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Legal Aid Society of the District of Columbia and McKenna Long & Aldridge Bring Class Action against Social Security Administration and U.S. Treasury for Unlawful Confiscation of Tax Refunds

Plaintiffs allege that government agencies seized their tax refunds based on alleged, decades-old Social Security overpayments; individuals were never notified, or given opportunity to challenge seizures; case could affect at least 400,000 beneficiaries who have had a total of \$75 million taken from their refunds

WASHINGTON, Feb. 18, 2015 – Claiming that government agencies intercepted thousands of tax refunds owed to individuals to cover alleged prior overpayments of Social Security benefits, a group of Washington, D.C. residents has filed suit against the Social Security Administration, the U.S. Treasury, and the District of Columbia government for confiscating these refund payments in violation of federal law and without the due process required under the Constitution.

The suit accuses the government agencies of withholding individual tax refunds based on alleged overpayment of Social Security benefits, in many cases extending back decades when the beneficiaries were children. Plaintiffs – three District of Columbia residents – claim they were never notified of the alleged overpayments. As a result, they were unable to challenge the offsets before they occurred.

Seeking class action status, plaintiffs are represented by the Legal Aid Society of the District of Columbia and McKenna Long & Aldridge LLP. The suit was filed in federal district court.

According to published reports, as of April 2014 the Treasury Department had confiscated approximately \$75 million in tax refunds owed to 400,000 Americans based on claims that they or their family members had received overpayments years earlier from Social Security. In most cases, the alleged debt to SSA had been incurred by their parents or other relatives.

“This case challenges outrageous government actions that have taken taxpayers’ refunds without prior notice and an opportunity to respond,” said Daniel G. Jarcho, a Washington-based partner at McKenna Long who also serves as President of Legal Aid’s Board of Trustees. “Due process principles and the Social Security Administration’s own regulations prevent the government from appropriating tax refunds and only notifying taxpayers after the money is gone.”

The named plaintiffs – Tina Heard, Pearline Snow, and Carolyn Graham – first learned of alleged debts they owed the government when some or all of the 2013 tax refunds they were expecting in early 2014 never arrived. They received no notice whatsoever from the SSA before the Treasury Department seized their refunds. Only after the plaintiffs undertook significant effort to determine why their refunds were withheld did they learn that Treasury’s actions were

based on SSA's findings that they had each been overpaid Social Security benefits decades before. Despite multiple attempts to communicate with the agency, none of the plaintiffs has received a clear explanation of what exactly was owed, or why.

Ms. Heard, for example, received Social Security benefits as a child for a number of years after her mother passed away in 1970, but the payments stopped more than 30 years ago. According to Ms. Heard, she was unaware of any overpayments and had no idea why she did not receive her expected 2013 tax refund. After multiple attempts to obtain an explanation (including two visits to her local SSA office), an SSA supervisor told her that the agency could not provide any information beyond the amount of the alleged overpayment and when it occurred (between 1978 and 1981) because the overpayment occurred before 2005 and the agency's system did not contain information that old.

"It doesn't seem fair that the government can withhold my tax refund just because it thinks I was overpaid Social Security benefits more than 30 years ago," Ms. Heard said. "It seems especially wrong that the government never told me that I owed it anything before taking my money."

The experiences of plaintiffs Ms. Snow and Ms. Graham were similar: both stopped receiving benefits more than twenty years ago, did not receive any notice about an overpayment before money was deducted from their 2013 tax refunds, and could not get an adequate explanation from the SSA despite repeated efforts.

"We don't know how the SSA made its initial decisions about these alleged overpayments because the agency hasn't explained its reasoning. Also, because SSA did not properly notify our clients of these decisions, our clients can't challenge the decisions through the normal avenues of appeal," said Nina Wu, a Legal Aid Staff Attorney.

Over the past several years, both SSA and the Treasury Department amended their regulations to revoke a limitations period that had prevented the government from offsetting tax refunds to collect overpayment debts more than 10 years old. Recent public statements by SSA officials suggest that roughly 400,000 individuals were affected by the regulatory changes, and at least \$75 million has already been taken from them. It is unclear how many of these individuals, all of whom could be members of the proposed class action, received actual and proper notice prior to their tax refunds being seized.

The lawsuit requests that the court declare these tax refund offsets unlawful and set them aside. It also seeks to enjoin the SSA, the Treasury Department, and the District of Columbia government from continuing to collect these old debts without adequate prior notice and explanation, and to have the government return any funds that it has unlawfully seized from affected individuals.

"We are pleased to collaborate with Legal Aid in bringing this important case," Mr. Jarcho said. "If, as we anticipate, the court certifies the class and we're able to prove our clients' claims, we can bring an end to an unlawful and harmful practice that has serious consequences for individuals living in poverty who depend on their tax refunds. We also hope that the government will follow its own procedures and stop engaging in this wrongful conduct in the future."

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The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” For more than 80 years, Legal Aid has been making justice real – in individual and systemic ways – for persons living in poverty in the District. Since its founding, Legal Aid has served tens of thousands of the District’s neediest residents. Last year, more than 4,000 individuals came to one of Legal Aid’s offices for an initial interview seeking assistance with their legal needs. Legal Aid currently serves individuals and families living in poverty in four priority areas – public benefits, consumer, family/domestic violence, and housing law. It also litigates appellate matters through its nationally-recognized Barbara McDowell Appellate Advocacy Project. To find out more about Legal Aid, please visit its website at www.legalaiddc.org.

McKenna Long & Aldridge LLP, formed in 2002 by the merger of two firms (Washington, DC-based McKenna & Cuneo and Atlanta-based Long Aldridge & Norman), is uniquely positioned at the intersection of law, business and government. Recognized for excellence, integrity, and efficiency, the firm has more than 500 attorneys and public policy advisors in 15 offices that work in the areas of complex litigation, corporate law, energy, environment, finance, government contracts, health care, infrastructure, insurance, intellectual property, private client services, public policy, real estate, and technology. It has a long-standing commitment to public service and proudly supports over 230 charitable organizations each year through pro bono legal services, volunteer and community service efforts, and the MLA Foundation. To find out more about the firm’s capabilities, please visit the firm’s website at www.mckennalong.com.