IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EXPRESS SCRIPTS HOLDING COMPANY
AND SUBSIDIARIES,
 	
    Plaintiffs,
 	
v.
 	
THE UNITED STATES,
 	
    Defendant.
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	)
		Case No. _____

COMPLAINT

Plaintiff, Express Scripts Holding Company and Subsidiaries ("Express Scripts"),[1] brings

this action against defendant, the United States, for a refund of federal income taxes, and alleges:

NATURE OF THE ACTION

1.   Express Scripts brings this action under 26 U.S.C. § 7422 for the refund of federal

income taxes. Express Scripts properly claimed the Domestic Production Activities Deduction

pursuant to 26 U.S.C. § 199 related to the production of its claims adjudication software on its

amended federal income tax return for its tax year ended December 31, 2012 (the year at issue).

The Internal Revenue Service ("IRS") erroneously denied the deduction and refused to refund

Express Scripts an overpayment of its 2012 income taxes in the amount of $34,111,929.[2]

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[1] For the tax year 2012, Express Scripts Holding Co. was the parent of Express Scripts, Inc., the plaintiff in
Express Scripts, Inc. and Subsidiaries v. United States, No. 4:21-cv-00737-NCC, which was filed on June 22, 2021.
Both companies are now owned by Cigna Corporation.

[2] Express Scripts filed a refund claim for $35,431,314. The IRS refunded tax and interest of $1,468,737.59.
Accordingly, the remaining refund claim is $34,111,929 plus interest.

PARTIES

2.　　　Express Scripts is a Delaware corporation with its principal place of business at One Express Way, St. Louis, Missouri 63121.

3.　　　Express Scripts maintained its books and records and timely filed its federal income tax return and amended federal income tax return on the basis of the calendar year and using the accrual method of accounting.

4.　　　Defendant is the United States of America.

JURISDICTION AND VENUE

5.　　　This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1346(a)(1) and 26 U.S.C. § 7422. This action is timely under 26 U.S.C. § 6532(a)(1).

6.　　　Venue is proper in this Court pursuant to 28 U.S.C. § 1402(a)(2). This is a civil action against the United States, and Express Scripts' principal place of business is located within the judicial district and this division.

FILING AND DISALLOWANCE OF EXPRESS SCRIPTS' CLAIM FOR REFUND

7.　　　On September 14, 2018, Express Scripts filed an amended federal income tax return (Form 1120X) for its tax year ended December 31, 2012, claiming a refund of taxes paid based on a deduction for its domestic production activities. Pursuant to Internal Revenue Code Section 199, 26 U.S.C. § 199 ("Section 199"),[3] Express Scripts reported a Domestic Production Activities Deduction of $97,462,655 and claimed a refund in the amount of $35,431,314. On April 20, 2021, the IRS refunded $1,468,737,59. The remaining claim for refund is $34,111,929.

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[3] Except as otherwise indicated, references to "Section" or to 26 U.S.C. are to the Internal Revenue Code of 1986 as amended and in effect during the tax year at issue.

8.   On March 15, 2021, the IRS denied Express Scripts' claim for refund, stating that Express Scripts did not qualify for the Domestic Production Activities Deduction.

9.   Pursuant to 26 U.S.C. § 6532(a)(1), Express Scripts may file a suit for refund of taxes for the year at issue within two years from March 15, 2021.

FACTUAL ALLEGATIONS

10.   During the year at issue, Express Scripts' customers included organizations that managed prescription benefit plans, such as managed care organizations, health insurers, third-party administrators, employers, union sponsored benefit plans, workers compensation plans, and government health care plans ("Customers"). The Customers provided prescription benefits to individuals who received prescription drug benefits through their employer, health plan, or directly through Medicare Part D ("Plan Members").

11.   During the year at issue, Express Script provided its Customers products and services to help them manage their prescription benefit plans. Express Scripts provided its Customers certain software, discussed below, as well as services, such as retail network pharmacy management, drug formulary management, drug utilization management, and home delivery pharmacy services.

12.   At issue in this litigation is Express Scripts' software for performing claims adjudication and related functions (the "Software"), which its Customers used to administer their prescription benefit plans and to adjudicate claims made by the Customers' Plan Members for prescription benefits under those plans. Express Scripts produced the Software and licensed, otherwise disposed of, or otherwise provided its Customers access to the Software for the Customers' direct use.

13.   Claims adjudication was the process through which Customers verified and processed prescription drug claims, including, but not limited to, verification of status as a Plan Member, eligibility and drug coverage, determination of pricing details, co-payments, and coordination of benefits. By using the Software, Customers fully automated their claims adjudication process and provided Plan Members real-time adjudication and processing at the point of sale.

14.   Express Scripts' employees produced, in whole or in significant part, the Software, in whole or in significant part within the United States, through the creation, development, and improvement of the Software.

15.   Express Scripts licensed, otherwise disposed of, or otherwise provided its Customers access to the Software for the Customers' direct use, while connected to the Internet or other public or private communications network, to adjudicate their Plan Members' prescription drug claims.

16.   Other businesses derived on a regular and ongoing basis gross receipts from the lease, rental, license, sale, exchange, or other disposition to their customers of software that was substantially identical to Express Scripts' Software and either affixed to a tangible medium (for example, a disk or DVD) or by allowing customers to download the software from the Internet.

17.   From the customers' perspective, the other businesses' software had the same functional result as Express Scripts' Software, and had a significant overlap of features or purpose with Express Scripts' Software.

CLAIM FOR THE 2012 TAX YEAR

18.   For the year at issue, Section 199 provided a deduction from federal income tax based on income derived from domestic production activities ("Domestic Production Activities Deduction").

19.   For the year at issue, the Domestic Production Activities Deduction was equal to 9 percent of the lesser of (1) the taxpayer's Qualified Production Activities Income ("QPAI") or (2) taxable income (determined without regard to Section 199), provided that the claimed deduction did not exceed 50 percent of the W-2 wages properly allocable to Domestic Production Gross Receipts ("DPGR").

20.   DPGR were the gross receipts of the taxpayer that were derived from the license, lease, rental, sale, exchange or other disposition of Qualifying Production Property ("QPP") that was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer in whole or in significant part within the United States. QPAI was the taxpayer's DPGR less the costs of goods sold and deductions allocable to the DPGR.

21.   The Software was QPP that was produced in whole or in significant part by Express Scripts in whole or in significant part within the United States.

22.   In the year at issue Express Scripts derived gross receipts from licensing or otherwise disposing of the Software to its customers, and those gross receipts qualified as DPGR under Section 199 and Treas. Reg. § 1.199-3(i)(6)(i).

23.   In the year at issue, Express Scripts derived gross receipts from providing its Customers access to the Software for the Customers' direct use while connected to the Internet or other public or private communications network, and those gross receipts qualified as DPGR under Section 199 and Treas. Reg. § 1.199-3(i)(6)(iii).

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