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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ELIZABETH BOARDMAN,  
Plaintiff,

No. 2:12-cv-00639-MCE-GGH

v.

MEMORANDUM AND ORDER

COMMISSIONER OF INTERNAL  
REVENUE, Douglas H.  
Shulman,  
Defendant.

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Through this action, Plaintiff Elizabeth Boardman seeks a permanent injunction preventing Defendant Internal Revenue Service ("IRS") from using its tax collection procedures to infringe on her religious rights. Plaintiff alleges that Defendant's policies run afoul of the First Amendment's Free Exercise Clause and the Religious Freedom Restoration Act of 1993 ("RFRA").

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1 Presently before the Court is Defendant's Motion to Dismiss  
2 Plaintiff's complaint for lack of subject matter jurisdiction,  
3 pursuant to Federal Rule of Civil Procedure 12(b)(1).<sup>1</sup>  
4 Additionally, Defendant moves the Court to dismiss Plaintiff's  
5 complaint for failure to state a claim, pursuant to Rule  
6 12(b)(6). Plaintiff filed her complaint on March 13, 2012. (ECF  
7 No. 1.) Defendant's motion to dismiss was filed on July 29,  
8 2012. (ECF No. 6.) Plaintiff filed an opposition to Defendant's  
9 motion (ECF No. 11), and Defendant filed a timely reply (ECF No.  
10 12). For the reasons set forth below, Defendant's motions are  
11 GRANTED.<sup>2</sup>  
12

### 13 BACKGROUND<sup>3</sup>

14

15 As a lifelong Quaker and peace activist, Plaintiff "refuses  
16 voluntarily to pay the percentage of her federal income taxes  
17 that is directed towards war." (ECF No. 1 at 1.) In fact,  
18 Plaintiff takes the position that "paying for war is repugnant to  
19 her religion and to her conscience." (Id. ¶ 35.) "The religious  
20 practice of antiwar tax retention, often called 'war tax  
21 resistance,' is an established [Quaker] practice." (Id. ¶ 16.)  
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24 <sup>1</sup> All further references to "Rule" or "Rules" are to the  
Federal Rules of Civil Procedure unless otherwise noted.

25 <sup>2</sup> Because oral argument would not be of material assistance,  
26 the Court ordered this matter submitted on the briefing. E.D.  
Cal. R. 230(g).

27 <sup>3</sup> The factual assertions in this section are based on the  
28 allegations in Plaintiff's complaint unless otherwise specified.  
(ECF No. 1.)

1 Quakers, like Plaintiff, suffer spiritual pain from war and  
2 adhere to a commandment against killing. (Id. ¶¶ 9, 29.)  
3 Plaintiff has held numerous leadership positions within Quaker  
4 organizations, and she has written several books and articles  
5 about Quaker customs and teachings. (Id. ¶ 6.) Plaintiff has  
6 also been involved in several forms of antiwar activism. (Id.  
7 ¶¶ 7-8.) These include writing letters, holding vigils,  
8 participating in marches and traveling to Iraq. (Id.)

9       When filing her federal tax returns for the 2007 and 2008  
10 tax years, Plaintiff fully completed the returns with accurate  
11 information but remitted only about half of her federal income  
12 tax liability. (ECF No. 11 at 1.) In a letter attached to the  
13 tax returns, Plaintiff explained that "her conscience and  
14 religious beliefs would not allow her to pay the full amount  
15 due." (ECF No. 1 at 1-2.) Plaintiff's letter also offered  
16 evidence that the withheld funds were on deposit with a financial  
17 institution and maintained that she would pay the funds if they  
18 were allocated toward peaceful purposes. (Id. at 2.) Further  
19 correspondence between Plaintiff and Defendant resulted in  
20 Defendant stating that Plaintiff's justification was frivolous  
21 and not supported by law. (Id. ¶¶ 33, 36.) Once Plaintiff's  
22 argument was deemed "frivolous," the Tax Relief and Health Care  
23 Act of 2006 ("TRHCA") allowed Defendant to deny any additional  
24 administrative or judicial review. (Id. ¶ 30.) As a result,  
25 Plaintiff's demand for a Tax Court determination was  
26 unsuccessful. (Id. ¶¶ 39, 40.)

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1 Plaintiff also claims that Defendant misrepresented various  
2 aspects of the tax collection process and misconstrued  
3 Plaintiff's statements. (Id. ¶ 41.) Plaintiff further alleges  
4 that Defendant's threats of imminent seizure compelled Plaintiff  
5 to pay her outstanding liability for the 2008 tax year. (Id.)

6 Plaintiff claims that Defendant "employs punitive procedures  
7 and/or policies against persons who fail or refuse to make full  
8 payment of taxes on grounds of religion or conscience." (Id. at  
9 2.) Defendant's practices, according to Plaintiff, are  
10 discriminatory and seek to suppress conduct undertaken for  
11 religious reasons. (ECF No. 11 at 17.) In fact, Plaintiff  
12 alleges that Defendant intentionally frustrated her religious  
13 beliefs by depriving her of rights and procedures that would have  
14 been available had she not asserted a religious motive for  
15 withholding a portion of her taxes. (ECF No. 1 at 2.)

16 Specifically, Plaintiff contends that Defendant's  
17 regulations and methods violate the First Amendment's Free  
18 Exercise Clause and the RFRA. (Id. at 3.) Plaintiff also takes  
19 offense to the word "frivolous" being used to describe a  
20 taxpayer's reliance on moral or religious grounds as a  
21 justification for refusing to pay their taxes. (Id.) Although  
22 Plaintiff claims that she does not challenge the tax system or  
23 "seek to restrain assessment or collection of tax," she does  
24 request a permanent injunction forcing Defendant to promulgate  
25 new procedures for collecting taxes. (Id. ¶¶ 4, 34, 54.) In  
26 doing so, Plaintiff "seeks to enforce the intent of Congress,  
27 which is to protect and preserve an established religious  
28 practice." (ECF No. 11 at 3.)

1 Plaintiff implicitly acknowledges that Defendant correctly  
2 calculated her taxes owed and any penalty due, and she does not  
3 request monetary damages. (Id. ¶ 55.) As indicated above,  
4 Defendant's motion is now before the Court for adjudication.

5  
6 **MOTION TO DISMISS PURSUANT TO 12(B) (1)**

7  
8 **STANDARD**

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10 In moving to dismiss for lack of subject matter  
11 jurisdiction pursuant to Rule 12 (b) (1), the plaintiff bears the  
12 burden of demonstrating that the court has jurisdiction.  
13 Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377  
14 (1994). The court presumes that jurisdiction is lacking until  
15 the plaintiff proves otherwise. Stock W., Inc., v. Confederated  
16 Tribes of the Colville Reservation, 873 F.2d 1221, 1225 (9th Cir.  
17 1989). Furthermore, courts should grant the motion if the  
18 complaint, when considered in its entirety, fails to allege facts  
19 sufficient to establish jurisdiction. Savage v. Glendale Union  
20 High Sch., 343 F.3d 1036, 1039 n.2 (9th Cir. 1979), cert. denied,  
21 541 U.S. 1009 (2004). "When considering a motion to dismiss  
22 pursuant to Rule 12(b) (1), the district court is not restricted  
23 to the face of the pleadings, but may review any evidence."  
24 McCarthy v. U.S., 850 F.2d 558, 560 (9th Cir. 1988). The party  
25 challenging jurisdiction may either make a "facial attack" on the  
26 allegations of jurisdiction contained in the complaint or can  
27 instead take issue with subject matter jurisdiction on a factual  
28 basis ("factual attack").

1 Thornhill Publishing Co. v. General Tel. & Elect. Corp., 594 F.2d  
2 730, 733 (9th Cir. 1979); Mortensen v. First Fed. Sav. & Loan  
3 Ass'n, 549 F.2d 884, 891 (3d Cir. 1977).

4 If the motion constitutes a facial attack, the Court must  
5 consider the factual allegations of the complaint to be true.  
6 Williamson v. Tucker, 645 F.2d 404, 412 (5th Cir. 1981);  
7 Mortensen, 549 F.2d at 891. If the motion constitutes a factual  
8 attack, however, "no presumptive truthfulness attaches to  
9 plaintiff's allegations, and the existence of disputed material  
10 facts will not preclude the trial court from evaluating for  
11 itself the merits of jurisdictional claims." Thornhill, 594 F.2d  
12 at 733 (quoting Mortensen, 549 F.2d at 891).

13 If the Court grants a motion to dismiss a complaint, it must  
14 then decide whether to grant leave to amend. Generally, leave to  
15 amend should be denied only if it is clear that the deficiencies  
16 of the complaint cannot be cured by amendment. Broughton v.  
17 Cutter Labs, 622 F.2d 458, 460 (9th Cir. 1980).

18  
19 **ANALYSIS**  
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21 The Anti-Injunction Act ("the Act") establishes that "no  
22 suit for the purpose of restraining the assessment or collection  
23 of any tax shall be maintained in any court by any person,  
24 whether or not such person is the person against whom such tax  
25 was assessed." 26 U.S.C. § 7421(a).

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1 "The Court has interpreted the principal purpose of [the Act] to  
2 be the protection of the Government's need to assess and collect  
3 taxes as expeditiously as possible with a minimum of pre-  
4 enforcement judicial interference." Bob Jones Univ. v. Simon,  
5 416 U.S. 725, 736 (1974). As such, the Act applies to all cases  
6 impacting tax collection, even if the complaint alleges  
7 constitutional violations. Alexander v. Ams. United Inc.,  
8 616 U.S. 752, 759 (1974). Furthermore, courts have relied on the  
9 Act when the complaint seeks injunctive relief. Uptergrove v.  
10 United States, 2009 WL 2244185, \*2 (E.D. Cal. July 27, 2009).

11 Courts tend to broadly and strictly enforce the Act.  
12 Maxfield v. U.S. Postal Serv., 752 F.2d 433, 434 (9th Cir. 1984).  
13 If the Act applies to a particular lawsuit, the court lacks  
14 jurisdiction to entertain the claim or grant relief. Life  
15 Science Church v. IRS, 525 F. Supp 399, 404 (N.D. Cal. 1981).  
16 However, the Act "sets forth [a two-prong exception] which, if  
17 present, will support the granting of equitable relief." Church  
18 of Scientology of California v. United States, 920 F.2d 1481,  
19 1484 (9th cir. 1990). "[A]n injunction may be obtained against  
20 the collection of any tax if [the plaintiff establishes that]  
21 (1) it is 'clear that under no circumstances could the government  
22 ultimately prevail' and (2) 'equity jurisdiction' otherwise  
23 exists, i.e., the taxpayer shows that he would otherwise suffer  
24 irreparable injury." Id. at 1485 (internal citations omitted).

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1           **A.     Whether the Act Applies**

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3           Plaintiff claims that the Act is not applicable in this case  
4 because she “does not seek to restrain assessment or collection  
5 of any tax.” (ECF No. 1 at 4.) Moreover, Plaintiff states that  
6 she “does not contend herein that the amount of any determination  
7 of tax or penalty by [Defendant] was improper and she does not  
8 seek any monetary damages.” (Id. at 19.) Instead, Plaintiff  
9 asks for “efficient and transparent collection of taxes” and  
10 asserts that her “requested restraints on abuse are extraneous to  
11 tax assessment and collection protected by the [Act].” (ECF  
12 No. 11 at 13-14.) Defendant asserts that although “Plaintiff  
13 candidly admits that she does not seek a refund of taxes paid,”  
14 she “seeks an injunction requiring the government to reorganize  
15 the method it has chosen to assess and collect taxes.” (ECF  
16 No. 7 at 10.) Thus, Defendant contends that Plaintiff’s  
17 requested relief would hinder Defendant’s “ability to avoid  
18 engaging in legally frivolous and ultimately meritless arguments  
19 advanced by taxpayers regardless of their religious or moral  
20 beliefs.” (Id. at 11.)

21           In a similar case involving a plaintiff disputing the  
22 constitutionality of particular tax code statutes, the court held  
23 that “[a]lthough [plaintiff’s] complaint does not specifically  
24 seek an injunction restraining the assessment or collection of  
25 tax, the relief he seeks . . . would ‘necessarily preclude the  
26 Act’s collection of’ the challenged tax and therefore falls  
27 within the Act’s scope.” Hansen v. Dep’t of Treasury, 528, 601  
28 (9th Cir. 2007).



1 Here, while Plaintiff claims she does not wish to interfere with  
2 tax assessment and collection, she requests that Defendant  
3 implement new procedures and policies for collecting taxes.  
4 Contrary to Plaintiff's stated purpose, her complaint is actually  
5 a thinly-veiled attempt to force extensive and burdensome changes  
6 to Defendant's already complex taxation system. As such,  
7 granting relief to Plaintiff would certainly impede the  
8 collection of taxes.

9       The Court has no doubt that ruling in Plaintiff's favor  
10 would negatively impact Defendant's established methods of  
11 assessing taxes. It is also clear that compelling Defendant to  
12 adopt procedures catering to the religious or moral views of  
13 every taxpayer would significantly burden tax collection.  
14 Indeed, the costs of administering the tax system may become  
15 prohibitively expensive, threatening the system's integrity, if  
16 Defendant allocated tax revenue based on the individualized  
17 beliefs of each taxpayer. Thus, the Court agrees with Defendant  
18 that Plaintiff's suit challenges statutory framework pertaining  
19 to tax assessment and collection, and, if Plaintiff is  
20 successful, she would "impermissibly restrain and hamper  
21 [Defendant's] ability to assess and collect taxes." (ECF No. 7  
22 at 11.) As a result, the Court finds that the Act does apply to  
23 the case at hand. Because the Act applies, the Court lacks  
24 jurisdiction unless Plaintiff demonstrates that she satisfies  
25 both prongs of the exception.

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1           **B.     Whether Plaintiff Satisfies the Act's Exception**

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3           A plaintiff bears the burden of demonstrating both that "the  
4 Government could not ultimately prevail" and that he will suffer  
5 an irreparable injury with no legal remedy. Church of  
6 Scientology of California, 920 F.2d at 1485.

7  
8                   **1.     Could the Government Ultimately Prevail**

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10          This first prong is satisfied "[o]nly if it is then  
11 manifest, under the most liberal view of the law and the facts,  
12 that the government cannot prove its claim." Thrower v. Miller,  
13 440 F.2d 1186, 1187 (9th Cir. 1971). Although Plaintiff fails to  
14 provide an argument regarding the first prong, Defendant contends  
15 that "Plaintiff cannot establish that under no circumstance could  
16 [Defendant] ultimately prevail on the merits of the action."  
17 (ECF No. 7 at 11.) Specifically, Defendant responds to  
18 Plaintiff's Free Exercise claim by stating that "[n]eutral laws  
19 of general application (such as the federal tax laws in question)  
20 do not run afoul of the Free Exercise Clause of the First  
21 Amendment, even when they somehow burden religious practices."  
22 (Id. at 18.) Thus, Defendant argues that it could indeed prevail  
23 regarding whether existing tax administration framework violated  
24 Plaintiff's First Amendment rights. (Id. at 11.)

25          "[T]he necessities of revenue collection under enactments of  
26 general applicability raise governmental interests sufficiently  
27 compelling to outweigh the free exercise rights of those who find  
28 the tax objectionable on bona fide religious grounds."

1 Franklet v. United States, 578 F. Supp. 1552, 1556 (N.D. Cal.  
2 1984). “[E]ven a substantial burden [on free exercise] would be  
3 justified by the ‘broad public interest in maintaining a sound  
4 tax system,’ free of ‘myriad exceptions flowing from a wide  
5 variety of religious beliefs.’” Hernandez v. Comm’r Internal  
6 Revenue, 490 U.S. 680, 699-700 (1989) (internal citations  
7 omitted). Furthermore, previous Supreme Court decisions “make it  
8 unmistakably clear that the constitutional nature of a taxpayer’s  
9 claim, as distinct from its probability of success, is of no  
10 consequence under the [Act].” Alexander, 416 U.S. at 759.

11 While Plaintiff’s pleadings are somewhat unclear, Plaintiff  
12 apparently claims that the Tax Relief and Health Care Act of 2006  
13 (“TRHCA”), which curtails the administrative appeals process for  
14 certain taxpayer claims, violates her free exercise rights.  
15 However, Plaintiff is unable to adequately demonstrate how the  
16 TRHCA is discriminatory or thwarting her religious practices.  
17 Moreover, the Court agrees with Defendant that the TRHCA advances  
18 the compelling government interest in efficiently collecting  
19 taxes by permitting the expedient disposal of meritless  
20 arguments. The TRHCA is also the least restrictive means of  
21 burdening religious freedom because the TRHCA only disregards  
22 arguments that have no legal basis. As a result, Plaintiff fails  
23 to establish that Defendant could not possibly prevail in regard  
24 to Plaintiff’s Free Exercise claim.

25 Plaintiff also alleges that Defendant has violated the  
26 Religious Freedom Restoration Act of 1993 (“RFRA”), legislation  
27 reaffirming the right to practice religion without government  
28 interference.

1 In countering Plaintiff's argument, Defendant states that neutral  
2 laws substantially burdening religion in order to further a  
3 compelling government interest do not contravene the RFRA. (ECF  
4 No. 7 at 20-21.) Therefore, Defendant asserts that Plaintiff  
5 "cannot show that [Defendant] would not prevail under RFRA."  
6 (Id. at 20.) Even after Congress enacted the RFRA, the  
7 government's compelling interest in collecting taxes outweighs  
8 the burden imposed on an individual's religious freedom. Droz v.  
9 Comm'r Internal Revenue, 48 F.3d 1120, 1122-23 (9th Cir. 1995).  
10 Additionally, "[i]n the context of [the TRHCA], the Government's  
11 compelling interest in maintaining a sound and administratively  
12 workable tax system justifies the alleged restriction on free  
13 expression." Bradley v. United States, 817 F.2d 1400, 1403  
14 (9thCir. 1987).

15 Once again, although Plaintiff's pleadings are convoluted,  
16 Plaintiff appears to allege that the TRHCA violates the RFRA. As  
17 discussed above, the TRHCA uses the least restrictive means  
18 possible to further a compelling Government interest. It is also  
19 a neutral law, equally impacting all religions and beliefs. As a  
20 result, Plaintiff fails to establish that Defendant cannot  
21 possibly prevail in regard to Plaintiff's RFRA claim. Because  
22 Defendant could succeed on the merits, Plaintiff is unable to  
23 fulfill the first prong of the Act's judicial exception.

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1                   **2.    Jurisdiction Premised on Equity**

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3            "[T]he taxpayer must demonstrate that [he] is entitled to

4 equitable relief." Church of Scientology of California, 920 F.2d

5 at 1485. This entails establishing that "he has no adequate

6 remedy at law and that the denial of injunctive relief would

7 cause him immediate, irreparable harm." Jensen v. IRS, 835 F.2d

8 196, 198 (9th Cir. 1987). Plaintiff claims that she "has no

9 alternative remedy" because "[n]one of the requested relief is

10 available in any forum other than this one." (ECF No. 11 at

11 11-12.) Defendant disagrees and contends that "Plaintiff has an

12 adequate remedy at law." (ECF No. 7 at 24.) According to

13 Defendant, Plaintiff can provide her outstanding tax balance, and

14 she "may then file an administrative claim for refund of taxes

15 she believes she should not be required to pay, and then sue for

16 a refund in a district court or the Court of Federal Claims."

17 (Id.)

18            "A taxpayer cannot render an available review procedure an

19 inadequate remedy at law by voluntarily forgoing it." Alexander,

20 416 U.S. at 762 n.13. Here, Plaintiff concedes that she declined

21 to pay the assessed taxes and file a refund suit. Plaintiff also

22 admits that she chose not to pursue all available administrative

23 remedies. (ECF No. 1 at 15.) Plaintiff is not permitted to then

24 claim that no satisfactory remedy exists simply because she would

25 prefer to create her own remedy. Additionally, Plaintiff offers

26 insufficient support for her allegations that she can obtain the

27 requested relief only through the present action.

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1 The Court finds that Plaintiff has "an adequate remedy at law in  
2 an action for a refund." Church of Scientology of California,  
3 920 F.2d at 1488. Furthermore, allowing taxpayers to pick and  
4 choose any remedy that they desire would significantly hinder the  
5 tax system.

6 The plaintiffs in United States v. American Friends Service  
7 Committee also claimed that they had "no alternative legal remedy  
8 available." 419 U.S. 7, 11 (1974). The court held that a refund  
9 suit provided the plaintiffs with ample opportunity to litigate  
10 their liability. (Id.) Similarly, Plaintiff in the present case  
11 cannot ignore the existing and adequate remedy of paying the tax  
12 liability and then suing for a refund. Moreover, "[e]ven though  
13 the remitting of [Plaintiff] to a refund action may frustrate  
14 [her] chosen method of bearing witness to [her] religious  
15 convictions, a chosen method which [she] insist[s] is  
16 constitutionally protected, the bar of the [Act] is not removed."  
17 (Id.) Because Plaintiff has a satisfactory remedy available,  
18 "equity jurisdiction" does not exist, and Plaintiff is unable to  
19 satisfy the second prong of the Act's judicial exception.

20 As discussed above, the Act applies to the instant  
21 action, and Plaintiff fails to demonstrate that she qualifies for  
22 an exception to the Act.<sup>4</sup> Therefore, Defendant's Motion to  
23 Dismiss pursuant to Rule 12(b)(1) is GRANTED.

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27 <sup>4</sup> Plaintiff put forth several additional arguments as to why  
28 the Act should not bar the Court's jurisdiction over this case.  
After examining Plaintiff's theories, the Court finds them  
unpersuasive.

1                   **MOTION TO DISMISS PURSUANT TO 12(B) (6)**

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3                                   **STANDARD**  
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5           On a motion to dismiss for failure to state a claim under  
6 Rule 12(b) (6), all allegations of material fact must be accepted  
7 as true and construed in the light most favorable to the  
8 nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,  
9 337-38 (9th Cir. 1996). Rule 8(a) (2) requires only “a short and  
10 plain statement of the claim showing that the pleader is entitled  
11 to relief” in order to “give the defendant fair notice of what  
12 the . . . claim is and the grounds upon which it rests.” Bell  
13 Atl. Corp. v. Twombly, 550 U.S. 544, 554-55 (2007) (internal  
14 citations and quotations omitted). Though “a complaint attacked  
15 by a Rule 12(b) (6) motion to dismiss does not need detailed  
16 factual allegations, a plaintiff’s obligation to provide the  
17 ‘grounds’ of his ‘entitlement to relief’ requires more than  
18 labels and conclusions, and a formulaic recitation of the  
19 elements of a cause of action will not do.” Id. at 555 (internal  
20 citations and quotations omitted).

21           A plaintiff’s factual allegations must be enough to raise a  
22 right to relief above the speculative level. Id. (citing  
23 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216,  
24 pp. 235-36 (3d ed. 2004) (“The pleading must contain something  
25 more . . . than . . . a statement of facts that merely creates a  
26 suspicion [of] a legally cognizable right of action”).

27           Moreover, “Rule 8(a) (2) . . . requires a ‘showing,’ rather  
28 than a blanket assertion of entitlement to relief.

1 Without some factual allegation in the complaint, it is hard to  
2 see how a claimant could satisfy the requirements of providing  
3 not only 'fair notice' of the nature of the claim, but also  
4 'grounds' on which the claim rests." Twombly, 550 U.S. at 555,  
5 n.3 (internal citations omitted). A pleading must contain "only  
6 enough facts to state a claim to relief that is plausible on its  
7 face." Id. at 570; see also Ashcroft v. Iqbal, 556 U.S. 662,  
8 677-79 (2009). If the "plaintiffs . . . have not nudged their  
9 claims across the line from conceivable to plausible, their  
10 complaint must be dismissed." Twombly, 550 U.S. at 570; Iqbal,  
11 556 U.S. at 680.

12 A court granting a motion to dismiss a complaint must then  
13 decide whether to grant leave to amend. Rule 15(a) empowers the  
14 court to freely grant leave to amend when there is no "undue  
15 delay, bad faith[, ] dilatory motive on the part of the movant,  
16 . . . undue prejudice to the opposing party by virtue of . . .  
17 the amendment, [or] futility of the amendment. . . ." Foman v.  
18 Davis, 371 U.S. 178, 182 (1962). However, leave to amend is  
19 generally denied when it is clear the deficiencies of the  
20 complaint cannot be cured by amendment. DeSoto v. Yellow Freight  
21 Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992); Balistieri v.  
22 Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990) ("A  
23 complaint should not be dismissed under Rule 12(b)(6) unless it  
24 appears beyond doubt that the plaintiff can prove no set of facts  
25 in support of his claim which would entitle him to relief.")  
26 (internal citations omitted).

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1 **ANALYSIS**

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3 "Because the broad public interest in maintaining a sound  
4 tax system is of such a high order, religious belief in conflict  
5 with the payment of taxes affords no basis for resisting the  
6 tax." United States v. Lee, 455 U.S. 252, 260 (1982). Although  
7 Plaintiff's pleadings are confusing and, at times, contradictory,  
8 Plaintiff alleges that Defendant's tax policies and practices  
9 violate the Free Exercise Clause and the RFRA. (ECF No. 1 at 3.)  
10 Plaintiff also argues that Defendant's use of the word  
11 "frivolous" evidences Defendant's hostility toward Plaintiff's  
12 religious views.<sup>5</sup> (ECF No. 11 at 15.) Defendant contends that  
13 Plaintiff fails to state a claim "because the overwhelming weight  
14 of authority has held that the government's interest in  
15 maintaining a uniform, mandatory system of taxation is  
16 compelling, and sufficient to defeat any claim of a substantial  
17 burden on Free Exercise under either the First Amendment or  
18 RFRA." (ECF No. 7 at 24.)

19 "The Free Exercise Clause . . . does not afford an  
20 individual a right to dictate the conduct of the Government's  
21 internal procedures." Bowen v. Roy, 476 U.S. 693, 693 (1986).

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26 <sup>5</sup> There appears to be some confusion over Defendant's use of  
27 the word "frivolous." Plaintiff mistakenly believes that  
28 Defendant utilizes "frivolous" as a means of discouraging  
religion. The Court finds that Defendant uses "frivolous" in its  
legal context, referring to an argument lacking a legal or  
factual basis. (ECF No. 12 at 7.)

1 Thus, "[t]he fact that some persons may object, on religious  
2 grounds, to some of the things that the government does is not a  
3 basis upon which they can claim a constitutional right not to pay  
4 a part of a tax." Autenrieth v. Cullen, 418 F.2d 586, 588 (9th  
5 Cir. 1969). "The tax system could not function if denominations  
6 were allowed to challenge the tax system because tax payments  
7 were spent in a manner that violates their religious belief."  
8 Lee, 455 U.S. at 260. Moreover, "[t]he Supreme Court has made it  
9 clear that a federal taxpayer has no standing to maintain a  
10 purely religious objection to federal expenditures." Grove v.  
11 Mead School Dist. No. 354, 753 F.2d 1528, 1532 (9th Cir. 1985),  
12 cert. denied, 474 U.S. 826 (1985). Because Plaintiff claims she  
13 is willing to voluntarily remit her outstanding tax liability  
14 only upon assurance that the funds will be used for purposes she  
15 deems acceptable, she essentially objects to Defendant's method  
16 of allocating tax dollars. Her position also prescribes both the  
17 grounds on which she will pay the tax and how the government can  
18 use the revenue. Furthermore, Plaintiff repeatedly cites her  
19 religious convictions as the basis for withholding tax payments.  
20 As a result, the Court agrees with Defendant that "the  
21 overwhelming weight of authority" clearly demonstrates that  
22 Plaintiff fails to state a claim.<sup>6</sup>

23 In an analogous case decided after Congress enacted the  
24 RFRA, a plaintiff sought a court order preventing the IRS from  
25 allocating his tax dollars to war-related programs.

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27 <sup>6</sup> Although the Court has duly considered Plaintiff's various  
28 arguments opposing the Motion to Dismiss under Rule 12(b)(6),  
these arguments are insufficient to warrant further discussion.

1 Kennedy v. Rubin, 1995 WL 552148, \*1 (N.D. Cal. Sept. 07, 1995).  
2 Additionally, the plaintiff wanted his payments distributed to  
3 programs that he did not consider "religiously objectionable."  
4 Id. In granting the defendant's motion to dismiss pursuant to  
5 Rule 12(b)(6), the court found that "a plaintiff cannot state a  
6 claim based upon a religious objection to paying taxes." Id. at  
7 \*3. The court also noted that the plaintiff simply "attempts to  
8 elevate form over substance" when he endeavors to distinguish his  
9 lawsuit from past cases on the ground that "he is not opposed to  
10 paying his federal taxes, but rather, seeks Only to divert his  
11 taxes away from military programs." Id. The court held that  
12 Supreme Court and Ninth Circuit decisions attach "equally whether  
13 the taxpayer refuses to pay taxes or simply attempts to control  
14 the use of any taxes tendered to the Government."

15 Likewise, Plaintiff in the present case seeks to prevent  
16 Defendant from using her tax dollars for war-related programs.  
17 Plaintiff claims that she will pay the full extent of her tax  
18 liability only if the money is allocated to peaceful purposes.  
19 Plaintiff predicates her lawsuit on Defendant allegedly  
20 suppressing religion. However, Kennedy v. Rubin plainly  
21 demonstrates that Supreme Court and Ninth Circuit cases estop  
22 Plaintiff from bringing her lawsuit, a religious objection to the  
23 country's tax system, even if she does not dispute her overall  
24 tax liability. Moreover, Plaintiff claims that Defendant's tax  
25 procedures violate her Constitutional and statutory religious  
26 rights, but "nothing in the Constitution prohibits the Congress  
27 from levying a tax upon all persons, regardless of religion, for  
28 support of the general government." Autenrieth, 418 F.2d at 588.

1 Therefore, Plaintiff fails to state a claim, and Defendant's  
2 motion to dismiss pursuant to Rule 12(b)(6) is GRANTED.

3  
4 **CONCLUSION**

5  
6 As a matter of law, and for the reasons set forth above,  
7 Defendant's Motion to Dismiss (ECF No. 7) is GRANTED.  
8 Plaintiff's Complaint is accordingly dismissed for lack of  
9 subject matter jurisdiction under Rule 12(b)(1) and,  
10 alternatively, for failure to state a claim under Rule 12(b)(6).

11 Because the Court does not believe that the defects of  
12 Plaintiff's Complaint can be remedied through amendment, leave to  
13 amend is DENIED. The Clerk of the Court is directed to close the  
14 file.

15 IT IS SO ORDERED.

16 Dated: December 6, 2012

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19 MORRISON C. ENGLAND, JR.  
20 UNITED STATES DISTRICT JUDGE  
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