

Honorable John C. Coughenour

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHARLES G. MOORE AND KATHLEEN F. )  
MOORE, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. 2:19-cv-1539-JCC

**DECLARATION OF JENNIFER Y.  
GOLDEN IN SUPPORT OF UNITED  
STATES’ RULE 56(d) MOTION**

I, Jennifer Y. Golden, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a trial attorney with the U.S. Department of Justice, Tax Division, located in Washington, D.C.

2. In my role as a trial attorney, I have been assigned to the above-captioned case and am in possession of the Department of Justice’s files regarding the case.

3. Plaintiffs Charles and Kathleen Moore (the “Moore’s”) claim a \$14,729 refund for their 2017 tax year, but it is unclear from the Complaint (Dkt. No. 1) or the Moore’s summary judgment filings (Dkt. Nos. 29 to 29-3) how they arrived at this amount or if it is accurate.

4. The United States has copies of the Moore’s federal income tax return for the year 2017 and the Moore’s two amended federal income tax returns for the year 2017, as referenced

1 in the Complaint. Dkt. No. 1, ¶¶ 21-24. The Moores have not provided these copies; rather, they  
2 are from the IRS's files.

3 5. The United States is still in the process of examining the Moores' returns to  
4 determine if any overpayment, in fact, exists for the Moores' 2017 tax year in the event the  
5 Moores prevail on their constitutional challenge to 26 U.S.C. § 965 (known colloquially as the  
6 "mandatory repatriation tax"). It is possible that the Moores underreported income, took  
7 improper deductions or credits, or treated items inaccurately in some other way that resulted in  
8 an underassessment of their income tax liabilities, separate from the 26 U.S.C. § 965 dispute. If  
9 any such issues exist, they would constitute offsets against the Moores' claimed refund.

10 6. Because discovery has not begun, the United States has not had a chance to issue  
11 written discovery requests to the Moores for information on how they calculated the alleged  
12 refund amount or how they determined the treatment of all other items on their returns.

13 7. The United States also has not had a chance to take depositions of the Moores and  
14 any other relevant witnesses—or indeed, to identify any other relevant witnesses—which would  
15 provide additional information on the topics identified in paragraphs 5 and 6 above.

16 8. Mr. Moore's declaration indicates that the Moores hired a CPA to prepare their  
17 two amended returns for 2017. Dkt. No. 29-3, ¶¶ 24-29. The CPA thus likely has relevant  
18 information on the Moores' calculation of their claimed refund and on the Moores' reporting of  
19 other items on their returns. The United States can obtain this information by subpoenaing  
20 records from the CPA and/or deposing the CPA.

21 9. Accordingly, if the Moores prevail on their constitutional challenge to 26 U.S.C.  
22 § 965, the United States will need additional time to examine the Moores' 2017 returns and  
23

1 engage in discovery, which would allow the United States to raise any offsets that might reduce  
2 or eliminate the overpayment that is alleged in the Complaint.

3  
4 I declare under penalty of perjury that the foregoing is true and correct

5 Executed on this 11th day of May, 2020.

6 /s/ Jennifer Y. Golden  
7 JENNIFER Y. GOLDEN  
8 Trial Attorney, Tax Division  
9 U.S. Department of Justice  
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