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# [***Rashidian v. United States Gov't***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RG2-NS71-K0BB-S3PW-00000-00&context=)

United States District Court for the Central District of California

December 7, 2017, Decided; December 7, 2017, Filed

8:17-cv-00111-JLS-DFM

**Reporter**

2017 U.S. Dist. LEXIS 215761 \*; 120 A.F.T.R.2d (RIA) 2017-6931

Hamid Rashidian et al. v. United States Government

**Prior History:** [*Rashidian v. United States Gov't, 2017 U.S. Dist. LEXIS 65321 (C.D. Cal., Apr. 28, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5NDX-FS11-F04C-T1NR-00000-00&context=)

**Core Terms**

refund claim, refund, administrative remedy, exhausted, tax refund, taxpayer, lack of subject matter jurisdiction, collection action, administrative claim, motion to dismiss, adjudicate, requires, damages

**Counsel:** **[\*1]**ATTORNEYS FOR PLAINTIFF: Not Present.

ATTORNEYS FOR DEFENDANT: Not Present.

**Judges:** Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE.

**Opinion by:** JOSEPHINE L. STATON

**Opinion**

**CIVIL MINUTES — GENERAL**

**PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING DEFENDANT'S MOTION TO DISMISS SECOND AMENDED COMPLAINT (Doc. 20)**

Before the Court is Defendant United States Government's Motion to Dismiss Plaintiffs' Second Amended Complaint. (Mot., Doc. 20.) Plaintiffs oppose the Motion (Opp'n, Doc. 23), and the Government replied (Reply, 24). The Court finds this matter appropriate for decision without oral argument. [*Fed. R. Civ. P. 78(b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-25Y1-FG36-105D-00000-00&context=); C.D. Cal. R. 7-15. Accordingly, the hearing set for December 8, 2017, at 10:30 a.m., is VACATED. Having considered the briefs, the Court GRANTS the Motion.

**I. BACKGROUND**

Plaintiffs operated a farm called R&A Ranch, which they sold in 2012. (Second Amended Complaint ("SAC") ¶¶ 7, 10, Doc. 18.) Upon sale, the escrow company, First American Title Insurance, remitted a check in the amount of $132,652.49 to the Internal Revenue Service (IRS) pursuant to a "Notice of Federal Taxes Due." (*Id.* ¶ 12.) The IRS subsequently refunded $30,098.88 to Plaintiffs. (*Id.* at 2.) Plaintiffs allege that $67,487.95[[1]](#footnote-0)1 of the money kept by the IRS was wrongly**[\*2]** assessed. (*Id.*) Separately, Plaintiffs allege that in November of 2016, they discovered that the IRS has assessed $19,154.53 in interest penalties arising from the erroneous assessment of $67,487.95 that was paid in 2012. (*Id.*)

In 2014, Plaintiffs sued the Government in this Court seeking a refund of the money retained by the IRS from the 2012 sale of the R&A Ranch. *See Rashidian v. United States of America*, No. 8:14-00016-JLS(DFM) (C.D. Cal. 2014). The Court dismissed claims related to 12 of the tax periods for lack of subject matter jurisdiction because Plaintiffs failed to file an administrative refund claim with the IRS before bringing suit. *See Rashidian*, No. 8:14-00016-JLS(DFM), ECF No. 40, at 6 (C.D. Cal. December 4, 2014). As to the remaining 37 tax periods, the Court granted summary judgment in favor of the Government. *Id.* at 8.

On January 17, 2017, Plaintiffs submitted to the IRS a claim for a tax refund for the years of 2002-2012. (Ex. 7, Doc. 18-2.) On January 23, 2017, Plaintiffs filed the instant case. In the SAC, they denominate their claims as follows: "[1] *28 U.S.C. section 1346* for wrongful tax lien and collection against Defendants[;] [2] damages for unauthorized collection action under [*IRC section 7433(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=); and [3]**[\*3]** legal interest and penalty. (SAC at 3-6.)

**II. LEGAL STANDARD**

A defendant may move to dismiss an action for lack of subject matter jurisdiction pursuant to [*Federal Rule of Civil Procedure 12(b)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=). "Dismissal for lack of subject matter jurisdiction is appropriate if the complaint, considered in its entirety, on its face fails to allege facts sufficient to establish subject matter jurisdiction." *In re Dynamic Random Access Memory (DRAM)* ***Antitrust*** *Litig., 546 F.3d 981, 984-85 (9th Cir. 2008)*. When considering a [*Rule 12(b)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) motion, the Court "is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction." [*McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-0BG0-001B-K181-00000-00&context=). "The party asserting [] subject matter jurisdiction bears the burden of proving its existence." [*Chandler v. State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1122 (9th Cir. 2010)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7Y1K-91P0-YB0V-P06K-00000-00&context=).

A motion to dismiss under [*Federal Rule of Civil Procedure 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) tests the legal sufficiency of the claims asserted in the complaint. *See* [*Ashcroft v. Iqbal, 556 U.S. 662, 678-79, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W9Y-4KS0-TXFX-1325-00000-00&context=). When evaluating a motion to dismiss under [*Federal Rule of Civil Procedure 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=), the Court must accept as true all allegations of material facts that are in the complaint and must construe all inferences in the light most favorable to the nonmoving party. [*Moyo v. Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3SM0-003B-P3NG-00000-00&context=). Dismissal of a complaint for failure to state a claim is not proper where a plaintiff has alleged "enough facts to state a claim to relief that is plausible on its face." [*Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NSN-8840-004C-002M-00000-00&context=). [*Rule 12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=) is read in conjunction with [*Rule 8(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YK-00000-00&context=), which**[\*4]** requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." [*Fed. R. Civ. P. 8(a)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YK-00000-00&context=).

If the Court determines that the complaint should be dismissed, it must then decide whether to grant leave to amend. Under [*Rule 15(a) of the Federal Rules of Civil Procedure*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F103-00000-00&context=), leave to amend "shall be freely given when justice so requires," bearing in mind "the underlying purpose of [*Rule 15*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F103-00000-00&context=) to facilitate decisions on the merits, rather than on the pleadings or technicalities." [*Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YJ3-P760-0038-X0KS-00000-00&context=). Accordingly, leave to amend generally shall be denied only if allowing amendment would unduly prejudice the opposing party, cause undue delay, or be futile, or if the moving party has acted in bad faith. [*Leadsinger, Inc. v. BMG Music Publ'g, 512 F.3d 522, 532 (9th Cir. 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4RGX-6R10-TXFX-D3CY-00000-00&context=).

**III. DISCUSSION**

In its Motion, the Government moves to dismiss Plaintiffs' claims for lack of subject matter jurisdiction and failure to state a claim.[[2]](#footnote-1)2 (Mot.)

**A. Tax Refund Claim**

Plaintiffs' first claim is brought under *28 U.S.C. section 1346* for "wrongful tax lien and collection," but the remedy Plaintiffs seek is "the return of the illegal[ly] obtained funds." (SAC ¶ 20.) Accordingly, the Court will presume that Plaintiffs intend to state a claim for a tax refund.

*28 U.S.C. section 1346* authorizes suits against the United States[[3]](#footnote-2)3 for erroneously assessed internal revenue taxes. *28 U.S.C. § 1346(a)(1)*. However, there**[\*5]** are a number of jurisdictional prerequisites that must be satisfied before a taxpayer can bring a refund suit. [*United States v. Dalm, 494 U.S. 596, 601, 110 S. Ct. 1361, 108 L. Ed. 2d 548 (1990)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-DHC0-003B-4012-00000-00&context=) ("Despite its spacious terms, *§ 1346(a)(1)* must be read in conformity with other statutory provisions which qualify a taxpayer's right to bring a refund suit upon compliance with certain conditions.") First is "full payment of the assessment." [*Flora v. United States, 362 U.S. 145, 146, 80 S. Ct. 630, 4 L. Ed. 2d 623, 1960-1 C.B. 660 (1960)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HT20-003B-S15X-00000-00&context=). Second "is [*section 7422*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GKX1-NRF4-44W3-00000-00&context=), which requires that a taxpayer seeking a refund file an administrative refund [claim] before filing a suit." [*Dalm, 494 U.S. at 601*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-DHC0-003B-4012-00000-00&context=). *See also* [*Boyd v. United States, 762 F.2d 1369, 1371 (9th Cir. 1985)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H130-0039-P4D7-00000-00&context=) ("[F]iling [an administrative refund claim] pursuant to the rules is a jurisdictional prerequisite."). Third is *section 6511*, which imposes time limits on filing an administrative refund claim. [*Dalm, 494 U.S. at 609-10*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-DHC0-003B-4012-00000-00&context=). *Subsection (a) of section 6511* requires that any claim for a refund must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later. *26 U.S.C. § 6511(a)*. Further, *section 6511(b)* provides that any refund will be limited to amounts paid within the three years immediately before the administrative refund claim is filed, i.e. the "three-year-lookback period." *26 U.S.C. § 6511(b)*. *See* [*Zeier v. U.S. I.R.S., 80 F.3d 1360, 1364 (9th Cir. 1996)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-2N90-006F-M0VK-00000-00&context=) (holding that the three-year-lookback period is jurisdictional); [*Bhattacharyya v. United States, 2005 U.S. Dist. LEXIS 51201, 2005 WL 608269, at \*4 (D. OR. Mar. 16, 2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5SR4-5211-FH4C-X0CC-00000-00&context=) (dismissing plaintiff's tax refund claim for lack of jurisdiction when no payment was**[\*6]** made within the three-year-lookback period).

As to the alleged interest assessment of $19,154.53, Plaintiffs do not allege that they have paid this amount.[[4]](#footnote-3)4 The Court does not have jurisdiction over a refund suit for an assessment that has not been paid. [*Flora, 362 U.S. at 146*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HT20-003B-S15X-00000-00&context=). Moreover, the interest arises from the allegedly erroneous assessment in 2012, so Plaintiffs would not be entitled to a refund on this interest if they are not entitled to a refund on the original assessment.

As to the allegedly erroneous assessment of $67,487.95, this amount was paid in 2012. (SAC at 2.) Because Plaintiffs do not allege that this payment or any part of it was made within the preceding three years, the Court has no jurisdiction to adjudicate a refund claim. *See* *26 U.S.C. § 6511(b)*; [*Bhattacharyya, 2005 U.S. Dist. LEXIS 51201, 2005 WL 608269, at \*4 (D. OR. Mar. 16, 2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5SR4-5211-FH4C-X0CC-00000-00&context=). Moreover, although Plaintiffs filed a refund claim for the periods of 2002-2012 on January 17, 2017 (Ex. 7), this refund claim is untimely under *section 6511*. *See* *26 U.S.C. § 6511(a)*. Plaintiffs do not claim that they timely filed a refund claim, but instead argue that they are entitled to equitable tolling. (Opp. at 2.) The Supreme Court has specifically held that the time periods set forth in *section 6511* are not subject to equitable tolling. [*United States v. Brockamp, 519 U.S. 347, 352-54, 117 S. Ct. 849, 136 L. Ed. 2d 818*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-J1W0-003B-R378-00000-00&context=) (1997.)

Because Plaintiffs do not allege that they exhausted**[\*7]** their administrative remedies in accordance with *section 6511*, the Court is without jurisdiction to adjudicate the refund claim. The Government's motion is GRANTED. As discussed above, the Court dismissed Plaintiffs' tax refund claims in their earlier suit because Plaintiffs had failed to exhaust their administrative remedies. *See Rashidian*, No. 8:14-00016-JLS(DFM), ECF No. 40, at 6. Because Plaintiffs have again failed to allege that they exhausted their administrative remedies, and the statute of limitations under 6511 has now run, this claim is DISMISSED WITH PREJUDICE. *See* [*Conforte, 979 F.2d at 1377*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-03K0-008H-V0HR-00000-00&context=).

**B. Unauthorized Collection Actions Claim**

Plaintiffs' second claim is for civil damages for an unauthorized collection action under Internal Revenue Code (IRC) [*section 7433*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=). The sole collection action that Plaintiffs assert is that the IRS failed to send Plaintiffs a notice of intent to levy before the escrow company paid the IRS in December 2012. (SAC at 4.)

[*Section 7433 of the IRC*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=) authorizes claims for damages against the United States when an officer or employee of the IRS recklessly, intentionally, or negligently disregards any provision of the IRC or the Treasury ***Regulations*** "in connection with any *collection*" of a federal tax. [*26 U.S.C. § 7433(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=) (emphasis added). The Ninth Circuit**[\*8]** has held that courts do not have subject matter jurisdiction over actions for improper assessment of taxes brought under [*section 7433*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=). [*Miller v. United States, 66 F.3d 220, 223 (9th Cir. 1995)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BVF0-001T-D3NB-00000-00&context=) (affirming a district court's dismissal of a tax assessment claim brought under [*section 7433*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=) for lack of subject matter jurisdiction).

Moreover, courts do not have jurisdiction over actions under [*section 7433*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=) unless the plaintiff has first exhausted its administrative remedies for improper collection. [*Conforte v. United States, 979 F.2d 1375, 1377 (9th Cir. 1992)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-03K0-008H-V0HR-00000-00&context=), *as amended* (Jan. 28, 1993). To do so, the plaintiff must send a form to the Compliance Technical Support Manager in the area where it resides that includes:

(i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include**[\*9]** copies of any available substantiating documentation or evidence); and

(v) The signature of the taxpayer or duly authorized representative.

[*26 C.F.R. § 301.7433-1(e)(1)-(2)*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5CMV-BYK0-008G-Y3WV-00000-00&context=). The administrative claim must be brought within two years after the date of the right of action accrues, i.e. "when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action." *Id.* [*§ 301.7433-1 (g)(1)*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5CMV-BYK0-008G-Y3WV-00000-00&context=)-[*(2)*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5CMV-BYK0-008G-Y3WV-00000-00&context=).

First, to the extent that Plaintiffs allege that the assessments from 2012 were an unauthorized collection action (see SAC at 5), the Court does not have subject matter jurisdiction under [*section 7433*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=) to adjudicate such claims. *See* [*Miller, 66 F.3d at 223*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BVF0-001T-D3NB-00000-00&context=).

Insofar as this claim relates to the IRS's failure to issue a notice of intent to levy, Plaintiffs cite to their 2017 refund claims as evidence that they exhausted their administrative remedies related to this collection action. (SAC at 6 ¶ h.) First, these refund claims do not satisfy the very particular substantive requirements for filing an administrative claim under [*section 7433*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=). *See* [*26 C.F.R. § 301.7433-1(e)(1)-(2)*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5CMV-BYK0-008G-Y3WV-00000-00&context=). Second, even if Plaintiffs' administrative claims were substantively sufficient, they are untimely. *See* [*26 C.F.R. § 301.7433-1 (g)(1)*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5CMV-BYK0-008G-Y3WV-00000-00&context=)-[*(2)*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5CMV-BYK0-008G-Y3WV-00000-00&context=). Plaintiffs' filing of an administrative claim in January 2017 is well outside the two-year statute of limitations period for administrative**[\*10]** claims under [*section 7433*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=). [*26 C.F.R. § 301.7433-1 (g)(1)*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5CMV-BYK0-008G-Y3WV-00000-00&context=)-[*(2)*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5CMV-BYK0-008G-Y3WV-00000-00&context=).

Accordingly, because Plaintiffs have failed to exhaust their administrative remedies, the Court does not have jurisdiction to adjudicate the [*section 7433*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=) claim. [*Miller, 66 F.3d at 223*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BVF0-001T-D3NB-00000-00&context=); [*Conforte, 979 F.2d at 1377*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-03K0-008H-V0HR-00000-00&context=). The Government's Motion is GRANTED. Moreover, the Court dismissed for lack of subject matter jurisdiction this same claim based on the same factual allegations in Plaintiffs' earlier suit because they had failed to exhaust their [*section 7433*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=) administrative remedies. *See Rashidian*, No. 8:14-00016-JLS(DFM), ECF No. 24, at 6. Because Plaintiffs have repeatedly failed to allege that they have exhausted their administrative remedies, and the statute of limitations under [*section 7433*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GP61-NRF4-415J-00000-00&context=) has now run, this claim is DISMISSED WITH PREJUDICE. *See* [*Conforte, 979 F.2d at 1377*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-03K0-008H-V0HR-00000-00&context=).

**C. Legal Interest and Penalty**

Plaintiffs also bring a claim for "legal interest and penalty," apparently pursuant to [*26 U.S.C. § 6611*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GHC1-NRF4-408N-00000-00&context=). (SAC at 6.) Under [*section 6611(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GHC1-NRF4-408N-00000-00&context=), "[i]nterest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the overpayment rate established under [*section 6621*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GW91-NRF4-44RS-00000-00&context=)." Under [*section 6611(b)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GHC1-NRF4-408N-00000-00&context=), "[s]uch interest shall be allowed and paid as follows: (2) Refunds[:] In the case of a refund, from the date of the overpayment to a date (to be determined by the Secretary) preceding the date of the refund check by not more than 30**[\*11]** days . . . ." [*Section 6611*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GHC1-NRF4-408N-00000-00&context=) operates as a waiver of sovereign immunity. *See* [*Schortmann v. United States, 82 Fed. Cl. 1, 5 (Fed. Cl. 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4SBR-8WM0-TXFN-G2BH-00000-00&context=) ("Every case to consider this question has so held.").

In the body of this claim, Plaintiffs calculate the damages and interest to which they believe they are entitled under their first two causes of action. (SAC at 6.) Construing Plaintiffs' allegations in a light most favorable to them, this claim is simply for interest on the overpayment of taxes. The Government agrees that "were Plaintiffs entitled to a tax refund, then they would automatically be entitled to interest on the right to a refund." (Mem. at 17.) However, because the Court is dismissing the refund claim with prejudice, the claim for interest on the refund is also DISMISSED WITH PREJUDICE.

**IV. CONCLUSION**

For the reasons stated above, the Government's Motion is GRANTED. All of Plaintiffs' claims are DISMISSED WITH PREJUDICE.

**End of Document**

1. 1The SAC is inconsistent in stating the amount of the erroneous assessment. At first it states $68,582.55, but later changes the calculation to $67,487.95. (See SAC at 2.) [↑](#footnote-ref-0)
2. 2The Government also argues that Plaintiffs' tax refund claim is barred by res judicata pursuant to *Rashidian*, No. 8:14-00016-JLS(DFM), ECF No. 40, at 8. (Mot. at 5-6.) In that case, as discussed above, the Court granted summary judgment in favor of the Government as to 37 of the relevant periods, but dismissed the remaining 12 for lack of subject matter jurisdiction because Plaintiffs failed to exhaust their administrative remedies. *Id.* at 6. Plaintiffs do not specifically allege the period from which their instant tax refund claim arises, but in an abundance of caution, the Court presumes that it arises from one of the 12 periods that was not adjudicated on the merits in that case. [↑](#footnote-ref-1)
3. 3The SAC also joins the IRS as a defendant in this suit. (SAC at 1.) "Where taxpayers are authorized to sue on matters arising out of IRS actions, the United States is the proper party defendant." *Rashidian*, No. 8:14-00016-JLS(DFM), ECF No. 24, at 4. Accordingly, the Internal Revenue Service is DISMISSED WITH PREJUDICE. [↑](#footnote-ref-2)
4. 4Plaintiffs provide a table in which they calculate the total amount taken by the IRS in the left-hand column. That amount states that the IRS has taken $0.00 in interest. (See SAC at 2.) The SAC is consistent in maintaining that Plaintiffs "owe no interest" (*Id.* at 2) and that interest is "being charged," (*Id.* at 7) but not that the interest was paid. The only evidence of payment is the check from 2012 that the escrow company provided to the IRS upon sale of the farm in the amount of $132,652.59, which is not alleged to have included that later interest assessment. (Ex. 3, Doc. 18-2.) [↑](#footnote-ref-3)