

**JS-6**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

**RICK ALJUNDI and MONA  
ALJUNDI,**

**Plaintiffs,**

**vs.**

**UNITED STATES OF AMERICA,**

**Defendant.**

**Case No.: SACV 12-02079-CJC(RNBx)**

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS**

**INTRODUCTION**

Plaintiffs Rick Aljundi and Mona Aljundi (the “Aljundis”) bring this action against Defendant United States of America (the “Government”) for the return of \$25,334.00 in income taxes they allegedly overpaid for the 2005 calendar year. The Aljundis seek to recover the overpaid taxes pursuant to 26 U.S.C. § 7422. (Dkt. No. 1 [“Compl.”].)

Before the Court is the Government's Motion to Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. (Dkt. No. 6 ["Def.'s Mot."].)<sup>1</sup> For the following reasons, the Government's motion is GRANTED.<sup>2</sup>

## BACKGROUND

The Aljundis are residents of Orange County, California. According to the allegations in the Complaint, the Aljundis filed their tax return for the 2005 calendar year with the Internal Revenue Service ("IRS") in March 2006. (Compl. ¶ 3.) The Aljundis paid \$35,186.00 in income taxes based on \$221,554.00 combined adjusted gross income. (Compl. ¶ 3.) In June 2008, Mr. Aljundi's employer informed him that he had been overpaid for his employment in 2005, and he was required to return \$65,000 of the income he earned that year. (Compl. ¶ 4.) In September 2008, the Aljundis filed an amended tax return for the 2005 calendar year reflecting the \$65,000 decrease in income earned by Mr. Aljundi. (Compl. ¶ 5.) The Aljundis also filed a claim for refund of \$25,334.00 of the income tax they paid in 2005. (Compl. ¶¶ 3–5.) According to the Complaint, the Aljundis were in contact with IRS representatives in the ensuing months but the refund was delayed because neither their original nor amended tax returns could

---

<sup>1</sup> As an initial matter, the Aljundis have failed to file an opposition to the Government's motion to dismiss. Local Rule 7-12 addresses a party's failure to file required papers. It states:

The Court may decline to consider any memorandum or other paper not filed within the deadline set by order or local rule. The failure to file any required paper, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion.

Accordingly, the Government's motion could be granted solely on the ground of the Aljundis' failure to file an opposition. Nevertheless, the Court finds that dismissal is appropriate on the merits as well.

<sup>2</sup> Having read and considered the papers presented by the Government, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for July 22, 2013 at 1:30 p.m. is hereby vacated and off calendar.

1 be found. (Compl. ¶¶ 6–7.) The Aljundis were required to re-file their returns multiple  
 2 times. (Compl. ¶¶ 6–7.) On February 24, 2010, the IRS sent the Aljundis a notice that  
 3 their refund claim had been disallowed. (Compl. ¶ 8; Def.’s Mot., Conrad Decl. Attach.  
 4 1, Exh. D [the “Notice of Disallowance].”<sup>3</sup> The letter stated that the amended return was  
 5 filed on December 7, 2009, which was beyond the 3-year time limit for submitting a tax  
 6 refund claim to the IRS. (Notice of Disallowance at 1.) The Aljundis allege that their  
 7 amended return had in fact been filed before expiration of the 3-year period but was lost  
 8 by the IRS. (See Compl. ¶¶ 5–6.) On March 11, 2010, the Aljundis petitioned the IRS  
 9 for reconsideration of its decision. (Compl. ¶ 9.) In August 2010, the IRS notified the  
 10 Aljundis that they were due a refund in the amount of \$25,344.00 for overpayment of  
 11 2005 taxes. (Compl. ¶ 11.) No refund was issued, however, and on October 2, 2010, the  
 12 Aljundis received another notice, this time denying their refund claim. (Compl. ¶ 13.)  
 13 On October 8, 2012, counsel for the Aljundis sent a demand letter to the IRS, detailing  
 14 the facts and history of their refund claim and requesting review of the claim denial.  
 15 (Def.’s Mot., Conrad Decl. Attach. 1.) The letter also requested “a statement that all  
 16 statutory filing requirements for bringing an action against the IRS are tolled until said  
 17 review is conducted and a decision, in writing, is reached.” (*Id.*) On November 30,  
 18 2012, the Aljundis filed the Complaint in this action seeking recovery of the alleged tax  
 19 overpayment. (See Compl.)

20 //

21 //

---

23 <sup>3</sup> In addition to the pleadings themselves, documents “whose contents are alleged in a complaint and  
 24 whose authenticity no party questions, but which are not physically attached to the [plaintiff’s]  
 25 pleading” may be considered in ruling on a motion to dismiss. *Parrino v. FHP, Inc.*, 146 F.3d 699, 705–  
 26 06 (9th Cir. 1998) (quoting *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994)). In addition, extrinsic  
 27 evidence may be considered in ruling on a motion under Federal Rule of Civil Procedure 12(b)(1).  
 28 *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1145 (9th Cir. 2003). Given that the February  
 24, 2010 IRS Notice is referenced in paragraph 8 of the Complaint and the Aljundis have not disputed  
 the authenticity of the Notice submitted by the Government as Exhibit D to Attachment 1 to its motion  
 to dismiss, the Notice is properly before the Court. The Notice is also properly considered given that the  
 Government’s motion is brought pursuant to Rule 12(b)(1).

## ANALYSIS

Under 26 U.S.C. § 7422(a), a taxpayer may bring an action for refund of overpaid taxes. The United States has provided its express consent to be sued for tax refunds under § 7422, which operates to grant a limited waiver of its sovereign immunity. *Tosello v. United States*, 210 F.3d 1125, 1127 (9th Cir. 2000). As a waiver of sovereign immunity, § 7422 must be construed narrowly and in favor of the United States. *Id.* The statute of limitations to bring an action for tax refund under § 7422(a) is prescribed by 26 U.S.C. § 6532(a)(1). Under § 6532(a)(1), “[n]o suit or proceeding . . . for the recovery of any internal revenue tax . . . shall be begun . . . after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.” Courts place particular importance on statutes of limitations in tax cases. *See Danoff v. United States*, 324 F. Supp. 2d 1086, 1091 (C.D. Cal. 2004) (“[A] statute of limitations is an almost indispensable element of fairness as well as of practical administration of an income tax policy.” (quoting *Rothensies v. Elec. Storage Battery Co.*, 329 U.S. 296, 301 (1946))). Specifically, the two-year time limit in § 6532(a)(1) has been held to be a jurisdictional prerequisite to maintaining an action for a tax refund. *See RHI Holdings, Inc. v. United States*, 142 F.3d 1459, 1461 (Fed. Cir. 1998). Moreover, the two-year limitations period must be strictly construed in favor of the government. *Tosello*, 210 F.3d at 1127.

The only way the period of limitations to bring a tax refund action can be extended is through a written agreement executed by the IRS and the taxpayer. *See* 26 U.S.C. § 6532(a)(2). The statute expressly provides that after a notice of disallowance has issued regarding a tax refund claim, “[a]ny consideration, reconsideration, or action by [the IRS] with respect to such claim . . . shall not operate to extend the period within which suit may be begun.” 26 U.S.C. § 6532(a)(3). In addition, courts have regularly

1 rejected any equitable exception to § 6532(a)(1)'s limitations period. *See, e.g., RHI*  
 2 *Holdings, Inc.*, 142 F.3d at 1461–63; *Estate of Orlando v. United States*, 94 Fed. Cl. 286,  
 3 291 (2010); *Thomasson v. United States*, No. C–96–3023–VRW, 1997 WL 220321, \*2–  
 4 \*3 (N.D. Cal. Apr. 21, 1997); *Brewer v. United States*, 390 F. Supp. 2d 1378, 1381 (S.D.  
 5 Ga. 2005).<sup>4</sup> Applying § 6532's time limit as a bright-line mandate is consistent with the  
 6 application of statutes of limitations in tax refund cases generally, which must be “strictly  
 7 adhered to by the judiciary.” *Walther v. United States*, 54 Fed.Cl. 74, 76 (2002)  
 8 (“Statutes of limitations for tax refunds ‘are established to cut off rights, justifiable or not,  
 9 that might otherwise be asserted and they must be strictly adhered to by the judiciary.  
 10 Remedies for resulting inequities are to be provided by Congress, not the courts.’ ”  
 11 (quoting *Kavanagh v. Noble*, 332 U.S. 535, 539 (1947))).

12  
 13 The Aljundis' Complaint was filed after expiration of the two-year limitations  
 14 period and the Court is without jurisdiction to entertain this action. The Notice of  
 15 Disallowance the IRS mailed to the Aljundis is dated February 24, 2010. The Complaint  
 16 was not filed until November 30, 2012, approximately nine months after expiration of the  
 17 two-year limitations period. Although the Aljundis petitioned for reconsideration after  
 18 receiving the Notice of Disallowance, and the IRS did at one point notify them that the  
 19 taxes would be refunded, the applicable code section explicitly provides that “[a]ny  
 20 consideration, reconsideration, or action by [the IRS]” with regard to a tax refund claim  
 21 “shall not operate to extend the period within which suit may be begun.” 26 U.S.C. §  
 22 6532(a)(4). Given this strict statutory language, none of the communications between the  
 23 parties after the Notice of Disallowance was sent served to toll the limitations period.  
 24 The limitations period could be extended only by a written agreement signed by the IRS.  
 25 *See* 26 U.S.C. § 6532(a)(2). Although counsel for the Aljundis requested such a written

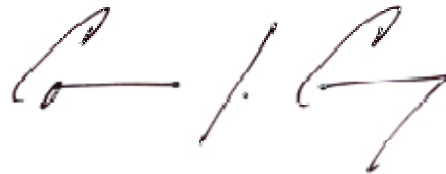
26  
 27 <sup>4</sup> These decisions partly stem from the Supreme Court's opinion in *United States v. Brockamp*, 519 U.S.  
 28 347, 350–53 (1997), in which the Court broadly rejected the existence of any implied equitable  
 exception to a closely related limitations period in 26 U.S.C. § 6511, which governs the filing of tax  
 refund claims with the IRS.

1 statement in the October 2010 demand letter, there is no allegation in the Complaint nor  
2 any evidence before the Court indicating that the IRS agreed to an extension. Given these  
3 circumstances and the strict statutory time limits mandated by 26 U.S.C. § 6532, which  
4 must be narrowly construed in favor of the Government, the Complaint must be  
5 dismissed for failure to meet the jurisdictional time limit for tax refund actions. *See*  
6 *Tosello*, 210 F.3d at 1127–28.

## 7 8 **CONCLUSION**

9  
10 For the foregoing reasons, the Government’s motion to dismiss is GRANTED.  
11 The Complaint in this action is DISMISSED WITH PREJUDICE.

12  
13  
14 DATED: July 11, 2013



15  
16 CORMAC J. CARNEY  
17 UNITED STATES DISTRICT JUDGE  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28