UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 1:25-CV-20646-JB

JORIAN LOFTIN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PETER T. LOFTIN,	)
Plaintiff,	)
v.	)
UNITED STATES OF AMERICA,	)
Defendant.	)

UNITED STATES' RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Peter T. Loftin owed substantial tax liabilities at his death. Plaintiff does not challenge the merits of those liabilities. Plaintiff contends that the statute of limitations expired before the IRS received payment for those liabilities. Plaintiff's argument fails as a matter of law.

To collect Mr. Loftin's liabilities, the IRS commenced a timely proceeding in court by filing a proof of claim in the probate case. Alternatively, the probate proceeding suspended the statute of limitations on collection because the probate court had control over substantially all of Mr. Loftin's assets. Under either theory, the statute of limitations on collection had not expired when the IRS received payment in March 2022.

Plaintiff's argument that the proof of claim is not a proceeding in court fails. Filing the proof of claim put in motion the final resolution of the United States' claim. In arguing otherwise, Plaintiff ignores the provision suspending the statute of limitations for claims

against a decent that arose before death where the creditor timely files a proof of claim and relies on inapposite caselaw and statutes. Plaintiff's argument that the probate case did not toll the collection statute fares no better. The Probate Court had control of substantially all the decedent's assets, including the decedent's interests in the various entities. The Probate Court need not, as Plaintiff contends, assume custody and control of the entities themselves.

Accordingly, the statute of limitations had not expired when the IRS received payment for the decedent's 1997 and 1998 tax liabilities. The Court should therefore deny Plaintiff's motion for summary judgment as to 1997 and 1998, and grant the United States' partial motion for summary judgment.[1]

I. The IRS's filing of the proof of claim was valid, extending the CSED until Mr. Loftin's liabilities were satisfied or became unenforceable.

The IRS timely commenced a proceeding in court to collect Mr. Loftin's tax liabilities within ten years of the assessment date when it filed the proof of claim with the Probate Court. This action extended the collection statute until Mr. Loftin's tax liabilities were satisfied.

The parties agree that "[w]hether a proof of claim is a 'proceeding in court' is a question of federal law that necessarily turns on the nature, function, and effect of the proof of claim under state law." *United States v. Est. of Chicorel*, 907 F.3d 896, 898 (6th Cir. 2018). But Plaintiff focuses on two cases to support its contention: *Silverman* and *Saxe*, neither of which supports its argument. ECF 29 at 24-25. The court in *Chicorel* specifically addressed *Silverman* and *Saxe*, distinguished the statutes analyzed in those cases, and found that the

[1] There is no dispute that the United States owes Plaintiff a refund for 1999. Plaintiff raises a new argument to increase the amount of the refund beyond what was agreed to in Tax Court. As discussed below, the Court lacks jurisdiction over this new argument.

filing of the proof of claim under a statutory scheme similar to Florida's *was* a proceeding in court which tolled the statute of limitations. *Chicorel*, 907 F.3d at 898, 900.

To determine whether a proof of claim is proceeding in court, the "inquiry takes into account factors such as whether the proof of claim serves merely to provide notice to the estate, if it works to toll state statutes of limitations, and if it will necessarily lead to a final disposition of the claim." *Chicorel*, 907 F.3d at 898. Starting with the Florida statute, a timely filed proof of claim tolls the statute of limitations for claims against the decedent that arose before and survive death. *See* Fla. Stat. § 733.104(2). Indeed, Florida courts recognize the tolling effect of this statute: "The effect of this statute is to toll the statute of limitations at the death of the person against whom the cause of action exists." *Est. of Cadden v. Schickedanz*, 855 So. 2d 651, 654 (Fla. Dist. Ct. App. 2003). Additionally, a timely filed claim requires the estate to either pay the claim or file an objection. *See* Fla. Stat. §§ 733.705(1)-(3). To be sure, an objection to a proof of claim requires a creditor to initiate a separate proceeding to determine its claim. Fla. Stat. § 733.705(5). But if there is no objection, the creditor need not take any action because its claim will be paid through the probate proceeding. Thus, the filing of a proof of claim leads to the final disposition of the creditor's claim—whether through the probate case or a separate proceeding if the personal representative objects to the claim. *Chicorel*, 907 F.3d at 898. *See also* ECF 31 at 9-10. And so, the filing of the proof of claim is a proceeding under 26 U.S.C. § 6502.

These provisions in the Florida Probate Code render *Silverman* inapplicable. *Silverman* dealt with the rejection of a claim, which did not occur here. *Silverman* states that a "nonclaim" statute, applicable upon the rejection of the claim, "limits the otherwise generally applicable statute of limitation but does not extend it." *United States v. Silverman*,

621 F.2d 961, 964 (9th Cir. 1980). The nonclaim statute in *Silverman* is analogous to Fla. Stat. § 733.705(5), not § 733.710 as Plaintiff asserts. Section 733.705(5) and the provision in *Silverman* require a creditor to bring a separate suit against the personal representative when the personal representative objects to a claim. 621 F.2d at 964 (quoting Cal. Probate Code § 714 (1956)). Failure to do so results in the claim being forever barred. *Id.*; Fla. Stat. § 733.705(5)(a). The similarities between the provisions at issue in *Silverman* and the Florida Probate Code end there. At the time *Silverman* was decided, filing a claim in a California probate proceeding did not suspend the statute of limitations on a creditor's claim. 621 F.2d at 694-95. But the Florida Probate Code expressly provides that the filing of a claim against a decedent for a cause of action that arose before and survived death suspends the statute of limitations on that claim. Fla. Stat. § 733.104(2). Even the statute relied on by Plaintiff recognizes this: the claim limitation in § 733.710 "shall not apply to a creditor who has filed a claim pursuant to s. 733.702 within 2 years after a person's death, and whose claim has not been paid or otherwise disposed of pursuant to s. 733.705." Fla. Stat. § 733.710(2). Thus, *Silverman* does not apply.

Nor can Plaintiff take solace in *United States v. Saxe,* 261 F.2d 316, 320 (1st Cir. 1958). In that case, the filing of a proof of claim in probate simply gave an estate notice of the claim. But filing a proof of claim in Florida does more than simply give the personal representative notice of the claim. The proof of claim suspends the statute of limitations on claims that survived the decedent's death and triggers the personal representative's obligation to object to object or pay the claim.

Here, the IRS filed a proof of claim in the probate case. Under Florida law, that claim suspends the statute of limitations. Fla. Stat. § 733.104(2); *Schickedanz*, 855 So. 2d at

654. And the filing of the claim triggered the personal representative's obligation to object to the claim. Because the Estate never objected to the IRS's claim, the United States was under no obligation to take any further action to ensure payment of its claim. The United States had taken all necessary actions to achieve final disposition of its claim. And so, filing the proof of claim is a proceeding in court that suspended the CSED. *Cf. United States v. Supervised Est. of Breidenbaugh*, 794 N.E.2d 547, 554 (Ind. Ct. App. 2003) (addressing Indiana's nonclaim statute and still finding that the IRS's proof of claim was a proceeding which stayed the CSED); *see also id.* at n. 4 (noting that under *Summerlin* with respect to the United States, a nonclaim statute "transgressed the limits of state power").

Finally, Plaintiff's assertion that a proof of claim is only a proceeding in court when the probate court can enter judgments fails. ECF 29 at 27-28. One must look at the effect of a proof of claim under state law. As discussed above, the filing of a proof of claim suspends the statute of limitations on that claim. Fla. Stat. § 733.104(2). Plaintiff ignores this provision throughout its brief. But this provision makes the filing of a proof of claim tantamount to a proceeding in court, even if a creditor must file a separate suit to obtain a judgment. Indeed, if the personal representative does not object, the creditor need not take any other action to get paid. And if they later find it necessary to obtain a judgment, the creditor can point to Fla. Stat. §§ 733.104(2) and 733.710 to show that the statute of limitations on their claim had not expired. As the court explained in *Chicorel*, "it is not the receipt of judgment . . . but the act of filing [a proceeding in court] that satisfies the statute of limitations." 907 F.3d at 899. And here, the United States satisfied the statute of limitations by filing a proof of claim within ten years of the assessments against Mr. Loftin.

The proof of claim acted as proceeding to collect the federal income taxes, and therefore, the collection statute was extended "until the liability for the tax . . . [was] satisfied." 26 U.S.C. § 6502; *Chicorel*, 907 F.3d at 898. Thus, the collection statute had not expired when Mr. Loftin's liability was satisfied through the probate proceedings.

II. The Probate Court controlled substantially all of Mr. Loftin's assets and as such, the probate case tolled the collection statute.

If the Court agrees that the filing of the proof of claim was a proceeding for the collection of tax, no further analysis is necessary. The collection statute was open when the IRS received payment. But even if the filing of the proof of claim was not a proceeding to collect a tax, the statute of limitations was still open when the IRS received payment because the Probate Court had control or custody of substantially all Mr. Loftin's assets. 26 U.S.C. § 6503(b).

A. The probate court had control of substantially all of Mr. Loftin's assets.

Plaintiff wants to have its cake and eat it too. Plaintiff sought the protection of the Probate Court when it wanted that court's blessing over the sale of the decedent's interest in the Bardstown Distillery. But now, Plaintiff wants to disavow that the Probate Court had any control over that exact asset.

The parties agree that the Probate Court did not take possession of Mr. Loftin's entities. But what Plaintiff ignores is that the Probate Court had control over *his interest* in those assets. For example, if a decedent owns controlling shares in a company, the probate court does not have control of company, but it does have possession of the shares. That is the case here, as well as in *Chibugo*. There, when dealing with the assets of an LLC owned by the decedent, the court explained that "the stock of the professional association is an asset of the Estate." *Ezeamama v. Est. of Chibugo*, 390 So. 3d 189, 191 (Fla. Dist. Ct. App.

2024) (*quoting BankAtlantic v. Est. of Glatzer,* 61 So. 3d 1222, 1223 (Fla. Dist. Ct. App. 2011)). The Personal Representative of the Estate, Thomas Wilson, recognized this when it listed on the inventories filed with the Probate Court, Mr. Loftin's interests in his various businesses. ECF Nos. 32-11, 32-13. The listed interests are for the same businesses through which Mr. Loftin held direct and indirect ownership interests in the Bardstown Distillery. ECF Nos. 29-17, 32-18, 29-29 at 23-24. And so, the Probate Court had control of substantially all of Mr. Loftin's assets.

Second, Plaintiff's claim that the Probate Court could not have jurisdiction over the entities in other states is contradicted by a case they cite. Again, Plaintiff ignores that the Probate Court had control over *his interest* in those assets. The interests are deemed to be held in Florida, decedent's domicile. And so, the Florida probate court had jurisdiction over those interests. *Blechman*, a probate case in Florida concerning a New Jersey LLC, is instructive on this issue. *Blechman v. Est. of Blechman*, 160 So. 3d 152 (Fla. 4th DCA 2015). Although the court found that the decedent's membership interest in a New Jersey LLC was not part of the probate state, the court did so by analyzing the LLC agreement, and not because the LLC was organized in New Jersey. Indeed, a probate estate in Florida is determined by the decedent's ownership in the property, not the property's location. Fla. Stat. § 731.201(32). Thus, the location of Mr. Loftin's various trusts and entities is irrelevant to whether the probate court had jurisdiction over his interests in those entities.

Third, Plaintiff contends that under *Silverman*, the collection statute should not be tolled where there are "substantial assets" that the IRS can levy. ECF 29 at 9. But the undisputed facts show there were not substantial assets outside of probate that the IRS could levy. Again, Mr. Loftin's interests in the various entities through which he held an interest

in Bardstown Distillery were within the custody and control of the probate court and were listed as such on the probate inventories. The IRS was not free to levy on those interests. And although the IRS issued levies to the Loftin Enterprises and Commonwealth Trust for any non-probate funds payable to Mr. Loftin, neither responded to the levy, nor provided funds to satisfy the federal income tax liabilities. *See* I.D., *supra.* In any event, Mr. Loftin's most valuable asset was his interest in Bardstown Distillery. And when that interest was sold, the Probate Court approved the sale from which the IRS was paid. Any other assets the IRS could have collected on outside probate court—if any even existed—were insubstantial compared to the distiller interest.

B. The IRS was entitled to explore collection of non-probate assets.

The IRS has a right to protect its interest in a taxpayer's property. And that's what it did in this case. The IRS researched the decedent's assets, issued levies, and re-filed federal tax liens to determine and protect potential collection avenues outside the Probate Court. This could hardly be considered "aggressive." Plaintiff lists thirteen events that occurred from January 2020 through September 2021, a majority of which occurred between January through September 2020—before the IRS was on notice of the probate case. ECF 29 at 21. These collection actions were well within the IRS's right to attempt to collect the unpaid federal income tax liabilities and to determine whether there were any collectible assets outside the Probate Court. And, as the IRS's records reflect, it did not locate any assets "to pursue." ECF 29-8 at IRS-00369. Just because the IRS sought additional avenues for collection, it does not make it more or less probable that substantially all the assets were in control of the probate court. Nor do these collection actions take away from the statutory

protection that the collection statute is suspended when substantially all of a decedent's assets are in the control of a probate court. *See* 26 U.S.C. § 6503(b).

C. The gross estate is the improper measuring stick for 26 U.S.C. § 6503(b).

To begin with, the Court need not compare the gross estate to the probate estate because the undisputed facts show that the Probate Court had control or custody of substantially all of Mr. Loftin's assets. The personal representative included Mr. Loftin's interests in the various entities on the probate inventory. And the probate court approved the sale of Mr. Loftin's most valuable asset—his interest in Bardstown Distillery.

But if Mr. Loftin's interests in those entities are not part of the probate estate, comparing the gross estate to the probate estate to determine whether the probate court had control over substantially all Mr. Loftin's assets is the incorrect analysis. This is because the probate estate and the gross estate for federal tax purposes are apples and oranges.

A gross estate includes all property, real or tangible, and wherever situated, valued at the time of the decedent's death. 26 U.S.C. § 2031(a); *see also* 26 U.S.C. §§ 2032, 2033. This broad definition captures property that a decedent transferred to others through trusts and other vehicles as part of an estate plan to avoid the assets passing through probate. In short, a taxpayer can avoid probate of his or her assets through certain transfers made during is or her life but not necessarily avoid federal estate tax.

A probate estate excludes property transferred through trusts and other non-probate mechanisms. *See Blechman*, 160 So. 3d at 157. This is because assets transferred outside probate "are distributed to the designated beneficiaries immediately upon the transfer's death without the need for judicial intervention." *Id.* (internal quotation and citation omitted). Comparing the probate and gross estate values to determine whether a probate

court had control over substantially all a decedent's assets is illogical as the gross estate's definition is so much more expansive than a probate estate.

Again, the United States maintains that Mr. Loftin's probate estate included his interests in the various entities through which he held an interest in Bardstown. But assuming those interests were not part of the probate estate, the Probate Court still had control over substantially all of Mr. Loftin's assets.[2] His interests in those entities passed immediately to others upon his death. *Blechman*, 160 So.3d at 160. Mr. Loftin's remaining assets were then submitted to probate. And those assets were his only assets following the immediate transfer of his ownership interests. Thus, by taking custody or control of his non-probate assets, the Probate Court took custody and control of all Mr. Loftin's assets.

The text of § 6503(b) supports this result. The statute of limitation on collection "shall be suspended for the period the assets of the taxpayer are in the control or custody of the court." The assets that transferred immediately outside of probate were no longer "assets" of Mr. Loftin. The fact that the non-probate assets were included in the gross estate for estate tax purposes does not compel the inclusion of the non-probate assets in an analysis under § 6503(b). To the contrary, the fact that the assets were no longer owned by decedent shows that those assets should not be included in a § 6503(b) analysis.

The cases cited by Plaintiff are inapplicable. Each case considered whether certain assets were excluded from the gross estate and thus should not be considered when determining whether a probate court had custody or control over substantially all a decedent's assets. *United States v. Silverman (Silverman II)*, 859 F.2d 1352 (9th Cir. 1988)

[2] Because tax liens attached to Mr. Loftin's interests in his various entities prior to his death, the interests that transferred immediately upon his death were encumbered by those federal tax liens. *See* 26 U.S.C. § 6323.

(excluding surviving spouse's share of community property from the substantially all analysis). *United States v. First Midwst Bank/Illinios, N.A.*, No. 97-C-7365, 1997 WL 675192, at *12 n. 21 (N.D. Ill. Oct. 28, 1997) (explaining that excluded property is not considered in a § 6503(b) analysis). These cases do not hold, or even consider, whether a court must compare the value of the probate estate with the value of the gross estate to determine whether a probate court had control over substantially all a decedent's assets.

III. Although Plaintiff is entitled to a refund for 1999, Plaintiff's interest suspension argument must be rejected.

The parties agree that Plaintiff is entitled to a refund for 1999. ECF 31 at n.1. This refund stems from the Tax Court's determination of Plaintiff's liability for that year. Plaintiff cannot now seek redetermination of that liability. Any such attempts to dispute the underlying amounts would be barred by res judicata. *Batchelor-Robjohns v. United States*, 788 F.3d 1280, 1285 (11th Cir. 2015); *see also Shapiro v. United States*, 951 F. Supp. 1019, 1023 (S.D. Fla. 1996) (internal citations omitted) ("The doctrine of *res judicata* is applicable in income tax cases."). And yet, Plaintiff asserts for the first time that interest on the underpayment of tax for that year was suspended from January 20, 2020 to March 2, 2022 due to the COVID-19 pandemic. Plaintiff's interest suspension argument fails for three reasons.

A. Plaintiff's evidence of the amount owed under its interest suspension argument should be stricken.

The Federal Rules of Civil Procedure do not allow a party to support a motion with evidence that it failed to disclose during discovery. *See* Fed. R. Civ. P. 37(c). But that is what Plaintiff has done through the declaration and supporting exhibits of Crystal Cox, CPA, attached to its summary judgment motion. Plaintiff failed to disclose Cox in its initial

disclosures or any other discovery material. Ex. 24. As a result, the United States has not had the opportunity to depose Cox and otherwise take discovery on her calculations. This substantially prejudices the United States as Plaintiff seeks almost $6 million more for 1999 than originally sought in the administrative claim for refund and in the complaint. *Compare* ECF No. 29-35 (seeking $12.6 million refund, excluding interest) *with* ECF No.29 at 29 (seeking refund of $18.1 million, excluding interest). Plaintiff can offer no excuse for its failure to identify and disclose Cox earlier. Thus, under Rule 37(c), the declaration of Cox, including all supporting exhibits, should be stricken. Fed. R. Civ. P. 37(c) ("If a party fails to . . . identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that . . . witness to supply evidence on a motion.").

B. The variance doctrine bars Plaintiff's interest suspension argument.

Plaintiff's recovery for the years at issue is limited to the relief sought in its administrative claims for refund, *i.e.,* Forms 843 – *Claim for Refund and Request for Abatement*. ECF 29-35. Any argument regarding an additional amount due, straying from the administrative claim, is barred from this Courts' consideration under the variance doctrine.

For the first time, Plaintiff argues that underpayment interest was suspended between January 20, 2020 and March 2, 2022. ECF 29 at 30-32. Plaintiff never made this argument in its administrative claim for refund. And it cannot do so now.

A taxpayer may not sue the United States for a tax refund until it first files a refund claim with the government. 26 U.S.C. § 7422(a). "The applicable regulations accompanying section 7422(a) require the taxpayer to detail each ground upon which a refund is claimed." Treas. Reg. § 301.6402-2(b)(1). "All grounds upon which a taxpayer relies must be stated in the original claim for refund so as to apprise the Commissioner of what to look into; the

Commissioner can take the claim at its face value and examine only those points to which his attention is necessarily directed." *Alabama By-Products Corp. v. Patterson*, 258 F.2d 892, 900 (5th Cir. 1958)[3] (citing *United States v. Garbutt Oil Co.*, 302 U.S. 528 (1938)). "Federal courts have no jurisdiction to entertain taxpayer allegations that impermissibly vary or augment the grounds originally specified by the taxpayer in the administrative refund claim." *Charter Co. v. United States,* 971 F.2d 1576, 1579 (11th Cir. 1992).

"The law requires the taxpayer to do more than give the government a good lead based upon the government's purported ability to infer interconnectedness." *Id.* at 1579-80. Indeed, "[a]t a minimum the taxpayer must identify in its refund claim the 'essential requirements' of each and every refund demand." *Id.* at 1580 (collecting cases). This way, the IRS has the essential facts to allow it to make a determination as to the refund claim and "resolve disputes in the first instance without litigation." *Sanders v. United States,* 740 F.2d 886, 890 (11th Cir. 1984).

Here, Plaintiff's sole basis for a refund was the stipulated decision in Tax Court. ECF No. 29-35 at 2. The administrative claim makes no interest suspension argument. Plaintiff's failure to raise an interest suspension argument is not because it did not possess information to have timely raised this argument. The statute on which his interest suspension argument rests existed. And the declaration of emergency was known. In short, Plaintiff could have—but did not—raise his interest suspension argument in the administrative claim for refund. *Ginsburg v. United States*, 17 F.4th 78, 85 (11th Cir. 2021). There is no basis to allow Plaintiff to raise this argument for the first time now. Because this Court's jurisdiction is limited to

[3] *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) (adopting all decisions of the former Fifth Circuit announced before October 1, 1981 as binding precedent in the Eleventh Circuit).

the grounds raised in Plaintiff's administrative claim for refund, and because the interest suspension was not included in that claim for refund, the Court lacks jurisdiction over the interest suspension argument. *Id.*

C. Plaintiff's reliance on Abo *and* Kwong *to support their contention regarding tolling of interest accrual is misplaced.*

Even if the Court had jurisdiction over the interest suspension argument, Plaintiff's interest suspension argument fails. Plaintiff's reliance on *Abdo v. Comm'r of Internal Revenue*, 162 T.C. 148, 155 (2024) and *Kwong v. United States*, 179 Fed. Cl. 382, 389 (2025), misses the mark, as those cases are not binding authority and inapposite, dealing with the act of filing a petition in Tax Court or a refund suit in federal court.[4] *Abdo* held that a petition to the Tax Court that would otherwise be untimely was not because it was filed in the first 60 days of the pandemic. *Abdo*, 162 T.C. at 156-57, 169. *Kwong* held that the time to file a refund suit that opened during the pandemic (October 2020) was postponed. *Kwong*, 179 Fed. Cl. at 385–388.[5] IRS Notice 2020-23 similarly deals with certain payment and filing obligations.

Moreover, *Kwong* was wrongly decided as to the length of the postponement period attributable to the COVID-19 disaster declaration. While *Kwong* insists it applies the applicable text of 26 U.S.C. § 7508A(d), *Kwong* actually disregards the textual language of

[4] To the extent that Plaintiff argues that the variance doctrine does not apply because these are new precedent, Plaintiff is mistaken. Neither case is binding precedent. And in any event, Plaintiff can offer no reason it did not raise the interest suspension argument at the administrative stage despite having the ability to do so.

[5] A stipulated judgment has been entered in *Kwong* and the time for the government to appeal that judgment is still running. If the Court determines it has jurisdiction over Plaintiff's interest suspension argument, the United States respectfully requests an opportunity to provide supplemental briefing to fully address this issue.

that subsection in effect at the time of the COVID-19 disaster declaration, language which limits the subsection's mandatory or automatic postponement of the deadlines to sixty days after the latest incident date specified in the relevant disaster declaration. The COVID-19 disaster declaration cited by the plaintiff in *Kwong*, declared a disaster "beginning on January 20, 2020, and continuing . . . ." Major Disaster and Related Determinations, 85 Fed. Reg. 31536-02; *see also Abdo*, 162 T.C. at 169. The disaster thus had an earliest incident date of January 20, but the phrase "and continuing" is not a date, much less the "latest incident date so specified" in the declaration, as described under § 7508A(d). Nor does the subsequent amendment of the declaration in 2023 specify the "latest incident" date described in § 7508A(d). That amendment included the statement "Notice is hereby given that the incident period for all COVID-19 major disaster declarations and the nationwide emergency declaration will close effective May 11, 2023." Major Disaster Declarations and Related Determinations: Expiration of COVID-19-Related Measures, 88 Fed. Reg. 8884 (Feb. 10, 2023). That the "incident period" would close on May 11, 2023, does not, however, mean that the "latest incident specified in the [disaster] declaration" was May 11, 2023.

Consequently, January 20, 2020, is both the "earliest incident date specified" and the "latest incident so specified" under the version of § 7508A(d) in effect in 2020. *Kwong* fails to explain how the modifier "and continuing" could actually specify a date, and it is unremarkable that a single date could be both the "earliest" and "latest" date specified.5 *See Abdo*, 162 T.C. at 156-57 n.7. Under this plain reading of the statute, the mandatory postponement of deadlines under § 7508A(d) from the COVID-19 major disaster declaration, to the extent such a period applies, ended on March 20, 2020.

Further, other language within the statute makes clear that the period of postponement provided for under § 7508A(d) could not have lasted the 3.5 years Plaintiff now contends. The version of § 7508A(d) in effect in 2020 provides that the mandatory period "shall be disregarded in the same manner as a period specified under subsection (a)." 26 U.S.C. § 7508A(d) (effective 2020). Under § 7508A(a), "the Secretary may specify a period of *up to 1 year* that may be disregarded[.]" 26 U.S.C. § 7508A(a) (effective 2020) (emphasis added). The 3.5-year period determined in *Kwong* far exceeds the maximum of one-year available in § 7508A(a) and thus disregards the phrase "in the same manner as a period specified under subsection (a)" found in § 7508A(d).

Finally, the possibility of indeterminate mandatory relief, as contemplated by the *Kwong* opinion, also grants FEMA unintended authority to impact tax administration. FEMA's authority here would ordinarily be cabined by the one-year limitation on section 7508A relief, *see* 26 C.F.R. § 301.7508A-1(g)(3)(ii)(A), but *Kwong* disregarded that constraint in holding the COVID-19 postponement period lasted for over 3.5 years. Practically speaking, if the Court interprets that there is no limit to the length of mandatory relief, it will mean that FEMA—who has sole authority to end an open-ended disaster declaration—would effectively recast tax filing and payment deadlines based on considerations unrelated to tax administration.

Plaintiff's contention that penalties and interest were told under § 7508A therefore remains unavailing.

IV. The Court lacks jurisdiction over Plaintiff's interest suspension argument for 1997 and 1998.

Continuing to rely on *Kwong* and *Abdo*, Plaintiff appears to be seeking a declaration from this Court that interest did not accrue on the underpayments for 1997 and 1998. ECF

29 at 30-31. But whether underpayment interest was suspended for those years does not matter for the purposes of the refund Plaintiff seeks. Here, Plaintiff paid the amounts due and owing as of March 30, 2022, including underpayment interest. ECF Nos. 26-25, 29-26 at 12-17. Therefore, if the Court finds for the Plaintiff they would be entitled to receive the amounts they paid, $27,630,097.79 and $1,010,302.09 for 1997 and 1998, respectively plus overpayment interest as provided for by statute. In other words, the amount to be refunded would not change if the Court determined that interest was suspended between January 20, 2020 and March 2, 2022 for 1997 and 1998.

To the extent Plaintiff posits this argument in the alternative should the Court rule for the United States, this alternative argument is barred by the variance doctrine. *See* § 3.B, *supra*. Litigation of Plaintiff's entitlement to a refund is limited to the grounds set forth in its administrative claims. Plaintiff's administrative claims for 1997 and 1998 assert as a primary ground for relief that the collection statute expired when payment was received. Plaintiff did raise alternative arguments in its administrative claims, none of which it pursues in this case and none of which concerns interest suspension. ECF No. 29-33 at 6-9; ECF No. 29-34 at 6-9.

Plaintiff cannot come in at the 11th hour and raise an alternative interest suspension argument that it could have, but did not, raise in its administrative claim. Indeed, Plaintiff's alternative arguments in its claims for refund show that Plaintiff knew that it was required to assert in its administrative claim each ground for relief to preserve those arguments for any subsequent litigation. The Court lacks jurisdiction over Plaintiff's interest suspension argument for 1997 and 1998.

Conclusion

The IRS commenced a timely proceeding in court to collect the tax by filing a proof of claim in the probate case. Alternatively, the probate proceeding suspended the statute of limitations on collection because the probate court had control over substantially all of Mr. Loftin's assets. Under either theory, the IRS received payment within the statute of limitations on collection. Thus, the Court should deny Plaintiff's motion for summary judgment, and enter summary judgment for the United States.

Dated: April 24, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will give notice of the filing to all registered participants.

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