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

AMICUS CURIAE BRIEF OF THE CENTER FOR TAXPAYER RIGHTS IN SUPPORT OF RESPONDENT

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

The Center for Taxpayer Rights ("the Center") is a § 501(c)(3)[2] nonpartisan, nonprofit organization that applies a multifaceted, rights-based approach to furthering equitable tax administration practices worldwide. One of the Center's programs includes a federally funded Low-Income Taxpayer Clinic (LITC) which offers direct legal representation to qualifying taxpayers. Nina E. Olson, the Center's Executive Director and the former National Taxpayer Advocate,[3] possesses five decades of experience representing and advocating for taxpayers. The Center has taken an interest in this case as it involves an issue that disproportionately harms low-income taxpayers.

SUMMARY OF ARGUMENT

When taxpayers do not receive a statutory notice of deficiency before a federal income tax liability is assessed, pursuant to § 6212, they may challenge that underlying

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1. Pursuant to Supreme Court Rule. 37.6, this is to affirm that no party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. The only persons who contributed money that was intended to fund preparing or submitting this brief are the Center for Taxpayer Rights and The Tax Litigation Clinic at the Legal Services Center of Harvard Law School.

2. Unless otherwise indicated, section references are to the Internal Revenue Code, Title 26.

3. From 2001 through 2019, Nina E. Olson served as the IRS National Taxpayer Advocate, appointed under § 7803(c)(1)(B).

liability in a Collections Due Process ("CDP") case by petitioning the Tax Court under § 6330(c)(2)(B).[4]

In the instant case, there is no dispute that the Tax Court had proper jurisdiction to determine liability at the time that Jennifer Zuch filed her petition. Yet before her liability challenge could be resolved, the Tax Court improperly determined that her challenge was moot after the Internal Revenue Service ("IRS") used its power under § 6402(a) to offset Ms. Zuch's tax refunds for each year that her CDP case remained active to progressively pay off the underlying liability at issue until the balance reached $0. Citing its precedent from *Greene-Thapedi v. Comm'r*, 126 T.C. 1 (2006), the Tax Court found that it lost jurisdiction to consider the claim once the amount in controversy zeroed out, as there was no longer a live controversy over the proposed levy action. *Zuch v. Comm'r*, Docket No. 251-25L (Order of Dismissal dated April 6, 2022). The court, however, disregarded the live controversy that remained: Ms. Zuch might never have owed the underlying liability that the IRS used her own money, in the form of her tax refunds, to pay off.

Amicus considers this outcome absurd and unjust. It violates the centuries-old principle that "the government may not take more from a taxpayer than what she owes." *Tyler v. Hennepin County*, 598 U.S. 631, 639 (2023). *Amicus* urges the Court to uphold the Third Circuit's decision overturning *Greene-Thapedi*'s rule that bars

4. CDP procedures are described in full under § 6330. Taxpayers must first request a hearing with a settlement officer from the IRS. Upon an unfavorable determination by that officer, taxpayers have 30 days to petition the Tax Court for review. § 6330(d)(1).

the Tax Court from deciding liability in CDP cases if the amount in controversy reaches $0 mid-litigation. In doing so, the Center supports the main legal arguments offered by the Appellee. The Center also submits the following additional points: (1) The rule in *Greene-Thapedi*, if reinstated in the Third Circuit and allowed to stand nationally, has a disproportionate impact on low-income taxpayers; (2) The statutory scheme underlying CDP procedures indicates that the Tax Court actually has overpayment and refund jurisdiction, as well as jurisdiction to determine liability under § 6330(c)(2)(B); (3) Any additional workload generated by these cases is outweighed by the need to protect crucial taxpayer rights.

ARGUMENT

A taxpayer's notice of deficiency pursuant to § 6212 has long been considered their "ticket to Tax Court" to contest underlying liability. *Robinson v. United States*, 920 F.2d 1157, 1158 (3d Cir. 1990). However, Congress granted taxpayers who did not receive a notice of deficiency, or another prior opportunity to be heard, special protection under § 6330(c)(2)(B). Congress intended § 6330(c)(2)(B) as a safety net to allow more taxpayers to bring challenges to their underlying tax liabilities.

In practice, however, the Tax Court treats taxpayers who use this provision differently by not continuing to hear cases in which the liability has been zeroed out and by refusing to exercise its overpayment and refund jurisdiction accordingly. The Tax Court overly restricted its own jurisdiction in *Greene-Thapedi* after the IRS fully offset a taxpayer's liability using his tax refunds. The Tax Court's position was that, as the IRS could not engage in

further collection actions, there was nothing for the court to consider. According to the Tax Court, it also could not reach overpayment and refund jurisdiction because it did "not believe [it] should assume, without explicit statutory authority, jurisdiction either to determine an overpayment or to order a refund or credit of taxes paid in a section 6330 collection proceeding." *Greene-Thapedi*, 126 T.C. at 11.

Amicus believes that low-income taxpayers, who receive large refunds each tax year, are particularly harmed by the *Greene-Thapedi* rule. The Tax Court does not need explicit statutory approval to determine whether a taxpayer has been forced to pay the government more than was owed, since the requirements for the Tax Court to exercise its overpayment jurisdiction under § 6330(d)(1) are already satisfied in CDP cases. Rather, as supported by the legislative history of the Tax Court, the remedial purpose of § 6330, and the harm done to taxpayers under the current scheme per *Greene-Thapedi*, the Tax Court should be able to fully exercise its overpayment and refund jurisdiction to provide relief to taxpayers bringing § 6330(c)(2)(B) claims.

I. Under the Tax Court's Current Interpretation of Its Jurisdiction, the IRS' Ability to Offset Current Year Tax Refunds is a Power That It Can Use to Disproportionately Prevent Low-Income Taxpayers from Challenging Liability Through CDP Procedures.

By allowing the IRS to unilaterally moot liability jurisdiction through its power to offset refunds in CDP cases, the Tax Court set a precedent that harms all taxpayers. As the Third Circuit in the instant case declared, "[w]hen Congress grants taxpayers the right to

challenge what the Internal Revenue Service says is owed to the government, Congress' will prevails. The IRS cannot say that such a right exists only under the circumstances it prescribes." *Zuch v. Comm'r*, 97 F.4th 81, 86 (2024). This general injustice not only obstructs the overall concept of judicial review, but also disproportionately harms low-income litigants.

In 2022, the average taxpayer in the $15,000-$25,000 adjusted gross income bracket received a larger refund amount than the average taxpayer in any of the other income brackets up to $75,000, although the tax liabilities of the former were likely to be much lower than those of the latter.[5] It follows that low-income taxpayers' CDP challenges to their tax liabilities under § 6330(c)(2)(B) are more likely to be rendered moot earlier, whereas higher income taxpayers in the same predicament might have longer to keep fighting their underlying tax liability. While it may seem counterintuitive that low-income taxpayers would be significantly affected by this court precedent, given their generally low tax liabilities, it is precisely low-income taxpayers who receive the largest tax refunds in proportion to their income since refundable tax credits constitute a larger share of their tax refunds. Cong. Rsch. Serv., IN11042, Where's My Refund? A Look at Tax Refund Trends over Time and Across Income Levels, 3 (Feb. 13, 2019). To understand the significance of this, it is helpful to discuss the crucial role that certain refundable tax credits play for low-income taxpayers.

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5. Calculated using, "All Returns: Tax Liability, Tax Credits, and Tax Payments. Published as: Individual Complete Report (Publication 1304), Table 3.3, *available at* https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by-size-of-adjusted-gross-income (last accessed, March 19, 2025).

A. Why Low-Income Taxpayers May Get Larger Refunds.

Tax credits are a crucial tool in the United States' anti-poverty efforts. By reducing tax burdens for low-income families, these credits effectively supplement wages and help offset essential expenses. Most of these tax credits are **refundable**, meaning if the credit for which an individual qualifies exceeds their tax liability, the individual will receive the remaining balance as a lump-sum refund after filing their tax return. The Congressional Budget Office noted that "[m]ost refundable tax credits were created to meet social policy goals, such as providing income support for low-income households, expanding health insurance coverage, or increasing college enrollment." CONG. BUDGET OFF., PUB. NO. 4152, REFUNDABLE TAX CREDITS 2 (2013), *available at* https://www.cbo.gov/publication/43767 (last accessed March 19, 2025). The largest refundable tax credits that reduce poverty for working families are the Earned Income Tax Credit ("EITC") and the Child Tax Credit ("CTC"). *See EITC fast facts*, IRS, *available at* https://www.eitc.irs.gov/partner-toolkit/basic-marketing-communication-materials/eitc-fast-facts/eitc-fast-facts (last accessed Mar. 17, 2025). Both of these tax credits are credited with lifting 10.6 million people above the Supplemental Poverty Measure (SPM) in 2018, while making 17.5 million other people less poor. *Policy Basics: The Earned Income Tax Credit*, CTR. ON BUDGET & POL'Y PRIORITIES 2-3 (Apr. 28, 2023), *available at* https://www.cbpp.org/research/policy-basics-the-earned-income-tax-credit (last accessed March 19, 2025). The EITC in particular is generally considered to be the single most effective program targeted at reducing poverty for working-age households. *How does the earned income tax*

credit affect poor families?, Tax Pol'y Ctr.: Urb. Inst. & Brookings Inst. (January 2024), https://taxpolicycenter.org/briefing-book/how-does-earned-income-tax-credit-affect-poor-families (last accessed March 19, 2025).

In 2021, the CTC and EITC were expanded while the Child and Dependent Care Tax Credit was made refundable for the first time. Per Official Census publications, these three tax credits worked in unison to lift 9.6 million people out of poverty that year. *Id.* The Census Bureau estimates that half of this effect can be attributed solely to the CTC, impacting an estimated 5.3 million people. *Id.* Moreover, the largest reductions in poverty were experienced in high-poverty, low-cost states disproportionately located in regions with weaker state-level safety net policies, further demonstrating the efficacy of the CTC. Bradley L. Hardy, Sophie M. Collyer, & Christopher T. Wimer, *The Antipoverty Effects of the Expanded Child Tax Credit across States: Where Were the Historic Reductions Felt?*, Brookings Inst. 1 (Mar. 2023), *available at* https://www.brookings.edu/articles/the-antipoverty-effects-of-the-expanded-child-tax-credit-across-states-where-were-the-historic-reductions-felt/ (last accessed March 19, 2025).

It is because tax credits like the EITC and CTC are so effective that the IRS Taxpayer Advocate Service ("TAS") has identified the fact that low-income taxpayers are more susceptible to having their refundable credits taken to offset tax liability as an important problem. Nat'l Taxpayer Advoc., 2024 Purple Book 38 (2023). This practice undermines the EITC's anti-poverty objective and risks imposing additional economic hardships on recipients of federal benefits.

B. Why the IRS Offsets These Refunds.

The IRS has the power to offset an income tax refund from one year to apply to another year's liability pursuant to § 6402(a). The IRS does not view refund offsets as levies, and refund offsets are not subject to CDP rights. Section 6512(b)(4) prevents the Tax Court from stopping a refund offset. *Winn-Dixie Stores Inc. v. C.I.R.*, 110 T.C. 291, 294 (1998). The Tax Court also cannot judge the IRS's decision as to which of a taxpayer's past liabilities it chooses to apply refund offsets. *See e.g. Luque v. Comm'r*, T.C. Memo 2016-128; *see also Sunoco Inc. v. C.I.R.*, 663 F.3.d. 181, 189 (3rd Cir., 2011) ("[T]he IRS has broad discretion in determining whether to credit an overpayment for one tax liability toward a different liability of the taxpayer and the IRS's discretion cannot be challenged in the Tax Court." [internal citations omitted]). These rules allow refund offsets to occur in a CDP case. However, they also illustrate why refund offsetting is such an aggressive and powerful tool for the IRS to collect from taxpayers who receive refunds—many of whom happen to be low-income.

It is important to note the difference between restraining or reviewing an offset's propriety and ordering a refund after an offset has already been applied to a liability for a tax year at issue in the Tax Court. Once a taxpayer's refund from a given tax year has been offset and applied to a liability for another tax year, that taxpayer has indeed made a payment. Therefore, if it is later determined by the Tax Court that the tax year in question did not have a liability equal to or more than the offset, then that taxpayer has made an overpayment because "[t]he commonsense interpretation is that a tax is overpaid when a taxpayer pays more than is owed, for whatever reason or no reason at all." *United States v.*

Dalm, 494 U.S. 596, 609 n.6 (1990). Thus, once the offset occurs, it converts into a tax payment for the year at issue and can be the subject of refund jurisdiction. *See* § 7422(d) ("The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability at the time such credit is allowed.") It is therefore potentially refundable as an overpayment.

C. The Manner in Which the IRS Exercises Its Refund Offset Power Disproportionately Harms Low-Income Taxpayers Who Challenge Liability in a CDP Proceeding.

The amount of money available through offset might not outright satisfy an outstanding liability for the tax year or years at issue in a CDP case. Even so, the taxpayer's refunds will get offset each year until the aggregate pays off the liability. Given the lengthy duration of CDP proceedings, it becomes substantially more likely that a low-income taxpayer will lose their refunds for several years in a row to fully offset their underlying liability at issue in the CDP case before it is resolved. In 2024, the Tax Court had 9,447 overall pending cases involving disputes under $50,000, of which 1,773 cases (18.8%) remained unresolved for one to two years and 978 cases (10.4%) remained unresolved for over two years. Keith Fogg, *Statistics from the ABA Meeting*, Procedurally Taxing, fig. 5 (Feb. 5, 2024). These figures do not account for the additional time spent first exhausting administrative remedies: between 2014 to 2017, approximately 15% of all Appeals cases at the IRS took over a year to be resolved. *See* U.S. Gov't Accountability Off., GAO-18-659, Tax Administration: Opportunities Exist to Improve

Monitoring and Transparency of Appeals Resolution Timeliness 37 (Sept. 21, 2018). Delays may arise from precedential opinions requiring internal review or busy judicial trial calendars; however, low-income litigants disproportionately pay the price as courts take time to conduct this research. *See e.g.*, Keith Fogg, *Tax Court Takes Almost Five Years to Decide a Dependency Exemption Case*, Procedurally Taxing (Mar. 7, 2022).

Even taking those factors into account, a case may take four, five or six years without adequate justification. *See* Leslie M. Book, Keith Fogg, Nina E. Olson, & Jack Townsend, *It is Time to Take Remedial Steps to Improve the Timeliness of Tax Court Dispositions*, Procedurally Taxing (Oct. 31, 2022). In the interim, the low-income taxpayer with a § 6330(c)(2)(B) claim is more likely than any other similarly situated litigant to have their case mooted out. Congress established § 6330(c)(2)(B) as a safeguard for taxpayers' due process rights, with a specific carve-out for those who had not yet had an opportunity to challenge underlying liability to do so in their CDP case. It is inconceivable that Congress intended for these protections to be circumvented by refund offsetting, disproportionately leaving low-income taxpayers without meaningful legal recourse in the Tax Court.

II. The Tax Court Should Exercise Overpayment and Refund Jurisdiction in CDP Cases Arising Under § 6330(c)(2)(B).

The Tax Court's current interpretation of § 6330(c)(2)(B) unduly restricts the scope of its jurisdiction and prevents it from determining overpayments and ordering refunds in CDP cases, which does not align with the

statute's remedial design to broaden the Tax Court's jurisdiction and strengthen taxpayers' due process rights in the face of possible levy action.

A. The Legislative History of the Tax Court Demonstrates that Overpayment and Refund Jurisdiction is One of its Default Powers.

Section 900 of the Revenue Act of 1924 created the Board of Tax Appeals, the Tax Court's predecessor, as the venue where taxpayers could exercise their right to appeal tax assessments made by the Commissioner. With relatively indefinite bounds set out regarding the extent of its jurisdiction, the Board assumed and later reaffirmed that it indeed had overpayment jurisdiction. *See* Revenue Revision, 1925, Hearings before the Committee on Ways and Means House of Representatives (1925 Hearings), 69th Cong. iii-iv (1925) at 922-923 (statement of Charles D. Hamel)).

In *Barry v. Comm'r*, 1 B.T.A. 156 (1924), the Commissioner contended that the Board should not be able to consider a taxpayer's depreciation claims from a previous tax year in which an overpayment had been found, as such an inquiry would amount to determining whether that taxpayer was entitled to a refund. The Board of Tax Appeals disagreed, stating: "We think it was clearly the intention of Congress in creating the Board that, on appeals by taxpayers, we should consider every question necessary to a correct and complete determination of any deficiency which the Commissioner proposes to assess." *See Barry v. Comm'r*, 1 B.T.A. at 156. *Barry* was the first in a string of cases heard by the Board through 1925 in which it affirmed more explicitly that it had overpayment

jurisdiction. *See generally Hickory Spinning Co. v. Comm'r*, 1 B.T.A. 409 (1925); *Walker-Crim Co. v. Comm'r*, 1 B.T.A. 599 (1925), *Maritime Sec. Co. v. Comm'r*, 2 B.T.A. 188 (1925).

The following year, Congress enacted certain limitations on the Board's overpayment jurisdiction as exercised in *Barry* through the passage of The Revenue Act of 1926, Pub. L. No. 69-20, 44 Stat. 9 (1926). Section 274(g) of the Act placed boundaries on the Board by preventing it from determining whether possible overpayments occurred in tax years that were not at issue in a given case. This statute operated to prevent the Board from proactively exercising its jurisdiction to locate any overpayments from previous tax years outside the scope of a deficiency case and apply them against a taxpayer's liability. It did not function to revoke altogether the Board's overpayment jurisdiction, which remained alive and well as evidenced by § 284(e) of the same Act. *Id* at § 284(e), 44 Stat. 67 ("If the Board finds that there is no deficiency and further finds that the taxpayer has made an overpayment in respect of the taxable year in respect of which the Commissioner determined the deficiency, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board becomes final be credited or refunded to the taxpayer as provided in subdivision (a).")

This history provides valuable context as to how to read § 6330(c)(2)(B). Just as the Tax Court's own predecessor assumed and continued to exercise its overpayment jurisdiction until Congress provided clarification, the Tax Court should assume that it retains overpayment jurisdiction in CDP cases until and unless Congress explicitly says otherwise.

B. Section 6330 is a Remedial Statute, and Any Ambiguity Therein Should Be Interpreted Broadly in Favor of Taxpayer Rights.

Section 6330 was drafted by Congress as remedial legislation. *Katz v. Comm'r*, 115 T.C. 329, 333 n. 8 (2000) ("Congress enacted secs. 6320 (pertaining to liens) and 6330 (pertaining to levies) to provide new protections for taxpayers with regard to collection matters.") The Senate Report accompanying the Internal Revenue Service Restructuring and Reform Act of 1998, which gave rise to § 6330, made multiple references to the Senate Finance Committee's intent in its drafting that "taxpayers [be] entitled to protections in dealing with the IRS" and that it include "procedures designed to afford taxpayers due process in collections . . . [and] increase fairness to taxpayers." *See Greene-Thapedi*, 126 T.C. at 15 (Vasquez, J., dissenting) (citing S. Rep. No. 105-174, at 67 (1998)).

As remedial legislation, § 6330 should be read broadly in favor of taxpayers for whose benefit the statute was enacted. *See Techerpenin v. Knight*, 389 U.S. 332, 336 (1967) ("Remedial legislation should be construed broadly to effectuate its purposes."); *See also Exxon Mobil Corp. v. Commissioner*, 689 F.3d 191, 199 (2nd Cir. 2012), *quoting U.S. v. Miriam*, 263 U.S. 179, 188 (1923) (" . . . we are particularly mindful of the longstanding canon of construction that where 'the words [of a tax statute] are doubtful, the doubt must be resolved against the government and in favor of the taxpayer.'"). In adherence to these statutory principles of construction, federal courts have commonly addressed any ambiguity in § 6330 by expanding Tax Court jurisdiction in a way that favors taxpayer rights.

For example, in *Churchill v. Comm'r*, the Tax Court found it could remand a CDP case back to an IRS Appeals Officer after taxpayer's circumstances had markedly changed since his original Appeals hearing. *Churchill v. Comm'r*, T.C. Memo 2011-182. The taxpayer in question was seeking a collections alternative but went through a divorce in between the time that his original settlement offer was rejected by Appeals Officer and his Tax Court case began. Section 6330's silence as to the Tax Court's power to remand did not prevent the Court from finding that "[a]bsent limiting statutes, courts generally have 'the inherent authority to issue such orders as they deem necessary and prudent to achieve the orderly and expeditious disposition of cases." *Id.* at 5, quoting *Williams v. Comm'r*, 92 T.C. 920, 293 (1989).

Similarly, the Ninth Circuit Court of Appeals found that the Tax Court has equitable powers in CDP cases to provide appropriate redress for IRS procedural violations. *Zapara v. Comm'r*, 652 F.3d 1042, 1045-46 (9th Cir. 2011). In that case, the IRS had imposed a jeopardy levy, or a levy that takes place before the opportunity for a CDP hearing, as was technically allowable under § 6330(f). The Commissioner contended that the words "proposed levy" in § 6330(c)(2)(A) blocked the court from reviewing a jeopardy levy since the levy in the instant case had already been completed. To agree with that contention would have created precedent for the IRS to unilaterally and prematurely moot cases by collection actions. Recognizing this, the Ninth Circuit opted to loosely interpret the phrase "proposed levy" to include a levy that had already been completed, finding that "the word 'proposed' serves only to clarify that the hearing should be about the specific levy at issue, as opposed to a past levy on other property." *Id.* at 1045.

In 2022, this Court also significantly expanded taxpayer rights in CDP cases when it found that the 30-day deadline to appeal a CDP Notice of Determination in § 6330(d)(1) is non-jurisdictional and therefore subject to equitable tolling. *Boechler, P.C. v. Comm'r*, 142 S.Ct. 1493 (2022). In making its finding, the Court was largely guided by its interest in protecting taxpayers in Tax Court, many of whom are pro se; it emphasized that § 6330(d)(1) "does not expressly prohibit equitable tolling . . . The deadline also appears in a section of the Tax Code that is 'unusually protective' of taxpayers and a scheme in which 'laymen, unassisted by trained lawyers,' often 'initiate the process.'" *Id.* at 1500, quoting *Sebelius v. Auburn Reg'l Med. Ctr.*, 133 S.Ct. 817.

These three examples serve to demonstrate how federal courts at various levels have confronted ambiguities in § 6330 by expanding the Tax Court's jurisdiction to taxpayers' benefit and protection. This Court recognizes that "[a] desire for equality among taxpayers is to be attributed to Congress." *Colgate-Palmolive-Peet Co. v. United States*, 320 U.S. 422, 425 (1943). Reading a statutory ambiguity in a way that would disproportionately burden low-income taxpayers cannot be correct.

C. The Tax Court's Overpayment and Refund Jurisdiction in Deficiency and CDP Cases Involving a Challenge to the Underlying Liability Should Be Consistent Under § 6512(b)(1).

In recognition of the burdens imposed on taxpayers who are required to seek enforcement of Tax Court overpayment determinations in an alternative forum, Congress enacted § 6512(b) in the Technical and Miscellaneous Revenue Act of 1988 to extend the Court's

jurisdiction. Taxpayer Advoc. Serv., 2017 Annual Report to Congress, Vol. 1, at 295 (2018). Under § 6512(b)(1), the Tax Court is authorized to determine overpayments; further, it may order payment of a determined refund where the Secretary fails to do so within 120 days of the Tax Court's decision becoming final. § 6512(b)(2).

The majority in *Greene-Thapedi* restricted the scope of the Tax Court's overpayment and refund jurisdiction under § 6512(b)(1) to deficiency proceedings. *Greene-Thapedi*, 126 T.C. at 27 (dissenting, Vasquez, J.). However, the Senate's rationale for this statute is relevant to both deficiency cases and CDP cases, in that it sought to provide taxpayers relief from "hav[ing] to incur the additional time, trouble, and expense of enforcing the Tax Court's decision in another forum" by providing that the taxpayer should receive their refund in "the [same] court that entered the decision." *Id.*

Moreover, the Tax Court's review in CDP proceedings where a taxpayer is challenging their underlying liability is the same as its review in deficiency proceedings where it has overpayment jurisdiction—*de novo* review. *Giamelli v. C.I.R.*, 129 T.C. 107, 111 (2007). The Tax Court must therefore afford no deference to the IRS's determination while taking a fresh look at the underlying facts and circumstances to make its determination as to the taxpayer's underlying liability. Therefore, as it already does in deficiency proceedings, the Tax Court should be able to determine an overpayment and order a refund for taxpayers in CDP proceedings because it would have already calculated this amount in reaching its decision.

Inferring refund jurisdiction into § 6330 from § 6512 is not an extraordinary measure as the Tax Court already

reaches across the Internal Revenue Code in another area of CDP jurisdiction. "Appropriate spousal defenses," which include "innocent spouse" defenses under § 6015, can be raised in CDP hearings per § 6330. *See* § 6330(c)(2)(A)(i); *see also Francel v. Comm's*, T.C. Memo 2019-35 at 11. Where a taxpayer raises a spousal defense pursuant to § 6015(b) or § 6015(f) in a CDP proceeding, the Tax Court is within its rights to find an overpayment and order a refund in alignment with its belief "that cases in which the taxpayer seeks relief under § 6015(f) should receive similar treatment and, thus, the same scope of review." *Porter v. Comm'r*, 130 T.C. 115, 125 (2008). Therefore, although there is no explicit reference to overpayment jurisdiction in § 6330, the Tax Court can infer such jurisdiction in the same manner that it did under § 6015(g)(1), which allows it to issue refunds to taxpayers relieved of joint and several liability under § 6015(b) or § 6015(f). The Tax Court has been able to issue refunds under § 6015 to taxpayers in non-deficiency cases. *See e.g.*, *Washington v. Comm'r*, 120 T.C. 137, 155-160 (2003). These same principles should allow it to look to § 6512 to exercise overpayment and refund jurisdiction in § 6330(c)(2)(B) cases.

D. Forcing Taxpayers to Relitigate Their Tax Liabilities in a New Forum Unnecessarily and Unfairly Burdens Taxpayers.

Taxpayers who challenge liability in the Tax Court under § 6330(c)(2)(B) invest significant amounts of time, effort, and money into those litigating those cases. When the case is mooted by the IRS applying their current year tax refunds to the liability at issue, the taxpayer loses all that investment through no fault of their own and with no legal justification stemming from the merits of their case. That they can, in theory, bring a new suit in a United

States District Court or Court of Federal claims, is not always a viable alternative. They must not only start their case from scratch, i.e., establishing correct liability and the entitlement to the refund, but also follow additional procedural rules to get the case before a judge in a forum in which it is far more difficult for the average person, particularly if unrepresented, to litigate.

It is well established that "[t]he Tax Court is the least expensive and best forum for low-income taxpayers to get their day in court." Nat'l Taxpayer Advoc., 2023 Purple Book 95 (2022). Indeed, not only are its filing costs less than 20% of those in federal district courts, but the Tax Court also has internal regulations that provide a more affordable forum for low-income litigants. *Compare* 26 U.S.C. § 7451(a) (capping cost to file in Tax Court at $60) *with* United States Courts, U.S. Court of Federal Claims Fee Schedule (December 1, 2023), *available at* https://www.uscourts.gov/court-programs/fees/us-court-federal-claims-fee-schedule (last access March 19, 2025) (publishing rate of $350 to file in Court of Federal Claims) *and with* United States District Court for the District of Massachusetts, Fees, Payments, and Interest Rates, *available at* https://www.mad.uscourts.gov/finance/fees.htm (last accessed March 19, 2025) (publishing rate of $405 to file a complaint). For example, the Tax Court permits Certified Public Accountants, enrolled agents, and other non-attorneys who pass a written exam may represent taxpayers—price-sensitive alternatives to the traditional lawyer. Tax Court Rule 200(a)(2). It is also generally presumed that since the IRS has developed its case in the administrative audit process, extensive discovery should not be necessary in the Tax Court, especially in cases where the taxpayer carries the burden of proof. Michael

J. Desmond & Kathleen Pakenham, *Commencement of A Deficiency Proceeding and Pretrial Practice*, Prac. Tax Law., Winter 2015, at 22.

By contrast, refund suits in federal district courts can be technical labyrinths. *See C.I.R. v. Lundy*, 516 U.S. 235, 252 ("The rules governing litigation in Tax Court differ in many ways from the rules governing litigation in the district court and the Court of Federal Claims"). For instance, taxpayers seeking to bring a refund suit in federal district courts must first file an administrative refund claim with the IRS in which they must state the grounds for refund with specificity. § 7422. Filing an administrative claim as a prerequisite for a refund suit must be done in accordance with a strict time limit: within three years of the return's filing or within two years of payment, whichever is later. § 6511. Although the guidelines for filing a refund claim also apply to litigating a refund in the Tax Court, the rule becomes complicating in cases where a taxpayer brought an underlying liability claim in their CDP case but then made involuntary payments (through refund offset) while the CDP case remained pending, as they must then wait for a liability determination to be made in the case before commencing a refund action for those offsets. If the case is mooted in the meantime before such a liability determination was made, even more time is lost.

Moreover, taxpayers are prohibited from suing in federal district courts or the Court of Federal Claims until their tax liability has been paid in full. *See Flora v. United States (Flora I)*, 357 U.S. 63, 68 (1958). While this may seem inapplicable to cases where the underlying tax liability has been reduced to zero, Zuch's circumstances

encapsulate the injustice that these rules, working in tandem, can create, since Zuch's alleged liability was not reduced all at once. Instead, it was by the function of continuous offsets over the course of many years coinciding with Tax Court litigation that her liability was zeroed out. As such, under § 6511, any offsetting "payments" made towards the liability from more than two years prior become barred from recovery in federal court, since "[b]y the time a person has fully paid in installments, it may be too late to recover the early payments." Taxpayer Advoc. Serv., 2018 Annual Report to Congress, Vol. 1, at 365 (2019). Note that the IRS had been collecting overpayments from Zuch for six years when the case was supposedly mooted. *Zuch*, 97 F.4th at 91. Taxpayers whose CDP cases end up taking longer than two years are effectively set up to lose at least some portion of their refunds offset by the IRS.

It is worth noting that the systems in place are all the more difficult to traverse without a lawyer. It should come as no surprise that of the CDP hearings petitioned in 2024, seventy-five percent were filed *pro se*. Taxpayer Advoc. Serv., 2024 Annual Report to Congress, Vol. 1, at 161 (2025). Of all the cases filed in Tax Court, eighty-nine percent were filed by unrepresented taxpayers. *Id.* at 165. Unsurprisingly, the disparate pecuniary and procedural roadblocks have led to vastly different dockets between the two fora. In 2023, the average amount in dispute for cases closed in the Tax Court was $158.24. IRS 2023 Data Book, Publication 55-B (Rev. 4-2024), at 69.[6] Comparatively,

6. Average amount in controversy calculated by dividing the amount in controversy for cases closed ($5,523,672) by the number of cases closed (34,907).

the average amount in dispute for closed refund suits in federal court was $6,887.08—forty-three times the amount. *Id.*[7] The Tax Court is the less expensive, less formal, and more accessible forum in which taxpayers can challenge their underlying tax liabilities.

E. The Tax Court's Refusal to Exercise Its Implicit Overpayment Jurisdiction Yields Absurd and Unjust Results.

The case examples below are provided to bring to life the situation of taxpayers who find themselves with an unjust liability and right to a refund that they are no longer able to litigate once their case is mooted.

1. *McLane v. Commissioner*

McLane offers a particularly striking example how tricky it can be for a taxpayer to pursue their claim. *McLane v. Comm'r*, T.C. Memo 2018-149 (2018), *aff'd*, 24 F.4th 316, 319 (4th Cir. 2022). McLane was issued, but never received, a notice of deficiency for his 2008 taxes. As such, he never had opportunity to contest the underlying liability in the Tax Court before he was issued a notice of intent to levy his property. *McLane*, 24 F.4th at 318. He petitioned the Tax Court and contested his underlying liability pursuant to § 6330(d)(1). However, before the Tax Court ruled on the merits, the IRS conceded that he had demonstrated adequate business expenses to fully eliminate his 2008 deficiency. *Id.* This agreement by the

7. Average amount in controversy calculated by dividing the amount in controversy for cases closed ($1,494,497) by the number of cases closed (217).

IRS, moreover, revealed that he had actually *overpaid* his 2008 taxes. Nevertheless, because the case was deemed moot and the time limit for filing a refund suit in federal courts had come and gone, he was unable to find redress. The outcome in McLane's case is particularly concerning because at the time he petitioned the Tax Court (November 3, 2013), McLane would have been able to sue for at least a partial refund (i.e., the sums paid between November 29, 2010 and September 21, 2012). *McLane*, T.C. Memo 2018-149 at 1.

2. *Willson v. Commissioner*

In *Willson v. Comm'r*, the taxpayer received a double refund on account of a mistake on the IRS' part. 805 F.3d 316, 318 (D.C. Cir. 2015) The IRS neglected to file suit for erroneous refund under § 7405 within two years, after which it sought to improperly recover the erroneous refund by levy. The taxpayer, realizing the IRS' error and estimating it was "in the region of about $10,000," proactively sent a check to the IRS for $5,000 and asked that he be allowed to pay back the rest of the excessive refund in installments. This was in addition to an estimated payment of $100 he had made a year earlier. During the CDP proceeding, the IRS conceded that the levy was an improper collection method, zeroed out Willson's disputed tax liability, and moved to dismiss the case as moot. The IRS argued that it could retain the $5,100 payment as it had been voluntarily paid by the taxpayer within two years of the issuance of the erroneous refund check. Despite the taxpayer's efforts to recover his $5,100 overpayment credit in addition to other damages, the Tax Court granted the IRS' motion and dismissed the case as moot, finding that no case or controversy remained. The D.C. Circuit upheld this decision, stating in its opinion

that "[n]o unpaid tax liability remains on Willson's 2006 tax account." *Id.* at 321. In this case, the IRS effectively profited—not from satisfying a tax liability, but from its own clerical error—while the mooted-out taxpayer lost thousands of dollars.

3. *Cosner v. Commissioner*

Similarly, in *Cosner v. Commissioner*, Docket No. 1480-14L (order dated June 8, 2015), the Tax Court was faced with the question of whether a case could be mooted by an IRS levy that the IRS was statutorily prohibited from conducting. In March 2012, IRS issued a notice of determination to Cosner for their unpaid 2009 federal income tax liability. Cosner timely petitioned the court. However, due to clerical error the case was never docketed. Consequently, on December 6, 2013, the IRS began garnishing Cosner's wages to collect on the 2009 liability. Cosner responded by filing a "second" petition (later converted to an amended petition) and motioning to enjoin the December levy. Importantly, the IRS is prohibited from enforcing any levy action after a hearing is requested, and the Tax Court may enjoin such action notwithstanding § 7421's injunction prohibition. *See* §§ 6330(e)(1), 7421. Nevertheless, by July 1, 2014, the IRS had fully collected on the 2009 liability and subsequently released the levy. Although the court eventually issued an order treating the original petition as timely filed, the IRS, nonetheless, moved to dismiss the case as moot. After all, the IRS had already reduced, albeit illegally, the liability to zero. While the presiding judge was able to distinguish *Green-Thapedi* to prevent mootness, the Tax Court was unable to state with certainty whether it could order the return of the prohibited levied amounts.

As the above examples reveal, the IRS is not immune to error, and it should not stand to benefit from the Tax Court's self-constrained position. Afterall, as J. Vasquez' dissent in *Greene–Thapedi* notes, "[i]t would be illogical that [the Tax Court] could conclude that the Commissioner has collected too much money, but . . . could not enter a decision that the taxpayer has overpaid his or her tax." *Greene-Thapedi*, 126 T.C. at 27 (Vasquez, J., dissenting).

III. Any Additional Workload for the Tax Court Created by Making Liability, Overpayment, and Refund Determinations in CDP Cases in Which the IRS Has Unilaterally Brought the Outstanding Liability to $0 is Significantly Outweighed by the Need to Protect Taxpayers.

The Tax Court should not be forced to pass the buck on determining a taxpayer's correct amount of tax liability because of unilateral actions taken by the IRS that prematurely render the CDP case moot. It should also be able to determine overpayments and refunds. Ensuring its continuing jurisdiction in these areas would not burden the court relative to the protections it provides taxpayers. The National Taxpayer Advocate has described the Tax Court's self-imposed constraints on its overpayment jurisdiction as they stand as "not only unfair, but inefficient." Nat'l Taxpayer Advoc., 2024 Purple Book at 101 (2023).

Though CDP actions are the second most-filed in the Tax Court, "it has long been the case that deficiency petitions make up the overwhelming majority of all petitions filed." Harold Dubroff & Brant Hellwig, "The United States Tax Court: An Historical Analysis" (2d ed.

2014) at 909 (Appendix B). For example, of the 21,882 cases filed at the Tax Court in the fiscal year ("FY") 2023, 20,730 were deficiency cases and 1,107 were CDP cases. S. & H.R. Comms. on Appropriations, Cong. Budget Justification: Fiscal Year 2025 at 18.

Per the most recent Congressional Budget Justification reports which categorize the types of Tax Court cases filed between FY2020 and FY2023, the number of CDP cases constituted between 3.29% to 5.06% of its total docket within a given fiscal year. S. & H.R. Comms. on Appropriations, Cong. Budget Justification: Fiscal Year 2023, at 18 and Cong. Budget Justification: Fiscal Year 2025 at 18. Meanwhile the number of deficiency cases fluctuated between 94.73% to 96.46%. *Id.* and S. & H.R. Comms. on Appropriations, Cong. Budget Justification: Fiscal Year 2023, at 18. Given that the Tax Court can routinely exercise its overpayment and refund jurisdiction in deficiency cases, it should be able to exercise its overpayment jurisdiction in CDP cases without expending many additional resources. The National Taxpayer Advocate has confirmed that the advent of new procedures would not be required since the Tax Court could simply apply to CDP proceedings "its own long-established procedures when it comes to determining overpayments in deficiency cases." Taxpayer Advoc. Serv., 2017 Annual Report to Congress, Vol. 1, at 295 (2018).

Moreover, it is important to note that this proposed scheme would not create any additional cases, as it would only apply to a fraction of the CDP cases already properly before the Tax Court in which taxpayers have raised challenges to their underlying tax liability. Consequentially, there would be no opening of the

floodgates as to any additional cases that would need to be heard by the Tax Court. Rather, the Tax Court's marginal increase in its time and resources spent completely resolving taxpayers' overpayment disputes will increase judicial efficiency and eliminate any need for confused taxpayers to have to relitigate their claims in a second forum.

At negligible additional cost, the Tax Court should be able to determine the true amount of a taxpayer's liability at issue in CDP cases, so that taxpayers can no longer be mooted out of the Tax Court and abandoned without even a declaratory judgment in hand. Furthermore, recognition of the Tax Court's jurisdiction to determine overpayments and issue refunds in CDP cases will protect taxpayer rights, reduce taxpayer burden, and better ensure the IRS collects the correct amount of tax while conserving judicial resources.

IV. Allowing the IRS to Unilaterally Moot CDP Cases Brought Under § 6330(c)(2)(B) Violates Multiple Fundamental Taxpayer Rights Delineated in the Taxpayer Bill of Rights.

Finally, *Amicus* notes that the Taxpayer Bill of Rights, as enacted and codified by Congress, should guide Courts and the IRS to ensure that procedures and provisions benefit taxpayers and create taxpayer-favorable procedural provisions. This encompasses the ten fundamental rights of each taxpayer in their interactions with the IRS.

Section 7803(a)(3)(E) of the Taxpayer Bill of Rights provides for "the right to appeal a decision of the

Internal Revenue Service in an independent forum." The IRS should not be able to tactically benefit from its valid employment of refund offsetting to interfere with a taxpayer's right to a meaningful hearing. Section 7803(a)(3)(D), which provides for "the right to challenge the IRS's position and be heard," is similarly implicated in that their challenges to the underlying tax liability as calculated by the IRS are cut short due to unilateral action taken by the IRS mid-CDP proceeding. Further, § 7803(a)(3)(J) provides for "the right to a fair and just tax system." Denying certain taxpayers their right to obtain complete and meaningful judicial review of their tax assessments does not square with this ideal, especially when this occurs solely as a result of ongoing IRS actions.

Section 7803(a)(3)(C), which provides for "the right to pay no more than the correct amount of tax," is also violated insofar as taxpayers have had to pay more than the amount of tax legally due by the IRS and, in the process, been timed out of litigating to remedy this injustice. This further denies taxpayers their "right to finality" under § 7803(a)(3)(F), as taxpayers mooted out of Tax Court are forced to resolve a single tax controversy in multiple fora, incurring unnecessary costs and delay while frustrating judicial efficiency. For low-income taxpayers especially, incurring additional unplanned expenses of litigating for a refund in another forum after having already claimed to have overpaid the IRS can cause serious economic harm.

The Tax Court should be allowed to exercise its implicit overpayment and refund jurisdiction as a countermeasure to the IRS' excessive degree of influence over a taxpayer's right to challenge their underlying tax liability in a CDP case.

CONCLUSION

The Center for Taxpayer Rights respectfully requests that the Court uphold the judgment of the Court of Appeals.

Respectfully submitted,

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