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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

JANE DOE, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 8:20-cv-00858-SVW-JEM

Motion to Dismiss; Memorandum of Points and Authorities; Proposed Order

Hearing Date: July 13, 2020
Time: 1:30 p.m.
Courtroom: 10A
Location: 350 W. 1st Street
Los Angeles, CA 90012

Hon. Stephen V. Wilson

PLEASE TAKE NOTICE that on the above date, or as soon thereafter as counsel can be heard, the United States of America[1] (United States) will move to dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6). This motion is

[1] The first amended complaint (amended complaint, ECF 28) names as defendants various government officials and agencies. The only proper party defendant is the United States of America. *See Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985).

based upon this notice, the attached memorandum, and such further evidence and argument as the Court may permit. The conference of counsel pursuant to Local Rule 7-3 took place on June 1, 2020.

Dated: June 15, 2020

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Jane Doe and John Doe, proceeding pseudonymously,[2] contend that the Internal Revenue Service (IRS) failed to issue each of them an advance refund of a 2020 tax credit because they are each married to and have filed joint federal income tax returns with individuals without social security numbers (SSNs). Assuming the allegations in the amended complaint are true, each plaintiff could qualify for the credit by selecting the "married filing separately" status when filing a 2020 income tax return. Plaintiffs, however, request injunctive and declaratory relief, including a declaration that section 6428(g) of the Internal Revenue Code (Title 26, U.S.C.) is unconstitutional.

This action should be dismissed for lack of jurisdiction and for failure to state a claim upon which relief can be granted. Plaintiffs lack standing, and their claims are not yet ripe for review. Congress did not create a justiciable right to an advance refund, and plaintiffs' eligibilities for a tax credit cannot be determined until the 2020 tax year ends and each selects a filing status when filing a 2020 tax return. Plaintiffs cannot rely on the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq*., as the jurisdictional basis for their claims because Congress has provided them a specific remedy under the tax refund provisions. In addition, plaintiffs fail to state a cognizable constitutional claim. Accordingly, plaintiffs' action should be dismissed.

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[2] Plaintiffs filed this case using pseudonyms. To determine whether to allow a party to proceed anonymously, the district court must balance (1) the severity of the threatened harm; (2) the reasonableness of the anonymous party's fears; (3) the anonymous party's vulnerability to [] retaliation; (4) the prejudice to the opposing party; and (5) the public interest. *See Doe v. Kamehameha Sch./Bernice Pauahi Bishop Estate*, 596 F.3d 1036, 1042 (9th Cir. 2010). Plaintiffs have not sought this Court's permission to proceed pseudonymously or alleged any circumstances that would allow them to do so. Moreover, not knowing plaintiffs' identities prevents the United States from evaluating plaintiffs' contentions that each of them would have received an advance refund if his or her spouse had an SSN. (*See* ECF 28 ¶¶ 42, 45.)

II. THE CARES ACT

On March 27, 2020, the President of the United States of America signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. 116-136. The CARES Act added section 6428 to the Internal Revenue Code. Pub. L. 116-136, sec. 2201(a). Section 6428 authorizes an eligible individual to claim a tax credit (CARES Act credit) for the 2020 tax year. The amount of the credit is based on the individual's filing status, her adjusted gross income, and the number of qualifying children (within the meaning of 26 U.S.C. § 24(c)) claimed on her return. *See* 26 U.S.C. § 6428(a) and (c). Nonresident aliens, dependents (as defined in 26 U.S.C. § 152), and estates and trusts are ineligible for the credit. 26 U.S.C. § 6428(d).

As relevant to the amended complaint, no CARES Act credit will be allowed to an individual who fails to provide a valid identification number for herself, any qualifying children, or her spouse, if filing a joint return.[3] 26 U.S.C. § 6428(g)(1). A valid identification number means an SSN valid for employment (*see* 26 U.S.C. § 24(h)(7)) or in the case of a qualifying child who is legally adopted or placed for adoption, the adoption taxpayer identification number of such child. 26 U.S.C. § 6428(g)(2).

If a married individual may not claim a CARES Act credit on a joint return because her spouse lacks an SSN valid for employment, she may claim the credit for herself and any qualifying children (assuming that they also have valid identification numbers) by using the married filing separately filing status. *See Economic Impact Payment Information Center*, https://www.irs.gov/coronavirus/economic-impact-payment-information-center Q&A 26 ("when spouses file jointly, both spouses must have valid SSNs to receive a Payment with one exception . . . If spouses file separately,

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[3] A married couple may provide only one spouse's SSN to claim a CARES Act credit on a joint return if at least one of the spouses was a member of the Armed Forces of the United States at any time during the taxable year. 26 U.S.C. § 6428(g)(3).

the spouse who has an SSN may qualify for a Payment; the other spouse without a valid SSN will not qualify.") (last accessed June 12, 2020).[4]

In accordance with section 6428(f), the IRS has begun issuing advance refunds of the CARES Act credit. *See generally* https://www.irs.gov/coronavirus/economic-impact-payment-information-center (last visited June 10, 2020). The advance refunds are computed based on the information available to the IRS. The IRS will first use information from an individual's 2019 tax return. 26 U.S.C. § 6428(f)(1). If no 2019 tax return was filed, the IRS may use information from the individual's 2018 tax return. 26 U.S.C. § 6428(f)(5). If no 2018 or 2019 tax return was filed, the IRS may use information provided to it on a 2019 Form SSA-1099, Social Security Benefit Statement, or Form RRB-1099, Social Security Equivalent Benefit Statement. *Id*. By statute, the IRS is directed to "refund or credit any overpayment attributable to [] section [6428] as rapidly as possible," but the IRS is authorized to issue advance refunds through December 31, 2020. 26 U.S.C. § 6428(f)(3)(A).

Section 6428 does not confer upon an eligible individual any justiciable right to an advance refund. Nor does it confer any right to receive an advance refund at a particular time or in a particular manner. Section 6428(a) provides that an individual's CARES Act credit "shall be allowed as a credit against the tax imposed by subtitle A for the first taxable year beginning in 2020." There is no corresponding mandate that the IRS immediately issue a CARES Act credit in the form of an advance refund. If the IRS does not issue an advance refund to an individual who will eventually qualify for a CARES Act credit, there is no mechanism in section 6428 by which the individual can compel it to do so. Instead, the statute contemplates that any advance refund an individual receives will be reconciled with the CARES Act credit reported on her 2020 tax return. *See* 26 U.S.C. § 6428(e) (providing that the amount of any CARES Act credit

[4] A printout of this webpage as of June 12, 2020, with the questions and answers referenced in this motion is attached for the Court's convenience.

will be reduced (but not below zero) by the aggregate amount of any advance refunds and credits made or allowed) and 26 U.S.C. § 6428(f)(3)(A) (providing that any advance refunds and credits will be made by December 31, 2020). Thus, an eligible individual who qualifies for a tax benefit under section 6428 will receive it in one of three ways: (1) as an advance refund in 2020, (2) as a CARES Act credit upon filing her 2020 tax return, or (3) as an advance refund and a CARES Act credit.[5]

Some individuals who believe they will be eligible for a CARES Act credit have received a smaller advance refund than they expected or no advance refund at all. These individuals will have to wait until the 2021 filing season to claim and receive the CARES Act credit on their 2020 tax return. *See Economic Impact Payment Information Center*, https://www.irs.gov/coronavirus/economic-impact-payment-information-center Q&A 32 ("If you did not receive the full amount to which you believe you are entitled, you will be able to claim the additional amount when you file your 2020 tax return.") (last accessed June 12, 2020).

III. PLAINTIFFS' AMENDED COMPLAINT

Plaintiffs' amended complaint, filed June 3, 2020, alleges that plaintiffs are excluded from receiving advance refunds of the CARES Act credit because they have each filed tax returns for prior tax years using the married filing jointly status with their respective spouses, who have individual taxpayer identification numbers (ITINs) rather than SSNs. (ECF 28 ¶¶ 40, 41, 43, 44.) Plaintiffs contend that they cannot and will not receive an advance refund of the CARES Act credit and that the IRS's determination of an individual's eligibility for such a refund is "final agency action" within the meaning of 5 U.S.C. § 704. (*Id*. ¶¶ 22, 35, 36.)

In Count I of the amended complaint, plaintiffs allege that the CARES Act violates the United States Constitution. (ECF 28 ¶¶ 55-85.) Their constitutional

[5] The third scenario would occur when the IRS issues an individual an advance refund that is less than the CARES Act credit reported on her return.

arguments are twofold. First, they allege discrimination based on the fundamental right to marry arising under the First Amendment, the Due Process Clause of the Fifth Amendment, and the Equal Protection and Privileges and Immunities clauses of the Fourteenth Amendment. (*Id.* ¶¶ 64-77.) They specifically contend that section 6428(g) unconstitutionally discriminates based on whom they have chosen to marry and should be stricken because it is "not narrowly tailored to advance a compelling government interest, nor is it rationally related to any legitimate government interest." (*Id.* ¶ 76.) Second, plaintiffs allege that they have been discriminated against based on the alienage of their spouses and that such discrimination is "presumptively unconstitutional and subject to strict scrutiny." (*Id.* ¶¶ 78-85.)

In Count II of the amended complaint, plaintiffs seek a "temporary, preliminary and permanent injunction" and a declaratory judgment that section 6428(g) violates their constitutional and statutory rights and "denies plaintiffs the privileges and immunities to which they would otherwise be entitled."[6] (ECF 28 ¶ 87.) Plaintiffs allege that not receiving an advance refund has caused harm, "including the ability to put food on the table, paying rent, insurance, health insurance, and loss of privacy, reputation in the community, and dignity." (*Id.* ¶ 90.) Although the amended complaint does not explicitly demand payment of the advance refunds, it requests an order compelling defendants to "treat Plaintiffs and the Putative Class equally in extending disbursement of the Advance [Refunds]" to them. (*Id.* at 20, ¶ h.)

IV. ARGUMENT

A. This action should be dismissed for lack of jurisdiction

It is fundamental that the United States cannot be sued without an "unequivocally expressed waiver of sovereign immunity by Congress." *McGuire v. United States*, 550

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[6] The amended complaint (ECF 28 at 21) asserts that "[a]ll rights relating to attorneys' fees have been assigned to counsel." However, the Anti-Assignment Act, 31 U.S.C. § 3727, prohibits assignment of such claims against the United States without the consent of the United States. *See United States v. Kim*, 806 F.3d 1161, 1169-70 (9th Cir. 2015).

F.3d 903, 910 (9th Cir. 2008) (quoting *Dunn & Black P.S. v. United States*, 492 F.3d 1084, 1088 (9th Cir. 2007)). "A waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text." *Lane v. Pena*, 518 U.S. 187, 192 (1996). Indeed, without "clarity of expression" of consent to the waiver of immunity in the text of a statute, this Court lacks jurisdiction, and the claim must be dismissed. *Id*. Thus, unless plaintiffs identify a waiver of sovereign immunity on which their claims are based, this Court must dismiss the action for lack of jurisdiction. *See id*.

In the tax context, Congress has expressly limited the circumstances under which suits can be brought against the government through a carefully articulated scheme. As the Supreme Court has repeatedly emphasized, a refund suit is the only way a taxpayer can litigate her taxes in district court, and such a suit can be brought only if certain jurisdictional prerequisites have been satisfied. *United States v. Clintwood Elkhorn Mining Co.*, 553 U.S. 1, 5-8 (2008). This limitation applies to constitutional challenges to the Internal Revenue Code like the challenge before this Court. *See id.* at 9 (Code's administrative exhaustion requirements apply to constitutional claims); *Quarty v. United States*, 170 F.3d 961, 973 (9th Cir. 1999) (same); *see also Freedom from Religion Found., Inc. v. Lew*, 773 F.3d 815, 825 (7th Cir. 2014); *Apache Bend Apts., Ltd. v. United States*, 987 F.2d 1174, 1177-79 & n.4 (5th Cir. 1993) (en banc).

1. 26 U.S.C. § 7422 provides plaintiffs' remedy

Plaintiffs seek declaratory and injunctive relief which, if granted, would require the United States to issue tax refunds. Plaintiffs contend that this Court can assume jurisdiction over their claims pursuant to 28 U.S.C. § 1331. (ECF 28 ¶ 12.) However, section 1331 is a general jurisdictional statute which cannot by itself be construed as a waiver of sovereign immunity. *See, e.g., Holloman v. Watt*, 708 F.2d 1399, 1401 (9th Cir. 1983). The district courts' jurisdiction (concurrent with the United States Court of Federal Claims) over tax refund suits is set forth in 28 U.S.C. § 1346(a)(1). The specific waiver of sovereign immunity that would allow the refund of a tax credit, including the

credit that is the subject of this case, is contained in 26 U.S.C. § 7422(a). *Clintwood*, 553 U.S. at 5-8; *see also Sarmiento v. United States*, 678 F.3d 147, 151 (2d Cir. 2012) (addressing the taxpayers' claim for a payment of a tax refund under former section 6428, another advance refund "stimulus check" program, after the taxpayers "filed an administrative claim with the IRS under 26 U.S.C. § 7422 seeking to recover the withheld" refund payments).

Refundable tax credits such as the Earned Income Credit (EIC), 26 U.S.C. § 32, the Additional Child Tax Credit (CTC), 26 U.S.C. § 24(d), and the CARES Act credit, 26 U.S.C. § 6428, create a legal fiction that the recipient has overpaid her taxes, thereby entitling her to a tax refund as a mechanism for achieving policy goals. *See Sorenson v. Sec'y of Treasury*, 475 U.S. 851, 864 (1986) (discussing the EIC). If an individual's refundable credits exceed her tax liability (after first reducing that liability by other credits), the excess amount "shall be considered an overpayment," and she is eligible for a refund in an amount corresponding to that constructive overpayment. *See* 26 U.S.C. § 6401(b)(1). An individual can seek such a credit by submitting to the IRS an administrative refund claim pursuant to section 7422. *See Sorenson v. Sec'y of Treasury*, 752 F.2d 1433, 1439 (9th Cir. 1985). Assuming the claim is timely, *see* 26 U.S.C. § 6511(a), and the IRS denies the claim or fails to act upon it within six months, *see* 26 U.S.C. § 6532(a)(1), the individual may then sue for a refund of the credit pursuant to section 7422(a). *See* 28 U.S.C. §§ 1346(a)(1), 1491; *see also Sorenson*, 752 F.2d at 1439; *Oatman v. Dep't of Treasury*, 34 F.3d 787, 789 (9th Cir. 1994).

There is no exception set forth in section 6428 to these basic jurisdictional requirements. Thus, to challenge the constitutionality of section 6428(g), plaintiffs must each file a joint income tax return for 2020 after the filing season begins in 2021, then each file a timely administrative refund claim with the IRS requesting a CARES Act credit because section 6428(g) is unconstitutional. Until their administrative refund claims are denied or six months pass, plaintiffs cannot maintain a refund suit. *See* 28

U.S.C. §§ 1346(a)(1), 1491; *Quarty*, 170 F.3d at 973 (dismissing constitutional claim for lack of jurisdiction because plaintiff was required to comply with requirements of section 7422 to raise constitutional claim despite "possible futility") (citing *United States v. Felt & Tarrant Mfg. Co.*, 283 U.S. 269, 273 (1931)); *Rand v. United States*, 249 U.S. 503, 510 (1918).

2. Plaintiffs lack standing and their claims are not yet ripe

Article III standing requires that a plaintiff establish (1) a concrete and particularized injury that is actual and imminent, as opposed to conjectural or hypothetical, (2) a fairly traceable causal connection between the injury and the alleged conduct, and (3) a substantial likelihood that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Vermont Agency of Natural Res. v. United States*, 529 U.S. 765, 771 (2000). The elements of standing "are not mere pleading requirements but rather an indispensable part of the plaintiff's case," and the plaintiff bears the burden of proof with respect to each element. *Lujan*, 504 U.S. at 561. If at any point an element of standing is not met, the case should be dismissed. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (citing *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)).

In order to have standing to challenge a tax benefit as unconstitutional, a plaintiff must (among other requirements) actually seek the tax benefit herself. *See Droz v. Commissioner*, 48 F.3d 1120, 1122 & n.1 (9th Cir. 1995) (recognizing that taxpayer had standing to raise an Establishment Clause challenge to a religious exemption from the self-employment tax under 26 U.S.C. § 1402(g) for sects opposed to certain insurance, where he claimed, and was denied, the exemption); *see also Gaylor v. Mnuchin*, 919 F.3d 420, 425-26 (7th Cir. 2019) (taxpayers had standing to challenge 26 U.S.C. § 107 because the IRS took longer than six months to act on their refund requests claiming exemptions under that section); *Moritz v. Commissioner*, 469 F.2d 466, 467 (10th Cir. 1972) (addressing an Equal Protection challenge brought by a single male who claimed a

dependent-care expense deduction that the statute limited to married or widowed men, but allowed to women regardless of marital status); *Warnke v. United States*, 641 F. Supp. 1083, 1089 (E.D. Ky. 1986) (addressing an Establishment Clause challenge to regulations under 26 U.S.C. § 107 by a taxpayer who claimed, and was denied, the exclusion). In these cases, the individuals actually sought the tax benefit from the taxing authority and then litigated their own tax liability, either by way of a deficiency proceeding in Tax Court (as in *Droz* and *Moritz*) or by filing a refund suit (as in *Gaylor* and *Warnke*).

To have standing to challenge the constitutionality of section 6428(g), plaintiffs must have first sought and been denied a CARES Act credit. Thus, as we have previously explained, each plaintiff must file a joint tax return for 2020, submit an administrative claim for refund, and wait until the IRS denies (or does not act upon within six months) that claim. These requirements apply even if plaintiffs believe that performing them would be an exercise in futility. *See Quarty*, 170 F.3d at 973. Until plaintiffs have followed the administrative procedures for claiming a credit, their injuries are merely hypothetical, and they lack standing to bring their claims.

Finally, plaintiffs' challenge to section 6428(g) fails as a jurisdictional matter under the ripeness doctrine. The ripeness doctrine is intended to avoid "premature adjudication" over "abstract disagreements" and to postpone judicial review until "an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-149 (1967). Where agency action offers a benefit or establishes criteria for dispensing benefits, courts generally have concluded that the plaintiff's application for benefits must be denied before a claim is ripe for review. *See Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 809 (2003); *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57-59 (1993). Courts have been particularly reluctant to find a specific pre-enforcement challenge ripe where (as in the tax refund context) a statutory scheme creates a separate

process for review. *See, e.g., Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207-209 (1994).

As explained above, section 6428 does not guarantee any individual an advance refund. Rather, the statutory scheme that Congress selected provides that the IRS will issue a CARES Act credit to an eligible individual in one of three ways: (1) as an advance refund in 2020; (2) as a refundable tax credit upon the filing of her 2020 tax return; or (3) as a combination of the two. Individuals like plaintiffs who have not received an advance refund must therefore claim a CARES Act credit on their 2020 tax return in order to obtain it. But the amount (if any) of the CARES Act credit to which plaintiffs will be entitled cannot yet be determined. The amount of the credit will be determined by factors set forth in section 6428, including plaintiffs' respective filing statuses, adjusted gross incomes, and number of qualifying children, if any, they will claim on their 2020 tax returns. *See* 26 U.S.C. §§ 6428(a), (c). These factors cannot be determined because the 2020 tax year will not end until December 31, 2020. Indeed, even under plaintiffs' incorrect view that the statute entitles them to an advance refund, the harm has not yet occurred because section 6428 authorizes the IRS to make advance refunds through December 31, 2020. 26 U.S.C. § 6428(f)(3)(A); *See Economic Impact Payment Information Center*, https://www.irs.gov/coronavirus/economic-impact-payment-information-center Q&A 21 ("Payments will be made throughout the rest of 2020.") (last accessed June 12, 2020).

Although plaintiffs believe they will not qualify for a CARES Act credit or advance refund, their circumstances may change. For instance, there are legislative efforts to amend section 6428(g) which, if enacted, may result in plaintiffs receiving an advance refund or CARES Act credit even if they elect to file joint returns. *See* Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, H.R. 6800, 116th Cong. (2020) § 20102. Additionally, plaintiffs may elect to file their 2020 tax returns using the married filing separately filing status and thus be eligible for the

CARES Act credit under the current version of section 6428(g). Or their respective spouses may qualify for SSNs or join the military before the year ends. *See* 26 U.S.C. §§ 6428(g)(1) and (3). Lastly, plaintiffs' financial circumstances may improve, completely eliminating their eligibility for the credit based on their respective adjusted gross incomes. *See* 26 U.S.C. § 6428(c). In short, plaintiffs' eligibility for CARES Act credits and the amounts of the credits will be uncertain until the end of the year.

3. Plaintiffs cannot rely on the APA as the basis of this Court's jurisdiction

Plaintiffs' amended complaint relies on the APA, specifically 5 U.S.C. § 702, implying that it provides the required waiver of sovereign immunity for their claims. (ECF 28 ¶ 35.) Although section 702 contains a broad waiver of sovereign immunity, section 704 contains express limits on this Court's jurisdiction for claims brought under the APA. *See Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017).

Section 704 provides that: "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." Thus, determining whether jurisdiction exists under section 704 requires inquiries into whether the agency's action is "final," *see Franklin v. Massachusetts*, 505 U.S. 788, 796-97 (1992), and whether other provisions could provide plaintiffs with a remedy. *See U.S. Army Corps of Engineers v. Hawkes Co.*, 136 S. Ct. 1807, 1815 (2016) ("[A]gency action is reviewable under the APA only if there are no adequate alternatives to APA review in court."). If an agency's action is not final or another avenue of relief exists, there is no jurisdiction under section 704, and the APA claims must be dismissed. *See id.* at 1813-14; *Wash. Toxics Coal. v. EPA*, 413 F.3d 1024, 1034 (9th Cir. 2005) ("Because this substantive statute independently authorizes a private right of action, the APA does not govern the plaintiffs' claims.").

Here, there is no jurisdiction pursuant to section 704 because, as we have discussed, Congress has designated section 7422 as the exclusive vehicle to recover tax credits, including the CARES Act credit that is the subject of this case. "It is a 'well-established principle that, in most contexts, a precisely drawn, detailed statute pre-empts more general remedies.'" *City of Oakland v. Lynch*, 798 F.3d 1159, 1165 (9th Cir. 2015) (quoting *Hinck v. United States*, 550 U.S. 501, 506 (2007)). This is particularly true with respect to the "general grant of review in the APA," which "Congress did not intend . . . to duplicate existing procedures for review of agency actions." *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988); *see also City of Oakland*, 798 F.3d at 1165 (quoting *Bowen*). Thus, the specific remedy set forth in section 7422 forecloses the availability of general relief under section 704. *See City of Oakland*, 798 F.3d at 1165 ("Permitting parties to file under the APA and circumvent the short deadlines Congress established . . . would make mush of the law."); *see also Hinck*, 550 U.S. at 506 (holding a "precisely drawn, detailed statute" in the Internal Revenue Code provided the taxpayer's "exclusive" and "specific" remedy); *Armstrong & Armstrong, Inc. v. United States*, 356 F. Supp. 514, 521 (E.D. Wash. 1973) (where "relief is at least available . . . judicial review may not be predicated on the [APA]"), *aff'd*, 514 F.2d 402 (9th Cir. 1975).

As we have explained, Congress has created a statutory scheme in section 7422 that allows plaintiffs, like all other taxpayers who seek tax credits, to obtain relief. Plaintiffs cannot escape this conclusion through artful pleading. Although plaintiffs' amended complaint purports to seek declaratory and injunctive relief, plaintiffs' alleged injury is the denial of a tax credit, and the relief they seek is issuance of the credit. This Court is not required to accept plaintiffs' characterization of the relief sought, *see Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 212 (2002), and should not do so here. Because plaintiffs have an adequate remedy to seek the credit and challenge the constitutionality of section 6428 via section 7422, section 704 precludes jurisdiction

under the APA. *See Bowen*, 487 U.S. at 903; *Clintwood*, 553 U.S. at 8-12; *City of Oakland*, 798 F.3d at 1165.

In addition, plaintiffs are mistaken that the IRS's determination of an individual's eligibility for an advance refund and the amount of the advance refund "constitutes 'final agency action'" within the meaning of section 704. (*See* ECF 28 ¶ 35.) "[T]wo conditions [must] generally [] be satisfied for agency action to be 'final' under the APA. 'First, the action must mark the consummation of the agency's decisionmaking process--it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.'" *U.S. Army Corps of Engineers*, 136 S. Ct. at 1813 (quoting *Bennett v. Spear*, 520 U.S. 154, 177-178 (1997)).

As we have explained, the CARES Act created a tax credit that can be issued as an advance refund, as a refundable tax credit, or as an advance refund and a refundable tax credit. If the IRS issues an otherwise eligible individual an advance refund that is smaller than the credit for which she eventually qualifies, the individual may claim the additional amount as a refundable credit on her 2020 tax return.[7] *See* 26 U.S.C. § 6428(e)(1). The issuance of an advance refund, then, is more accurately characterized as an approximation (based on 2018 or 2019 tax information) of the CARES Act credit an individual might receive. But the final amount of the credit cannot be determined until

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[7] There are a number of scenarios that would produce this outcome. Assume, for instance, that an otherwise eligible individual gives birth to or adopts a child in 2020. The child would not appear on the individual's 2019 and 2018 tax returns, and the individual would therefore receive no advance refund relating to that child. If she claims the child as a qualifying child on her 2020 tax return, however, she would qualify for an additional CARES Act credit. 26 U.S.C. § 6428(a)(2); *see Economic Impact Payment Information Center*, https://www.irs.gov/coronavirus/economic-impact-payment-information-center Q&A 28 (last accessed June 12, 2020). Alternatively, the IRS may be unable to compute an advance refund for an individual who will qualify for a CARES Act credit in 2020 because it does not have any of the information set forth in section 6428 for that individual. The individual, assuming she otherwise qualifies, could claim and receive a CARES Act credit upon the filing of her 2020 tax return. Lastly, an individual might be eligible for a CARES Act credit based on her 2020 adjusted gross income but no advance refund based on her 2019 or 2018 adjusted gross income.

the tax year ends and the IRS receives and reviews the individual's 2020 tax return. As such, the IRS's issuance--or non-issuance--of an advance refund is not the action from which the right to a CARES Act credit flows and thus is not a "final agency action" in any sense. *See U.S. Army Corps of Engineers*, 136 S. Ct. at 1813.

4. Plaintiffs cannot avoid the bar of sovereign immunity by naming individual government officials

Finally, it is well-settled that plaintiffs' naming of individual government officials as defendants does not allow them to avoid the jurisdictional bar of sovereign immunity. *See, e.g.*, *Hutchinson v. United States*, 677 F.2d 1322, 1327 (9th Cir. 1982); *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 688 (1949).

B. This action should be dismissed for failure to state a claim

The amended complaint fails to state a claim upon which relief can be granted. As such, this action should be dismissed. A district court properly dismisses an action for failure to state a claim "if there is a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (internal quotations omitted). In considering a 12(b)(6) motion, the district court must accept as true all material allegations of fact in the complaint, as well as all reasonable inferences to be drawn from them. *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998).

Acts of Congress, including the CARES Act, are presumed to be constitutional. *See INS v. Chadha*, 462 U.S. 919, 944 (1983); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 563 (2012) ("[E]very reasonable construction must be resorted to, in order to save a statute from unconstitutionality.") (quoting *Hooper v. California*, 155 U.S. 648, 657 (1895)). "Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes." *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 547 (1983) (rejecting an equal protection challenge to a federal tax classification). Indeed, "[n]o scheme of taxation, whether the tax is imposed

on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 41 (1973). Thus, "[i]n such a complex arena in which no perfect alternatives exist," courts cannot "impose too rigorous a standard of scrutiny lest all [] fiscal schemes become subjects of criticism under the Equal Protection Clause." *Id*. Rather, "within the limits of rationality, the legislature's efforts to tackle problems should be entitled to respect." *Id.* at 42 (internal quotations omitted); *see United States v. Md. Savings-Share Ins. Corp.*, 400 U.S. 4, 6 (1970) (tax classifications are generally presumed to be constitutional if a rational basis is demonstrated to or perceived by a court).

1. Section 6428(g) does not violate due process or equal protection principles by implicating the right to marry

Plaintiffs assert that section 6428(g) violates their fundamental right to marry by denying them an advance refund because they are married to individuals without SSNs.[8] (ECF 28 ¶¶ 64-77.) They contend that the section is "not narrowly tailored to advance a compelling government interest" or "related to any legitimate governmental interest" and should therefore be deemed unconstitutional. (*Id*. ¶ 76.)

However, even if the factual allegations in the amended complaint are accepted as true, section 6428(g) does not implicate plaintiffs' fundamental right to marry. Plaintiffs allege that they are each married and thus cannot contend that the CARES Act prevented them from marrying an individual of their choosing. Nor can they deny that they could each qualify for a CARES Act credit by electing to file a married filing separately tax return for the 2020 tax year. Plaintiffs' claim, then, is that section 6428(g) impermissibly distinguishes between groups of married people, specifically, between couples in which only one spouse has an SSN and couples in which both spouses have SSNs. Such a distinction does not warrant any sort of heightened scrutiny: the Supreme

[8] Plaintiffs describe the fundamental right to marry as arising under the First Amendment, the Due Process Clause of the Fifth Amendment, and the Equal Protection and Privileges and Immunities Clauses of the Fourteenth Amendment. (ECF 28 ¶ 71.)

Court has long distinguished between statutes that implicate the fundamental right to marry and statutes that differentiate between groups of married people. Thus, the Supreme Court has held that laws which "interfere directly and substantially with the right to marry" are constitutionally infirm, but "reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may be legitimately imposed." *Zablocki v. Redhail*, 434 U.S. 374, 386-87 (1978). As such, distinctions based on marital status are subject only to rational-basis review. *Id.; see also Califano v. Jobst*, 434 U.S. 47, 53-54 (1977).

In *Aleman v. Glickman*, 217 F.3d 1191, 1201 (9th Cir. 2000), for example, the Ninth Circuit determined that a federal food stamps provision that distinguished between noncitizen spouses of citizens whose marriages ended in divorce and noncitizen spouses of citizens whose marriages ended in death did not interfere directly and substantially with the right to marry and was therefore subject to rational-basis review. Likewise, in *In re Talmadge*, 832 F.2d 1120, 1126 & n.3 (9th Cir. 1987) the Ninth Circuit upheld a California statute that limited married debtors to one exemption in bankruptcy where, if the debtors were not married, they would have been entitled to two. The court determined that the distinction did not implicate a fundamental right, was subject only to rational-basis review, and was permissible because the California legislature may have had a reasonable explanation for making it. *Id*. at 1125-26.

Talmadge cited the Second Circuit's decision in *Druker v. Commissioner*, 697 F.2d 46, 50 (2d Cir. 1982). There, the Second Circuit considered a challenge under the Fourteenth Amendment's Equal Protection clause to the so-called "marriage penalty", which causes certain married individuals to pay more taxes than they would if they were unmarried. The court held that the mere fact that tax rates have differently affected particular groups did not make tax rate structure set forth in the Internal Revenue Code unconstitutional. *Id*. The court acknowledged that the "marriage penalty" has "some adverse effect on marriage." *Id.* Nevertheless, the "adverse effect of the 'marriage

penalty' . . . is merely 'indirect'; while it may to some extent weight the choice whether to marry, it leaves the ultimate decision to the individual." *Id.* (citation omitted). Because the Second Circuit determined that the tax rate structure set forth in the Internal Revenue Code places "no direct legal obstacle in the path of persons desiring to get married," and "the 'marriage penalty' is most certainly not 'an attempt to interfere with the individual's freedom [to marry],'" it concluded that Congress was entitled to enact a policy that penalizes some dual-income couples and that such a choice would even survive strict scrutiny were it to apply. *Id.* (quoting *Zablocki*, 434 U.S. at 387 n.12 & *Jobst*, 434 U.S. at 54).

Numerous tax benefits and obligations distinguish based on marital status. For example, the Internal Revenue Code permits several filing statuses, each subject to different tax rates and other provisions, based on marital status. *See* 26 U.S.C. §§ 1(a) (married individuals filing joint returns and surviving spouses); 1(b) (heads of household); 1(c) (unmarried individuals); 1(d) (married individuals filing separate returns). Federal courts have consistently rejected constitutional claims where, for federal tax purposes, married couples are treated differently than unmarried couples or certain married couples are treated differently than other married couples. *See Druker*, 697 F.2d at 50; *Mapes v. United States*, 576 F.2d 896, 900 (Ct. Cl. 1978) (applying rational-basis review and holding that differential tax effect between married couples was constitutionally permissible)*; Schinasi v. Commissioner*, 53 T.C. 382, 384 (1969) (holding that 26 U.S.C. § 6013(a)(1) was reasonable and did not violate the Constitution in precluding individuals married to individuals who were nonresident aliens for any part of the taxable year from filing joint federal tax returns); *see also Barter v. United States*, 550 F.2d 1239, 1240 (7th Cir. 1977) ("We agree with the district court that the inequities asserted to inhere in the 'marriage penalty,' whatever may be their persuasiveness as arguments for legislative change, do not rise to the level of constitutional violations of appellants' rights.") (footnote omitted).

Assuming they otherwise qualify, there is no dispute that plaintiffs would each be eligible to claim a CARES Act credit by filing a 2020 tax return using the married filing separately filing status. Thus, plaintiffs' constitutional claim is that in order to receive the credit, they must each select a filing status that they would not have otherwise chosen. But all married individuals must evaluate the benefits and burdens of whether to file a joint or a separate tax return. *See* 26 U.S.C. §§ 1(a) and (d).

As described above, section 6428(g) does not implicate plaintiffs' fundamental right to marry; it merely distinguishes, like other provisions in the Internal Revenue Code, between categories of married couples. As such, it is subject to rational-basis review. *See Aleman*, 217 F.3d at 1201; *In re Talmadge*, 832 F.2d 1120, 1126 & n.3.

2. Section 6428(g) does not make distinctions based on alienage, and even assuming *arguendo* it does, federal distinctions based on alienage are subject to rational-basis review

Plaintiffs argue that section 6428(g) is constitutionally infirm because it discriminates on the basis of their spouses' alienage. (ECF 28 ¶¶ 78-85.) As a threshold matter, section 6428(g) does not distinguish based on alienage; rather, it provides that married couples who elect to file a joint income tax return cannot claim a CARES Act credit unless both spouses have SSNs valid for employment.[9] But SSNs valid for employment are not issued exclusively to U.S. citizens. Instead, they are assigned to U.S. citizens, lawful permanent residents, and other noncitizens with authorization to work in the United States. *See* 42 U.S.C. § 405(c)(2)(B)(i)(I) and (III); 20 C.F.R. § 422.104 ("Who can be assigned a social security number"). As such, lawful permanent

[9] The CARES Act's SSN restrictions are not unique in the Internal Revenue Code. The Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613 (Feb. 13, 2008), and 1996 amendments to the EIC, 26 U.S.C. § 32, use substantially similar language to bar tax credits to those who fail to provide SSNs on their income tax return. And since 2017, the CTC, like the EIC and the CARES Act credit, has distinguished between children with and without SSNs. From 2018 through 2025, the Code allows a individual to claim a larger CTC for a child with an SSN. *See* 26 U.S.C. § 24(h)(7).

residents and other noncitizens with SSNs valid for employment can qualify for a CARES Act credit or receive an advance refund.

In contrast, ITINs are identifying numbers issued by the IRS to nonresident and resident aliens (as well as their alien spouses and alien dependents) who have a reporting requirement under the Internal Revenue Code but do not qualify for an SSN. 26 C.F.R. § 301.6109-1(d)(3); *see Hansen v. Dep't of Treasury*, 528 F.3d 597, 599 (9th Cir. 2007). ITINs are held by noncitizens, some of whom live outside the United States but are required to have an identification number for tax purposes, such as individuals with U.S.-source investment income. Many other ITIN-holders live and work in the United States even though they are not so authorized. *See* Congressional Research Service, Report R43840, "Federal Income Taxes and Noncitizens: Frequently Asked Questions" at 3-5 (updated December 31, 2014). Holding an SSN valid for employment, then, tracks work authorization in the United States more closely than it does United States citizenship. *See* Congressional Research Service, Report R46339, "Unauthorized Immigrants' Eligibility for COVID-19 Relief Benefits: In Brief" (updated May 7, 2020) at 5-6 (SSNs are "typically issued to U.S. citizens, lawful permanent residents, and noncitizens with work authorization"). And the Ninth Circuit has previously upheld a federal program that distinguished between SSN and non-SSN holders in allocating federal benefits in the face of an equal protection challenge. *See Alcaraz v. Block*, 746 F.2d 593, 605 (9th Cir. 1984).

Plaintiffs' amended complaint does not challenge section 6428(d)(1)'s exclusion of nonresident aliens[10] from receiving a CARES Act credit. And, in any event, to the

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[10] "[F]or federal tax purposes, a noncitizen is classified as a resident or nonresident alien, regardless of whether he or she is in the United States as an immigrant or nonimmigrant, or is in the United States unlawfully. This classification is for federal tax purposes only and does not affect the individual's immigration status." Congressional Research Service, Report R43840, "Federal Income Taxes and Noncitizens: Frequently Asked Questions" at 1-2 (updated December 31, 2014); *see* IRS Publication 519, available at https://www.irs.gov/pub/irs-pdf/p519.pdf (last accessed June 11, 2020.).

extent that the SSN requirement in section 6428(g) distinguishes between resident aliens and nonresident aliens, distinctions between individuals in those categories in the Tax Code have been consistently upheld. *See Hofstetter v. Commissioner*, 98 T.C. 695, 702 (1992); *Schinasi*, 53 T.C. at 384; *see also Barr v. Commissioner*, 51 T.C. 693, 695 (1969).

As we have explained, the CARES Act's SSN requirement is not a distinction based on alienage, since lawful permanent residents and other noncitizens with work authorization can obtain an SSN and qualify for a CARES Act credit. Even assuming *arguendo* the requirement is a distinction based on alienage, the Supreme Court recognizes that the federal government has "broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394 (2012) (citing *Toll v. Moreno*, 458 U.S. 1, 10 (1982)). When federal law classifies individuals on the basis of alienage, rational-basis review applies.[11] *See Mathews v. Diaz*, 426 U.S. 67, 81-85 (1976). Thus, in considering the food stamps provision in *Aleman*, 217 F.3d at 1201, the Ninth Circuit held that Congress had differentiated between groups of aliens and that the provision was subject to rational-basis review.

In sum, section 6428(g) is not a classification based on alienage. Even assuming *arguendo* that it is, it would be subject to rational-basis review. *See Aleman*, 217 F.3d at 1201.

3. Plaintiffs have not pleaded a cognizable legal theory

As we have explained, section 6428(g) is subject to rational-basis review. Plaintiffs cannot prevail under that standard. "[R]ational-basis review in equal protection analysis 'is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.'" *Aleman*, 217 F.3d at 1200 (quoting *Heller v. Doe*, 509 U.S. 312, 319 (1993)) (internal quotations omitted). When reviewing a provision under rational-

[11] Plaintiffs cite *Graham v. Richardson*, 403 U.S. 365, 372 (1971) for the proposition that that the federal tax provision at issue is subject to strict scrutiny. That case, however, dealt with a state classification based on alienage. *See id.* at 376-377.

basis review "a statutory classification . . . must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Id.* at 1201 (quoting *FCC* v. *Beach Communications*, 508 U.S. 307, 313 (1993)). The government "has no obligation to produce evidence to sustain the rationality of a statutory classification"; rather, "[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." *Heller*, 509 U.S. at 320 (internal quotations omitted); *see also Fournier v. Sebelius*, 718 F.3d 1110, 1123 (9th Cir. 2013).

Plaintiffs cannot "negative every conceivable basis which might support" section 6428(g) and thereby overcome its presumption of constitutionality. *See Aleman*, 217 F.3d at 1201 (quoting *Heller*, 509 U.S. at 320). Indeed, Congress could have reasonably used the prohibition on joint filing in section 6428(g) as a means to reconcile section 6428(a)(1)'s provision of $2,400 credits to eligible joint filers with section 6428(d)(1)'s exclusion of nonresident aliens.[12] Whether Congress could have selected a different method to achieve the same result is not at issue. *See Nat'l Fed'n of Indep. Bus.*, 567 U.S. at 563; *Brushaber v. Union P.R. Co.*, 240 U.S. 1, 26 (1916). As such, plaintiffs' action should be dismissed.

[12] Plaintiffs do not challenge either of these provisions.

V. CONCLUSION

This action should be dismissed because this Court lacks jurisdiction over plaintiffs' claims and because the amended complaint fails to state a claim upon which relief can be granted.

Dated: June 15, 2020

Respectfully submitted,

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IRS

Economic Impact Payment Information Center

Mailed Check Payments May Be Sent As Debit Cards

If the Get My Payment application says you're receiving a check, your Payment may come as a debit card. Debit card Payments come in a plain envelope from "Money Network Cardholder Services."

For more information, see Prepaid Debit Cards.

For additional questions regarding the Get My Payment application check out our Get My Payment FAQs.

Millions of Americans have already received their Economic Impact Payments (Payments) authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The Internal Revenue Service (IRS) continues to calculate and automatically send the Payments to most eligible individuals, however some may have to provide additional information to the IRS to get their Payments. Below are answers to frequently asked questions related to these Payments. These questions and answers will be updated periodically. Please DO NOT call the IRS.

EIP Eligibility and General Information

Q1. Who is eligible? (updated June 5, 2020)

Q2. Who is not eligible? (updated June 5, 2020)

> **Q3. How much is it worth? (updated May 29, 2020)**

> **Q4. Do I need to take action?**

> **Q5. Will I receive notification from the IRS about my Payment?**

> **Q6. How do I avoid scams related to Economic Impact Payments or COVID-19?**

> **Q7. Should I use Get My Payment or Non-Filers: Enter Payment Info Here?**

> **Q8. As a U.S. citizen living abroad, am I entitled to a Payment?**

> **Q9. If I live in Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, will I get a Payment if I'm eligible?**

> **Q10. I am a citizen or resident of one of the Freely Associated States (Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau). Can I be eligible to receive a Payment? (added June 8, 2020)**

> **Q11. What does it mean if I received a Payment from both the IRS and a U.S. territory tax agency? (added June 8, 2020)**

> **Q12. Does someone who has died qualify for the Payment? (updated May 26, 2020)**

> **Q13. Does someone who is a resident alien qualify for the Payment? (added May 6, 2020)**

> **Q14. Does someone who is incarcerated qualify for the Payment? (added May 6, 2020)**

Requesting My Economic Impact Payment

> **Q15. I recently filed a tax return. What do I need to do to get a Payment?**

> **Q16. I haven't filed a tax return for 2018 or 2019 and don't need to file tax returns for those years. I receive Social Security, SSI, Railroad Retirement, or Department of Veterans Affairs (VA) benefits.**

What do I need to do to get a Payment? (updated April 24, 2020)

Q17. I haven't filed a federal tax return for 2018 or 2019 because I'm not required to file. I don't receive Social Security retirement or any other federal benefits. What do I need to do to get a Payment? (Updated June 10, 2020)

Q18. I did not file a tax return for 2018 or 2019. How do I know if I am required to file a tax return?

Q19. I haven't filed my 2019 tax return but filed my 2018 return and already received an Economic Impact Payment. Will filing a 2019 return affect my Economic Impact Payment? (added June 10, 2020)

Q20. Who should NOT use Non-Filers: Enter Payment Info Here? (updated June 10, 2020)

Q21. I need to file a tax return but am concerned about visiting a tax professional or local community organization in person right now to get help with my tax return. How long is the Payment available?

A21. Payments will be made throughout the rest of 2020. If you don't receive a Payment this year, you can also claim it by filing a tax return for 2020 next year.

Q22. Will the IRS contact me about my Payment? (updated May 8, 2020)

Calculating My Economic Impact Payment

Q23. What is the amount of the Payment I will receive? Who is a qualifying child? (updated May 8, 2020)

Q24. How do I calculate my Economic Impact Payment? (added April 27, 2020)

Q25. Will my Payment be reduced if my income is too little or too much?

Q26. I filed a joint return with my spouse. Will we receive a Payment if I have a valid SSN and my spouse has an IRS Individual Taxpayer Identification Number (ITIN)?

A26. No, when spouses file jointly, both spouses must have valid SSNs to receive a Payment with one exception. If either spouse is a member of the U.S. Armed Forces at any time during the taxable year, only one spouse needs to have a valid SSN.

If spouses file separately, the spouse who has an SSN may qualify for a Payment; the other spouse without a valid SSN will not qualify.

Q27. What is meant by a valid SSN required for a Payment?

A27. A valid SSN for a Payment is one that is valid for employment and is issued by the SSA before the due date of your 2019 tax return (including the filing deadline postponement to July 15 and an extension to October 15 if you request it) or your 2018 tax return (including extensions) if you haven't filed your 2019 tax return.

If the individual was a U.S. citizen when they received the SSN, then it is valid for employment. If "Not Valid for Employment" is printed on the individual's Social Security card and the individual's immigration status has changed so that they are now a U.S. citizen or permanent resident, ask the SSA for a new Social Security card. However, if "Valid for Work Only With DHS Authorization" is printed on the individual's Social Security card, the individual has the required SSN only as long as the Department of Homeland Security authorization is valid.

Q28. Is a child born, adopted, or placed into foster care in 2020 a qualifying child for the Payment?

A28. The Payment in 2020 will not include an additional amount for these children because the Payment in 2020 is based only on information from your 2019 or 2018 tax return. You may claim the child next year for an additional credit on your 2020 tax return.

Q29. I received an additional $500 Payment in 2020 for my qualifying child. However, he just turned 17. Will I have to pay back the $500 next year when I file my 2020 tax return?

Q30. I claimed my child as a dependent on my 2019 tax return. She is graduating from school in 2020. Will she receive her own Payment?

Q31. I claimed my mom as a dependent on my 2019 tax return. Will I receive an additional Payment for her or will she receive her own Payment?

Q32. I think the amount of my Economic Impact Payment is incorrect. What can I do? (updated June 10, 2020)

A32. Payment amounts vary based on income, filing status and family size. If you filed a 2019 tax return, the IRS used information from it about you, your spouse, your income, filing status and qualifying children to calculate the amount and issue your Payment. If you haven't filed your 2019 return or it has not been processed yet, the IRS used the information from your 2018 return to calculate the amount and issue your Payment. The IRS is not able to correct or issue additional payments at this time and will provide further details on IRS.gov on the action people may need to take in the future.

If you did not receive the full amount to which you believe you are entitled, you will be able to claim the additional amount when you file your 2020 tax return. This is particularly important for individuals who may be entitled to the additional $500 per qualifying child payments. We encourage everyone to review our "How do I calculate my EIP" question and answer (See question 23).

Keep the Notice 1444, Your Economic Impact Payment, you will receive regarding your Economic Stimulus Payment with your records. This notice will be mailed to each recipient's last known address within a few weeks after the Payment is made. When you file your 2020 tax return next year, you can refer to Notice 1444 and claim additional credits on your 2020 tax return if you are eligible for them. The IRS will provide further details on IRS.gov on the action they may need to take.

Q33. What if a child's parents who are not married to each other both got the $500 for a child - will one of them have to pay that back? (updated May 15, 2020)

Receiving My Payment

Q34. Is the Payment includible in my gross income? (updated April 24, 2020)

Q35. If I owe tax, or have a payment agreement with the IRS, or owe other federal or state debts or past-due child support, will my Payment be reduced or offset? (updated May 8, 2020)

Q36. How will the IRS know where to send my Payment? (updated May 15, 2020)

Q37. What if the bank account number I used on my recent tax return is closed or no longer active? Can I switch and be mailed a Payment? (updated May 20, 2020)

Q38. I already filed my 2019 tax return and owed tax. I scheduled a payment (electronic funds withdrawal, Direct Pay, or Electronic Federal Tax Payment System (EFTPS)) from my bank account. Will the IRS send my Payment to the account I used? (updated May, 14, 2020)

Q39. I already filed my 2019 tax return, but I didn't provide bank information. Can I use the Non-Filers: Enter Payment Info Here tool to provide my banking information? (updated May, 14, 2020)

> **Q40. How do I find the bank account information the IRS needs?**

> **Q41. What if I don't have a bank account? (updated May 20, 2020)**

> **Q42. My address is different from the last tax return I filed. How can I change my address? (updated June 9, 2020)**

> **Q43. Where did you get the bank information for me, and what if I need to change it? (updated May 14, 2020)**

> **Q44. I requested a direct deposit of my Payment. Why are you mailing it to me as a check?**

> **Q45. I heard that past-due child support can be taken from the EIP, but can other debt collectors get access to this money? (updated May 15, 2020)**

> **Q46. Will I need to provide information or reconcile the Economic Impact Payment on my 2020 taxes when I file next year? (added May 14, 2020)**

Prepaid Debit Cards

> **Q47. Can I have my economic impact payment sent to my prepaid debit card? (added May 14, 2020)**

> **Q48. Will IRS be sending prepaid debit cards? (added May 20, 2020)**

> **Q49. Can I transfer money from my debit card to my bank account? (added June 5, 2020)**

> **Q50. Can I specifically ask the IRS to send the Economic Impact Payment to me as a debit card? (added May 20, 2020)**

> **Q51. What do I do if my prepaid debit card was lost or destroyed? (added June 4, 2020)**

> **Q52. I received the prepaid debit EIP Card as my Payment, but my name is incorrect. What should I do? (added June 9, 2020)**

Payment Issued but Lost, Stolen, Destroyed or Not Received

Q53. I received my Payment by check but it was lost, stolen or destroyed. How do I get a new one? (added June 9, 2020)

Q54. I received Notice 1444 in the mail saying my Payment was issued, but I have not received my Payment. What should I do? (added June 9, 2020)

Non-Filer Tool

Q55. Do I need to use the Non-Filers: Enter Payment Info Here tool if I am not required to file a federal income tax return for 2019 or 2018 and I do not receive Social Security retirement, disability (SSDI), Supplemental Security Income (SSI) or survivor benefits, Veteran's benefits or Railroad Retirement benefits? (added May 14, 2020)

Q56. Do I need to use the Non-Filers: Enter Payment Info Here tool if I am not required to file a federal income tax return for 2019 or 2018 and I do receive federal benefits for Social Security retirement, disability (SSDI), Supplemental Security Income (SSI) or survivor benefits, Veteran's benefits, or Railroad Retirement benefits? (added May 14, 2020)

Q57. Do I need to use the Non-Filers: Enter Payment Info Here tool if I filed a return for 2019 or 2018? (updated May 14, 2020)

Social Security, Railroad Retirement and Department of Veteran Affairs benefit recipients

Q58. Do Social Security, Railroad Retirement and Department of Veteran Affairs benefit recipients need to take any action? (added May 15, 2020)

Q59. When will eligible Social Security, Railroad Retirement and Department of Veteran Affairs benefit recipients who are not required to file a tax return receive their Economic Impact Payment? (added May 15, 2020)

Q60. How much will Social Security, Railroad Retirement and Department of Veteran Affairs benefit recipients receive? (added May 15, 2020)

Q61. Do I need to do anything if I am the spouse of an SSA, SSI, RRB, or VA recipient? (added May 15, 2020)

Q62. How will the IRS send my Economic Impact Payment if I have a representative payee or I am a representative payee? (added June 10, 2020)

Returning the Economic Impact Payment

Q63. What should I do to return an Economic Impact Payment (EIP) that was received as a direct deposit or a paper check? (updated June 9, 2020)

Q64. How do I return an Economic Impact Payment (EIP) that was received as an EIP Card (debit card) if I don't want the payment re-issued? (added June 9, 2020)

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

JANE DOE, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 8:20-cv-00858-SVW-JEM

[Proposed] Order Granting Motion to Dismiss

The Court, having read and considered the United States of America's Motion to Dismiss (motion, ECF No. 30) and any responses thereto, holds that the United States of America is the only proper party defendant with respect to the claims asserted by plaintiffs. It accordingly DISMISSES Donald J. Trump, Mitch McConnell, Steven Mnuchin, Charles Rettig, the U.S. Department of the Treasury, and the U.S. Internal Revenue Service as defendants.

The Court further holds that it lacks subject-matter jurisdiction over the claims asserted by plaintiffs pursuant to Federal Rule of Civil Procedure 12(b)(1) and that plaintiffs have failed to state a claim upon which relief can be granted pursuant to

Federal Rule of Civil Procedure 12(b)(6). The Court accordingly GRANTS the motion for the reasons stated therein and DISMISSES this action with prejudice.

IT IS SO ORDERED.

Dated: _____

_____
HON. STEPHEN V. WILSON
United States District Judge