Data Book Table 31, <https://www.irs.gov/statistics/soi-tax-stats-chief-counsel-workload-tax-litigation-cases-by-type-of-case-irs-data-book-table-29> (last visited March 22, 2025).

By way of contrast, only 714 refund cases were pending *nationwide* as of June 30, 2023. *Id.* Simply put, taxpayers generally prefer to litigate in the Tax Court, due to the significant cost and inconvenience associated with litigating tax cases in District Court. Per the records available at the above [irs.gov](https://www.irs.gov) website, a similar disparity between the number of pending Tax Court cases and the number of pending District Court cases has existed for every year going back to 1997, the year before Congress enacted the Collection Due Process provisions. *Id.*

Given this background, it makes no sense to construe §6330 in a manner that creates more difficulties for, and financial burdens on, taxpayers

such as Ms. Zuch by forcing them to litigate in District Court.

C. The IRS May Not Ignore the Fact That Congress Has Changed The Rules Regarding Litigation of the Merits of Tax Liabilities for Taxpayers in Collection Due Process Appeals; In Any Event, the IRS's Assertion That a Ruling For Ms. Zuch Will Generate a Flood of New Litigation is Meritless

The IRS fails to properly acknowledge that Congress significantly changed the rules regarding the litigation of the merits of tax liabilities when Congress enacted §6330. The IRS states at page 2 of its Brief for Petitioner that “[t]he federal tax system operates on a simple default premise: pay now, dispute later.” But Congress modified those rules for taxpayers in Collection Due Process Appeals. This case is not about the rules as they existed prior to the enactment of the Collection Due Process Appeals provisions. This case is about the changes to the law enacted by Congress in 1998.

The significant changes to the law made by Congress in 1998 in enacting §§6320 and 6330, and the reasons why those changes call for this Court to interpret §6330 in the manner urged by Ms. Zuch, are eloquently articulated in the Brief for Respondent.

The IRS offers no cogent reasons why this Court should not affirm the judgment of the Third Circuit.

The IRS's feeble "scary statistics" argument should be rejected out of hand. The IRS claims that a ruling in favor of Ms. Zuch could lead to a flood of new litigation. Brief for Petitioner at p. 24. But the IRS fails to explain how a holding that permits the continuation of a case over which the Tax Court already has jurisdiction after a previously unpaid liability is paid through tax refund offsets is going to lead to increased litigation by a large number of additional taxpayers.

This case is about whether existing cases in which taxpayers have the right to challenge the existence or amount of an unpaid liability, and over which the Tax Court has jurisdiction, will be thrown out of court. This case is not about whether taxpayers who previously were not able to pursue a challenge to the existence or amount of an unpaid liability will be allowed to do so.

More broadly, the notion that a ruling for Ms. Zuch might cause taxpayers to flock en masse to use the Collection Due Process procedures to challenge unpaid liabilities is illogical. Taxpayers cannot challenge the merits of the underlying liability in a Collection Due Process appeal under §6320 until the IRS has filed a Notice of Federal Tax Lien ("NFTL") against the taxpayer. The filing of a NFTL provides

notice to the public at large that the IRS believes that the taxpayer owes taxes to the IRS in the amount set forth in the NFTL and that the IRS is pursuing collection of those taxes against the party whose name(s) are listed as taxpayers in the NFTL.

The filing of the NFTL typically has additional adverse consequences for all taxpayers, beyond letting the world know that the IRS is pursuing collection of the unpaid tax liability shown on the NFTL. The filing of a NFTL can trigger defaults under loan agreements and under personal guarantees of loans. It can also significantly curtail the taxpayer's ability to do business or to keep their job. The taxpayer's ability to borrow funds becomes significantly limited. Taxpayers cannot encumber or sell their real property or most other assets to third parties without involving the IRS. Additional adverse consequences are possible, if not likely.

Collection Due Process appeals brought under §6330 following the issuance of a Notice of Intent to Levy likewise expose taxpayers to situations that are potentially harmful. IRS revenue officers are directed by the Internal Revenue Manual to decide whether to file a NFTL promptly after beginning work on a case. *See* IRM 5.12.2.3.2 (10-14-2013). Thus, in most cases, a levy Collection Due Process proceeding is unlikely to take place unless the IRS has already filed a NFTL against the taxpayer. Furthermore, it is not a pleasant experience to receive a notice stating that

the IRS intends to levy on all of your assets and be forced to pursue a levy Collection Due Process appeal in order to both protect your assets from levy action and challenge the merits of the underlying liability.

The vast majority of Collection Due Process Appeals handled by *amicus* involve simultaneous appeals pursued under both §§6320 and 6330. In that regard, the present case is atypical.

The IRS states, at Brief for Petitioner at p.24, that there were 28,349 §6330 Collection Due Process appeals closed in 2023. The IRS then suggests that, if the Court rules in favor Ms. Zuch, it will open the floodgates to challenges to the merits of unpaid liabilities under the Collection Due Process procedures.

The IRS, however, fails to advise the Court what percentage of those taxpayers disputed their tax liabilities in their Collection Due Process Appeals. It is probable that only a fraction of those taxpayers disputed the “underlying liability” in the Collection Due Process appeals.

The IRS also fails to inform the Court that Collection Due Process appeal cases constitute only a small fraction of the Tax Court’s existing caseload and that only an unidentified portion of that small fraction of the Tax Court’s existing case involves challenges to the existence or amount of the

previously unpaid tax liability. Thus, as the Brief for Respondent explains, it is unlikely that a ruling in favor of Ms. Zuch will generate a flood of new challenges to the existence or amount of the liability in Collection Due Process appeals.

But the proper response to the IRS's argument on this point is as follows. To the extent any of the 28,349 taxpayers identified in the relevant Report had a bona fide challenge to the existence or amount of the underlying liability, and if they did not receive a notice of deficiency or did not otherwise have an opportunity to dispute the existence or amount of the underlying liability, Congress has made it clear that they were entitled to challenge the existence or amount of the underlying liability in their Collection Due Process appeals. That is true whether the number of taxpayers choosing to exercise their statutory rights to challenge the existence or amount of the underlying liability was a "flood" or a "trickle."

The IRS's statement at page 24 of the Brief for Petitioner, that "[n]othing in the text or history of §6330 supports that end-run around the calibrated statutory framework that generally provides for post-payment adjudication of disputes over tax liability," is categorically untrue. §6330(d) explicitly provides for a departure from the "old rules."

The IRS has already conceded that the Tax Court had jurisdiction to determine the amount of Ms.

Zuch's disputed tax liability in a situation in which the "old rules" would have prohibited the Tax Court from resolving that dispute. It is disingenuous for the IRS to have made the above quoted statement.

The IRS, having conceded that the Tax Court had jurisdiction to resolve the disputed regarding the disputed estimated tax credit at the time Ms. Zuch filed her Tax Court petition, now argues for a result that, if adopted by this Court, would actually *discourage* taxpayers from paying their disputed tax liability while litigating the merits of a disputed liability in a Collection Due Process Tax Court case. Amicus does not believe that Congress intended such a result.

CONCLUSION

For the reasons set forth above, *Amicus* urges this Court to affirm the holding of the Seventh Circuit and to remand the case to the Tax Court to determine whether Ms. Zuch is entitled to the disputed withholding credit.

Respectfully submitted,

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