UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PFIZER, INC., and SUBSIDIARIES,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

16 Civ. 1870 (LGS)

THE GOVERNMENT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS OR TO TRANSFER THIS ACTION FOR LACK OF SUBJECT MATTER JURISDICTION

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Defendant United States of America (the "United States" or the "Government") respectfully submits this Memorandum of Law in Support of Its Motion to Dismiss or to Transfer this Action for Lack of Subject Matter Jurisdiction.

PRELIMINARY STATEMENT

In this case, plaintiffs Pfizer, Inc., and subsidiaries ("Plaintiffs" or "Pfizer") bring a claim for interest on a refund paid to Pfizer with respect to an overpayment of taxes for tax year 2008. Specifically, Pfizer alleges that its 2008 federal income tax return listed an overpayment of several hundred million dollars. Although the Internal Revenue Service ("IRS") issued a refund to Pfizer based on the listed overpayment, Pfizer claims that on top of that refund the IRS should have paid Pfizer interest because the IRS allegedly did not timely send refund checks to Pfizer. Pfizer's claim thus does not seek a refund of any tax, penalty, or other amount imposed, assessed, or collected by the Government. Rather, Pfizer's claim is merely that the Government's alleged failure to timely provide Pfizer a refund entitles Pfizer to an award of interest.

The Court lacks subject matter jurisdiction over this action because a claim for interest on a tax overpayment does not fall within the jurisdictional grant of 28 U.S.C. § 1346(a)(1), the jurisdictional provision invoked by Pfizer in its complaint. Section 1346(a)(1) provides that the district courts and United States Court of Federal Claims shall have concurrent jurisdiction over "[a]ny civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws." The plain meaning of this provision does not encompass Plaintiffs' claim because interest on a tax overpayment is neither a "penalty" nor an "internal-revenue tax," and Plaintiffs do not seek "recovery" of any sum "alleged to have been

excessive or . . . wrongfully collected under the internal-revenue laws," as set forth more fully below.

Although § 1346(a)(1) thus does not grant the district court jurisdiction over this lawsuit, a plaintiff bringing a claim for interest on the basis that a tax refund issued by the Government was not timely sent is not without a judicial remedy. Suits seeking interest on tax overpayments may be brought in the United States Court of Federal Claims under the Tucker Act, which vests jurisdiction in the Court of Federal Claims over, *inter alia*, "any claim against the United States founded . . . upon . . . any Act of Congress . . . or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1). Here, Plaintiffs' claim for more than $8 million in interest on a tax overpayment has been brought pursuant to 26 U.S.C. § 6611(a). Thus it is a non-tort money claim founded upon an "Act of Congress," and, because Plaintiffs' suit seeks more than $10,000, it falls exclusively within the jurisdiction of the United States Court of Federal Claims under the Tucker Act, 28 U.S.C. § 1491(a)(1).[1]

Accordingly, the Court should dismiss this action pursuant to Rules 12(b)(1) and 12(h)(3) of the Federal Rules of Civil Procedure or transfer the action to the United States Court of Federal Claims under 28 U.S.C. § 1631.[2]

BACKGROUND

A. Plaintiffs' Allegations

The following facts are taken from the well-pleaded allegations of Plaintiffs' complaint.

[1] Under 28 U.S.C. § 1346(a)(2), known as the "Little Tucker Act," the district courts and United States Court of Federal Claims have concurrent jurisdiction over non-tort money claims against the United States "not exceeding $10,000 in amount," *i.e.*, claims that, if they exceeded $10,000, could only be brought in the United States Court of Federal Claims under § 1491.

[2] While the Court of Federal Claims is the only court that could have jurisdiction over this lawsuit, if the case is transferred to that court, the Government reserves the right to move for dismissal based on the applicable statute of limitations in 28 U.S.C. § 2501, which is jurisdictional. *See John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 134, 139 (2008).

For purposes of this motion only, these facts are assumed to be true. *See J.S. ex rel. N.S. v. Attica Cent. Sch.*, 386 F.3d 107, 110 (2d Cir. 2004).

Pfizer is a corporation with its principal place of business in New York, New York. (Dkt. No. 1, ¶ 1). On March 3, 2009, Pfizer filed a Form 7004 (Application for Automatic Extension of Time to File Corporation Income Tax Return) for its tax year ending on December 31, 2008, and extended the due date for its return to September 15, 2009. (*Id.* ¶ 5). On September 11, 2009, Pfizer filed its 2008 federal income tax return. (*Id.* ¶ 6). This 2008 tax return listed an overpayment of tax of $769,665,651. (*Id.*). Pfizer requested that $500 million of the overpayment be refunded and that the balance be applied to its 2009 estimated tax. (*Id.* ¶ 8). When the IRS processed the return, refunds totaling $499,528,499 (six refund checks) were scheduled for October 19, 2009. (*Id.* ¶ 9). Between December 2009 and February 2010, Pfizer made several inquiries of the IRS regarding the status of the refund. (*Id.* ¶¶ 13-16). The IRS cancelled the refund checks, (*id.* ¶ 18), and a refund totaling $499,528,499 was paid to Pfizer by electronic funds transfer on March 19, 2010 (*id.* ¶ 20).

B. Plaintiffs' Claim

In this action, Plaintiffs claim that they are entitled to over $8 million in interest on the $499,528,499 refund under 26 U.S.C. § 6611(a). (Dkt. No. 1, ¶ 25; *id.* at 5-6). Plaintiffs assert that this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1346(a)(1). (*Id.* ¶ 3).

ARGUMENT

THIS ACTION SHOULD BE DISMISSED OR TRANSFERRED FOR LACK OF SUBJECT MATTER JURISDICTION

A. Procedural Standards

Pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure, "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the

action." "With respect to motions made pursuant to Rule 12(h)(3), the analysis is the same as that for a Rule 12(b)(1) motion." *Li v. Napolitano*, No. 08 Civ. 7353 (JGK), 2009 WL 2358621, at *1 (S.D.N.Y. July 30, 2009). On a motion to dismiss for lack of subject matter jurisdiction, a court accepts as true the material factual allegations of the complaint but is "not to draw inferences from the complaint favorable to plaintiffs." *J.S.*, 386 F.3d at 110.

Under 28 U.S.C. § 1631, whenever a civil action is filed in a district court and the court finds that "there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed."

B. Subject Matter Jurisdiction Over Plaintiffs' Claim for Overpayment Interest Lies Exclusively in the United States Court of Federal Claims

"In any suit in which the United States is a defendant, there must be a cause of action, subject matter jurisdiction, and a waiver of sovereign immunity." *Presidential Gardens Assocs. v. United States*, 175 F.3d 132, 139 (2d Cir. 1999). "The waiver of sovereign immunity is a prerequisite to subject-matter jurisdiction." *Id.*; *see also F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994) ("Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit. . . . Sovereign immunity is jurisdictional in nature." (internal citations omitted)). Congress can waive sovereign immunity, but any such waiver must be "unequivocally expressed in the statutory text," and the waiver's scope is to be strictly construed in favor of the sovereign. *Dep't of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 261 (1999) (quotation marks omitted). "[T]he terms of the United States' consent to be sued in any court define that court's jurisdiction to entertain the suit." *Meyer*, 510 U.S. at 475 (alteration and quotation marks omitted).

"In the absence of express congressional consent to the award of interest separate from a general waiver of immunity to suit, the United States is immune from an interest award." *Library*

of Congress v. Shaw, 478 U.S. 310, 314 (1986), *superseded by statute on other grounds*. Pursuant to 26 U.S.C. § 6611, interest on overpayments of tax may be awarded in certain circumstances. *See* 26 U.S.C. § 6611. At issue in this motion is not whether there is express congressional assent to an award of interest on tax overpayments, but rather whether the waiver of sovereign immunity set forth in 28 U.S.C. § 1346(a)(1) applies to claims for interest on tax overpayments, or whether the only applicable waiver of sovereign immunity is supplied by the Tucker Act, 28 U.S.C. § 1491, which permits certain lawsuits to be brought exclusively in the United States Court of Federal Claims. For the reasons set forth below, to the extent the United States has consented to be sued for interest on tax overpayments, jurisdiction over such claims seeking more than $10,000 lies exclusively in the Court of Federal Claims, under the Tucker Act, 28 U.S.C. § 1491(a)(1), which provides that the Court of Federal Claims shall have jurisdiction over claims "founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." Section 1346(a)(1), which provides for concurrent jurisdiction in the district courts and Court of Federal Claims over actions to recover certain amounts paid by a taxpayer or assessed or collected by the Government, does not apply to Plaintiffs' claim seeking interest on a tax overpayment.

1. The Plain Meaning of § 1346(a)(1) Does Not Encompass Suits for Interest on Tax Overpayments

In their complaint, Plaintiffs invoke 28 U.S.C. § 1346(a)(1) as the basis for their assertion that the Court has subject matter jurisdiction over this action. (Dkt. No. 1, ¶ 3). When confronting a question of statutory construction, a court should "begin with the language of the statute." *Townsend v. Benjamin Enters.*, 679 F.3d 41, 48 (2d Cir. 2012) (quotation marks

omitted). Section 1346(a)(1) provides that the district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, over:

> Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

28 U.S.C. § 1346(a)(1). "Statutory construction begins with the plain text and, if that text is unambiguous, it usually ends there as well." *Local Union No. 38, Sheet Metal Workers' Int'l Ass'n v. Pelella*, 350 F.3d 73, 94 n.2 (2d Cir. 2003) (quotation marks omitted). Under the plain meaning of the statute, a claim for overpayment interest does not fall within any of the categories set forth in § 1346(a)(1), for several reasons.

First, interest on an overpayment of tax is self-evidently not a "penalty." Thus, Plaintiffs' claim is not an action for "recovery of . . . any penalty claimed to have been collected without authority." 28 U.S.C. § 1346(a)(1).

Second, this action seeking interest on an overpayment is not an action for the "recovery" of any "internal-revenue tax." Black's Law Dictionary defines tax as "[a] charge, usu[ally] monetary, imposed by the government on persons, entities, or property to yield public revenue." Black's Law Dictionary (7th ed., 1999). Consistent with this definition, the Internal Revenue Code provides that interest on deficient payments by taxpayers, which is imposed by the Government on taxpayers, is treated in the same manner as taxes under the Code. *See* 26 U.S.C. §§ 6601(e)(1). In contrast, "tax," by its plain meaning and as used in the Internal Revenue Code, does not encompass overpayment interest, which is not imposed by the Government on taxpayers and which is paid not by the taxpayer, but by the Government itself. *See Alexander Proudfoot Co. v. United States*, 454 F.2d 1379, 1384 (Ct. Cl. 1972) (explaining that "[u]nlike deficiency

interest paid by the taxpayer, Congress did not provide that statutory interest to be paid by the United States is to be fully assimilated in treatment to the principal amount of a tax"). Moreover, the Supreme Court has construed "tax" as used in 28 U.S.C. § 1346(a)(1) to have an even narrower meaning than it does in the Internal Revenue Code, and to exclude interest entirely. Specifically, the Supreme Court has observed that, to the extent § 1346(a)(1) grants jurisdiction over claims seeking refunds of interest assessed by the Government, such interest falls not within the category of "internal revenue tax," but rather is an example of the third, "any sum," category. *See Flora v. United States*, 362 U.S. 145, 149 (1960). In short, interest paid by the Government to the taxpayer, as Pfizer seeks in this case, is simply not an "internal revenue tax."

Third, while the "any sum" language in § 1346(a)(1) may encompass underpayment interest—in other words, interest that was owed by the taxpayer because the taxpayer failed to pay the full amount of tax when due and that may be assessed and collected by the Government—its plain meaning does not extend to interest on tax overpayments. As an initial matter, when it commented in *Flora* that "interest" is "[o]ne obvious example" of a "sum" that is neither a tax nor a penalty as those terms are used in § 1346(a)(1), the Supreme Court clearly was contemplating underpayment interest, *i.e.*, an amount charged by the Government, and not overpayment interest. *See Flora*, 362 U.S. at 149-50 Indeed, in explaining its interpretation of the term "sum" in § 1346(a)(1), the *Flora* Court noted that "it is significant that many old tax statutes described the amount which was to be *assessed* under certain circumstances as a 'sum' to be added to the tax, simply as a 'sum,' as a 'percentum,' or as 'costs.'" *Id.* (emphasis added); *see also Calhoun v. United States*, IP 93-273-C, 1994 WL 116791, at *2 (S.D. Ind. Jan. 7, 1994) (explaining that in *Flora*, "the Court indicated, in dicta, that interest *assessed on a tax liability* is 'an obvious example of such a 'sum'' under § 1346(a)(1)" (emphasis added)).

Further, the overpayment interest at issue is not a sum "alleged to have been excessive or . . . wrongfully collected," 28 U.S.C. § 1346(a)(1), because it is not an amount that Plaintiffs ever paid or that the IRS ever collected. Indeed, Pfizer is not seeking to recoup any prior payment made to the Government that it alleges was either "excessive" or "wrongfully collected." Rather, Pfizer seeks interest on an overpayment that has already been refunded. Likewise, Plaintiffs' claim for overpayment interest does not fall within the ambit of § 1346(a)(1) because it is not a "civil action against the United States for the *recovery* of . . . any sum alleged to have been excessive or . . . wrongfully collected." 28 U.S.C. § 1346(a)(1) (emphasis added). Indeed, Plaintiffs' suit is not an action seeking "recovery" of anything. *See, e.g.*, *Amoco Prod. Co. v United States*, 87 C 8811, 1988 WL 9112, at *5 (N.D. Ill. Feb. 4, 1988) (concluding that "any sum" language of § 1346(a)(1) did not encompass claim for interest on tax overpayment because, *inter alia*, the interest sought "ha[d] not previously been assessed" and plaintiff was "not seeking a 'recovery;' that is, it [was] not seeking the return of sums already paid"). Indeed, the phrase "alleged to have been excessive or . . . wrongfully collected" reinforces the plain meaning of "recovery": "The regaining or restoration of something lost or taken away." Black's Law Dictionary (7th ed., 1999). This is not an action seeking to regain or restore any sum because the overpayment interest that Plaintiffs seek was never in Plaintiffs' possession. *See Alexander Proudfoot Co.*, 454 F.2d at 1384 ("[T]hat form of interest is paid by the United States, not as a refund of interest previously paid by the taxpayer in demand of the Service, but simply because the Government has had the use of money found to belong to the taxpayer.").

Accordingly, by its plain meaning, § 1346(a)(1) does not provide a jurisdictional grant for suits seeking interest on overpayments of tax.

2. The Courts That Have Concluded That Claims for Overpayment Interest Fall Within the Ambit of § 1346(a)(1) Ignore the Plain Meaning of the Statute

Neither the Supreme Court nor the Second Circuit has addressed the jurisdictional issue presented by this case. While a few courts have concluded that § 1346(a)(1) grants jurisdiction over suits seeking interest on tax overpayments, those courts rely on arguments that defy the plain language of the statute, violating the principle that waivers of sovereign immunity are to be strictly construed. *See, e.g.*, *Lane v. Pena*, 518 U.S. 187, 192 (1996) ("[A] waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign.").

First, a few district courts have concluded that suits for overpayment interest fall into the category of actions for recovery of an "internal revenue tax." These courts not only fail to contend with the fact that overpayment interest is neither "assessed" against the taxpayer nor "collected" by the IRS and that a suit for overpayment interest does not seek "recovery" of anything, but also ignore the Supreme Court's observation in *Flora* that "interest," to the extent it is addressed in § 1346(a)(1), would fall under the third "any sum" category of § 1346(a)(1). *See Flora*, 362 U.S. at 149. In the two-and-a-half page opinion in *Triangle Corp. v. United States*, for instance, the basis for the district court's conclusion that overpayment interest constituted an "internal revenue tax" was the court's surmise that there must be some forum "in which to enforce the right provided by Section 6611." 592 F. Supp. 1316, 1317 (D. Conn. 1984). That reasoning, however, completely overlooks the Court of Federal Claims' jurisdiction under the Tucker Act, 28 U.S.C. § 1491.[3] In another very brief opinion, the district court in *Trustees of*

[3] In support of its conclusion with respect to § 1346(a)(1), the *Triangle Corp.* court also relied on two cases in which district courts simply concluded, without any analysis, that they had jurisdiction over claims for overpayment interest. *See Triangle Corp.*, 592 F. Supp. at 1317 (citing *Draper v. United States*, 62-2 U.S. T.C. P 9697, 10 AFTR 2d 5446 (E.D. Wash. 1962),

Bulkeley School v. United States adopted the reasoning of *Triangle Corp.*, and, citing a *Federal Income Taxation* textbook, further reasoned that the phrase "internal revenue tax" must encompass overpayment interest because 26 U.S.C. § 6611 recognizes that "refunds of taxes overpaid in previous years must be appropriately adjusted to recognize the time value of money." *Trustees of Bulkeley Sch. v. United States*, 628 F. Supp. 802, 803 (D. Conn. 1986). The district court in *E.W. Scripps Co. v. United States*, in turn, adopted the *Bulkeley* court's time-value-of-money reasoning to conclude that overpayment interest was "an integral and inseparable part of the original overpayment." No. C-1-01-434, 2002 WL 31477137, at *4 (S.D. Ohio Sept. 16, 2003). However, this reasoning in *Bulkeley* and *Scripps* again fails to contend with the plain meaning of "tax" as well as the plain meaning of "assessed" and "collected." *See* 28 U.S.C. § 1346(a)(1) (providing for jurisdiction over civil actions for recovery of any "internal revenue tax alleged to have been erroneously or illegally assessed or collected").

Because the courts in these opinions ignore the plain statutory text, as well as the Supreme Court's dicta in *Flora*, their conclusions are unpersuasive and should not be followed by this Court.[4]

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and *Citadel Indus., Inc. v. United States*, 314 F. Supp. 245 (S.D.N.Y. 1970)).

[4] Similarly, in *Doolin v. United States*, 737 F. Supp. 732 (N.D.N.Y.), *rev'd* 918 F.2d 15 (2d Cir. 1990), the district court, "without undue further elaboration," noted that it "agree[d] with the courts in [*Bulkeley*] and [*Triangle Corp.*]." *Id.* at 734. After finding that it had jurisdiction, the *Doolin* district court granted summary judgment for the Government on the plaintiffs' claim for overpayment interest, finding that the IRS had properly tendered a refund check to the plaintiffs in March 1986. *See id.* at 735. On appeal, the Second Circuit reversed this ruling and held that the Government had not shown that the check at issue was properly tendered, without addressing the jurisdictional issue. *See* 918 F.2d at 19. The Second Circuit's decision in that case does not constitute precedent establishing that claims for overpayment interest fall within § 1346(a)(1)'s ambit, as "it is well established that *sub silentio* assumptions of jurisdiction have no precedential value on the jurisdictional question." *Gallego v. Northland Group, Inc.*, 814 F.3d 123, 128 n.2 (2d Cir. 2016).

Second, on appeal in *Scripps*, the Sixth Circuit, after declining to decide whether overpayment interest qualified as an "internal revenue tax," held that overpayment interest is encompassed by the "any sum" language in § 1346(a)(1). *See E.W. Scripps Co. v. United States*, 420 F.3d 589, 598 (6th Cir. 2005). Specifically, that court concluded that overpayment interest was an "excessive" sum under a time-value-of-money theory, reasoning that "[i]f the Government does not compensate the taxpayer for the time-value of the tax overpayment, the Government has retained more money than it is due, i.e., an 'excessive sum.'" *Id.* at 597. However, the *Scripps* appellate panel thereby ignored the plain meaning of § 1346(a)(1), which requires an action "for the recovery" of a sum "alleged to have been excessive . . . under the internal-revenue laws." As discussed above, a claim that merely seeks interest on a tax overpayment does not seek to recover a sum "alleged to have been excessive . . . under the internal revenue laws," because it does not seek to regain any sum previously paid to the Government, much less a sum paid to the government that was allegedly too large.

Moreover, the Supreme Court opened the door for the Sixth Circuit to reconsider its holding in *Scripps* when it vacated the Sixth Circuit's decision in *Ford Motor Co. v. United States*, 508 F. App'x 506 (6th Cir. 2012) (unpublished), *vacated*, 134 S. Ct. 510 (Mem.) (2013). *Ford Motor Co.* involved a question of when interest on a tax overpayment begins to accrue where the money ultimately found to constitute an overpayment was originally designated by the taxpayer as a deposit in the nature of a cash bond—which under the Internal Revenue Code does not accrue interest—and was only later converted by the taxpayer into an advance payment of tax. *See* 508 F. App'x at 507-08. The Sixth Circuit rejected Ford's claim that interest began to accrue on the date the taxpayer submitted deposits to the IRS, rather than on the later date when the deposits were converted into advance payments of tax, relying on a strict construction of 26

U.S.C. § 6611, the provision of the Internal Revenue Code by which the government has consented to the award of interest on overpayments of tax. *See id.* at 515-16.

After being denied *en banc* rehearing,[5] Ford petitioned for certiorari, "arguing that the Sixth Circuit was wrong to give § 6611 a strict construction." 134 S. Ct. at 510. Ford maintained that the relevant waiver of sovereign immunity was in 28 U.S.C. § 1346(a)(1), not 26 U.S.C. § 6611, and that § 6611 was instead a substantive provision not subject to the rule of strict construction. *See id.* In response, the Government—which had not contested jurisdiction under § 1346(a)(1) in the Sixth Circuit because of that court's controlling opinion in *Scripps*—argued that § 1346(a)(1) did not apply at all, and that the Tucker Act, 28 U.S.C. § 1491, was the general waiver of sovereign immunity that encompassed Ford's claim. *See* 134 S. Ct. at 510; Br. of the United States in Opp'n to Cert., *Ford Motor Co. v. United States*, No. 13-113, 2013 WL 5702382, at *3 n.3 (Oct. 9, 2013). The Supreme Court concluded that "[t]he Sixth Circuit should have the first opportunity to consider the Government's new contention with respect to jurisdiction in this case," and vacated the Sixth Circuit's decision and remanded for further proceedings. 134 S. Ct. at 511.[6] Given this subsequent procedural history in *Ford Motor Co.*, and the gaps in the Sixth Circuit's reasoning in *Scripps* described above, this Court should decline to follow the Sixth Circuit's holding that the "any sum" language in § 1346(a)(1) encompasses suits for interest on tax overpayments.

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[5] *See* Order Denying Pet. for En Banc Rehearing, *Ford Motor Co. v. United States*, No. 10-1934 (6th Cir. Mar. 25, 2013).

[6] On remand, the Sixth Circuit ultimately did not reach this question, noting that it was "bound by *Scripps*" and declining the Government's invitation "*sua sponte* to poll the en banc court to gauge its interest in revisiting the issue decided in *Scripps*." *Ford Motor Co. v. United States*, 768 F.3d 580, 584 (6th Cir. 2014), *cert. denied*, 135 S. Ct. 2858 (2015). Instead, the court "proceed[ed] to the merits," and again affirmed the district court's judgment that Ford was not entitled to interest from the earlier date on which it made the deposits. 768 F.3d at 594.

3. The Exclusion of Claims for Overpayment Interest from the Jurisdictional Grant of 28 U.S.C. § 1346(a)(1) Is Consistent With the Treatment of Overpayment Interest in the Internal Revenue Code

The exclusion of claims for overpayment interest from the jurisdictional grant of § 1346(a)(1) is consistent with the treatment of overpayment interest in the Internal Revenue Code. As noted above, under the Internal Revenue Code, underpayment interest, which is an amount collected and assessed by the Government when a taxpayer fails to pay an amount due and owing, is treated in the same manner as the underlying tax. 26 U.S.C. § 6601(e)(1). Claims by taxpayers seeking return of underpayment interest thus are subject to the same statute of limitations as claims by taxpayer for refunds of the underlying tax, *see* 26 U.S.C. §§ 6511, 6532, and to the requirement that such claims be filed with the Secretary of the Treasury before a suit may be brought in federal court, *see id.* § 7422. In contrast, claims for overpayment interest are not subject to the Code's requirements (in 26 U.S.C. §§ 6511, 6532, and 7422) for claiming a tax refund or a refund of underpayment interest, and there is no provision in the Code specifically governing suits for overpayment interest. *See Alexander Proudfoot Co.*, 454 F.2d at 1384. Rather, an action for recovery of overpayment interest is a non-tort money claim against the United States based on a statute (*i.e.*, 26 U.S.C. § 6611) that is subject to the general six-year statute of limitations for claims brought in the Court of Federal Claims or, if it is a claim for $10,000 or less that is filed in district court, to the general six-year statute of limitations applicable in the district courts. *See* 28 U.S.C. §§ 1346(a)(2), 1491(a)(1), 2401(a), 2501; *Alexander Proudfoot Co.*, 454 F.2d at 1384. Accordingly, because Plaintiffs seek more than $10,000, jurisdiction lies exclusively in the Court of Federal Claims. *See* 28 U.S.C. § 1491(a)(1).

CONCLUSION

For the foregoing reasons, the Court lacks subject matter jurisdiction over this action under 28 U.S.C. § 1346(a)(1), and the United States Court of Federal Claims has exclusive jurisdiction over claims for interest on tax overpayments where such claims exceed $10,000. Accordingly, the Court should dismiss this action under Rule 12(b)(1) and Rule 12(h)(3) or transfer the action to the United States Court of Federal Claims pursuant to 28 U.S.C. § 1631.

Dated: New York, New York
July 15, 2016

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