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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTBI, LLC,
R. GREGORY SHEPARD, and NELDON
JOHNSON

Defendants.

**SUPPLEMENTAL BRIEF RE
JURISDICTION OF INTERVENORS**

Civil No: 2:15cv-00828-DN

District Judge David Nuffer

Prospective Intervenors Preston Olsen and Elizabeth Olsen, and all other similarly situated taxpayers represented by attorney Paul Jones in the United States Tax Court¹ (collectively referred to as the “Intervenors”) hereby files a supplemental brief regarding subject matter jurisdiction as is required for permissive intervention under Fed. R. Civ. P. 24(b).

For efficiency Intervenors will list the substantive basis for federal subject matter jurisdiction independent of the court’s jurisdiction over the underlying action in this case.

28 U.S.C. §2410(a) – Interpleader: The United States waives sovereign immunity and grants jurisdiction to the federal courts in actions involving property subject to a lien if the subject

¹ See Exhibit A of Dkt No. 1143.

matter of the suit is an action to quiet title, foreclose a mortgage or lien, partition the property, condemn the property, or interplead. 28 U.S.C. §2410(a). A party can bring an interpleader suit when the party holds funds that are subject to the claims of creditors or other interest holders and the total claims exceed the amount of the funds. See Fed. R. Civ. P. 22. The United States can be joined as a party in an interpleader action under 28 U.S.C. §2410(a)(5) as long as it is a “true interpleader” action. A true interpleader action is one in which a stakeholder is subject to a legal dilemma because two or more parties have colorable claims to the stake in its possession and the satisfaction of one will likely lead to a lawsuit by the others. See *California v. Texas*, 98 S.Ct. 3107, 437 U.S. 601, 57 L.Ed.2d 464 (1978). In this case Intervenor has a property right in the application of the funds paid to the United States as it relates to the amount that should be applied to their tax accounts at the Internal Revenue Service.

26 USC §7421 - Anti-Injunction Act: The statutory exceptions to the Anti-Injunction Act in §7421, are not all-inclusive. A party can sue the United States to enjoin collection if special and extraordinary circumstances exist that render any remedy at law inadequate.² For example, the Tenth Circuit held in *Guthrie v. Sawyer*, 970 F.2d 733 (10th Cir. 1992) that §6213(a) specifically authorizes injunction prohibiting assessment or levy when taxpayer has not received deficiency notice; thus, taxpayer was authorized obtain injunctive relief notwithstanding availability of refund suit. See also *Bob Jones Univ. v. Simon*, 416 U.S. 725 (1974).

Bivens v. Six Unknown Federal Narcotics Agents: In *Bivens*,³ the Supreme Court held that a plaintiff could recover money damages for Fourth Amendment violations committed by

² For clarity Intervenor is not seeking to directly “enjoin collection” of the United States funds. Instead, Intervenor merely seek application of the collected funds to their tax accounts (consistent with the purpose for which collection was intended).

³ *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971)

federal agents. Subsequently, courts expanded the *Bivens* remedy to encompass violations of other constitutional provisions. See, e.g., *Butz v. Economou*, 438 U.S. 478 (1978) (extending right to actions arising under the Due Process Clause of the Fifth Amendment). No *Bivens* remedy exists where Congress already has created “comprehensive procedural and substantive provisions giving meaningful remedies against the United States.” *Bush v. Lucas*, 462 U.S. 367, 368 (1983). In other words, *Bivens* actions confer jurisdiction on district courts when relief is sought for which the Internal Revenue Code does not provide relief. See *Judicial Watch, Inc. v. Rossotti*, 317 F.3d 401 (4th Cir. 2003); *Shreiber v. Mastrogiovanni*, 214 F.3d 148 (3d Cir. 2000); *Haas v. Schalow*, 172 F.3d 53 (7th Cir. 1998) (unpub. op.). This is such a case. Intervenors have no “meaningful remedies against the United States” as to this matter.

Dated this 17th day of November, 2021

HALE & WOOD, PLLC

/s/ Paul W. Jones

Paul W. Jones

Attorney for Intervenors

CERTIFICATE OF SERVICE

I hereby certify that the above **SUPPLEMENTAL BRIEF RE JURISDICTION OF INTERVENORS** was filed with the Court on this 17th day of November, 2021 and served via ECF on all parties who have requested notice in this case. Copies were also sent by mail to:

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/s/ Paul W. Jones
