



NYU | LAW

# MOOT COURT BOARD

Sheldon Scott, Secretary of Health and Human Services,  
in his official capacity as Secretary of Health and Human Services, et al.,  
Petitioner,

-against-

Aimee Baker,  
Respondent.

Record

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& Jerome David

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### **QUESTION PRESENTED**

Whether the exaction provision of § 4980H of the Affordable Care Act is barred from pre-enforcement challenge by the Anti-Injunction Act.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAPLE

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|  |   |                          |
|--|---|--------------------------|
| Aimee Baker,                           | : | Docket No. 24-CV-0987009 |
|  | : |                          |
| Plaintiff,                             | : |                          |
|  | : | OPINION AND ORDER ON     |
| -against-                              | : | MOTION TO DISMISS        |
|  | : |                          |
| Sheldon Scott, Secretary of Health and | : |                          |
| Human Services et al.,                 | : |                          |
| Defendant.                             | : |                          |

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CHERNOTT, J.:

**INTRODUCTION**

Plaintiff Aimee Baker brought this action against Health and Human Services Secretary Sheldon Scott, in his official capacity, as well as other agency officials, challenging the constitutionality of the Affordable Care Act’s (“ACA”) requirement for group health plans to include the recommendations of the U.S.. Preventive Services Task Force (“Task Force”) because the members of the Task Force were not appointed according to the Article II Appointments Clause. Plaintiff seeks a preliminary injunction so that they will not be liable for the exaction under 26 U.S.C. § 4980H while their lawsuit is pending.

In response, Defendant moved to dismiss the complaint on the grounds that the Anti-Injunction Act bars pre-enforcement challenges to § 4980H, the “employer mandate.” The Anti-Injunction Act states that “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.” 26 U.S.C. § 7421(a). Plaintiff argues that the exaction called for by the employer mandate is not a tax for purposes of the Anti-Injunction Act, and thus their complaint can be heard on its merits. Plaintiff also argues their suit is not targeted at a tax, but rather the regulatory mandate underlying the tax. This Court must therefore address the jurisdictional issue of whether the Anti-Injunction Act bars pre-enforcement challenge to § 4980H.

**FACTUAL BACKGROUND**

Baker employs 61 employees at their health and fitness club. The club has multiple floors of exercise equipment, a pool, a café, a tennis court, and a daycare center. Baker’s business opened this year, and Baker is expected to employ 61

employees for the duration of this year. None of Baker’s employees have health coverage under TRICARE or the Department of Veterans’ Affairs. Baker is therefore an “applicable large employer” under § 4980H. Baker has made the decision not to provide health insurance to their employees in an attempt to avoid meeting the requirements for group health plans set out by the ACA. Plaintiff objects to the requirement that a group health plan must cover “evidence-based items or services that have in effect a rating of ‘A’ or ‘B’ in the current recommendations of the United States Preventive Services Task Force.” 42 U.S.C. § 300gg–13(a)(1). Baker believes that the key to a healthy life is taking care of oneself through lifestyle changes and a consistent exercise regimen. Due to these convictions, and the belief that the regulations are unconstitutional, Plaintiff has decided to forego providing health insurance to their employees, thus subjecting them to the exaction under section 4980H(a) of the ACA.

## DISCUSSION

This Court must decide today whether it has jurisdiction to hear Plaintiff’s claims on their merits and “must avoid deciding a constitutional issue ‘if there is some other ground upon which the case may be disposed of.’” *Hotze v. Burwell*, 784 F.3d 984, 990–91 (5th Cir. 2015) (citing *St. Joseph Abbey v. Castille*, 712 F.3d 215, 220 (2013)) (quoting *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring)). As a result, this Court’s decision is confined to whether the Anti-Injunction Act bars Plaintiff’s challenge to the employer mandate. This Court will not address the ultimate decision of whether Plaintiff’s objection to the group health plan requirements is valid.

The provision at issue is § 4980H. The statute requires certain large employers to provide their employees the option to enroll in “minimum essential coverage under an eligible employer-sponsored plan.” 26 U.S.C. § 4980H(a)(1). The coverage must also be affordable based on an employee’s household income. *See id.* § 36B(c)(2)(C)(i)(II); *see also Optimal Wireless LLC v. IRS*, 77 F.4th 1069, 1071 (D.C. Cir. 2023). If these two requirements are not met, the employee may become eligible for a tax credit or cost-sharing reduction, which triggers liability for the employer under § 4980H. *See Optimal Wireless*, 77 F.4th at 1071; 26 U.S.C. § 36B (tax credit); 42 U.S.C. § 18071 (reduced cost-sharing). Subsection (a) goes into effect when an applicable large employer, such as Baker, does not provide adequate health coverage. The relevant section is as follows:

(a) LARGE EMPLOYERS NOT OFFERING HEALTH COVERAGE

If —

- (1) any applicable large employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-

sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(2) at least one full-time employee of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

26 U.S.C § 4980H(a)(1)–(2).

The question is how the Anti-Injunction Act and the employer mandate relate to each other. The Supreme Court considered how the Anti-Injunction Act related to an analogous provision of the ACA, the “individual mandate,” in *National Federation of Independent Business v. Sebelius* (“*NFIB*”). 567 U.S. 519, 543 (2012). However, the Court has not addressed how the Anti-Injunction Act might apply to the employer mandate.

Plaintiff argues that § 4980H is not a tax for purposes of the Anti-Injunction Act and thus this Court can address their complaint on its merits. Defendant, meanwhile, argues that the employer mandate is a tax for purposes of the Anti-Injunction Act, thereby depriving this Court of subject matter jurisdiction.

Moreover, even if the exaction is a tax for purposes of the Anti-Injunction Act, Plaintiff argues that their lawsuit is not “for the purpose” of preventing the assessment or collection of taxes—it is to object to the type of care they must provide pursuant to the recommendations of the Task Force. This, according to Plaintiff, means their lawsuit does not implicate the Anti-Injunction Act.

**I. The Text of the Employer Mandate Requires a Finding that the Exaction Should be Treated as a “Tax” Under the Anti-Injunction Act.**

In *NFIB*, the Court determined that 26 U.S.C. § 5000A of the ACA, the individual mandate, was not a tax for purposes of the Anti-Injunction Act. 567 U.S. at 546. The Court emphasized that how the ACA and the Anti-Injunction Act interact “is up to Congress,” and the way to figure out Congress’s intent is to look at the text of the statute. *Id.* at 544. Looking at the text of § 4980H of the ACA, it is clear that

Congress intended the exaction under the employer mandate to be considered a tax for purposes of the Anti-Injunction Act.

The exaction called for by the employer mandate is referred to as a “tax” repeatedly, while the individual mandate’s exaction is not. *Compare* 26 U.S.C. § 4980H, *with* 26 U.S.C. § 5000A. The choice to call the individual mandate a penalty was a “deliberate drafting decision.” *Liberty Univ., Inc. v. Geithner*, 671 F.3d 391, 424 (4th Cir. 2011) (Davis, J., dissenting). Likewise, the use of the word “tax” in the employer mandate was also deliberate. *Welt v. United States*, No. 22-cv-20294-BLOOM/OTAZO-REYES, 2022 U.S. Dist. LEXIS 178234, at \*14 (S.D. Fla. Sep. 29, 2022). As such, it was deliberate for Anti-Injunction Act purposes if there are multiple reasons for using the word “tax” in the statute. *See, e.g., Liberty Univ., Inc. v. Lew*, 733 F.3d 72, 88 (4th Cir. 2013) (finding that one use of the word “tax” was to avoid confusion on matters of deductibility).

Plaintiff points out that “tax” is not the only word used to describe the exaction in § 4980H (explaining how the words “assessable payment” and “assessable penalty” are also used). *Id.* at 88. The use of these words, however, is not contradictory. *Hotze*, 784 F.3d at 998. The words “penalty” and “tax” can both be used to describe exactions. *Optimal Wireless*, 77 F.4th at 1076. Additionally, a tax is a type of assessable payment. *Id.* at 1075. If only this broader term were used, there might be a question as to whether the Anti-Injunction Act applies. *Id.* But since the more specific word “tax” is used, the question is resolved in favor of treating the exaction as a tax. *Id.*

As such, the text of the statute indicates that Congress intended § 4980H to be treated as a tax for Anti-Injunction Act purposes.

## **II. The Suit’s Regulatory Aims Do Not Change the Court’s Conclusion that § 4980H Is a Tax for Purposes of Anti-Injunction Act.**

The Anti-Injunction Act bars pre-enforcement suits “for the purpose of restraining the assessment or collection of any tax.” 26 U.S.C. § 7421(a). Plaintiff’s objection to providing compliant healthcare is based on their opposition to a regulatory mandate, and so they have argued that they are not targeting the collection of taxes. The court in *Korte v. Sebelius* seemed to give weight to this argument, noting that “the Anti-Injunction Act does not reach ‘all disputes tangentially related to taxes.’” 735 F.3d 654, 670 (7th Cir. 2013) (quoting *Cohen v. United States*, 650 F.3d 717, 727 (D.C. Cir.2011)). However, we believe that this suit is not “tangentially related” to taxes.

Defendant contends that an exemption from the mandate would have obvious effects on Plaintiff’s tax liability. *See Korte*, 735 F.3d at 670 (finding that not having to pay the penalty found in § 4980D would implicate the plaintiff’s tax liability). If the IRS were enjoined from collecting the exaction imposed by § 4980H on Plaintiff

for failing to provide health coverage to their employees or if Plaintiff were otherwise exempted from the exaction, this would reduce their tax liability. As a result, this Court finds Defendant's analysis to be more persuasive on this point.

### **III. Treating the Employer Mandate Differently Than the Individual Mandate Is Already Contemplated by the ACA.**

Due to the Court's finding in *NFIB* that the individual mandate was not a tax for Anti-Injunction Act purposes, Plaintiff argues that a finding that the employer mandate does implicate the Anti-Injunction Act would be untenable. However, the ACA has already drawn distinctions between the two mandates in the methods it provides for each mandate's enforcement. *See Hotze*, 784 F.3d at 998–99. As a result, it is not novel for this Court to treat the mandates differently.

### **CONCLUSION**

The Anti-Injunction Act deprives this Court of subject matter jurisdiction in this case and thus Defendant's motion to dismiss pursuant to Rule 12(b)(1) is GRANTED.

IT IS SO ORDERED.

\_\_\_\_\_  
Jeromia Chernott

Hon. Jeromia Chernott  
United States District Judge

Dated: January 4, 2024  
Syrup City, Maple

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAPLE

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Aimee Baker,

Plaintiff,

-against-

Sheldon Scott, Secretary of Health and  
Human Services et al.,

Defendant.

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NOTICE OF APPEAL

No. 24-CV-0987009

NOTICE IS GIVEN that Donna Leifer appeals to the Court of Appeals for the Fourteenth Circuit the District Court's granting of Defendant's motion to dismiss entered on January 4, 2024.

Diego P. Bleu

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Lupa, Charles & Mocha, LLC  
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy hereof upon Defendant's counsel by email and by postage prepaid-first class U.S. mail on January 5, 2024.

Diego P. Bleu

Diego P. Bleu  
Attorney for Aimee Baker



In the  
**United States Court of Appeals**  
FOR THE FOURTEENTH CIRCUIT

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MARCH TERM 2024  
No. 24-870-cv

**AIMEE BAKER,**

*Plaintiff-Appellant,*

v.

**SHELDON SCOTT, SECRETARY OF HEALTH AND HUMAN SERVICES,  
IN HIS OFFICIAL CAPACITY AS SECRETARY OF HEALTH AND HUMAN SERVICES,  
ET AL.,**

*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAPLE

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ARGUED: JUNE 13, 2024  
DECIDED: AUGUST 30, 2024

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Before: WAGNER, WOTAN, AND MCCLOUD, *Circuit Judges.*

**INTRODUCTION**

Appellant requests review of the district court’s decision to grant Appellee’s motion to dismiss because the Anti-Injunction Act denied the court subject matter jurisdiction. Specifically, the district court held that the exaction imposed by § 4980H of the Affordable Care Act (“ACA”) is a tax for purposes of the Anti-Injunction Act, which bars pre-enforcement challenge, and that Appellant’s anti-regulatory aims did not affect that bar. We review this motion de novo.

For the reasons explained below, we **REVERSE** the district court’s holding.

McCloud, *Circuit Judge*:

## **BACKGROUND**

The district court considered whether the Anti-Injunction Act deprives courts of subject matter jurisdiction to hear challenges to section 4980H of the ACA before the exaction is paid. This is contingent upon whether the exaction provided for by section 4980H is classified as a tax for Anti-Injunction Act purposes and, as argued by Appellant, whether the aim of the lawsuit is the tax itself or an independent regulatory mandate. Appellant objects to the A & B Recommendations of the United States Preventive Services Task Force (“Task Force”). See A & B Recommendations, U.S. Preventative Serv. Task Force, <https://www.uspreventiveservicestaskforce.org/uspstf/recommendation-topics/uspstf-a-and-b-recommendations> (last visited Sept. 28, 2024) (listing the A & B grade recommendations group health plans must cover pursuant to the ACA). Per 42 U.S.C. § 300gg–13(a)(1), group health plans must cover these recommendations. Appellant believes mandating this kind of care is not only unnecessary but also unconstitutional because members of the Task Force were not appointed in accordance with the Article II Appointments Clause.

Appellant operates a new health and fitness club that employs 61 individuals. Appellant has declined to provide health coverage to their employees due to their belief that this regulatory mandate is unconstitutional. Appellant requests preliminary injunctive relief so that the IRS cannot collect any money from them for failing to provide health insurance to their employees until the constitutional matter is settled. But this Court will not get to Appellant’s constitutional claim today. Rather, our inquiry is confined to whether the Anti-Injunction Act bars the courts from hearing Appellant’s claim on its merits before any exaction is paid.

## **DISCUSSION**

### **I. The Fact that § 4980H Uses the Word “Tax” Is Not Persuasive Given the Use of “Assessable Payment” and “Penalty.”**

As the Supreme Court emphasized in *National Federation of Independent Business v. Sebelius* (“*NFIB*”), how the ACA and the Anti-Injunction Act relate to one another is “up to Congress.” 567 U.S. 519, 544 (2012). As a result, we must look to the text of the statute to glean Congress’s intent. *Id.* Appellee emphasizes that the word “tax” is used several times throughout the statute. However, this does not mean that Congress used this word to treat the employer mandate as a tax under the Anti-Injunction Act. See *Liberty Univ., Inc. v. Lew*, 733 F.3d 72, 88 (4th Cir. 2013). Rather, for example, the word “tax” was used to make a cross-reference to 26 U.S.C. § 275(a)(6) and clarify that the employer mandate’s exaction is a tax under Chapter 43 and hence non-deductible. *Id.* And even in another instance where there is no similar explanation for the use of the word “tax,” the court need not over-credit this

“single unexplained use of that term.” *Id.* As a result, we find the use of the word “tax” in the statute to be of relative insignificance.

Importantly, the statute also refers to the employer mandate’s exaction as an “assessable payment” and “assessable penalty.” *Id.* The district court, citing *Hotze v. Burwell*, insisted that the use of these terms was not contradictory. 784 F.3d 984, 998 (5th Cir. 2015). But the statute refers to the exaction as an “assessable payment” seven times. *See* 26 U.S.C. §§ 4980H(a)(2)–(d)(3). Therefore, any significance of the use of the word “tax” is outweighed by the more frequently used language of “assessable payment.”

Finally, placing significance on the use of the word “tax” in § 4980H so that the Anti-Injunction Act applies to the employer mandate would result in an anomaly. The court in *NFIB* determined that individuals may bring a pre-enforcement suit to challenge the individual mandate because it was not considered a tax for purposes of the Anti-Injunction Act. 567 U.S. at 546. A finding that § 4980H is a tax under the Anti-Injunction Act would only allow employers to bring a post-enforcement suit. *See Lew*, 733 F.3d at 88. “It seems highly unlikely that Congress meant to signal—with two isolated references to the term ‘tax’—that the mandates should be treated differently for purposes of the AIA’s applicability.” *Id.* We therefore find that the district court erred in determining that the exaction under § 4980H was a tax for purposes of the Anti-Injunction Act.

## **II. The Target of this Lawsuit is Not the Assessment or Collection of Taxes, Making the Question of Whether the Exaction Is a Tax Irrelevant.**

The Anti-Injunction Act is meant to prevent lawsuits “for the purpose of restraining the assessment or collection of any tax.” 26 U.S.C. § 7421(a). Appellant does seek relief from the assessment or collection of the exaction imposed by section 4980H, but this is not the purpose of the lawsuit. Rather, Appellant aims to enjoin the IRS from collecting the payments under section 4980H for failing to comply with a mandate that Appellant believes to be unconstitutional.

As in *Korte v. Sebelius*, Appellant seeks “relief that exists separate and apart from the assessment or collection of taxes.” 735 F.3d 654, 669 (7th Cir. 2013). Appellant simply seeks relief from the exactions imposed upon them for not complying with a regulatory mandate they believe is unconstitutional.

Importantly, the Anti-Injunction Act does not apply to all cases “tangentially related to taxes.” *Id.* at 670 (quoting *Cohen v. United States*, 650 F.3d 717, 727 (D.C. Cir. 2011)). So, for example, a reporting requirement that would get the plaintiff out of a tax penalty is not a tax for purposes of the Anti-Injunction Act. *See CIC Servs., LLC v. IRS*, 593 U.S. 209, 216 (2021) (“A reporting requirement is not a tax; and a suit brought to set aside such a rule is not one to enjoin a tax’s assessment or

collection.”). This is true even though courts like the Seventh Circuit believe that “a provision in the Internal Revenue Code is implicated in the remedial sweep of these cases.” *Korte*, 735 F.3d at 669–70 (describing how an exemption from a certain regulatory mandate would allow the plaintiffs to avoid the penalty tax imposed by section 4980D, thus implicating their tax liability). As a result, even if this Court decided that the exaction of section 4980H is a tax for purposes of the Anti-Injunction Act, the present suit is not barred.

### **CONCLUSION**

For these reasons, the decision of the district court in this case is **REVERSED**. The district court’s grant of Appellee’s motion to dismiss is **VACATED**. The case is **REMANDED** to the district court for further proceedings consistent with this opinion.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAPLE

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Aimee Baker,

*Plaintiff,*

-against-

Sheldon Scott, Secretary of  
Health and Human Services et al.

*Defendant.*

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Civil Action

No. 24-CV-0987009

**COMPLAINT FOR INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This case is brought to enjoin the Internal Revenue Service from collecting the exaction under § 4980H from Aimee Baker during the pendency of this action.

**JURISDICTION AND VENUE**

2. This action arises under the laws of the United States. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1361. This Court has jurisdiction to grant injunctive relief under 28 U.S.C. §§ 2201, 2202.

3. Venue is proper in this district under 28 U.S.C. § 1391(e) because Plaintiff lives here.

**STANDING**

4. Plaintiff has probable success on the merits. Members of the United States Preventive Task Force are principal officers and therefore must be appointed by the President and confirmed by the Senate. Instead, the Task Force's members are "convene[d]" by the Agency for Healthcare Research and Quality Director. Therefore, the selection of the members violates the Article II Appointments Clause. Plaintiff will be irreparably harmed. To avoid facing large monetary consequences, Plaintiff will have to provide health care that is against their longstanding values and that they believe is unconstitutional. Others will not be substantially harmed. Plaintiff's employees may seek other employment with a health care plan that suits their needs if Plaintiff's does not. The public interest will be served. By not enforcing the mandate, Plaintiff does not have to supply health care coverage they do not agree with, and the Government must defend the constitutionality of Defendant's

mandates. There is no adequate remedy at law because Plaintiff faces the choice of being fined large amounts during a time when their business is just starting or supplying coverage that is against their beliefs and is unconstitutional.

### **PARTIES**

5. Plaintiff Aimee Baker is an individual and an employer of 61 employees at a health and fitness club.

6. Defendant is Sheldon Scott, Secretary of Health and Human Services, in his official capacity as Secretary of Health and Human Services, et al.

### **ALLEGATIONS**

7. Plaintiff chooses not to provide group health insurance to their employees on account of their objection to the United States Preventive Services Task Force's recommendations made under 42 U.S.C. § 300gg-13(a)(1) of the Affordable Care Act.

8. Plaintiff is not required to comply with these guidelines because they believe enforcing these mandates against them is unconstitutional.

9. Plaintiff is entitled to an order restraining the Internal Revenue Service from collecting the exaction imposed by 26 U.S.C. § 4980H during the pendency of this suit.

### **PRAYER FOR RELIEF**

Plaintiff respectfully requests that this Court:

1. Preliminarily enjoin Defendants from collecting the exaction imposed by 26 U.S.C. § 4980H for employers who fail to provide group health insurance to their employees during the pendency of this lawsuit.

DATED: July 15, 2020

Robert Irish, Esq.

(ORDER LIST: 595 U.S.)

**CERTIORARI GRANTED**

24-1013     Sheldon Scott, Secretary of Health and Human Services,  
              in his official capacity as Secretary of Health and  
              Human Services v. Aimee Baker

              The petition for a writ of certiorari is granted.  
The parties are directed to address the following  
question:

              Whether the exaction provision of § 4980H of the  
Affordable Care Act is barred from pre-enforcement  
challenge by the Anti-Injunction Act.