

Villanova University Charles Widger School of Law

From the Selected Works of T. Keith Fogg

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Financial Disability For All

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FINANCIAL DISABILITY FOR ALL

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John Smith¹ worked as a scientist for a large pharmaceutical company in the suburbs north of Philadelphia, Pennsylvania. In mid-March 2003, on his way home from work one evening, John stepped out of the commuter train station and into a nightmare. As he walked to his car from the station, a robber hit him on the head with a cinderblock. The assailant then robbed John, not only of his cash, but also of his soundness of mind.

After the attack, John fell into a coma. He awoke a few weeks later to a life he did not know. His memory faded in and out. He experienced debilitating fear and anxiety. He could no longer function in his job. He slowly recovered his physical strength, but he did not recover his full cognitive abilities. Unmarried and without any close family, John had no one to take full care of him. Although friends aided him during the recovery, he did not have a permanent caretaker to provide the assistance he needed.

Consequently, John failed to file his 2002 tax return, which came due while he was in the coma. Likewise, he failed to file his 2003 return, which included a few months of salary and several months of sick leave and severance pay. The Internal Revenue Service (IRS) eventually sent John letters notifying him of his failure to file the returns. Like so much of the other correspondence John received, he did not know what to do with the letters and he did not respond. The IRS eventually calculated John's liability and sent him a notice of deficiency. When he did file a petition with the Tax Court, the IRS assessed the proposed liabilities. The IRS then sent John the customary collection notices, including the collection due process notice informing him of its intent to levy his assets if he did not address the unpaid taxes.

Although his injuries prevented him from understanding and responding to the IRS notices, John did receive assistance in applying for Social Security disability and began receiving disability payments in 2005. Because John had spent his entire savings on medical care after the robbery, he subsisted entirely on his disability payments. His monthly disability check covered only his essential expenses: rent, food, and essential medical care. The disability payments did not leave him with extra funds he could use to pay down his federal tax obligation.

When John failed to pay his tax debt, the IRS began to levy fifteen percent of his disability payments each month. The levy was a hardship for John because he could no longer afford all of his medication, food, or other necessities. He eventually wrote to the IRS to attempt to explain his situation.

1. John Smith is a fictional name and the facts stated here, although partially based on a real case, are a composite of facts and do represent the circumstances of a specific individual.

However, the IRS could not understand John's letter, and because of his diminished capacity, John did not respond to any of the IRS's requests for clarification.

After the IRS levied John's disability payments for almost three years, John's friend brought him to the Villanova Tax Clinic to seek assistance in reducing or removing the levy. The clinic contacted the IRS and requested that it stop the levy because it created an economic hardship for John. Initially, the clinic received some resistance from the IRS because John had not filed returns. However, the Tax Court had recently ruled that the failure to file returns did not override the statutory language concerning levies that created economic hardship.² The clinic then considered whether it could reduce or eliminate the underlying liability, or at the very least obtain a refund of the already-levied funds. Unfortunately, John had no records, no memory, and liabilities that were long outstanding. Although the Internal Revenue Code ("IRC" or "Code") authorizes the IRS to refund money it has collected in situations of economic hardship, the Code limits the refund to the amount of wrongfully-levied funds collected within the nine months before the taxpayer files a request for a return.³ Therefore, John could only recover twenty-five percent of the total amount levied from his disability payments.⁴

The IRC contains a number of strict time limitations with which financially disabled taxpayers are often unable to comply. In 1998, Congress addressed financial disability within the Code by enacting IRC § 6511(h), creating a mechanism by which these financially disabled individuals could benefit from a suspension of the statute of limitations for filing claims for tax refunds.⁵ Congress limited the relief granted in § 6511 to individuals seeking a tax refund. However, the provision does not provide relief to financially disabled taxpayers like John, facing tight statutory time frames in a variety of situations other than just the claiming of a tax refund.⁶

Although John's story provides an extreme example of taxpayer disability, a large number of taxpayers face financial disabilities that have a great impact on their ability to comply with the strict limitations imposed by the Code. This

2. See *Vinatieri v. Commissioner*, 133 T.C. 392, 401–02 (2009) (concluding that levying the appellant's wages because she failed to file her tax returns was "wrong as a matter of law" because I.R.C. § 6343 required the levy to be released if it created an economic hardship); see also I.R.C. § 6343(a)(1)(D) (2006) (requiring the release of a levy on property if the levy "is creating an economic hardship due to the financial condition of the taxpayer").

3. See I.R.C. § 6343(b) (limiting the recovery of wrongfully-levied funds to the amount collected within nine months of the levy).

4. John could only recover nine out of the thirty-six months of disability payments levied, or twenty-five percent of the total amount. See *id.* (allowing for the recovery of wrongfully levied funds collected within nine months of the request).

5. See Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3202(a), 112 Stat. 685, 740 (codified at I.R.C. § 6511(h) (2006)).

6. See I.R.C. § 6511 (2006 & Supp. 2012) (placing limitations on requests for the refund of overpaid taxes).

Article argues that the concept of financial disability deserves broader application to allow those afflicted by financial disability to obtain an extension of the statutes of limitations under the IRC in circumstances beyond requests for tax refunds. The Article first examines the definition of “financial disability” in light of fifteen years of judicial and administrative interpretation and proposes expanding the definition to encompass circumstances other than those allowed by the current statute. Part I reviews *United States v. Brockamp* and *Webb v. United States*, two cases that led to the adoption of the IRC’s financial disability provision. Part II examines the legislative history and scope of the IRC’s financial disability provision, § 6511(h). Part III explores three other provisions within the Code that also allow for the suspension of time limitations. This Part also discusses additional circumstances that give rise to financial disability. Finally, Part IV proposes a legislative solution that draws upon features of current statutes and IRS authority and outlines the suggested circumstances in which tolling should occur.

I. BACKGROUND OF THE IRC’S FINANCIAL DISABILITY RELIEF PROVISIONS

The IRC’s financial disability relief provisions came into existence primarily in response to the U.S. Supreme Court’s decision in *United States v. Brockamp*.⁷ The request for relief in *Brockamp* occurred as a result of the Supreme Court opening the door to assertions of equitable tolling against the federal government in *Irwin v. Department of Veterans Affairs*.⁸

The dispute in *Irwin* began after Shirley Irwin was fired from his job at the Department of Veterans Affairs.⁹ Irwin filed an unsuccessful complaint with the Veterans Administration, alleging that he was fired because of his race and an unspecified physical disability.¹⁰ On appeal, the Equal Employment Opportunity Commission (EEOC) affirmed the Administration’s decision.¹¹ After the EEOC sent him a notice of its determination, Irwin had thirty days to file a complaint in the U.S. District Court.¹² Irwin failed to timely file his

7. 519 U.S. 347 (1997), *superseded by statute*, § 3202(a), 112 Stat. at 740.

8. 498 U.S. 89, 95–96 (1990). This Article briefly discusses the equitable tolling of time frames in federal statutes. *See infra* Part IV (suggesting the proper application of equitable tolling principles to the IRC’s time deadlines). For a detailed discussion of this issue, see Carlton M. Smith, *Cracks Appear in the Code’s ‘Jurisdictional’ Time Provisions*, 137 TAX NOTES 511 (2012) [hereinafter Smith, *Cracks Appear in the Code’s ‘Jurisdictional’ Time Provisions*]; Carlton M. Smith, Friedland: *Did the Tax Court Blow Its Whistleblower Jurisdiction?*, 131 TAX NOTES 843 (2011); Carlton M. Smith, *Equitably Tolling Innocent Spouse and Collection Due Process Periods*, 126 TAX NOTES 1106 (Mar. 1, 2010).

9. *Irwin*, 498 U.S. at 90.

10. *Id.* at 90–91.

11. *Id.* at 91.

12. *Id.* (noting that Irwin had the right to file an employment discrimination action under Title VII of the Civil Rights Act within thirty days after receiving the EEOC’s determination letter).

complaint, both because of his late receipt of the EEOC's notice of determination and because his attorney was out of the country when notice finally arrived.¹³

At the trial and intermediate appellate levels, the government succeeded in arguing that compliance with the statute of limitations was an absolute requirement for waiving sovereign immunity.¹⁴ Because Irwin failed to meet this condition, his complaint was barred for lack of jurisdiction.¹⁵ However, the Supreme Court, instead of deciding the case on this jurisdictional ground and noting the need for greater predictability in this area, granted certiorari "to adopt a more general rule to govern the applicability of equitable tolling in suits against the Government."¹⁶ The Court reasoned that equitable tolling is ordinarily available in suits against private litigants, and therefore that "the same rebuttable presumption of equitable tolling that applies to suits against private defendants should also apply to suits against the United States."¹⁷

The Court created hope for litigants whose actions against the United States did not meet the statutory time frames and whose cases were subject to dismissal on jurisdictional grounds. Even though the Supreme Court went out of its way in *Irwin* to announce a clarifying rule in a case that did not merit equitable tolling, the clarity the Court sought to bring with the ruling would not have as wide of an impact as anticipated. The Court's holding was undercut by a case decided earlier the same year, in which the Court held that it did not have jurisdiction to hear a tax refund claim filed outside of the statute of limitations.¹⁸ Drawing on this holding, the application of the *Irwin* rule to federal tax provisions was soon considered, challenged, and rejected.

A. Webb v. United States

Three days before the Ninth Circuit's decision in *Brockamp*, the Fourth Circuit decided a case that also considered the application of equitable tolling

13. See *id.* (explaining that Irwin filed his complaint in the district court forty-four days after his attorney's office allegedly received the EEOC's letter, but only twenty-nine days after he claimed to have personally received the letter, which was nineteen days after the date on the letter).

14. *Id.* at 91–92 ("The [Fifth Circuit] held that the 30-day [statute of limitations] begins to run on the date that the EEOC right-to-sue letter is delivered to the offices of formally designated counsel or to the claimant, even if counsel himself did not actually receive notice until later.").

15. *Id.* (commenting that this conclusion was in direct conflict with other federal courts of appeals).

16. *Id.* at 95.

17. See *id.* at 95–96 (specifying that equitable tolling applies to suits against private litigants as well as to private suits under Title VII). Unfortunately for Mr. Irwin, the Court concluded that his circumstances did not merit equitable tolling. *Id.* at 96.

18. See *United States v. Dalm*, 494 U.S. 596, 608–10 (1990) (denying the appellant's request for a refund on a gift tax because she filed her claim after the three-year statute of limitations had expired).

principles to tax cases.¹⁹ In *Webb v. United States*, the Fourth Circuit rejected the argument that § 6511 contained an implied exception permitting equitable tolling.²⁰ *Webb* involved Mary Morton Parsons, a member of a wealthy Richmond, Virginia family.²¹ Mrs. Parsons lived a life sheltered from financial concerns and relied on her parents, then her husband, and then her sister-in-law to manage her financial affairs.²² When all of these individuals passed away, Mrs. Parsons turned to Dr. Alvin Q. Jarrett, her personal physician and social acquaintance, to manage her personal affairs.²³ He soon proved that her trust was misplaced.²⁴ Dr. Jarrett teamed with tax attorney Roland Freasier, Jr. to essentially take all of Mrs. Parsons's money:

Through systematic physical and emotional abuse during the ensuing fourteen years, Jarrett and Freasier induced Parsons to relinquish to them total control over her day-to-day affairs. They persuaded her to move into virtual seclusion in Virginia Beach, Virginia, where they confined her to her bed under heavy sedation. They discharged most of Parsons' household staff and prevented her from receiving mail or telephone calls and from seeing visitors. They also induced her to grant to each of them powers-of-attorney, thus enabling them to manipulate her financial affairs for their own benefit.²⁵

As they stole her money, Jarrett and Freasier filed a gift tax return reporting the transfers of funds from Mrs. Parsons to each of them, their spouses, and their children.²⁶ Mrs. Parsons eventually discovered the fraudulent transfers, with the help of an old friend, and brought suit against Jarrett and Freasier in state court to recover the stolen money.²⁷ Mrs. Parsons also filed a refund

19. See *Webb v. United States*, 66 F.3d 691, 692 (4th Cir. 1995).

20. *Id.* at 701–02 (holding that *Irwin*'s presumption of equitable tolling does not apply to tax cases).

21. *Id.* at 692 (noting that Mrs. Parsons was the daughter of the founder of an insurance company and “enjoyed considerable wealth”).

22. *Id.* (explaining that Mrs. Parsons had “only a limited understanding of financial matters”).

23. *Id.*

24. *Id.*; see *Best Rip-Off Artists in Richmond History*, STYLE WKLY., Apr. 27, 2011, at 65 (naming Dr. Jarrett and his accomplice “The Philanthropist’s Jailers” and considering the duo among the “Best Rip-Off Artists in Richmond History”). A series of articles that appeared in the *Richmond Times-Dispatch* provide the best recitation of the facts of Mrs. Parsons's case. See, e.g., Elliott Cooper, *Physician Says Widow's Suit Against Him Is Too Sweeping*, RICH. TIMES-DISPATCH, Jan. 12, 1988, at B–5; Randolph Goode, *Estate Files \$16.8 Million Lawsuit Against U.S.*, RICH. TIMES-DISPATCH, Dec. 18, 1993, at B–1; Randolph Goode, *Lawsuit Seeking Return of '80 Gift Taxes Dismissed*, RICH. TIMES-DISPATCH, May 6, 1994, at B–6; Bill McKelway, *A Quiet Man of Influence*, RICH. TIMES-DISPATCH, Sept. 20, 1998, at G–1; *Service Scheduled Here for Mary Morton Parsons*, RICH. TIMES-DISPATCH, Aug. 28, 1990, at B–2.

25. *Webb*, 66 F.3d at 692.

26. *Id.* (noting that Jarrett and Freasier paid a total of \$11,362,876.88 in gift taxes on these transfers).

27. *Id.*

claim with the IRS seeking the return of the gift taxes paid, arguing that no gift had occurred.²⁸ Her suit against Jarrett and Freasier succeeded, but her suit against the IRS did not.²⁹

Under § 6511, a taxpayer must file a refund claim three years from the time the tax return was filed or two years from the time the tax was paid, whichever is later.³⁰ The IRS accepted the basis for Mrs. Parsons's refund claim and refunded the gift tax payments made within the two-year statutory time period before she filed the claim.³¹ However, the IRS denied her refund claim on gift taxes paid more than two years before the claim, reasoning that return of this balance was barred by the statute of limitations.³²

Mrs. Parsons's estate brought suit, arguing that the circumstances of this case warranted the equitable tolling of the statute of limitations under *Irwin*.³³ The district court dismissed the case for lack of jurisdiction.³⁴ On appeal, the Fourth Circuit noted that "[i]f this case had arisen prior to 1990, there would seemingly be no question that the district court's holding was correct."³⁵ However, the Fourth Circuit engaged in a lengthy analysis of *Irwin* before affirming the district court's decision.³⁶ The court distinguished *Irwin*, finding that the Supreme Court premised its holding on the fact that the case involved an employment action under Title VII.³⁷ Consequently, the court refused to toll the statute of limitations, both because tax refund suits have no private

28. *Id.* at 692–93; see Petition for a Writ of Certiorari at 6, *Webb v. United States*, 519 U.S. 1148 (1997) (No. 95–1360) (explaining that the IRS refunded a portion of the gift taxes and interest paid because no gift had occurred).

29. See *Webb*, 66 F.3d at 692–93 (hearing the plaintiff's appeal of the IRS's refusal to refund the gift taxes paid more than two years before the filing of the refund claim).

30. I.R.C. § 6511(a) (2006) (requiring the taxpayer to file a claim for a refund "within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later").

31. *Webb*, 66 F.3d at 692–93 (explaining that the IRS refunded the gift tax and interest payments made within the time frame prescribed by § 6511(a)).

32. See *Webb*, 66 F.3d at 692–93 (noting that the IRS refused to refund the payments made in 1980, eight years before Mr. Parsons filed the claim, and acknowledging that she filed the claim outside of the statute of limitations).

33. *Webb v. United States*, 850 F. Supp. 489, 490–92 (E.D. Va. 1994) (citing *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95–96 (1960)). The plaintiffs argued that *Irwin*'s presumption extended to tax cases, and that equitable tolling was therefore available to Mrs. Parsons. *Id.* at 492.

34. *Id.* at 493.

35. *Webb*, 66 F.3d at 692, 694 (explaining that courts traditionally decline to toll statutes of limitations on equitable principles alone out of deference to Congress's authority to determine the exact circumstances in which the government will waive its sovereign immunity).

36. *Id.* at 695–702 (rejecting the application of *Irwin*'s rebuttable presumption to tax cases).

37. *Id.* at 696–97. The *Irwin* court concluded that, because equitable tolling is available under Title VII for actions against private employers, the same statutory time limits and exceptions are available in suits against the United States. 498 U.S. at 95. The Fourth Circuit found the Title VII similarity "[c]rucial to the Supreme Court's holding." *Webb*, 66 F.3d at 696.

remedy comparable to Title VII actions, and because the tax refund statute clearly identifies the statute of limitations as a jurisdictional bar.³⁸

Drawing on the sympathetic nature in the case and the disagreement among the circuits in the application of *Irwin*, Mrs. Parsons's estate appealed to the Supreme Court.³⁹ However, the Court declined the opportunity to clarify *Irwin*'s reach and extend equitable tolling principles to § 6511, and denied certiorari.⁴⁰ In reality, the Fourth Circuit's holding was consistent with the circuit courts that had considered the issue and found that § 6511 did not authorize equitable tolling.⁴¹

B. Brockamp v. United States

Driven by the same language in *Irwin* that inspired *Webb*, two other cases made their way to the Ninth Circuit at precisely the same time.⁴² *Brockamp v. United States* and *Scott v. United States*, were decided by the Ninth Circuit on

38. *Id.* at 697–702. In *Oropallo v. United States*, 994 F.2d 25, 31 (1st Cir. 1993) (per curiam), the court found that the statutory structure of the IRC is inconsistent with the concept of equitable tolling. The *Oropallo* court reasoned that Section § 6511 has two “time barriers”: (1) the claim must be made within three years of the filing of the return, and (2) the requested relief must fall within the “outside limit” on recovery, three years before the filing of the claim. 994 F.2d at 30–31. As a result of this structure, the claimant has adequate time to file a claim and is aware of the extent of allowable recovery. *Id.* (relying on *Lampf v. Gilbertson*, 501 U.S. 350, 363–64 (1991) (using the same rationale in the context of similarly-structured securities regulations), *superseded by statute*, Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, § 476, 105 Stat. 2387 (codified at 15 U.S.C. § 78aa-1(a) (2006))).

39. Petition for a Writ of Certiorari, *supra* note 28, at 13, 26–27. The petitioners first pointed to a perceived circuit split, arguing that both the result of cases heard in the First, Fourth, Ninth, and Eleventh Circuits and the rationale underlying the holdings differed greatly. *Id.* at 13–16. The petitioners also cited fairness and administrative issues, noting that the failure to recognize equitable tolling in tax cases resulted in the “wrongful retention” of tax funds. *Id.* at 26–27.

40. *Webb v. United States*, 519 U.S. 1148, 1148 (1997).

41. *See, e.g., Amoco Prod. Co. v. Newton Sheep Co.*, 85 F.3d 1464, 1471–72 (10th Cir. 1996) (holding that the plaintiffs could have—and should have, based on their knowledge—filed a protective claim for a refund in anticipation of the potential for a future claim); *Lovett v. United States*, 81 F.3d 143, 145–46 (Fed. Cir. 1996) (holding that claims of equity cannot override congressional intent concerning statutes of limitations); *Oropallo*, 994 F.2d at 28–31 (finding that the structure of § 6511 is inconsistent with equitable tolling); *Vintilla v. United States*, 931 F.2d 1444, 1446–47 (11th Cir. 1991) (per curiam) (concluding that the statute of limitations bar is jurisdictional because it is a condition of the United States' waiver of its sovereign immunity).

42. *Brockamp v. United States*, 859 F. Supp. 1283, 1287–88 (C.D. Cal. 1994) (considering the application of the *Irwin* presumption of equitable tolling to tax cases), *rev'd*, 67 F.3d 260 (9th Cir. 1995), *rev'd*, 519 U.S. 347 (1997), *superseded by statute*, Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3202(a), 112 Stat. 685, 740–41 (codified at I.R.C. § 6511(h) (2006)); *Scott v. United States*, 847 F. Supp. 1499, 1506–07 (D. Haw. 1995) (same), *aff'd*, Nos. 94-15321, 94-15323, 1995 WL 653979, at *1–2 (9th Cir. Oct. 5, 1995) (citing *Brockamp*, 67 F.3d 260 (allowing for equitable tolling in tax cases)).

the same day.⁴³ While the *Brockamp* case has received more attention,⁴⁴ *Scott* also deserves mention.

Nicholas Scott, a former California lawyer, faced severe personal and financial consequences from alcoholism.⁴⁵ For the tax year 1984, Scott's father, acting under power of attorney, deposited over \$30,000 in anticipated tax liability with the IRS on Mr. Scott's behalf.⁴⁶ However, Mr. Scott's father terminated the power of attorney before filing Mr. Scott's 1984 tax return.⁴⁷ Mr. Scott eventually filed the 1984 return in November of 1989, long after the period for claiming a refund had expired. The return sought a refund of the full amount of estimated payments to the IRS in 1984.⁴⁸ The IRS denied the claim because Scott filed it well outside of the statute of limitations prescribed by § 6511.⁴⁹ Scott filed suit in district court, which concluded that Scott's alcoholism rendered him mentally incompetent from the due date for the 1984

43. *Brockamp*, 67 F.3d at 260 (hearing argument on June 5, 1995 and issuing an opinion on October 5, 1995); *Scott*, 1995 WL 653979, at *1 (same).

44. The Ninth Circuit devoted a full opinion to *Brockamp*, 67 F.3d at 260–61, but simply affirmed the district court without a reported opinion in *Scott*, 1995 WL 653979, at *1–2.

45. *Scott*, 847 F. Supp. at 1501–02. Plaintiff Nicholas Scott was suspended from the California bar and eventually lost his job as an attorney because of his heavy drinking. *Id.* at 1500–01. From 1980 to 1985, Mr. Scott was incapacitated to the point that his father held power of attorney for him. *Id.* at 1501. Mr. Scott faced additional professional consequences of his alcoholism, such as losing his wine store, and personal consequences, such as failed relationships and DUI violations. *Id.* at 1501–02.

46. *Id.* at 1500. Mr. Scott's father, Gene Scott, demanded power of attorney when he discovered that his son had failed to pay income taxes for several years. *Id.* Gene Scott oversaw Mr. Scott's tax liability, paying a total of \$30,096.00 to the IRS on Mr. Scott's behalf during the 1984 tax year. *Id.*

47. *See id.* Gene Scott tore up his power of attorney at some time during the period between December of 1984 and January of 1985, several months before Mr. Scott's tax return was due. *Id.* Although Gene Scott did not facilitate the filing of the 1984 return, he did ensure that Mr. Scott made the final estimated tax payment for the year, due in January of 1985. *Id.* Mr. Scott made this payment on time, but did not file his 1984 return by the due date, April 15, 1985. *Id.*

48. *Id.* at 1500. Because he had no tax liability in 1984, Mr. Scott sought a refund of the \$30,096.00—plus interest—he paid to the IRS throughout that year. *Id.*

49. *Id.* at 1500–01 (explaining the procedural history of Mr. Scott's case before reaching the district court); I.R.C. § 6511(a) (prescribing a three-year statute of limitations for the filing of refund claims with the IRS). Mr. Scott filed his refund claim over four years after the due date, over a year outside of the statute of limitations. *See Scott*, 847 F. Supp. at 1500–01.

return to the filing of the late return in 1989.⁵⁰ The court thus held that the statute of limitations was equitably tolled.⁵¹ The Ninth Circuit agreed.⁵²

In *Brockamp*, Marian Brockamp was appointed to administer the estate of her father, Stanley B. McGill.⁵³ In 1984, Mr. McGill, a brilliant mathematician during his working years, sent a check for \$7,000 to the IRS in anticipation of his 1983 tax liability, along with a request for an extension to file his 1983 return.⁵⁴ However, Mr. McGill never filed a return for that year.⁵⁵ At the time of filing the request for extension, Mr. McGill was ninety-three years old and suffering from some symptoms of dementia.⁵⁶ While settling his estate, Ms. Brockamp realized that her father had not filed a tax return for 1983.⁵⁷ She prepared and filed the 1983 return, which showed a liability of only \$427.⁵⁸ When the IRS refused to refund the balance, citing the three-year statute of limitations, she brought suit.⁵⁹ The district court dismissed the suit for lack of

50. *Scott*, 847 F. Supp. at 1503–04. The court heard expert witness testimony from two doctors, both of whom agreed that alcohol use can result in mental incompetence if used in a sufficient amount and over a sufficient period of time. *Id.* at 1503. The court concluded that Mr. Scott, as a result of his alcoholism, was mentally incompetent from January 1995 through September 1987, and from September 1988 through November 1989. *Id.* Consequently, as a matter of law, Mr. Scott did not have the mental competency to file a tax return before November 1989. *Id.* at 1503–04.

51. *Id.* at 1506–08. The court found that the *Irwin* presumption that equitable tolling is available in an action against the United States is applicable to tax cases, and that the government failed to rebut the presumption. *Id.* at 1506 (citing *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95–96 (1990)). The court used the rationale in *Irwin* to hold that a statute of limitations may be equitably tolled because of mental incompetence, and consequently found that Mr. Scott's alcoholism tolled the statute of limitations on his tax refund claim. *Id.* at 1506–08.

52. *Scott v. United States*, Nos. 94-15321, 94-15323, 1995 WL 653979, at *1–2 (9th Cir. Oct. 5, 1995) (relying on *Brockamp v. United States*, 67 F.3d 260 (9th Cir. 1995), *rev'd*, 519 U.S. 347 (1997), *superseded by statute*, Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3202(a), 112 Stat. 685, 740–41 (codified at I.R.C. § 6511(h)).

53. *Brockamp v. United States*, 859 F. Supp. 1283, 1285 (C.D. Cal. 1994), *rev'd*, 67 F.3d 260. Ms. Brockamp was the administrator and sole beneficiary of Mr. McGill's estate. *Id.*

54. *Id.* at 1284. Mr. McGill did not indicate the purpose for the payment, but simply sent a \$7,000 check accompanying his Form 4868 extension request. *Id.*

55. *Id.* Because Mr. McGill requested a time extension for his return but never filed it, the IRS sent two delinquency notes, on December 15, 1984 and February 18, 1985. *Id.* at 1284 & n.2.

56. *Id.* at 1284. Ms. Brockamp described Mr. McGill as “mentally deranged” and “senile.” *Id.* at 1284 & n.1.

57. *See id.* at 1284–85 (explaining that Mr. McGill failed to file a return for the 1983 tax year and that Ms. Brockamp filed this return in 1991, only after assuming control of the estate).

58. *Id.* at 1285. Mrs. Brockamp requested a refund of the remaining balance because, due to his mental incapacities, Mr. McGill mistakenly sent a check for \$7,000 rather than \$700. *Id.*

59. *Id.* Ms. Brockamp first argued that, as a “deposit as a matter of law,” the balance should be returned to the estate. *Id.* In the alternative, she claimed that the statute of limitations should be equitably tolled based on Mr. McGill's mental incapacity. *Id.* at 1287.

jurisdiction due to the late filing of the return as a refund claim.⁶⁰ Ms. Brockamp appealed, and the Ninth Circuit, relying on *Irwin*, found that equitable tolling applied because of McGill's mental condition at the time the statute of limitations passed.⁶¹

The government appealed to the Supreme Court in both *Brockamp* and *Scott*.⁶² The Court consolidated the cases and granted certiorari.⁶³ The Court acknowledged that some language in *Irwin* could support equitable tolling in tax refund cases, but determined that it could "travel no further, however, along *Irwin*'s road, for there are strong reasons for answering *Irwin*'s question in the Government's favor."⁶⁴ The Court noted that "[§] 6511 sets forth its time limitations in unusually emphatic form."⁶⁵ It determined that the "highly detailed" and technical structure of the statute did not indicate an implicit exception for equitable tolling.⁶⁶ The Court noted that tax law generally does not provide relief in the form of case-specific exceptions because of the high volume of returns the IRS must process.⁶⁷ However, the Court did not explicitly rule out the possibility that equitable tolling could apply to tax provisions, nor did the Court limit the rule prohibiting equitable tolling of tax statutes to situations involving high-volume IRS activities, like requests for refunds.⁶⁸ With these issues still unsettled, taxpayers with other tax issues can still hold out hope that equitable tolling may be available in their cases.⁶⁹

60. See *id.* at 1284–86, 1289 (explaining that a court does not have jurisdiction over tax claims filed outside of the statute of limitations and dismissing Ms. Brockamp's claim because it was filed outside of the limitations period, which could not be equitably tolled).

61. *Brockamp v. United States*, 67 F.3d 260, 262–63 (9th Cir. 1995) (citing *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95–96 (1990)) (reasoning that the presumption that equitable tolling applies to suits against the United States coupled with the fact that Congress took no action to prevent equitable tolling even after *Irwin* compelled equitable tolling in favor of the plaintiff), *rev'd*, 519 U.S. 347 (1997), *superseded by statute*, Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3202(a), 112 Stat. 685, 740–41 (codified at I.R.C. § 6511(h)).

62. *Brockamp v. United States*, 517 U.S. 1232, 1232–33 (1996).

63. *Id.*

64. *Brockamp*, 519 U.S. at 350 (finding that the similarity between private suits and actions against the government was sufficient to advance the inquiry to congressional intent concerning equitable tolling).

65. *Id.* (finding the statute of limitations clear and without implicit exceptions, representative of the congressional intent to exclude equitable tolling).

66. *Id.* at 350–52 (analyzing the language and structure of § 6511(h)).

67. *Id.* at 352 (predicting that reading an "equitable tolling" exception into § 6511 could create serious administrative problems by forcing the IRS to respond to, and perhaps litigate, large numbers of late claims").

68. See *id.* at 352–53.

69. *Auburn Reg'l Med. Ctr. v. Sebelius*, 642 F.3d 1145 (D.C. Cir. 2011), *rev'd*, 133 S. Ct. 817 (2013), was poised to clarify the ability to extend *Irwin*'s equitable tolling principles and provided the opportunity for the Supreme Court to reconsider or overturn its holding in *Brockamp*. *Auburn* involved a hospital's late claim for Medicare reimbursement, which was the result of the incorrect calculation of the amount to be refunded. *Id.* at 1147. The D.C. Circuit

II. IRC § 6511(h)

A. Legislative History of § 6511(h)

Brockamp revealed the Code's harshness in matters in which a statutory time frame exists.⁷⁰ Both Congress and the Clinton Administration recognized that the Ninth Circuit's holding yielded inequitable results.⁷¹ The decision led President Clinton to urge the Department of the Treasury to revise the IRC so that the decision to extend equitable relief in such situations would no longer be left up to the courts.⁷²

The House of Representatives responded similarly to the Ninth Circuit's decision in *Brockamp*. In a bipartisan effort, Democratic Representative Robert T. Matsui of California and Republican Representative Jennifer B. Dunn of Washington sought to amend § 6511 to allow for equitable tolling of the statute under certain circumstances.⁷³ In her remarks on the House floor, Representative Dunn highlighted the "outrageous injustice" created by *Brockamp*, which she argued could be corrected with a "commonsense change of law."⁷⁴ To remedy the problem, the representatives moved to add an equitable tolling provision to the Taxpayer Bill of Rights 2.⁷⁵ The proposed amendment, which allowed for the suspension of § 6511's statute of limitations, stated:

for the period during which it is established to the satisfaction of the Secretary [of the Treasury] that—(1) the taxpayer is incompetent (as

applied equitable tolling principles to the hospital's claim, distinguishing the case from *Brockamp* by pointing to the Court's discussion of § 6511's language and structure. *Id.* at 1149–50. However, the Court declined to equitably toll the statute of limitations, citing *Brockamp* to support the principle that the Court "h[ad] never applied the *Irwin* presumption to an agency's internal appeal deadline." *Auburn*, 133 S. Ct. at 827.

70. See David G. Savage, *Woman Wins Victory—But No Refund—In IRS Battle*, L.A. TIMES, Feb. 14, 1997, at B1 (arguing that *Brockamp*'s "strict enforcement of the rules, rather than a sense of fairness, reigns in the area of tax law").

71. See Andrea Sharetta, Note, *The Problem of Equitable Tolling in Tax Refund Claims*, 72 NOTRE DAME L. REV. 545, 588 (1997) ("Both the legislative and executive branches have recognized that a legislative fix is in order.").

72. *Id.*; see also Michael S. Moriarty, *Government Asks Supreme Court to Overturn Equitable Tolling Cases*, 96 TAX NOTES TODAY 23-2 (Feb. 2, 1996), available at LEXIS, 96 TNT 23-2, Doc. No. 96-3456 (noting that, because of the sympathetic nature of the cases, "the Clinton [A]dministration has publicly encouraged Treasury to work on a possible legislative fix"). Then-Treasury Secretary Robert Rubin commented that he and President Clinton believed that the tax system should be "responsive to the personal hardships faced by incapacitated taxpayers." *Treasury Proposes Extending Time Limit for Refund Claims for Incapacitated Taxpayers*, 70 TAX NOTES 1425, 1743 (Donna Edwards ed., 1996).

73. See 142 CONG. REC. 7639 (1996) (statement of Rep. Dunn).

74. *Id.* (explaining that the legislation was designed to aid taxpayers who made an "honest mistake").

75. *Id.* The Taxpayer Bill of Rights 2 was enacted "to provide for increased taxpayer protections." Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (codified as amended in scattered sections of I.R.C.).

determined by a court), (2) the taxpayer is committed to a mental institution or hospital, or (3) to the extent provided in regulations, the taxpayer suffers from any debilitating physical or mental condition which prevents the taxpayer from managing the taxpayer's financial affairs.⁷⁶

Despite the representatives' efforts, the Taxpayer Bill of Rights 2 went into effect without this provision.⁷⁷

The following year the Supreme Court reached its conclusion in *Brockamp*, making clear that the injustice Representatives Dunn and Matsui tried to fix in 1996 had come to pass.⁷⁸ As part of the Restructuring and Reform Act of 1998, Congress added a provision to the refund statute authorizing a suspension of the statute of limitations for "financially disabled" taxpayers.⁷⁹ For a taxpayer to qualify as "financially disabled," the amended § 6511(h) "requires that (1) the taxpayer have a physical or mental impairment; (2) the impairment be medically determinable; and (3) the impairment bear a causal relationship to the taxpayer's inability to manage financial affairs."⁸⁰ However, a taxpayer who meets these conditions will still not qualify as "financially disabled" if an authorized individual acts on his behalf in financial matters.⁸¹ Each of the listed requirements to establish financial disability limits the overall benefit Congress sought to confer and may create limitations greater than intended.

Although the legislative history of § 6511(h) does not specifically identify the origin of the financial disability requirement, it is evident that Congress drew on statutory language from elsewhere in the Code.⁸² For example, § 22,

76. *Dunn's Equitable Tolling Amendment to Section 6511*, 97 TAX NOTES TODAY 25-22 (Feb. 6, 1997), available at LEXIS, 97 TNT 25-22, Doc. No. 97-3678.

77. See generally 110 Stat. 1452 (containing no provision for equitable tolling).

78. *Brockamp v. United States*, 519 U.S. 347 (1997), superseded by statute, Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3202(a), 112 Stat. 685, 740-41 (codified at I.R.C. § 6511(h)).

79. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3202(a), 112 Stat. 685, 740-41 (codified at I.R.C. § 6511(h) (2006)) (suspending the statute of limitations in § 6511 "during any period of [an] individual's life that such individual is financially disabled").

80. Bruce A. McGovern, *The New Provision for Tolling the Limitations Periods for Seeking Tax Refunds: Its History, Operation and Policy, and Suggestions for Reform*, 65 MO. L. REV. 797, 855 (2000). Section 6511(h) considers a taxpayer "financially disabled" if he "is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." I.R.C. § 6511(h)(2)(A).

81. I.R.C. § 6511(h)(2)(B) ("An individual shall not be treated as financially disabled during any period that such individual's spouse or any other person is authorized to act on behalf of such individual in financial matters.").

82. McGovern, *supra* note 80, at 850 & n.286 (citing S. REP. NO. 105-174, at 145 (1998); H.R. REP. NO. 105-599, at 146-47 (1998) (Conf. Rep.)); H.R. REP. NO. 105-364, pt. 1, at 62-63 (1997) (noting that the legislative history fails to define "financial disability").

which provides a credit for the elderly and permanently disabled, defines “permanent and total disability” as “any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than [twelve] months.”⁸³ The language first appeared in the Social Security Amendments of 1956 as the threshold for receiving Social Security Disability Insurance benefits.⁸⁴

Section 6511(h)’s definition of “financial disability” significantly limits the circumstances in which this provision applies. Section 6511(h)’s requirement that the taxpayer suffer from a “medically determinable” impairment may define the circumstances necessary to establish financial disability too narrowly, precluding relief in equally compelling cases.⁸⁵ By linking financial disability to physical and mental impairment, the statute fails to address other circumstances that raise significant fairness issues. It is unclear why Congress chose to define “financially disabled” so narrowly.⁸⁶

83. I.R.C. § 22(e)(5) (2006); *see also* McGovern, *supra* note 80, at 850 & n.287 (discussing the provisions of the IRC from which § 6511(h) borrowed).

84. McGovern, *supra* note 80, at 850 & n.289.

85. The cases that led to § 6511(h) involved a physical or mental condition that impaired the taxpayer and prevented him from filing a timely refund claim. *See, e.g.*, *United States v. Brockamp*, 519 U.S. 347, 348 (1997) (dementia), *superseded by statute*, Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3202(a), 112 Stat. 685, 740-41 (codified at I.R.C. § 6511(h)); *Webb v. United States*, 66 F.3d 691, 692 (4th Cir. 1995) (heavy sedation); *Scott v. United States*, 70 F.3d 120, No. 94-15321, 1995 WL 653979, at *1 (9th Cir. Oct. 5, 1995) (alcoholism), *rev’d*, *Brockamp*, 519 U.S. 347(1997). However, other cases that have considered the equitable tolling of § 6511’s statute of limitations have raised additional important concerns. *See, e.g.*, *Amoco Prod. Co. v. Newton Sheep Co.*, 85 F.3d 1464, 1471 (10th Cir. 1996) (rejecting Newton Sheep Company’s argument that the statute of limitations for filing windfall tax refund claims should be equitably tolled because the company’s customers withheld windfall profit taxes on its behalf and it was unaware of the exact amount of the royalties to which it would be entitled); *Lovett v. United States*, 81 F.3d 143, 144-46 (Fed. Cir. 1996) (rejecting the taxpayer’s request for equitable tolling because he received incorrect advice from the Veteran’s Administration); *Oropallo v. United States*, 994 F.2d 25, 28 (1st Cir. 1993) (*per curiam*) (rejecting the taxpayer’s request for equitable tolling because he suffered from carbon monoxide poisoning); *Vintilla v. United States*, 931 F.2d 1444, 1446 (11th Cir. 1991) (*per curiam*) (rejecting the taxpayers’ argument that equitable tolling should apply because similarly-situated taxpayers had been treated differently and were not required to pay taxes in the same manner).

86. Congress authorized the IRS to award equitable relief in certain situations by providing for equitable relief with the new effective tax administration offer-in-compromise provisions. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3462, 112 Stat. 685 at 764-67. It also added equitable relief for innocent spouse claimants with the creation of new I.R.C. § 6015(f). Internal Revenue Service Restructuring and Reform Act of 1998 § 3201(a), 112 Stat. at 734 (codified at I.R.C. § 6015 (2006)).

B. IRS Guidance on § 6511(h)

Section 6511(h) grants the Secretary of the Treasury the authority to require proof of a taxpayer's financial disability.⁸⁷ In April of 1999, the IRS issued Revenue Procedure 99-21,⁸⁸ which "sets forth in detail the 'form and manner' in which proof of financial disability must be provided."⁸⁹ According to Revenue Procedure 99-21, a taxpayer must submit two very specific pieces of documentation to prove financial disability. First, the taxpayer must submit a physician's written statement that sets forth:

- (a) the name and a description of the taxpayer's physical or mental impairment;
- (b) the physician's medical opinion that the physical or mental impairment prevented the taxpayer from managing the taxpayer's financial affairs;
- (c) the physician's medical opinion that the physical or mental impairment was or can be expected to result in death, or that it has lasted (or can be expected to last) for a continuous period of not less than 12 months;
- (d) to the best of the physician's knowledge, the specific time period during which the taxpayer was prevented by such physical or mental impairment from managing the taxpayer's financial affairs; and
- (e) the following certification, signed by the physician:
I hereby certify that, to the best of my knowledge and belief, the above representations are true, correct, and complete.⁹⁰

Second, a taxpayer must submit a statement certifying that no other individual had the authority to act on taxpayer's behalf regarding financial matters during the taxpayer's period of financial disability.⁹¹ Any time period during which an individual was authorized to act for the taxpayer must be included in the calculation of the limitations period.⁹²

87. I.R.C. § 6511(h)(2)(A) (requiring proof of financial disability "in such form and manner as the Secretary may require").

88. Rev. Proc. 99-21, 1999-1 C.B. 960. In *Abston v. Commissioner of the IRS*, 691 F.3d 992, 996 (8th Cir. 2012), the taxpayer challenged the validity of Revenue Procedure 99-21, arguing that it should not control in tax refund cases because it is not a formal IRS rule. The court rejected this argument, holding that the Revenue Procedure is sufficient to provide guidance in applying § 6511. *Id.*

89. *Bova v. United States*, 80 Fed. Cl. 449, 455 (2008).

90. Rev. Proc. 99-21, 1999-1 C.B. 960. The term "physician" is defined in 42 U.S.C. §1395x(r) (2006).

91. Rev. Proc. 99-21, 1999-1 C.B. 960.

92. See Michael I. Saltzman, *IRS Practice and Procedure* ¶ 11.05[2][b] (rev. 2d ed. 2012).

C. Judicial Interpretation and Application of § 6511(h)

1. Judicial Refusal to Equitably Toll § 6511

In considering refund claims brought under § 6511, courts have generally applied the *Brockamp* rationale to reject requests to equitably toll the statute of limitations, particularly in situations involving circumstances that fall clearly outside of the scope of § 6511(h), or in situations in which taxpayers fail to properly substantiate their assertions of financial disability. For example, the First Circuit in *Dickow v. United States* declined to equitably toll the statute of limitations of § 6511's "look back" provision, which limits the refund amount that a taxpayer can recover.⁹³ The court emphasized *Brockamp*'s admonition that "[c]ourts cannot toll, for nonstatutory equitable reasons, the statutory time (and related amount) limitations for filing tax refund claims set forth in section 6511."⁹⁴

Similarly, in *Davis v. United States*, the taxpayer argued that he was entitled to equitable tolling because the statute of limitations for his estate tax refund claim allegedly expired before the "claim and its value came into existence."⁹⁵ The taxpayer asserted that, because taxpayers must have "sufficient legal and factual grounds to file a claim for refund," the estate could not file a claim during the prescribed statutory period because it did not yet have "sufficient grounds."⁹⁶ Although the district court was sympathetic to the taxpayer's

93. *Dickow v. United States*, 654 F.3d 144, 151–53 (1st Cir. 2011). *Dickow*, the executor of the estate at issue, requested a time extension to file the estate's tax returns, which are due nine months after the death of the deceased. *Id.* at 146; I.R.C. § 6075(a) (2006). He also mailed an estimated payment of the estate's tax liability. *Dickow*, 654 F.3d at 146. The IRS extended the time deadline from October 15, 2003 to April 15, 2004. *Id.* On March 23, 2004, *Dickow* submitted a second request for a time extension, which the IRS did not approve. *Id.* at 146–47. *Dickow* finally filed the estate tax return on September 30, 2004, seeking a refund of entire estimated payment he rendered at the time of the first extension. *Id.* at 147. The IRS refunded the full amount. *Id.* On September 10, 2007, *Dickow* filed an amended return seeking an additional refund, which the IRS denied as untimely. *Id.* *Dickow* argued that the statute of limitations should be tolled because the IRS "'misrepresented' to [him] that the second extension had been granted by not telling him explicitly that the request had been denied." *Id.* at 151.

94. *See Dickow*, 654 F.3d at 151–52 (quoting *United States v. Brockamp*, 519 U.S. 347, 348 (1997), *superseded by statute*, Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3202(a), 112 Stat. 685, 740–41 (codified at I.R.C. § 6511(h))).

95. No. 2:11-CV-00034, 2011 WL 6294467, at *1 (N.D. Miss. Dec. 15, 2011).

96. *See id.* On February 3, 2003, Mr. Davis filed an estate tax return for a parcel of land he believed the decedent owned in fee simple. *Id.* Consequently, Mr. Davis reported a liability of nearly \$500,000. *Id.* On April 17, 2003, Mr. Davis paid the IRS approximately \$400,000, representing estate taxes, interest, and penalties. *Id.* Several months later, the Mississippi Chancery Court determined that the decedent held only a vested remainder in the property, rather than a fee simple interest. *Id.* The Mississippi Court of Appeals affirmed the ruling, and the Mississippi Supreme Court denied certiorari on March 2, 2006. *Id.* Mr. Davis filed an administrative claim with the IRS on November 4, 2008, seeking a refund of overpaid federal estate taxes. *Id.* The IRS denied the refund claim as untimely, asserting that the claim was not filed within three years of the filing of the return or two years of payment. *Id.*

situation, it concluded that “the law directs a finding inconsistent with the [c]ourt’s sympathies” and rejected the claim.⁹⁷

The Court of Federal Claims also adhered to *Brockamp*’s principles by strictly interpreting § 6511(h)’s mandate that, in order to be financially disabled, the taxpayer may not have authorized another person to act on their behalf.⁹⁸ In *Plati v. United States*, the court denied relief to a taxpayer who had authorized another person to act on her behalf, explaining that the evaluation of a taxpayer’s financial disability turns on “whether any person [is] ‘authorized to act on behalf of [the taxpayer] in financial matters,’ . . . not whether the authorized person actually took such action.”⁹⁹ Therefore, although the taxpayer insisted on managing her own finances, she designated her son to manage her financial matters and was consequently barred from claiming financial disability.¹⁰⁰

The decisions interpreting and applying § 6511(h) almost unanimously hold in favor of the IRS. The effect that the statute has in causing the IRS to concede to equitable tolling is unclear, because these cases do not become public. Section 6511(h) seemingly has not opened the floodgates to cases involving claims of financial disability because the provision provides only a narrow exception to one circumstance in which a limited time frame can bar full recovery.

2. Judicial Treatment of Revenue Procedure 99-21

Courts have reached different conclusions on how to apply Revenue Procedure 99-21’s requirements for documenting a medically determinable

97. *Id.* at *1–2. *Dickow* and *Davis* suggest that § 6511(h) may be insufficient to address the complexities of estate tax cases. Similarly, the strict tolling provisions in § 6511 may not be suitable for other complex issues that require lengthy litigation before a refund claim can be filed. *See, e.g., Haas v. United States*, 107 Fed. Cl. 1, 3–4 (2012) (declining to equitably toll § 6511 for a veteran who missed the filing deadline because of litigation about his medical disability benefits). The taxpayer in *Haas* was a seventy-five-year-old Vietnam veteran. *Id.* at 3. In 2001, he requested that the Department of Veterans Affairs declare that his medical conditions resulted from his military service. *Id.* The Department eventually accommodated his request, and, consequently, the taxpayer’s disability compensation was not taxable income. *Id.* In 2010, the taxpayer filed an amended income tax return to obtain a refund for the tax payments he made from 2001 to 2009. *Id.* at 3–4. The IRS granted refunded the payments from 2007 to 2009, but denied the refund claims for 2001 to 2006 as untimely. *Id.* at 4. The taxpayer filed suit in the Court of Federal Claims, arguing that he was unable to file an amended tax return until 2010 because of the delay in the decision on his claim for veterans benefits. *Id.* The court refused to equitably toll the statute of limitations and held that the refund claims for tax years 2001 to 2006 were untimely.

98. *See Plati v. United States*, 99 Fed. Cl. 634, 640 (2011).

99. *Plati*, 99 Fed. Cl. at 640–41 (quoting *Bova v. United States*, 80 Fed. Cl. 449, 458 n.12 (2008)). The taxpayer, Ms. Plati, designated her son as her attorney-in-fact and granted him the authority to manage her financial affairs. *Id.* at 635. However, Ms. Plati “‘insist[ed] on keeping control’ and ‘did not let [her son] have control or authority to act for her.’” *Id.* at 640.

100. *Id.* at 641.

illness to establish financial disability.¹⁰¹ Generally, the failure to include a physician's statement with a taxpayer's medical records precludes relief.¹⁰² Additionally, a majority of courts strictly interpret Revenue Procedure 99-21 and not only require a physician's statement, but also demand that the statement meet a standard of specificity.

For example, in *Bowman v. IRS*, the court declined to toll the statute of limitations because, although the taxpayer submitted a fairly comprehensive physician statement, the statement was technically deficient for failure to include the dates of treatment or an adequate basis for the physician's diagnosis.¹⁰³ The court explained the requirements for proving a medically determinable illness, but noted that "[w]here a physician substantially complies with Revenue Procedure 99-21, technical deficiencies may be cured by a supplemental statement."¹⁰⁴ Accordingly, the court directed the taxpayer to submit a supplemental statement detailing the dates of treatment and describing the doctor's diagnosis.¹⁰⁵ However, the taxpayer failed to provide the additional information, and the court dismissed the claim.¹⁰⁶

Similarly, in *Pleconis v. IRS*, the court denied the taxpayer's request to toll the statute of limitations for the period of time during which he underwent five

101. See, e.g., *Abston v. Comm'r*, 691 F.3d 992, 993 (8th Cir. 2012) (concluding that the plaintiff did not comply with the requirements in Revenue Procedure 99-21 because he did not submit a physician's statement despite being told to do so). Compare *Bowman v. IRS*, No. CIV S-09-0167 MCE GGH PS, 2010 WL 2991712, at *4 (E.D. Cal. July 29, 2010) (holding that technically deficient physician's statement can be cured by supplemental physician statements to comply with Revenue Procedure 99-21), and *Walter v. United States*, No. 09-420, 2009 WL 5062391, at *10 (W.D. Pa. Dec. 16, 2009) (same), with *Estate of Rubinstein v. United States*, 96 Fed. Cl. 640, 652 (2011) (citing *Ibeagwa v. United States*, No. 09 C 1267, 2009 WL 3172165, at *2 (N.D. Ill. Sept. 30, 2009) and *Nunn v. United States*, No. 3:08CV-199-S, 2009 WL 260803, at *4 (W.D. Ky. Feb. 4, 2009)) (requiring "[s]trict compliance" with Revenue Procedure 99-21).

102. See, e.g., *Abston*, 691 F.3d at 993-95 (rejecting the taxpayer's request for equitable tolling because she failed to submit physician statement); *Henry v. United States*, No. 3:05-CV-1409-D, 2006 WL 3780878, at *4 (N.D. Tex. Dec. 26, 2006) (explaining that a physician's written statement "is necessary to claim financial disability" and consequently dismissing the taxpayer's claim because she failed to submit a statement).

103. *Bowman*, 2010 WL 2991712, at *4-5 (reproducing the physician's statement, which certified "that Mr. Bowman, who is 48, has been suffering from years of chronic daily headaches with clear migraine characteristics. They have been intense and daily for over six years with the last two years being more intense even. . . . In these conditions it is understandable that his concentration and productivity is greatly affected and therefore feasible that for medical reasons he has at times in the last years been unable to fulfil[l] his duties of doing the tax return in a timely fashion. . . . This statement is signed by Marc Lenaerts M.D., and dated October 28, 2009.").

104. *Id.* at *4 (citing *Walter*, 2010 WL 724445, at *4). Cf. *Jardine v. United States*, No. C12-1421RSL, 2013 WL 195674, at *2 (W.D. Wash. Jan. 17, 2013) (distinguishing *Bowman* and *Walter* and denying the plaintiff's refund claim because the physician's statement did not provide any information about the taxpayer's physical or mental state).

105. *Bowman*, 2010 WL 2991712, at *4-5.

106. *Bowman v. I.R.S.*, NO. 2:09-CV-00167-MCE-GGH PS, 2010 WL 3516685, at *1 (E.D. Cal. Sept. 8, 2010).

back surgeries and two heart surgeries.¹⁰⁷ The taxpayer submitted a physician statement that explained that “[t]he surgeries, rehabilitation and pain medication *could be expected* to have an adverse effect on the [taxpayer’s] ability to carry about business and personal activities either correctly or in a timely fashion.”¹⁰⁸ However, after a strict application of Revenue Procedure 99-21, the court held that these statements were insufficient because the Revenue Procedure requires a physician assert that the injury actually “prevented the taxpayer from managing [his] financial affairs.”¹⁰⁹

Other courts have interpreted Revenue 99-21’s requirements more liberally. In *Walter v. United States*, the taxpayer submitted a physician’s statement that attributed the taxpayer’s failure to file his tax return to his clinical depression.¹¹⁰ The taxpayer subsequently submitted a more thorough supplemental statement.¹¹¹ The IRS argued that the taxpayer could not submit a supplemental statement, and that the initial documentation was insufficient because it did not specifically assert that the taxpayer’s clinical depression “prevented him from managing his financial affairs.”¹¹² The court held that the taxpayer substantially complied with Revenue Procedure 99-21 by submitting the initial physician’s statement and the subsequent supplemental letter, and tolled the statute of limitations.¹¹³

107. *Pleconis v. IRS*, No. 09-5970, 2011 WL 3502057, at *2 (D.N.J. Aug. 10, 2011) (noting that Mr. Pleconis also suffered from sleep apnea, obstructive sleep, and restless leg syndrome). Mr. Pleconis and his wife failed to file joint tax returns from 1999 to 2003 because of Mr. Pleconis’s “extreme medical circumstances.” *Id.* at *1. Consequently, the IRS levied their bank account to satisfy the interest and penalties that had accrued. *Id.* The IRS denied Mr. Pleconis’s refund claim because he filed outside of the statute of limitations, and subsequently declined to toll the statute of limitations. *Id.* at *2.

108. *Id.* at *5.

109. *See Pleconis* at *5. Additionally, the district court examined the extent of Pleconis’s injuries, noting that he was “able to talk on the phone, watch television, surf the internet, drive to the pharmacy for his prescriptions, and do ‘light grocery shopping.’” *Id.* at *2. This evidence undercut the argument that Mr. Pleconis could not file his tax returns because of his medical conditions. *Id.* at *6.

110. *Walter v. United States*, No. 09-420, 2009 WL 5062391, at *9 (W.D. Pa. Dec. 16, 2009) (detailing the physician’s statement, which concluded, “with a reasonable degree of medical certainty,” that the plaintiff’s failure to file his tax returns “was a result of his clinical depression”).

111. *Id.* The doctor’s supplemental letter stated: “It is my medical opinion, with a reasonable degree of medical certainty that Mr. Walter has lacked since 2002 the mental capacity to handle financial affairs (possessed by a normal person), let alone do something as relatively complicated as completing and filing income tax returns.” *Id.*

112. *Id.* at *9–10.

113. *Id.* at *11.

III. CONTINUING EFFORTS TO EXPAND RELIEF FOR LATE FILERS

A. Tolling of Statutes of Limitations Within the Internal Revenue Code

The Code contains three additional statutory provisions that allow taxpayers to toll statutes of limitations. These three statutes provide a potentially useful structure to draw from in building a better and broader financial disability statute.

1. Section 7508

Section 7508 is part of a series of special tax provisions for members of the armed services that trace their history back to the passage of the Sixteenth Amendment in 1913.¹¹⁴ Changes to these provisions have generally run parallel to the United States' involvement in foreign conflicts.¹¹⁵ Congress enacted the first general waiver provision for limitations periods in the Code with the Revenue Act of 1921.¹¹⁶ This waiver was not specific to individuals serving in combat zones, but it nonetheless addressed the need to extend statutory limitations periods under certain circumstances.¹¹⁷

World War II prompted the first extension of limitations periods for certain individuals affected by war conditions.¹¹⁸ The Revenue Act of 1942 added § 3804, which extended "the time specified for the performance of certain acts where the ability to do or perform those acts would or might be affected by the

114. I.R.C. § 7508 (2006); Richard W. Rousseau, *Update: Tax Benefits for Military Personnel in a Combat Zone or Qualified Hazardous Duty Area*, ARMY LAWYER, Dec. 1999, at 1 ("Since the inception of the first modern income taxation in the United States in 1913, special federal income tax benefits have been granted for service members.").

115. See Edward A. Beck, III, *The Taxation of Members of the Armed Services: Legislative and Administrative Changes Arising from the Persian Gulf Conflict*, 38 FED. B. NEWS & J. 350, 350 (1991). Earlier legislation provided benefits to service members with federal income tax exclusions. See *id.* In addition to the time-limit extensions granted to active service members discussed in this Article, the Code also exempts pay to active service members from taxation. See *id.* at 1–2. For a detailed discussion of the evolution of tax exclusions for members of the Armed Forces, see generally *id.*

116. See 15 JACOB MERTENS, JR., MERTENS THE LAW OF FEDERAL INCOME TAXATION § 57:2 (2011) (citing Revenue Act of 1921, ch. 136, § 250(d), 42 Stat. 227, 265–66).

117. See § 250(d), 42 Stat. at 265–66. Section 250(d) provided that the statute of limitations would apply "unless both the Commissioner and the taxpayer consent in writing to a later determination, assessment, and collection of the tax." *Id.* The modern IRC contains a similar provision. See I.R.C. § 6501(c)(4) (2006).

118. Patrick J. Kusiak, *Income Tax Exclusion for Military Personnel: Examining the Historical Development, Discerning Underlying Principles, and Identifying Areas for Change*, 39 FED. B. NEWS & J. 146, 146–47 ("Members of the Armed Forces serving during World War II were beneficiaries of a host of tax exemptions and exclusions enacted during World War II."). Benefits to service members included an extension of the time deadline for filing tax returns and paying tax liabilities. *Id.* at 147.

war.”¹¹⁹ This wartime provision further extended the time for performance of certain acts to include those in any period during which any individual traveled outside of the United States for more than ninety days and for an additional ninety days following his or her return.¹²⁰ The time extension applied to any individual caught outside of the country during the war, not just service members.¹²¹ Congressional reports noted that extending the statute of limitations was necessary because filing refund claims or paying tax liabilities was “impracticable or impossible” during periods of war.¹²²

Following World War II, Congress has repeatedly allowed for the extension of certain limitations periods as the United States continues to involve itself in foreign conflicts, but generally only for members of the Armed Forces.¹²³ Congress revised the time-limit extensions to accommodate individuals either serving directly in, or in support of, the Armed Forces in areas designated as combat zones.¹²⁴ Congress also extended these benefits to individuals who are hospitalized abroad for injuries sustained during service in a combat zone.¹²⁵ The amount of time the extension grants generally equals the length of service and hospitalization plus an additional 180 days.¹²⁶ In 1954, § 3804 was recodified within § 7508.¹²⁷ Congress has since revised § 7508 to include

119. *Hamilton v. Comm’r*, 13 T.C. 747, 750 (1949); *see also infra* note 127 and accompanying text (noting that § 3804 was amended and recodified within the IRC).

120. *See* Revenue Act of 1942, Pub. L. No. 753, § 507, 56 Stat. 798, 961.

121. *Id.* Section 3804 is not only broader than its successor—§ 7508—in the scope of to whom it provided relief, but also in the area it covers. *Compare id.* (extending relief to any individual outside of the United States during World War II), *with* I.R.C. § 7508 (2006) (extending relief to individuals serving in the Armed Forces in designated combat zones).

122. *Hamilton*, 13 T.C. at 750 (noting that the House’s discussion of § 7508 was limited to its practicality).

123. *See* MERTENS, *supra* note 116, at § 57:2. In the past few decades, the Code has been amended to address foreign conflicts in which the United States has been engaged. *See id.*

124. *See id.* According to the IRS:

Combat zones are designated by an Executive Order from the President as areas in which the Armed Forces are engaging or have engaged in combat. There are currently three such combat zones (including airspace above each): [1] Arabian Peninsula Areas, beginning Jan. 17, 1991. . . . Kosovo area, beginning Mar. 24, 1999. . . . Afghanistan, beginning Sept. 19, 2001. . . . In addition, the Department of Defense has certified a number of locations for combat zone tax benefits due to their direct support of military operations.

Combat Zones, IRS, <http://www.irs.gov/uac/Combat-Zones> (last updated May 6, 2013). For a discussion of qualified service in a combat zone and the benefits of such service, *see Combat Zone Tax Exclusions*, MILITARY.COM, <http://www.military.com/benefits/military-pay/special-pay/combat-zone-tax-exclusions.html> (last visited Oct. 5, 2013). *See also* Rachel Ney, *Assisting Military Clients*, in 2 EFFECTIVELY REPRESENTING YOUR CLIENT BEFORE THE IRS § 23.1, § 23.5.4 (T. Keith Fogg, ed., 5th ed. 2011).

125. MERTENS, *supra* note 116, at § 57:2.

126. *Id.*

127. *See* S. REP. NO. 83-1622, at 616 (1954) (explaining that the § 7508 “contains no material change in existing law” and “continues in the law those provisions of section 3804 of the 1939 Code”).

individuals serving in specific foreign conflicts.¹²⁸ The extension of time created by § 7508 occurs for everyone covered by the statute and does not depend on the discretion of the IRS.

2. Section 7508A

In 1997, Congress enacted § 7508A, which closely resembles § 7508 in providing broad coverage to a class of identified persons but differs in operation.¹²⁹ Section 7508 suspends time limitations within the Code for service members, whereas § 7508A provides the opportunity for similar relief to taxpayers affected by disasters.¹³⁰ Section 7508A contains a broad catch-all provision that authorizes the Treasury to promulgate regulations to allow the IRS to suspend the time limitations for actions “required or permitted under the internal revenue laws specified by the Secretary of the Treasury” for up to one year.¹³¹ Section 7508A authorizes, but does not mandate, the IRS to

128. Section 7508 was first revised to accommodate those serving in the Armed Forces in Vietnam. *See* S. REP. NO. 94-1319, at 3–4 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6061, 6063–64 (extending certain tax benefits to individuals serving in Vietnam who were missing in action or hospitalized). In 1976, Congress again revised § 7508—which had previously extended benefits to those individuals affected “by reason of war”—to extend benefits to individuals affected “by reason of service in combat zone.” Tax Reform Act of 1976, Pub. L. No. 94-455, § 1906(a)(51)(A), 90 Stat. 1520, 1831 (codified at I.R.C. § 7508 (2006)). Congress subsequently extended § 7508 relief several times to accommodate specific conflicts. *See, e.g.*, Act of Jan. 31, 1991, Pub. L. No. 102-2, 105 Stat. 5, 5–6 (codified at I.R.C. § 7508) (including those serving in the Gulf War); Act of Mar. 20, 1996, Pub. L. No. 104-117, § 1, 110 Stat. 827, 827–28 (accommodating those serving in Bosnia, Herzegovina, Croatia, and Macedonia); Act of Apr. 19, 1999, Pub. L. No. 106-21, § 1(a)(8), 113 Stat. 34 (extending relief to service members in Kosovo and the surrounding areas). Regarding the Kosovo conflict, President Clinton stated: “With our citizens working so hard to protect the people of Kosovo, they shouldn’t have to worry about their taxes.” *Tax Legislation: Clinton to Issue Executive Order by April 15 to Give Tax Relief to U.S. Troops in Kosovo*, Daily Tax Rep. (BNA) No. 70, at G-1 (Apr. 13, 1999), *available at* 1999 WL 291069. In 2003, Congress revised § 7508 to include “contingency operations” in addition to combat zones. Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, § 104(b)(2), 117 Stat. 1335, 1338 (codified at I.R.C. § 7508).

129. *See* Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 911(a), 111 Stat. 788, 877 (codified at I.R.C. § 7508A (2006 & Supp. 2012)).

130. *Compare* I.R.C. § 7508(a) (applying “[i]n the case of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces”), *with* I.R.C. § 7508A(a) (applying “[i]n the case of a taxpayer”). Congress created § 7508A relief after many high-profile disasters. *See, e.g.*, Aviation Security Improvement Act of 1990, Pub. L. No. 101-604, § 211(c), 104 Stat. 3066, 3085 (codified at 22 U.S.C. § 5570 (2006)) (providing limited tax benefits to victims of the December 21, 1988 terrorist attack on Pam Am Flight 103 over Lockerbie, Scotland); Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135, 119 Stat. 2577 (codified in scattered sections of I.R.C.) (extending “tax benefits for the Gulf Opportunity Zone and certain areas affect by Hurricanes Rita and Wilma”); Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73, 119 Stat. 2016 (codified in scattered sections of I.R.C.) (granting “emergency tax relief for persons affected by Hurricane Katrina”).

131. I.R.C. § 7508(a)(1)(K); *see* I.R.C. § 7508A(a)(1) (adopting the list of triggering actions in § 7508). Treasury Regulation § 301.7508A-1 defines the scope of § 7508A’s catch-all provision and includes “any other act specified in a revenue ruling, revenue procedure, notice,

suspend taxpayers' obligations under the Code following a "federally-declared disaster."¹³²

While § 7508 and § 7508A are similar in scope, § 7508A gives the IRS greater discretion in granting relief. Each of the two statutes creates a zone, and when compared, the zones aid in illustrating the amount of IRS authority. When Congress creates a combat zone, the statutory provisions automatically extend numerous time periods set out in the Internal Revenue Code for the time that qualified taxpayers spend in the combat zone, plus an additional 180 days.¹³³ However, when the President declares a disaster under § 7508A, the IRS must analyze the nature and scope of the disaster and create a response tailored to that disaster in order to suspend the relevant time limitations.¹³⁴ Congress's willingness to give to the IRS the authority to make decisions on whether and how much relief to grant within the parameters set by Congress shows again that Congress wants to get out of the business of passing legislation with minute details of the nature and scope of relief, similar to a private bill. Instead, it adopts a model, as it did in section 6511(h) and in section 408(d)(3)(I), discussed below, to pass this authority to the Agency.

3. Section 408(d)(3)(I)

In 2001, Congress enacted § 408(d)(3)(I), adding another statutory provision that extends time limitations under the Code.¹³⁵ Section 408(d)(3)(I) permits the Treasury to waive the sixty-day rollover requirement for individual

announcement, news release, or other guidance published in the Internal Revenue Bulletin." Treas. Reg. § 301.7508A-1(c)(1)(vii) (2012).

132. See IRC § 7508A(a). A "federally declared disaster" is "any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act." I.R.C. § 165(h)(3)(C)(i) (2006 & Supp. 2012).

133. I.R.C. § 7508(a).

134. The process of declaring a disaster under § 7508A begins with the affected state's governor requesting aid from the federal government. *The Declaration Process*, FEMA, <http://www.fema.gov/declaration-process> (last updated June 13, 2012). The President, with the help of the Federal Emergency Management Agency (FEMA), determines the scope of the disaster area and the scope of relief. See *id.* (explaining that the President decides where to declare a disaster and whether to extend individual or public assistance). See generally Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. No. 100-707, 102 Stat. 4689 (codified in scattered sections of 42 U.S.C.) (detailing the disaster-declaration process). After the President declares a disaster, the IRS evaluates the disaster's impact on taxpayers' obligations under the IRC and issues a notice setting out the tax consequences. See, e.g., I.R.S. Notice 2001-61, 2001-40 I.R.B. 305 (providing tax relief to the presidentially-declared disaster areas of New York City, Western Pennsylvania, and the Pentagon in Northern Virginia after the 9-11 terrorist attacks); I.R.S. Notice 2001-63, 2001-40 I.R.B. 308 (same). However, although Congress authorized the IRS to determine what and how much relief to provide, the IRS does not make this decision in a vacuum. The disaster areas are represented by members of Congress who will make their views known if the IRS's response is not appropriate.

135. Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 644(b), 115 Stat. 38, 123 (codified at I.R.C. § 408).

retirement accounts (IRAs) if “the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.”¹³⁶ Section 408(d)(3)(I)’s legislative history details situations that justify waiver of the sixty-day period for filing, such as the failure to cash checks, “errors committed by a financial institution, restrictions imposed by a foreign country, or postal error.”¹³⁷ Waiver may also be justified by death, disability, hospitalization, or incarceration.¹³⁸ Perhaps because the sixty-day time period is short and during such a short time period death, hospitalization, or incarceration could have an impact on failing to act within the statutory time frame, Congress did not believe a longer period, such as the two or three year period of 6511(h) would merit. Still, Section 408(d)(3)(I) opens the door for additional bases for suspension not considered when Congress passed 6511(h).

Additionally, § 408(d)(3)(A)(i) imposes different procedural obligations. Revenue Procedure 2003-16 requires taxpayers to apply to the IRS for a private letter ruling to obtain relief under § 408(d)(3)(A)(i).¹³⁹ If the transaction meets certain safe-harbor provisions, approval through the private letter ruling process is not required.¹⁴⁰ Furthermore, the Revenue Procedure’s “[r]equirements for a favorable ruling” provision provides additional bases for suspension, including “casualty, disaster or other events beyond the reasonable

136. See I.R.C. § 408(d)(3)(I) (2006). After a taxpayer receives funds from an IRA, there is a sixty-day time limitation to complete the rollover to another IRA. See I.R.C. § 408(d)(3)(A)(1). If the taxpayer does not complete the rollover within sixty days, the funds he received from the IRA will be treated as ordinary income. I.R.C. § 408(d)(1). The IRS considers “all relevant facts and circumstances” in determining whether the taxpayer is entitled to the waiver of the sixty-day limitation, including:

[W]hether errors were made by the financial institution (in addition to those described under automatic waiver, above); whether you were unable to complete the rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; whether you used the amount distributed (for example, in the case of payment by check, whether you cashed the check); and how much time has passed since the date of distribution.

Retirement Plans FAQs Relating to Waivers of the 60-Day Rollover Requirement, IRS, <http://www.irs.gov/Retirement-Plans/Retirement-Plans-FAQs-relating-to-Waivers-of-the-60-Day-Rollover-Requirement> (last updated Mar. 26, 2013).

137. H.R. REP. NO. 107-84, at 252–53 (2001) (Conf. Rep.), *reprinted in* 2001 U.S.C.C.A.N. 46, 178.

138. Rev. Proc. 2003-16, 2003-4 I.R.B. 359. The IRS has issued approximately eight hundred private letter rulings since the inception of the program.

139. *Id.*

140. See *id.* at 359–60 (detailing the requirements for automatic approval). The transaction will be automatically approved if the financial institution actually received the rollover funds within sixty days, together with appropriate instructions, and the failure to complete the rollover resulted solely from the institution’s error. *Id.* at 360.

control of the taxpayer.”¹⁴¹ The Revenue Procedure also offers avenues for relief that § 6511(h) does not consider.¹⁴²

B. Tolling of Statutes of Limitations Outside of the Internal Revenue Code

1. Legislative Efforts

Just as Congress sought to expand financial disability relief by enacting § 6511(h), it similarly has revised other inequitable statutes of limitations. For example, in 1998, Goodyear Tire and Rubber Company employee Lily Ledbetter brought a pay discrimination action against Goodyear after discovering that she earned significantly less than three male employees in the same position.¹⁴³ However, the U.S. Supreme Court held that Ledbetter’s suit was barred by the statute of limitations, even though she was unaware of the discrimination during the statutory timeframe and did not learn of the unequal pay until years later.¹⁴⁴ The Court concluded that, under the applicable 180-day limitations period, Ledbetter should have filed suit within six months of receiving her first discriminatory paycheck.¹⁴⁵

In response to the Supreme Court’s ruling, Democrats in the House of Representatives sought to amend the statute so that the 180-day statute of limitations would restart with each discriminatory paycheck received by the employee.¹⁴⁶ George Miller, House Education and Labor Chairman, stated that the bill “will make it clear that discrimination occurs not just when the decision to discriminate is made, but also when someone becomes subject to that discriminatory decision, and when they are affected by that discriminatory decision.”¹⁴⁷ The Lily Ledbetter Fair Pay Act extended the time frame in which an employee may bring a pay discrimination action by expanding the definition of “unlawful employment practice;” actionable illegal activity now occurs “when a discriminatory compensation or other practice is adopted,

141. *Id.* at 359.

142. *Compare id.* (extending the time limitation for a variety of events “beyond the reasonable control of the taxpayer”), with I.R.C. § 6511(h)(2)(A) (2006) (tolling the statute of limitations only for physical or mental impairment that “can be expected to result in death or [that] has lasted or can be expected to last for a continuous period of not less than 12 months”).

143. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 621–22 (2007), *superseded by statute*, Lily Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5.

144. *Id.* at 632.

145. *Id.* at 628 (“Ledbetter should have filed an EEOC charge within 180 days after each allegedly discriminatory pay decision was made and communicated to her.”). The Supreme Court reasoned that the 180-day statute of limitations “reflects Congress’ strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation.” *Id.* at 630–31.

146. Jesse J. Holland, *House Dems Target Court’s Pay Ruling*, USA TODAY (June 12, 2007, 4:45 PM), http://usatoday30.usatoday.com/news/washington/2007-06-12-2953732132_x.htm.

147. *See id.* The Senate initially struck down the bill, but it was reintroduced and ultimately passed in early 2009. *Id.* The Lilly Ledbetter Fair Pay Act was the first piece of legislation signed into law by President Obama. *Id.*

when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time, wages, benefits, or other compensation is paid.”¹⁴⁸

2. Judicial Efforts

Although time limitations in the Internal Revenue Code may not allow for equitable tolling due to their “unusually emphatic” and “technical” language,¹⁴⁹ courts have relied on *Irwin* to equitably toll statutes of limitations in other areas of law that do. In *Irwin*, the Supreme Court held that the “rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States.”¹⁵⁰ Since that decision, the Court has applied equitable tolling principles in several other statutory contexts.¹⁵¹

In 2010, the Supreme Court tolled the one-year statute of limitations imposed by the Antiterrorism and Effective Death Penalty Act (AEDPA).¹⁵² Under the AEDPA, an individual in custody generally must file a request for habeas corpus relief within one year from the date on which his or her conviction became final.¹⁵³ This one-year time limitation is statutorily tolled for the period in which any properly filed post-conviction relief is pending in state court.¹⁵⁴ In addition to statutory tolling, the one-year limitations period may also be equitably tolled.¹⁵⁵ In *Holland v. Florida*, the Court held that,

148. § 3, 123 Stat. at 5–6 (codified at 42 U.S.C. § 2000e-5(e)(3) (A) (Supp. 2012)).

149. *United States v. Brockamp*, 519 U.S. 347, 350 (1997), *superseded by statute*, Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3202(a), 112 Stat. 685, 740–41 (codified at I.R.C. § 6511(h)).

150. *Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89, 95–96 (1990).

151. *See, e.g., Holland v. Florida*, 130 S. Ct. 2549, 2560 (2010) (equitably tolling the Antiterrorism and Effective Death Penalty Act’s statute of limitations for a habeas corpus petition); *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 140–43 (2008) (Stevens, J., dissenting) (discussing equitable tolling principles in response to the majority’s refusal to toll the six-year time limitation to file a suit against the United States in the Court of Federal Claims); *Scarborough v. Principi*, 541 U.S. 401, 423 (2004) (permitting an untimely amendment of a fee application under Equal Access to Justice Act).

152. *Holland*, 130 S. Ct. at 2560–61.

153. 28 U.S.C. § 2244(d)(1) (2006). A petitioner must file a habeas petition from the latest of: (1) the date the judgment became final; (2) the date an impediment to filing is removed; (3) the date the Supreme Court recognizes a constitutional right; or (4) the date “the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.” *Id.* Before the AEDPA was enacted, federal habeas corpus petitions were not subject to a statute of limitations. *Day v. McDonough*, 547 U.S. 198, 214 (2006) (Scalia, J., dissenting).

154. *See* 28 U.S.C. § 2244(d)(2). Because of the complexities involved in calculating the one-year statute of limitations, the Supreme Court has heard twelve AEDPA statute of limitations cases since the statute’s enactment. *See* Anne R. Traum, *Last Best Chance for the Great Writ: Equitable Tolling and Federal Habeas Corpus*, 68 MD. L. REV. 545, 553–54 (2009).

155. *Holland*, 130 S. Ct. at 2560. The AEDPA itself does not identify circumstances under which the statute of limitations can be tolled, as does § 6511(h) and § 408(d)(3)(I). *Compare* 28

because the AEDPA's statute of limitations is not jurisdictional, it is "subject to a rebuttable presumption in *favor* of equitable tolling."¹⁵⁶ The Court concluded that, because habeas relief is based in equity and the statute "differs significantly" from the tax provision at issue in *Brockamp*, the presumption of equitable tolling applied.¹⁵⁷ Consequently, courts have the discretion to award habeas relief to petitioners who would otherwise be denied relief for failing to file within the limitations timeframe.

To qualify for equitable tolling, a habeas petitioner must establish "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing."¹⁵⁸ Such extraordinary circumstances have been defined as those in which "it would be unconscionable to enforce the limitation period . . . and gross injustice would result."¹⁵⁹ Although a habeas petitioner is entitled to equitable relief in limited circumstances, the judiciary has at least provided a petitioner who files an untimely request the opportunity to argue for equitable tolling. Furthermore, tax litigants may benefit from *Holland's* "rebuttable presumption" in *favor* of equitable tolling."¹⁶⁰ The holding in *Holland* signals that future courts may

U.S.C. § 2244 (making no mention of tolling), with I.R.C. § 6511(h) (2006) (suspending the statute of limitations during periods of financial disability), and I.R.C. § 408(d)(3)(I) (waiving the sixty-day time deadline if "the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control" of the taxpayer).

156. *Holland*, 130 S. Ct. at 2560. Compare *Henderson ex rel. Henderson v. Shinseki*, 131 S. Ct. 1197, 1200 (2011), in which the Supreme Court concluded that the statute of limitations of the appeal of a Board of Veterans' Appeals decision was not jurisdictional. The Court reasoned that the statute did not indicate that the time limitation "was meant to carry jurisdictional consequences," *id.* at 1204, indicating that congressional intent is an important factor in determining whether a statute of limitations can be equitably tolled. The Court explained that, because "filing deadlines . . . are quintessential claim-processing rules," they should not be jurisdictional unless Congress has clearly indicated that the rule is jurisdictional. *Id.* at 1203.

157. *Holland*, 130 S. Ct. at 2560–61. The Court emphasized that the statute at issue in *Brockamp* "se[t] forth its time limitations in unusually emphatic form," using "technical" language." *Id.* (quoting *United States v. Brockamp*, 519 U.S. 347, 350 (1997), *superseded by statute*, Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3202(a), 112 Stat. 685, 740–41 (codified at I.R.C. § 6511(h))). The Court reasoned that the AEDPA's statute of limitations does not contain "unusually emphatic" language and that equitable tolling would not affect the merits of a petition for habeas corpus. *Id.*

158. *Lawrence v. Florida*, 549 U.S. 327, 336 (2007) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)).

159. *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2006). For example, several circuits consider "sufficiently egregious misconduct" by a petitioner's counsel sufficient to toll the limitations period. See, e.g., *Fleming v. Evans*, 481 F.3d 1249, 1256 (10th Cir. 2007).

160. *Holland*, 130 S.Ct. at 2560 (quoting *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95–96 (1990)). For a discussion of *Holland's* application to tax cases involving equitable tolling, see Smith, *Cracks Appear in the Code's 'Jurisdictional' Time Provisions*, *supra* note 8.

conclude that certain provisions in the IRC are not jurisdictional, therefore providing taxpayers with the opportunity for equitable relief.¹⁶¹

3. *Administrative Responses*

Treasury Regulation section 301.9100-3 allows taxpayers who fail to make a timely election for certain administrative, rather than statutory, deadlines to request relief.¹⁶² To obtain relief under section 301.9100-3, the taxpayer must show that he “acted reasonably and in good faith, and [that] the grant of relief will not prejudice the interests of the Government.”¹⁶³ The taxpayer can meet the requirements of reasonableness and good faith if he:

[1] [r]equests relief . . . before the failure to make the regulatory election is discovered by the Internal Revenue Service (IRS); [2] [f]ailed to make the election because of intervening events beyond the taxpayer’s control; [3] [r]easonably relied on the written advice of the Internal Revenue Service (IRS); or [4] [r]easonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.¹⁶⁴

The taxpayer must also make the request using the private letter ruling procedure, which, like § 408(d)(3)(I), provides transparency.¹⁶⁵ In the request, the taxpayer must show that he acted reasonably and good faith—consistent with the factors listed in the regulation—and that granting the request will not prejudice the IRS.¹⁶⁶ Section 301.9100-3 also includes a broad catch-all provision for additional relief.¹⁶⁷

Similarly, in 1998, Congress added § 6015(f) to the IRC, known as the innocent spouse provision.¹⁶⁸ The IRS imposed a two-year filing deadline

161. See *Henderson*, 131 S. Ct. at 1202–03 (observing that the Court has “tried in recent cases to bring some discipline to the use of” the jurisdictional label).

162. See Treas. Reg. § 301.9100-3(a)–(c) (2012) (listing the various circumstances under which a request for an extension may be granted).

163. Treas. Reg. § 301.9100-3(a).

164. Treas. Reg. § 301.9100-3(b).

165. Treas. Reg. § 301.9100-3(e)(5) (“A request for relief under this section is a request for a letter ruling.”); Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (requiring a private letter ruling under § 408(d)(3)). Private letter rulings add a level of transparency to IRC proceedings because the IRS is required to publish private letter determinations. See I.R.C. § 6110(a) (2006) (“[T]he text of any written determination and any background file document relating to such written determination shall be open to public inspection at such place as the Secretary may by regulations prescribe.”).

166. Treas. Reg. 301.9100-3(c)(1) (“The Commissioner will grant a reasonable extension of time to make a regulatory election only when the interest of the Government will not be prejudiced by the granting of the relief.”).

167. See Treas. Reg. 301.9100-3(b)(1)(ii) (granting relief if the taxpayer “[f]ailed to make the election because of intervening events beyond the taxpayer’s control”).

168. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3201(a), 112 Stat. 685, 734 (codified at I.R.C. § 6015 (2006)) (providing relief from the joint

within the provision, but, after years of taxpayers challenging its validity,¹⁶⁹ the IRS withdrew the time limitation.¹⁷⁰

Individuals who seek innocent spouse relief are frequently unable to file their claims in a timely manner. In many instances, the nature of the spousal relationship that creates the need for innocent spouse relief—domination, manipulation, or domestic violence—also leaves the victim in a vulnerable financial and emotional state that makes it difficult to meet statutory deadlines.¹⁷¹ The cases that address the § 6015(f) regulations have revealed a vulnerable population.¹⁷²

For example, in *Mannella v. Commissioner*, Mrs. Mannella missed the innocent spouse provision's two-year filing deadline because her husband hid the couple's mail and refused to allow her to see it.¹⁷³ Although she eventually obtained relief after the IRS withdrew the two-year rule, the court noted that Mrs. Mannella's case warranted equitable tolling.¹⁷⁴ The circumstances in cases like *Mannella* highlight the need for equitable remedies for taxpayers who miss filing deadlines due to circumstances beyond their control. Addressing this need requires a statute that does not limit financial disability to physical and mental impairment. The IRS has administratively acknowledged

and several liability for the failure to file a joint tax return imposed by § 6013(d)(3)). The Internal Revenue Service Restructuring and Reform Act also directed the IRS to create provisions of offers-in-compromise in situations in which the taxpayer would not have sufficient "means to provide for basic living expenses" were he to satisfy his outstanding tax liabilities. § 3462(a), 112 Stat. at 764–65 (codified at 26 U.S.C. § 7122 (2006)). The equitable provisions for offers-in-compromise do not relate to time frames and are outside of the scope of this Article.

169. See, e.g., *Jones v. Comm'r*, 642 F.3d 459 (4th Cir. 2011) (plaintiff-taxpayer disputing the validity of the two-year statute of limitations in § 6015(f)); *Mannella v. Comm'r*, 631 F.3d 115 (3d Cir. 2011) (same); *Lantz v. Comm'r*, 607 F.3d 479 (7th Cir. 2010) (same).

170. See I.R.S. Notice 2012-8, 2012-4 I.R.B. 309 (withdrawing Revenue Procedure 2003-61 and proposing new equitable factors as its replacement). Revenue Procedure 2003-61 required the requesting spouse file a claim for equitable relief within two years of the IRS's first collection activity. Rev. Proc. 2003-61, 2003-2 C.B. 296. On July 25, 2011 the IRS changed its position on the two-year rule in innocent spouse cases seeking equitable relief, see I.R.S. Notice 2011-70, 2011-32 I.R.B. 135, and, on January 23, 2012, the IRS withdrew the policy in its entirety. I.R.S. Notice 2012-8, 2012-4 I.R.B. 309. The IRS eliminated the two-year requirement because the Commissioner concluded that the time limitation was an incorrect interpretation of the statute, despite the fact that the IRS was successful in defending taxpayer suits. See *supra* note 169 (listing examples of taxpayer challenges to Revenue Procedure 2003-61's validity).

171. See *Wilson v. Comm'r*, 705 F.3d 980, 982 (9th Cir. 2013) (observing that many taxpayers who discover "that they are liable for their former spouse's tax debt" are women who are "victims of domestic abuse [and] whose ability to review or correct a joint [tax] return before it is filed is impaired").

172. See, e.g., *Stephenson v. Comm'r*, T.C.M. (CCH) 1048, 1048–49 (2011) (noting that the taxpayer's husband physically and mentally abused her and threatened her with violence for refusing to sign documents); *Brown v. Comm'r*, 55 T.C.M. (CCH) 1249, 1251 (1988) (explaining that the taxpayer's husband abused her and forced her to sign documents).

173. 631 F.3d 115, 118–19 (3d Cir. 2011).

174. *Id.* at 117.

the problem and is seeking to work with the bar to find language in its forms and guidance that will meet the needs of this group of taxpayers.¹⁷⁵

IV. CRAFTING A SOLUTION

Congress's current approach to suspending the IRC's statutory time frames permits suspension in relatively limited circumstances. These ad hoc sections that address specific, narrow circumstances do not serve the best interests of either taxpayers or the IRS. Consequently, the Code should adopt a broader approach to granting of relief when a financially disabled taxpayer misses a statutory deadline. A statutory solution is a better mechanism for relief than entrusting courts with applying equitable tolling on a case-by-case basis.¹⁷⁶

A more expansive system for suspending time periods due to excusable circumstances must have three characteristics. First, the solution must be sufficiently broad. For example, § 7508 and § 7508A essentially allow for the suspension of any time frame in the IRC, which in turn permits taxpayers to obtain relief in any circumstance that meets the statutory requirements.¹⁷⁷ Financial disability should similarly apply to a wide range of time limitations. Second, the excusable circumstances for which the statute of limitations may be tolled must be specifically enumerated. Drawing on Revenue Procedure 2003-16 and equitable tolling principles,¹⁷⁸ the circumstances should be broad enough to address all situations in which relief should be granted. Third, in order to conserve judicial resources, the IRS should be responsible for determining whether a taxpayer is financially disabled, subject to judicial review for abuse of discretion.

A. Breadth of Suspension

The legislative history of § 7508 signifies Congress's recognition of the sacrifices made by those serving in combat zones and the hardships those individuals face. The purpose of Section 7508 most concretely applicable to this article stem from the provision initially enacted in 1941; this statute recognized that performing certain acts under the IRC were "impracticable or impossible" for individuals outside of the United States during times of war.¹⁷⁹ Although the benefits afforded by this initial statute expired just a few years later with the end of World War II, Congress has since repeatedly recognized

175. See T. Keith Fogg, *Low-Income Taxpayer Clinicians Meet with Service Representatives*, 31 A.B.A. SEC. OF TAX'N NEWS Q., Summer 2012, at 16.

176. A statutory solution will both eliminate case-by-case equitable tolling fights and empower the IRS to suspend statutory time frames.

177. See I.R.C. § 7508(a) (2006) (applying to "the internal revenue laws" and extending time deadlines with "respect [to] any tax liability"); I.R.C. § 7508A(a) (2006 & Supp. 2012) (same).

178. See Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (providing broad grounds for waiving the sixty-day time requirement in § 408(d)(3)); see also *supra* notes 139-142 and accompanying text (discussing the requirements for waiver under Rev. Proc. 2003-16).

179. *Hamilton v. Comm'r*, 13 T.C. 747, 751 (1949).

the need to extend the limitations periods for individuals serving in the Armed Forces.¹⁸⁰

While Congress has recognized the need for broad relief from statutory time frames for certain individuals in the military and those suffering from specified disasters, it has not yet initiated comprehensive relief for those suffering from financial disability.¹⁸¹ Any taxpayer subject to an IRC time deadline should have the right to demonstrate that he failed to meet that deadline because of an excusable circumstance. The breadth of § 7508 and § 7508A make them attractive models for expanding the reach of financial disability relief.

Adopting broad grounds for relief, as Congress did with § 7508 and § 7508A,¹⁸² shifts the focus to the quality of the excuse for missing the time frame, rather than the nature of the time frame itself. Although certain situations may require different, or greater, proof, no time deadline should preclude relief if the taxpayer has a meritorious excuse. Congress could certainly enact different requirements for different sections of the IRC. Late action by the taxpayer, even with an excuse, does not necessarily mean that the statute should grant relief. Rather, a broader scheme for relief simply means that the time barrier for seeking the relief will be lifted if the taxpayer shows a sufficient basis for doing so.

B. Excusable Circumstances

Section 6511(h) provides a very narrow path to tolling the statute of limitations for filing a refund claim and serves as a poor model for establishing broader relief provisions for at least two reasons. First, § 6511(h)'s requirements for relief exclude many of the traditional bases for relief available in equitable tolling cases.¹⁸³ Second, Revenue Procedure 99-21 narrows § 6511(h) relief even further with strict requirements that burden taxpayers, especially low income taxpayers.¹⁸⁴ Section 408(d)(3)(I) and Revenue Procedure 2003-16 provide better models of excusable circumstances for

180. See *supra* notes 123–128 and accompanying text (tracing the development of § 7508 following World War II and describing the continued protection Congress has provided to members of the Armed Services).

181. See *supra* Part II.A. (discussing the legislative history of § 6511(h) and noting the very limited relief the provision provides).

182. See I.R.C. § 7508(a) (applying to any “individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in an area designated by the President of the United States by Executive order as a ‘combat zone’”); I.R.C. § 7508A(a) (applying to any “taxpayer determined by the Secretary to be affected by a federally declared disaster”); see also Part III.A.1–2 (discussing the tolling provisions in § 7508 and § 7508A).

183. I.R.C. § 6511(h)(2)(A) (2006) (suspending the statute of limitations in § 6511 only if the taxpayer is “financially disabled”).

184. Rev. Proc. 99-21, 1999-1 C.B. 960 (requiring a detailed physician’s statement and a certification that the taxpayer has not authorized another person to act on his behalf); see also Part II.B.2 (discussing the judicial interpretation of Revenue Procedure 99-21’s requirements).

extending time deadlines.¹⁸⁵ The list of excusable circumstances found in § 408(d)(3)(I) and Revenue Procedure 2003-16 should be supplemented with circumstances found in equitable tolling cases in order to create a sufficiently broad base of potential circumstances for the IRS to consider in deciding whether to allow an extended time frame.¹⁸⁶ Congress should adopt a specific set of excusable circumstances and specifically define these circumstances to guide the IRS in its application of the law.

1. Bases for Relief

Considering the sources described above, the following eight events serve as potential triggering events for suspending of the IRC's time frames: (1) casualty, disaster, or other intervening events beyond the taxpayer's control; (2) mental incapacity; (3) physical disability including hospitalization; (4) death; (5) misleading statements or guidance from IRS; (6) breach of fiduciary duty; (7) domestic or sexual abuse; and (8) diligent pursuit of litigation. Congress has already provided limited relief in the IRC for some of these circumstances, and courts have suggested the equitable tolling principles in domestic abuse situations. A provision for broad relief from statutory time frames should similarly extend to these excusable circumstances.

a. Disasters and Other Intervening Events Beyond the Taxpayer's Control

While § 7508A protects taxpayers in "federally declared disaster" areas,¹⁸⁷ personal disasters—a home fire, sewer backup, or burst pipe—can pose similar or even greater barriers to meeting the IRC's time deadlines.¹⁸⁸ Revenue Procedure 2003-16 recognizes that personal disasters are beyond the taxpayer's control and may be sufficient to suspend 408(d)(3)(I)'s time frame.¹⁸⁹ The same rationale should be applied to other sections of the IRC.

185. See Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (tolling § 408(d)(3)(I)'s statute of limitations "in cases where the failure to waive [the] requirement would be against equity or good conscience, including casualty, disaster or other events beyond the taxpayer's control").

186. These additional bases for relief also draw support from several of the bases for reasonable cause allowing the IRS to excuse late filing of a return or late payment of a liability, e.g., death, serious illness, erroneous advice from the IRS, fire, casualty natural disaster or other disturbance. See DAVID RICHARDSON, JEROME BORISON, & STEVE JOHNSON, CIVIL TAX PROCEDURE 298-300 (2d ed. 2008). The granting to the IRS of the ability to excuse penalties for late filing and late payment for these bases adds symmetry to the granting of authority to the IRS to excuse other deadlines for action.

187. I.R.C. § 7508A.

188. See INTERNAL REVENUE MANUAL § 20.1.1.3.2.2.2 (2011), available at <http://www.irs.gov/irm/> (recognizing that "a fire, casualty, natural disaster, or other disturbance" may constitute cause for relief if the taxpayer exercised reasonable care but was unable to comply with tax obligations due to circumstances beyond his control).

189. See Rev. Proc. 2003-16, 2003-4 I.R.B. 359.

b. Mental Incapacity

Webb and *Brockamp* demonstrate the devastating impact that mental incapacity can have on an individual's ability to meet the IRC's deadlines.¹⁹⁰ While Mrs. Parsons's and Mr. McGill's mental incapacity extended well beyond the twelve-month period required by § 6511(h),¹⁹¹ a shorter period of incapacity could also cause a taxpayer to miss a deadline. Taxpayers therefore should have the opportunity to demonstrate the impact of their mental incapacity without a twelve-month time requirement. Section 408(d)(3)(I), which does not require a lengthy period of disability to obtain relief, provides a more appropriate approach to determining financial disability.¹⁹²

c. Physical Disability

Section 6511(h) currently limits relief for physical disability to situations in which the taxpayer can demonstrate that the period of incapacity lasted for at least twelve months.¹⁹³ This length of disability imposes a barrier of inappropriate length. A more appropriate inquiry is whether it is proper to award relief to the taxpayer, not whether the disability continued for a statutorily-prescribed length of time. A short-term disability can have just as devastating an impact on a taxpayer's ability to meet deadlines. Taxpayers should be required to demonstrate that their physical disability caused them to miss the statutory deadline, but they should not be required to prove that the disability continued for at least twelve months. While the duration of the disability may be relevant in proving that it caused the taxpayer to miss the deadline, it should not automatically preclude relief.

d. Death

Under § 408(d)(3)(I), death may necessitate the waiver of a time requirement because the transition from the decedent to the executor of the

190. See *Webb v. United States*, 66 F.3d 691, 692–93 (4th Cir. 1995) (noting that Mrs. Parsons's mental incapacity resulted in the IRS withholding \$4,324,822.54 in overpaid taxes because she missed the filing deadline); *Brockamp v. United States*, 859 F. Supp. 1283, 1284–85 (C.D. Cal. 1994) (noting that the taxpayer, who suffered from dementia, overpaid close to \$7,000 that the IRS refused to refund because his estate filed the refund claim outside of the statute of limitations), *rev'd*, 67 F.3d 260 (9th Cir. 1995), *rev'd*, 519 U.S. 347 (1997), *superseded by statute*, Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3202(a), 112 Stat. 685, 740–41 (codified at I.R.C. § 6511(h) (2006)).

191. See *Webb*, 66 F.3d at 692 (explaining that Mrs. Parsons was mentally incapacitated for fourteen years); *Brockamp*, 859 F. Supp. at 1284–85 (explaining that Mr. McGill was “mentally deranged” from 1984 until his death in 1988).

192. See I.R.C. § 408(d)(3)(I) (2006) (no time frame for waiver of the sixty-day filing requirement).

193. I.R.C. § 6511(h) (2006).

decedent's estate may significantly disrupt the taxpayer's affairs.¹⁹⁴ While the executor has a duty to step forward within a reasonable time to manage the affairs of the estate,¹⁹⁵ the transition could cause the executor to miss an IRC deadline. For example, as illustrated in *Davis*, value determinations of a decedent's assets may be subject to litigation, thereby delaying the proceedings and causing the taxpayer's estate to miss a filing deadline.¹⁹⁶ The Code should acknowledge this possibility and accommodate the death of a taxpayer with a more flexible tolling provision.

e. Misleading Statements or Guidance from the IRS

Equitable tolling is available in situations in which the government misled the taxpayer about the statutory deadline.¹⁹⁷ Misleading information therefore should also be a basis for relief under § 6511(h).¹⁹⁸ Congress recognized the potential for the IRS to mislead or provide incorrect information to taxpayers and, with the Internal Revenue Service Restructuring and Reform Act, required the IRS to specifically denote the last day on which a taxpayer can petition the Tax Court on statutory notices of deficiency.¹⁹⁹ If the date on the note from the IRS is incorrect, the taxpayer is then permitted to file a petition within the time period promised by the incorrect notice.²⁰⁰ Similarly, the government

194. Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (listing death as an excusable circumstance for waiving the sixty-day requirement in § 408(d)(3)); INTERNAL REVENUE MANUAL, *supra* note 188 (listing death as a basis for reasonable cause for a late filing or late payment penalty).

195. See I.R.C. § 6012(b)(1) (2006) ("If an individual is deceased, the return of such individual . . . shall be made by his executor, administrator, or other person charged with the property of such decedent.").

196. *Davis v. United States*, No. 2:11-CV-00034, 2011 WL 6294467, at *1 (N.D. Miss. Dec. 15, 2011).

197. See, e.g., *Bailey v. West*, 160 F.3d 1360, 1365 (Fed. Cir. 1998) (noting that if government misleads a claimant into missing a filing deadline, the claimant may be entitled to equitable tolling of the six-year statute of limitations to file a complaint in Court of Federal Claims); *Juice Farms, Inc. v. United States*, 68 F.3d 1344, 1346 (Fed. Cir. 1995) (recognizing that the court would equitably toll the six-year statute of limitations for filing a claim if the government tricked the plaintiff into missing filing deadline).

198. Treasury Regulation 301.6404-3 requires the abatement of "[a]ny portion of any penalty or addition to tax that is attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the" IRS. Treas. Reg. § 301.6404-3(a) (2012). The IRS can also reduce a penalty for reasonable cause if the taxpayer relies on oral advice from an IRS employee. INTERNAL REVENUE MANUAL, *supra* note 188, at § 20.1.1.3.3.4.2.

199. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3463, 112 Stat. 685, 767 (codified at 26 U.S.C. § 6213 (2006 & Supp. 2012)) ("Any petition filed with the Tax Court on or before the last date specified for filing such petition by the Secretary in the notice of deficiency shall be treated as timely filed.").

200. INTERNAL REVENUE MANUAL, *supra* note 188, at § 35.3.2 (explaining that, "[e]ven if the date listed on the notice of deficiency for the last day to file is incorrect and allows more than the statutory 90 or 150 day period to timely file a petition, a petition mailed to the Tax Court on or before the date listed on the notice will nevertheless be deemed timely"). Courts addressing the time frame to appeal a notice of deficiency originally considered the certified mailing record as the "true" date of the mailing to prevent the IRS from benefitting from its own mistake. See,

should provide a remedy in situations in which its own mistake causes a taxpayer to miss statutory deadlines.

f. Breach of Fiduciary Duty

Allowing a breach of fiduciary duty to extend the period for performing a duty allows taxpayers who fall prey to unscrupulous fiduciaries to have additional time to seek the correct result. The loss of a time frame for acting due to the actions of a fiduciary most frequently occurs with minors or the very old. If a breach of fiduciary duty is an excusable circumstance under a broad grant of statutory relief, minors who fall victim to unscrupulous fiduciaries could have the opportunity to seek redress when they reach majority. Often, a fiduciary who missed a filing deadline is unable to make the taxpayer, who lacks capacity, whole.²⁰¹ Consequently, a broad grant of statutory relief should provide the injured taxpayer the opportunity to seek relief by tolling the statute of limitations in situations in which relief from the fiduciary does not exist. This provision does not seek to allow fiduciaries to escape liability and make the Government the insurer of the fiduciary's bad action but rather to recognize that vulnerable individuals should not suffer unnecessarily as a result of actions beyond their control.

g. Domestic Abuse

The IRS has acknowledged the special problems caused by domestic abuse by granting equitable relief under § 6015's innocent spouse provision.²⁰² Congress should consider the complications associated with domestic violence

e.g., *Lundy v. Comm'r*, 73 T.C. (CCH) 1693, 1697 (1997). The IRS subsequently required the taxpayer to appeal the notice within a period that began on the actual date the notice of delinquency was mailed. I.R.S. Chief Couns. Mem. SCA 1998-036 (Dec. 4, 1998) (citing *Hurst, Anthony & Watkins*, 1 B.T.A. 26 (1924); *United Tel. Co. v. Comm'r*, 1 B.T.A. 450 (1925)) ("Generally, the time for filing a petition begins to run on the date of actual mailing, at least where the notice is undated or dated prior to the actual mailing date."). The IRS explained that, although "courts have fixed the date of actual mailing variously, . . . [i]t is now fairly settled that the relevant date is the postmark date, and that in the absence of the actual postmark, the best evidence is the certified mailing list." *Id.* However, even after Congress amended § 6213 to require the notice of deficiency to bear the final date for appeal to the Tax Court, § 3463(b), 112 Stat. at 767, the IRS could still record the incorrect date. Consequently, the IRS adopted an approach more favorable to the taxpayer. See INTERNAL REVENUE MANUAL, *supra* note 188, at § 35.3.2.

201. See McGovern, *supra* note 80, at 863 (noting that, in situations in which a fiduciary "acts adversely," the fiduciary cannot remedy the taxpayer because he cannot "assert[] a claim against himself").

202. I.R.S. Notice 2012-8, 2012-4 I.R.B. 309 (expanding the IRS's authority to grant equitable relief with regard to "abuse and financial control by the nonrequesting spouse"). The IRS observed that "when a requesting spouse has been abused by the nonrequesting spouse," under the existing innocent spouse provision, "the requesting spouse may not [be] able to challenge the treatment of any items on the joint return, question the payment of the taxes reported as due on the joint return, or challenge the nonrequesting spouse's assurance regarding the payment of the taxes." *Id.*

beyond § 6015(f) and recognize that domestic abuse could cause taxpayers to miss other deadlines within the IRC.²⁰³ These time frames should similarly be extended if taxpayers can show that domestic abuse caused the failure to timely act.

h. Diligent Pursuit of Litigation

Statutes of limitations should be tolled while litigation or administrative proceedings are pending if the taxpayer diligently pursued the judicial or administrative matters. A taxpayer may be unable to file a refund claim or suit until a court has resolved an underlying issue, and the taxpayer may consequently miss a filing deadline.²⁰⁴ Congress has already provided relief to similarly situated habeas corpus petitioners and permitted tolling of the AEDPA's statute of limitations for properly-filed petitions.²⁰⁵ Taxpayers should receive similar relief tolling statutory time periods during certain judicial or administrative proceedings which prevent the taxpayer from timely action.

2. Standards for Testing Bases for Relief

Both the IRS and the courts need reasonable and administrable standards for granting relief from statutory time frames. The technical medical report required by Revenue Procedure 99-21 provides only one possible model for the standard of relief.²⁰⁶ The quantifiable standard imposed by the Revenue Procedure aids the IRS in administering a provision that has the possibility of opening a Pandora's Box of unfinished business. However, the standard should not only be quantifiable, but also flexible enough to minimize the difficulty encountered by some worthy taxpayers in providing proof of financial disability.

The medical report required by Revenue Procedure 99-21 places a heavy burden on the taxpayer to procure a satisfactory description of the disability from a physician.²⁰⁷ This standard precludes relief if the physician cannot describe the taxpayer's condition in a sufficiently specific manner.²⁰⁸ Rather

203. See *Mannella v. Comm'r*, 631 F.3d 115, 117, 125 (3d Cir. 2011) (remanding the case so that the district court could determine whether the statute of limitations under § 6015 should be equitably tolled).

204. See *Davis v. United States*, No. 2:11-CV-00034, 2011 WL 6294467 (N.D. Miss. Dec. 15, 2011) (noting that the plaintiff failed to file a timely refund request because of the underlying litigation over the estate's ownership interest in the property at issue); see also *Haas v. United States*, 107 Fed. Cl. 1, 3–5 (2012) (dismissing the taxpayer's refund claim as untimely, despite his ongoing effort to obtain disability benefits from the Department of Veterans Affairs).

205. *Holland v. Florida*, 130 S. Ct. 2549, 2560 (2010).

206. See Rev. Proc. 99-21, 1999-1 C.B. 960.

207. See *id.* (requiring "a description of the taxpayer's physical or mental impairment").

208. See *id.* (mandating that the statement include "[1] the physician's medical opinion that the physical or mental impairment prevented the taxpayer from managing [his] financial affairs; [2] the physician's medical opinion that the physical or mental impairment was or can be

than focus on the specific language of the expert, whether it is a medical opinion or the circumstance of domestic violence, the standard should take an approach focused on gathering the facts and applying those facts to the basis for relief. The IRS should not require the taxpayer to provide reports with specific language, but should focus on what the taxpayer must prove and then evaluate the evidence to determine whether the circumstance is excusable. The IRS should also specifically identify the proof necessary to establish an excusable circumstance. The IRS should explain how the taxpayer can establish his claim and specifically detail what an expert report must contain.

Both the cases that apply equitable tolling principles and Revenue Procedure 2003-16 take a broader approach, foregoing Revenue Procedure 99-21's narrow, check-the-box path to relief.²⁰⁹ Under this approach, the IRS and the reviewing court consider all of the surrounding circumstances and consequently have a greater opportunity to achieve a fair result.

C. Mechanism for Granting Relief

Each of the IRC's provisions has its own mechanisms for relief. Section 6511(h)'s process is problematic because it authorizes the IRS to grant relief without mandating disclosure of the decision.²¹⁰ If the IRS receiving office or appeals office determines that a taxpayer meets the criteria of § 6511(h)—as elaborated in Revenue Procedure 99-21—then the IRS makes no official notification of the decision, other than to the taxpayer.²¹¹ The only cases that make their way into the public eye involve disputes between the IRS and taxpayers over the application of the relief provision.²¹² Most courts engaging in this review have given significant deference to Revenue Procedure 99-21

expected to result in death or that it has lasted (or can be expected to last) for a continuous period not less than 12 months; [and] [3] to the best of the physician's knowledge, the specific time period during which the taxpayer was prevented by such physical or mental impairment from managing the taxpayer's financial affairs").

209. Even one case interpreting Revenue Procedure 99-21 considered relief beyond the narrow language of the Procedure. *See Bowman v. IRS*, No. CIV 5-09-0167 MCE GGH PS, 2010 WL 2991712, at *4 (E.D. Cal. July 29, 2010) (holding that a technically deficient physician's statement can be cured by supplemental statements that collectively comply with Revenue Procedure 99-21).

210. *See generally* I.R.C. § 6511 (2006) (containing no disclosure requirement).

211. *See generally id.*; Rev. Proc. 99-21, 1999-1 C.B. 960 (containing no disclosure requirement). *Cf.* Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (requiring a private letter ruling, which must be disclosed per I.R.C. § 6110(a) (2006)).

212. *See, e.g., United States v. Brockamp*, 519 U.S. 347 (1997) (resolving a dispute between a taxpayer and the IRS regarding the proper application of § 6511(h)), *superseded by statute*, Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3202(a), 112 Stat. 685, 740-41 (codified at I.R.C. § 6511(h) (2006)); *Webb v. United States*, 66 F.3d 691 (4th Cir. 1995) (same); *Scott v. United States*, 847 F. Supp. 1499 (D. Haw. 1995) (same), *aff'd*, Nos. 94-15321, 94-15323, 1995 WL 653979, at *1-2 (9th Cir. Oct. 5, 1995).

and the IRS's decision.²¹³ Therefore, it is difficult to discern what set of circumstances meets § 6511(h)'s requirements and is entitled to a time extension.

In creating a new mechanism for relief from statutory time frames Congress should consider the existing procedures, in addition to other review mechanisms for granting relief to taxpayers. Revenue Procedure 99-21 created a system that operates within existing IRS claims review procedures.²¹⁴ This system is advantageous because it relies on IRS officials who are familiar with refund claims.²¹⁵ However, because of the system's lack of transparency, it does not provide helpful information to other applicants about the likelihood of relief.²¹⁶

Section 408(d)(3)(I)'s private letter ruling process provides a transparent but arguably more cumbersome procedure. Like Revenue Procedure 99-21's financial disability requirements, requesting a private letter ruling is challenging for pro se taxpayers who may not fully understand the submission procedure. However, a private letter ruling provides insight into the decision-making process and establishes precedent to guide subsequent taxpayers seeking similar relief.²¹⁷ A transparent system helps to identify the circumstances under which taxpayers should seek relief.

The IRS is not solely responsible for awarding relief under § 7508; rather, Congress, the President, or the Department of Defense determines whether an area qualifies as a combat zone and whether a taxpayer in that zone is entitled to relief.²¹⁸ Although the IRS may have some discretion in evaluating the evidence the taxpayer presents, the procedure for granting relief is fairly transparent because of the public nature of naming a combat zone.²¹⁹ The IRS's role is one of verification, not of determination.

Relief under § 7508A is similarly broad and transparent, providing relief publicly and to a wide spectrum of taxpayers.²²⁰ The IRS's role under § 7508A is primarily one of determination, as Congress authorized the IRS to determine the scope of relief.²²¹ Additionally, the IRS fills a verification role,

213. See *supra* note 101 (citing cases in which courts have deferred to Revenue Procedure 99-21).

214. See Rev. Proc. 99-21, 1999-1 C.B. 960.

215. See *id.*

216. See *supra* note 211 and accompanying text (noting that neither § 6511 nor Revenue Procedure 99-21 requires the IRS to disclose its decisions).

217. See I.R.C. § 6110(a) (2006) (requiring the IRS to publish its private letter rulings).

218. I.R.C. § 7508(a) (2006).

219. See *supra* note 128 (listing congressional hearings discussing combat zones and public laws passed by Congress to declare combat zones).

220. See I.R.C. § 7508A(a) (2006 & Supp. 2012) (applying to any taxpayer the Secretary of the Treasury concludes has been "affected by a federally declared disaster").

221. See *id.* (authorizing the IRS to award the amount of relief it determines to be appropriate, based on the "federally declared disaster" in question).

ensuring that taxpayers meet the requirements for relief.²²² Section § 7508A in many ways places the greatest burden on the IRS because of this dual role.

Revenue Procedure 2003-16 establishes a private letter ruling process.²²³ Since its inception, the process has produced a large number of decisions.²²⁴ Private letter rulings are public, allowing taxpayers seeking relief to benefit from the IRS's previous decisions.²²⁵ The person seeking a private letter ruling must pay a fee, which assists the IRS in maintaining the system for the rulings.²²⁶ Such a fee could assist in limiting the number of persons seeking relief under the broader grant of relief from statutory time frames proposed herein. However, any fee for seeking relief from statutory time frames must accommodate low-income taxpayers for whom the fee may serve as a barrier to relief.²²⁷

Congress has created two less formal procedures that permit administrative appeals and authorize the Tax Court to review the IRS's decisions: the innocent spouse provision and collection due process.²²⁸ These procedures, which both generally involved low-income taxpayers, could serve as models for a review mechanism for relief from statutory time frames. The IRS could set up a special unit for processing relief requests based on the defined excusable circumstances and provide an administrative appeal of the initial determination, like the innocent spouse provisions.²²⁹ Alternatively, the IRS could authorize the special unit to make the initial determination regarding the request for relief, subject to appellate review like claims under collection due process.²³⁰ In either case, the IRS's decision, if unfavorable to the taxpayer,

222. See *id.* (requiring the Secretary of the Treasury to determine whether the taxpayer is actually "affected by a federally declared disaster").

223. Rev. Proc. 2003-16, 2003-4 I.R.B. 359.

224. See Dale F. Rubin, *Private Letter and Revenue Rulings: Remedy or Ruse?*, 28 N. KY. L. REV. 50, 51-52 (2001) (tracing the history of private letter rulings).

225. See I.R.C. § 6110(a) (2006) (requiring the IRS to disclose written determinations).

226. See Rev. Proc. 2012-1, 2012-1 I.R.B. 1, Sec. 15 & Appx. A (listing private letter ruling fees).

227. Unlike requests for an offer in compromise, which has a full fee waiver for low-income taxpayers and arguably provides the collection equivalent of a private letter ruling, the private letter ruling process currently has no fee waiver provision. See 26 C.F.R. § 300.3 (2013). The current private letter ruling process contains formalities that may require adjustment to fit the needs of low-income taxpayers and applicants of the type of equitable process described here. See Rev. Proc. 2012-1, 2012-1 I.R.B. 1, Sec. 15 & Appx. A.

228. See Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3201, 112 Stat. 685, 734-40 (codified in scattered sections of I.R.C.) (adding innocent spouse relief); § 3401, 112 Stat. at 746-50 (codified at I.R.C. §§ 6320, 6330) (adding collection due process relief).

229. See generally INTERNAL REVENUE MANUAL, *supra* note 188, at § 4.11.34 (explaining the process of claiming innocent spouse relief).

230. See generally INTERNAL REVENUE MANUAL, *supra* note 188, at § 5.1.9 (explaining the collection appeal process).

could result in a ticket to Tax Court for a review of the determination. For transparency, the IRS and the Tax Court could publish decisions, similar to publishing accepted offers-in-compromise.²³¹ Furthermore, the innocent spouse and collection due process procedures are simpler than obtaining a private letter ruling, which is beneficial to all taxpayers, and especially low-income taxpayers.

The statutory relief provision should adopt a review process that incorporates the benefits of the innocent spouse provisions, collection due process, and the private letter ruling process: the taxpayer should first have the opportunity for administrative appeal, followed by the opportunity for review of the decision by the Tax Court for abuse of discretion. The IRS should publish its decisions with an online system to provide guidance to similarly situated taxpayers. Additionally, taxpayers seeking review should pay a fee for system maintenance.²³² The fee would be waived for qualifying low-income taxpayers.

V. CONCLUSION

Congress has expressed concern for individuals and entities that miss deadlines under the IRC. Yet, it has only provided relief in limited circumstances. More than twenty years have passed since the Supreme Court held that equitable tolling principles apply to federal statutes. Perhaps it was an unlucky stroke of timing that the first IRC provision litigated after *Irwin* was § 6511 with its many rules. The goal of extending equitable tolling to the Code cannot be achieved without a stronger statement by the Supreme Court concerning the exceptional nature of tax laws. Without broad legislation providing guidance in this area, taxpayers will be forced to attempt to extend equitable tolling to tax cases with piecemeal litigation.

For collection due process cases, one centralized site does not exist; the correspondence giving the taxpayer the appeals rights informs the taxpayer of the location to which to send the collection due process request for appeal. *Id.*

231. See I.R.C. § 6103(k)(1) (2006) (providing for public inspection of certain offers-in-compromise); Treas. Reg. § 601.702(d)(8) (2010) (requiring that “form 7249, ‘Offer Acceptance Report,’ for each accepted offer in compromise with respect to any liability for a tax imposed by title 26 shall be made available for inspection and copying”); INTERNAL REVENUE MANUAL, *supra* note 188, at § 11.3.11.8 (“Public Inspection of Accepted Offers-in-Compromise”). Applicable Forms 7249 will be available for one year from the date of execution, and the file will be maintained so that it is readily available for examination by the public. See INTERNAL REVENUE MANUAL, *supra* note 188, at § 5.8.8.9; see also Treas. Reg. § 301.7122-1 (2012) (providing guidance for offers-in-compromise matters); Treas. Reg. § 601.702(d) (2010) (same).

232. The authors recommend charging a fee of \$1,000 or more to reflect the cost to the IRS. It is possible to consider returning this fee to taxpayers whose determinations are favorable. Although this fee would put the IRS in a position in which it could be accused of preventing a favorable determination in order to keep the fee, the IRS would not make its decisions on such a basis and credible accusations of that type behavior would be extremely rare.

Given its acknowledgement of the role of equitable circumstances in certain, so far limited, situations, Congress should preempt this unnecessary litigation and set broad parameters for the extension of the IRC's deadlines for good cause. By adding a broad provision to the Internal Revenue Code, Congress could control the discussion on its own terms, moving away from the narrow, case-specific relief available under § 6511(h) to the broader type of equitable relief perhaps envisioned by Treasury Secretary Rubin. This type of relief would only award relief to deserving taxpayers who succeed on the merits, which in turn would promote fairness in the tax system and overall compliance. By creating a broader system of relief that is not dependent on equitable tolling principles or subject to stiff administrative barriers, Congress could craft a system that serves all taxpayers, not just those with funds to purchase the full measure of justice.