In The
Supreme Court of the United States

ROYAL HARKONNEN OIL COMPANY,

Petitioner,

v.

UNITED STATES,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR THE PETITIONER

Team No. 96
Counsel for the Petitioner

QUESTIONS PRESENTED

I. Did Harkonnen Oil's payment of taxes to the Republic of Arrakis, which only included net income and was in substitution for the general Arrakis income tax, qualify for the foreign tax credit under 26 U.S.C. § 901 or 26 U.S.C. § 903?

II. Did Harkonnen Oil's payments to the Inter-Sietch Fremen Independence League qualify for a foreign tax credit when IFIL is a valid taxing entity, the Sietch Dunes Peace Treaty did not prohibit IFIL from levying its own tax, and Harkonnen properly exhausted all practical remedies to reduce its tax burden?

CORPORATE DISCLOSURE

In accordance with Supreme Court Rule 29, Petitioner, Royal Harkonnen Oil Company, hereby discloses its status as an incorporated entity. Royal Harkonnen Oil Company is a Delaware Corporation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

LEGISLATIVE MATERIALS

FIELD SERVICE ADVICE

IRS PRIVATE LETTER RULINGS

PRESIDENTIAL ORDERS

OTHER AUTHORITIES

OPINION BELOW

The Record sets forth the unofficial and unreported judgment of the United States Court of Appeals for the Fourteenth Circuit, Royal Harkonnen Oil Company v. United States, Case No. 15-1701 (14th Cir.). R. at 2-21.

STATUTORY PROVISIONS INVOLVED

29 U.S.C. § 901 and 26 U.S.C. § 903 are reproduced, in pertinent part, in Appendix A.

STATEMENT OF JURISDICTION

Jurisdiction existed in the district court pursuant to 28 U.S.C. § 1346 and 26 U.S.C. § 7422. Consistent with the final judgment rule, jurisdiction existed for the Court of Appeals for the Fourteenth Circuit pursuant to 28 U.S.C. § 1291, which states that courts of appeals shall have jurisdiction from all final decisions of the district courts of the United States. This Court possesses appellate jurisdiction pursuant to 28 U.S.C. § 1254, which states that the Supreme Court may review cases in the courts of appeals by "writ of certiorari granted upon the petition of any party to any civil . . . case, before or after rendition of judgment or decree."

STATEMENT OF THE CASE

The Republic of Arrakis ("Arrakis") is a nation ruled by President Jules Corrino ("Corrino"). R. at 3. After several uprisings in Arrakis, a group of dissidents, led by Paul Atreides, created a province called the Sietch State within the Sietch Dunes region, which annually appoints the Arrakis Vice-President. R. at 8-9. Subsequent to the formation of the Sietch State, a group of dissidents known as the Inter-Sietch Fremen Independence League ("IFIL"), led by Jessica Mohiam ("Mohiam"), took control of part of the Sietch State, and have been recognized by the international community as a sovereign political entity. R. at 12-14.

Harkonnen Oil and the Republic of Arrakis

On February 5, 2008, Royal Harkonnen Oil Company ("Harkonnen Oil") began negotiations with Arrakis for the rights to develop the Caladan Oil Field's. R. at 3. The negotiations between Harkonnen Oil's CEO and President Corrino centered on the amount of the royalty Harkonnen would pay for access to the Field's resources, owned by President Corrino and his family. R. at 4.

On March 10, 2008, and before the conclusion of the negotiations, President Corrino instituted a tax that applied to all foreign entities that operated machinery in Arrakis. R. at 5. The Republic of Arrakis Foreign Tax ("RAFT"), briefly labeled the Republic of Arrakis Foreign Value Tax, utilizes the gross receipts generated by any corporation operating within Arrakis during a calendar year as the tax base. R. at 5.

The imposition of RAFT, part of a five—year effort to modernize the Arrakis Tax Code ("ATC"), was an attempt by President Corrino to tax foreign entities. R. at 4-5. The ATC functions primarily under deeply engrained religious principles, and distinguishes between subjects of the former Sietch and Arrakis thrones. R. at 4. Under Arrakis law and religious norms, foreign entities cannot be subjected to the general income tax. Id.

RAFT required the deposit of all amounts earned within Arrakis into the Central Bank of Arrakis ("the Bank") prior to distribution to the nonresident entity. R. at 5. After the initial collection, the Bank calculates the tax receipts, which it disburses directly to the Arrakis Treasury, and remits the remaining funds to the nonresident entity. Id.

Several years after the creation of RAFT, President Corrino enforced Proclamation 102, which permits foreign corporations to take all the deductions available to Arrakis citizens. R. at 15. The United States Internal Revenue Service stipulated that the deductions available to Arrakis citizens are comparable to deductions in the United States Tax Code. R. at n. 7. Under the religious laws of Arrakis, foreign entities are not permitted to have the same benefits as true believers, so that nonresident deductions are capped at ninety-five percent of the value for Arrakisian citizens. R. at 15.

Ultimately, the negotiations between President Corrino and Harkonnen resulted in the Arrakis Lease, an agreement signed on June 30, 2008, for Harkonnen Oil to develop the entire 231,000 square miles of the Caladan Oil Field.

R. at 7. The Arrakis Lease mandated a one-time bonus of fifty-five million dollars and a royalty of fifteen percent for the privileges granted under its provisions. Id.[1]

Harkonnen Oil and the IFIL

In December 2010, IFIL mounted a rebellion in the Sietch State, alleging that Mohiam should unseat Vice-President Atreides as the rightful heir to the Sietch Throne. R. at 11-12. Although, the State Department has labeled IFIL an independent splinter group of the Bene Gesserit, a terrorist organization, However, IFIL has rebelled from the Bene Gesserit, and Mohiam has condemned the organization as archaic. Id. The Bene Gesserit itself has denounced Mohiam as a "Profiteer" and "Capitalist Swine." R. at 13. Since 2005, IFIL and Mohiam have not been associated with or operated in the same territory as the Bene Gesserit. R. at 12.

Thus far, Al Dhanab, Anbus, France and Russia have all recognized IFIL as a legitimate foreign government, and as a sovereign and independent state in the Sietch Dunes region. R. at 12-13. The United States and United Nations are currently considering whether to formally recognize IFIL as a sovereign state. Id. The President of the United States has referred to IFIL as "sovereign." R. at 14.

Arrakis and the Sietch State have recognized IFIL as a sovereign political subdivision of the Sietch State and Arrakis, and have agreed to establish a permanent principal location for IFIL within the Sietch Dunes region. R. at 15. In

[1] The parties had ongoing negotiations concerning RAFT rate; in 2011, President Corrino lowered RAFT rate to thirty-three percent, from forty-five percent, after the First Annual Caladan Oil Field Conference. R. at 15.

early 2011, Jessica Mohiam ran as a candidate in the Sietch State election and finished in a "virtual tie" with Paul Atreides. Id.

By March 2011, IFIL expanded into the Sietch Dunes region by taking control of the "Badlands" territory and Onn region. R. at 13. This expansion allowed IFIL to control territory that included Harkonnen Oil's "Unit #12," which is located near Onn, the historic seat of the Sietch Empire throne. Id. After taking control of the territory, IFIL demanded a bonus, royalty payment, and income tax on Harkonnen Oil for continued production of Unit #12. Id.

Harkonnen Oil immediately protested IFIL's demand for an income tax. R. at 14. In an initial attempt to reduce its liability for all three entities, Harkonnen Oil hosted the First Annual Caladan Oil Field Conference. R. at 15. To further determine the proper remedy to reduce its tax burden, Harkonnen consulted with President Corrino, who noted that the Holy Royal Court of Arrakis handles tax disputes. Id. Pursuant to that expert advice, Harkonnen petitioned the Holy Royal Court for a determination of the status of IFIL, which held that IFIL is "part of Sietch" and a valid taxing authority. R. at 14. Harkonnen then timely paid IFIL, with separate checks, the bonus, royalty payments, and income tax. Id.

Following Harkonnen's tax payment to IFIL, the President of the United States issued Executive Order 14012, which declared "IFIL a sovereign friend of the United States, whom we would like to establish trade relations with." Id. Executive Order 14012 also stated that "[t]he United States would always continue to help individuals around the world obtain freedom." Id.

Internal Revenue Service Determination

Harkonnen Oil timely paid the income taxes levied by Arrakis, the Sietch State, and IFIL, and claimed a foreign tax credit for each payment. R. at 16. The IRS audited the 2012 returns. Id. The IRS determined that Harkonnen's payments to Arrakis did not qualify for credit because the tax did not sufficiently reach net income. R. at 16-17. The IRS declared that Harkonnen's payments to IFIL did not qualify for foreign tax credits because IFIL was not a proper taxing authority and IFIL's levy violated the Sietch Dunes Peace Treaty. R. at 17. Harkonnen filed suit for a refund in the Central District Court of New Tejas, which ruled in favor of the United States. Id.

Fourteenth Circuit Opinion

The United State Court of Appeals for the Fourteenth Circuit affirmed the District Court's holding that Harkonnen's payments to Arrakis and IFIL did not qualify for foreign tax credits. Id. First, the Court of Appeals determined that payments to Arrakis did not qualify for foreign tax credits under 26 U.S.C § 901. Id. The court reasoned that RAFT was a value tax that did not credibly reach net income, and that Arrakis' cap on foreign tax deductions failed to satisfy the definition of "significant cost recoveries" under 26 CFR 1.901-2. Id. The Court of Appeals also found that 26. U.S.C § 903 did not provide an alternate basis for relief, and the Central Bank of Arrakis' practice of holding funds prior to remittance did not qualify as a "withholding tax." R. at 18.

The Fourteenth Circuit Court of Appeals also concluded that IFIL is not a valid taxing entity, despite the Holy Royal Court's decision and the President of the United States' Executive Order 14012. Id. In addition, the court found that IFIL's tax was in violation of the Arrakis constitution as an "impermissible second tax." Id. Finally, the court held that Harkonnen Oil did not exhaust all of its remedies to reduce its tax burden to IFIL, because it did not petition the Sietch Council for a determination of the IFIL's status. Id.

Judge Layton dissented, noting the court should uphold Harkonnen Oil's claimed foreign tax credit for payments to both Arrakis and IFIL. R. at 20-21. The judge emphasized policy concerns, noting that the fundamental goals of the credit are to prevent double taxation and to encourage foreign trade. R. at 19. Judge Layton determined RAFT sufficiently allowed Harkonnen Oil to recover costs and expenses, so that it reached net income. Id. Alternatively, the judge noted the Arrakis' levy qualified for the credit as a tax in lieu of an income tax. Id.

Judge Layton also dissented and concluded that the IRS improperly denied the claimed credit for payments to IFIL because Harkonnen Oil "properly exhausted all remedies to challenge a foreign jurisdiction's tax levy by consulting with the Holy Royal Court," which determined that IFIL was a part of Sietch and a valid taxing entity. R. at 21. The judge reasoned that that Harkonnen was not required to seek relief from every court once the Holy Royal Court gave its determination. Id.

SUMMARY OF THE ARGUMENT

This Court should reverse the decision of the Fourteenth Circuit Court of Appeals and find that Harkonnen Oil's payments to Arrakis and IFIL are eligible for foreign tax credits under 26 U.S.C. § 901.

Tax Payments to Arrakis

Harkonnen Oil's payments to Arrakis comply with the requirements of the foreign tax credit provisions of the United States Tax Code.

First, RAFT is a creditable income tax under § 901. The predominant character of RAFT is substantially similar to an income tax under U.S. principles, as the joint effect of RAFT and Proclamation 102 is to tax nonresident corporations on their gross receipts minus applicable deductions, the equivalent of reaching net income for purposes of the Code. The initial "value" label is not dispositive of the true nature of the levy, as it is more properly categorized as an income tax. This Court should apply a flexible standard when analyzing a foreign assessment to ensure that the Code is properly enforced.

Alternatively, this Court should find that RAFT is a tax in lieu of an income tax under § 903. The general income tax of Arrakis was not imposed on nonresidents because of religious and historical norms that required the separation of believers and nonbelievers. As such, RAFT was an attempt to tax the income of foreign entities without subjecting them to the Arrakis income tax. The agreement under the Arrakis Lease does not disqualify RAFT, as the levy was not imposed in consideration for the grant of mineral extraction rights to Harkonnen Oil. Lastly, the Central Bank of Arrakis' disbursement process also qualifies RAFT for a foreign tax credit. To comport with the policy concerns of the foreign tax credit, which include the avoidance of double taxation and the encouragement of global trade, this Court should permit the taxpayer to receive the benefits of the credit.

Tax Payments to IFIL

Harkonnen Oil's payments to IFIL were valid compulsory taxes under 26 U.S.C. § 901.

First, this Court should find that IFIL is a valid foreign taxing entity as an independent and sovereign political entity, separate and apart from Arrakis and the Sietch State. In the alternative, this Court should find that IFIL was a valid taxing entity as a political subdivision of the Sietch State and Arrakis. In any event, this Court should conclude that § 901(j), which prohibits foreign tax credits for payments made to countries which have been sanctioned, does not apply to IFIL, which has a diplomatic relationship with the United States. However, even if § 901(j) is found to apply to IFIL, the President of the United States validly waived its application through Executive Order 14012.

Second, this Court should find that Harkonnen Oil was reasonable in concluding that IFIL has the authority to levy taxes under the Sietch Dunes Peace Treaty and Arrakis Constitution. The ordinary meaning of the terms in those documents does not prohibit IFIL, an independent government or valid political subdivision, from levying its own taxes. In addition, the intent of the contracting parties and the surrounding circumstances of the Treaty indicate that it was not intended to prohibit the imposition of taxes by IFIL. This Court should not interpret the Treaty and Constitution so rigidly as to render IFIL's tax unconstitutional, as this would undercut Congress's stated intent to avoid the "evil of double taxation" and encourage foreign trade and investment.

Third, this Court should find that Harkonnen Oil exhausted all reasonable remedies to reduce its tax liability to IFIL. Harkonnen was only required to seek remedies directly through IFIL, because IFIL as an independent nation has the sovereign authority to levy its own taxes without the interference of any other political entity. However, even if this Court determines that IFIL is a political subdivision of the Sietch State or Arrakis, Harkonnen in good faith also sought a determination from the Holy Royal Court, which was the only other authority that could potentially assess the taxing authority of IFIL. Moreover, by seeking expert advice from President Corrino, Harkonnen invoked the safe harbor provision of 26 C.F.R. § 1.901-2(e)(5)(i). And although the Fourteenth Circuit suggested that Harkonnen should also have petitioned the Sietch Council, this would have been a futile and impracticable remedy because the Council had no authority to rule on the taxing ability of IFIL. Because taxpayers are not required to pursue futile measures, Harkonnen properly exhausted all reasonable remedies to reduce its tax liability and payments to IFIL.

ARGUMENT

I. THE COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT ERRED BY DISALLOWING A FOREIGN TAX CREDIT FOR HARKONNEN OIL'S PAYMENTS TO ARRAKIS BECAUSE RAFT QUALIFIES AS AN INCOME TAX OR A TAX IN LIEU OF AN INCOME TAX UNDER THE DEFINITIONS PROFFERED BY THE UNITED STATES TAX CODE IN 26 U.S.C. § 901 AND 26 U.S.C. § 903.

The decision of the Fourteenth Circuit should be reversed because RAFT qualifies for the foreign tax credit under the relevant provisions of the U.S. Tax Code. The tax is substantially similar to a United States income tax, so that Harkonnen Oil should receive a refund for payments remitted to the Republic of Arrakis. A foreign assessment's credibility is analyzed under the tenets of 26 U.S.C. § 901 and 26 U.S.C. § 903, which include incomes taxes and taxes in lieu of income taxes under the umbrella of permissible creditable levies.

First, RAFT is a tax on income under § 901. The Code permits domestic corporations to receive a credit for the amount of any income taxes paid or accrued during the given taxable year to any foreign country. 26 U.S.C. § 901(b)(1). To qualify as creditable, any amount paid to the foreign country must be (1) a tax, and (2) substantially similar to an income tax in the U.S. sense. Biddle v. Commissioner, 302 U.S. 573, 579 (1938). The Fourteenth Circuit improperly held that RAFT does not meet the second requirement, so this Court should determine that the joint effect of RAFT and Proclamation 102 is to tax nonresident corporations on their gross receipts minus up to ninety-five percent of applicable deductions, the equivalent of reaching net income for purposes of the Code.

Alternatively, RAFT can properly be categorized as a tax "in lieu of" an income tax under the provisions of § 903. The levy is imposed on nonresident corporations that are not subject to the general income tax on Arrakis residents, and is applicable to "all foreign entities that operate machinery on sovereign territory of Arrakis." R. at 5. Ultimately, this Court should reverse the Fourteenth Circuit and permit Harkonnen Oil to receive a refund for payments remunerated to Arrakis in compliance with its foreign income tax.

A. RAFT qualifies for a foreign tax credit under § 901 because its predominant character is that of an income tax.

RAFT's predominant character is substantially similar to that of a United States income tax. For a levy's character to reflect that of an "income tax," it generally must satisfy the mandates proffered by the United States Treasury Department regulation, including the requirement that the levy reach net gain. 26 CFR 1.901-2. Net gain "consists of realized gross receipts reduced by significant costs and expenses attributable to such gross receipts." PPL Corp. v. Commissioner, 133 S. Ct. 1897, 1902 (2013). A levy satisfies this standard, then, when it properly reaches the net income generated by the entity.

This Court should avoid applying any formalistic standard to determine RAFT's predominant character. In assessing a levy's "predominant character," courts emphasize substance over form, as the central inquiry "is whether the country is attempting to reach some net gain, not the form in which it shapes the income tax or the name it gives." Entergy Corp. & Affiliates v. Commissioner, 683

F.3d 233, 236 (5th Cir. 2012) (citing Bank of Am. Nat. Trust & Sav. Ass'n v. U.S., 459 F.2d 513, 519 (Ct. Cl. 1972) ("Bank of America I")). The foreign tax is not required to precisely mirror the U.S. Tax Code, but instead must simply be the "substantial equivalent of an 'income tax' as the term is understood in the United States." Schering Corp. v. Commissioner, 69 T.C. 579, 582 (1978) (internal quotations omitted) (holding that irrespective of its apparent application in the circumstances, the Swiss Federal Withholding Tax retained its general character as a creditable foreign income tax). In practice, courts have even permitted foreign tax credit for levies that reached amounts the United States would deem to be non-income receipts. Id. at 593.

Though RAFT was initially labeled a "value tax," the actual substance of the tax is more accurately classified as reaching income. President Corrino's identification of the tax as a "value tax" is not determinative of the actual nature of the foreign levy. First, a government's characterization of "its tax is not dispositive with respect to the U.S. credibility analysis." PPL Corp., 133 S. Ct. at 1902. Here, the definition of the term "value" could reasonably differ across nations, and does not necessarily reflect the essential composition of the tax scheme. Second, the assessment does not function as a value tax, as it is directly aimed at the gross receipts from production in the territory rather than at any valuation of the oil or gas involved in the transactions. See Texasgulf, Inc. v. United States, 1999 U.S. Claims LEXIS 245, at *75 (Fed. Cl. 1999) (determining levy was directed at income where the majority of taxpayers were taxed on sales, rather than the value of production). Here, RAFT functions to burden the net gain, so that its true nature is that of an income tax. Most importantly, the predominant character of RAFT is that of an income tax because it sufficiently reaches net income within the meaning of the proffered Treasury Regulations to constitute a tax on income for foreign tax credit purposes.

i. The effect of RAFT is to reach realized net income because it allows for the recovery of costs and expenses attributable to the gross receipts.

RAFT sufficiently reaches net income for purposes of § 901 because it is computed by reducing the gross receipts generated from operations in Arrakis by applicable deductions permissible under Proclamation 102. "Income," under the principles of the Code, is determined by subtracting operating and business expenses from a corporation's gross receipts tax base. 26 C.F.R. § 1.901-2(b)(4). The Treasury regulation proffers a flexible standard for determining whether a tax permits for the recovery of significant costs or expenses, in that the levy only needs to "effectively compensate" for such amounts. 26 C.F.R. § 1.901-2(b)(4)(i). Thus, the regulation is specifically intended to focus on the practical application of a levy, rather than requiring a formal standard that cannot acquiesce to the demands of continually shifting tax codes on the global scale.

Nonresident entities can recover significant costs and expenses incurred in the receipt of income under Proclamation 102. Harkonnen Oil was permitted to take deductions analogous to those in the U.S. Tax Code, so that the tax ultimately reached net income. Net income consists of realized gross receipts reduced by significant costs and expenses attributable to such gross receipts. 26 C.F.R. § 1.901-2(b)(1). As such, a "foreign tax that reaches net income, or profits, is creditable." PPL Corp., 133 S. Ct. at 1902 (citing 26 C.F.R. § 1.901-2(b)(1)).

In assessing whether a tax allows for the significant recovery of expenses, it is not decisive whether the levy itself "specifically allows the deduction or exclusion of the costs or expenses of realizing the profit." Bank of America I, 459 F.2d at 519 (noting alternative methods exist to effectively compensate for or recognize the costs in making the gain without the levy directly reaching net income). In Texasgulf, Inc. v. CIR, the Second Circuit determined a mining tax qualified for a foreign tax credit, despite allegations that the levy itself allowed for recovery of significant expenses attributable to the gross receipts incorporated in its base. 172 F.3d 209, 210 (2d Cir. 1999) (holding tax that incorporated processing allowance for a percentage of the cost of assets utilized in mine production was creditable). There, even though the processing allowance was technically separate from the levy itself, the court still determined that the tax had the ultimate effect of reaching net income.

Here, the practical application of RAFT combined with Proclamation 102 is to tax the net income of nonresident corporations operating within the nation. The key consideration is the effect of the assessment on net gain, so that a "gross income tax which embodies...consideration of the taxpayer's relevant costs and expenses" is as creditable as a direct tax on net income." Bank of America I, 459 F.2d at 520-21. Proclamation 102 currently allows for nonresident entities to deduct significant expenses and capital costs from gross income, in line with the U.S. Tax Code. The United States Internal Revenue Service stipulated that the deductions available in the Arrakis Tax Code match the available range of deductions under the United States Tax Code. R. at 4 n7.

Though Harkonnen Oil is not permitted to take the full extent of deductions, the levy still effectively reaches net income in its application. In Inland Steel Co. v. United States, the court analyzed whether the disputed tax had the effect of falling on some net gain, suggesting it is not relevant what specific percentage of net gain the tax reaches. 230 Ct. Cl. 314, 325 (Ct. Cl. 1982). Instead, the tax failed to satisfy the requirements of the Code because there was no allowance for numerous significant costs and expenses. Id. at 327. Similarly, 26 C.F.R. § 1.901-2's "effectively compensates" language was enforced after the holding in Inland Steel, signifying the Treasury's intent to ensure that a foreign tax that does not allow for recovery of one or more costs or expenses may still be incorporated within the definition of an income tax. So while some percentage of Harkonnen Oil's gross income was not reduced to compensate for business expenses because of the ninety-five percent cap, RAFT still ultimately had the effect of reaching *some* of the company's net income.

Regardless of the technical form of RAFT alone, Proclamation 102 effectively adjusted Harkonnen Oil's gross income for the substantial costs of doing business through deductions equivalent to those in the U.S. Tax Code. Ultimately, Harkonnen Oil remitted "the thirty-three percent tax less applicable deductions from total income generated by the Caladan Oil Field to Arrakis." R. at 16. This Court should look beyond a formalistic approach, consistent with the application by the Second Circuit and the Court of Claims, and analyze the *effect* of the Arrakis taxes. In doing so, this Court will undoubtedly find that RAFT sufficiently reaches net income.

Additionally, the payments from Harkonnen Oil to Arrakis should not be categorized as a royalty in application because the tax amounts were not remitted for ongoing exploitation of the Caladan Oil Field. While some transactions regarding oil reserves have blurred the line between a levy and a royalty payment, which involves one party remitting monies for ongoing use of an asset, the royalty and bonus payments contained within the Arrakis Lease are entirely distinct from the requirements of RAFT. In Phillips Petroleum v. Commissioner, the tax court determined that Norway had "imposed the special charge pursuant to the exercise of its sovereign taxing power, not pursuant to its proprietary rights, as an owner of petroleum resources." Phillips Petroleum v. Commissioner, 104 T.C. 256, 296 (1995) (noting in its determination that tax was not a royalty that if something "quacks like a duck and waddles like a duck, it's a duck"). The court also noted the separate administration of a royalty and a levy can lend to a determination that they are distinct transactions. Id. (citing American Metal Co. v. Commissioner, 19 T.C. 879, 883 (1953), affd. 221 F.2d 134 (2d Cir. 1955)). Here, the amount paid to Arrakis was properly creditable because President Corrino oversaw the effectuation of the Arrakis Lease, which involved mineral rights that were solely owned by his family. R. at 3. That was a private transaction properly negotiated between two parties, and did not involve the nation's exercise of the levy. Further still, the Bank of Arrakis separately handled the administration of RAFT, and had no power over the disbursement of the royalty and bonus treatments. This separation further demonstrates that RAFT is properly categorized as a tax on income, rather than being treated as a type of royalty.

ii. Any difference in the deductions permitted to residents and nonresidents are attributable to the religious tenets of the Republic of Arrakis, and should not be the subject of U.S. judicial scrutiny.

The slight differences in form of U.S. income taxes and RAFT should not defeat the application of the foreign tax credit. While the status of a levy is analyzed under U.S. standards, "that is not to say that the foreign law is irrelevant, of course; it means only that the ultimate U.S. tax consequences of a particular set of rights and obligations established under foreign law remains a question of U.S. law." Amoco Corp. v. Commissioner, 138 F.3d 1139, 1144 (7th Cir. 1998).

Courts should concentrate on "whether taxation of net gain is the ultimate objective or effect of [the] tax," rather than undertaking a formalistic approach that excludes taxes actually intended to reach the income of nonresidents. Inland Steel, 230 Ct. Cl. at 326. This Court has held that permitting the true nature of a tax transaction "to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress." Commissioner v. Court Holding Co., 324 U.S. 331, 334 (1945). This principle is particularly pertinent in the context of foreign tax transactions, where complex jargon shifts fluidly in meaning from nation to nation. While U.S. statutory meanings necessarily must inform the analysis, the nature of the transaction requires a more malleable understanding. Here, RAFT, despite a slight difference in the percentage of permissible deductions, is an analog to a U.S. income tax in that it effectively reaches some net income.

This policy is especially applicable here, where denying that RAFT is a proper income tax would have the unconscionable result of "forcing a country to violate its religious tenets in order to satisfy [U.S.] fear of under taxation." R. at 20. While "income" ultimately must be analyzed under U.S. principles, not every court has entirely ignored the treatment of the tax by the taxing foreign nation. <u>See</u> <u>Seatrain Lines, Inc. v. CIR</u>, 46 B.T.A. 1076, 1080-81 (1942) (incorporating Cuba's application and categorization of the disputed tax in its analysis). Here, the religious customs of Arrakis prevent the even application of the permissible deductions to both citizens and nonresident corporations. R. at 4, 15-16. The law of Arrakis, deeply engrained in its religious history, does not allow foreign entities to receive the same benefits as "true believers." R, at 15. This Court should not deny Harkonnen Oil a credit of its payments to Arrakis simply because the religious tenets of the nation have forced it to deny noncitizens a minor five percent of deductions. That result would send the crippling message to foreign nations that the U.S. will not encourage trade within their territories unless the countries comply with U.S. standards, regardless of any differences in religious beliefs.

Ultimately, this Court should determine that RAFT qualifies for the foreign tax credit because it sufficiently satisfies the requisite criteria under § 901.

B. Even if this Court determines § 901 does not afford relief to Harkonnen Oil, § 903 applies to RAFT because the tax was paid in lieu of a tax on income.

If this Court determines RAFT does not satisfy the requirements of § 901, the payments to Arrakis still qualify for the foreign tax credit under § 903 as a payment "in lieu of an income tax". This section allows a tax that is "imposed in substitution for, and not in addition to, a generally imposed income tax" to qualify for a foreign tax credit. 26 C.F.R. § 1.903-1.

This statutory provision was specifically created to include levies that are intended to be income taxes under § 901, but which fail to satisfy the numerous requirements. Bank of Am. Nat'l Trust & Sav. Ass'n v. Commissioner, 61 T.C. 752, 761 (1974). By enacting § 903, Congress intended to widen the net of § 901. Id. Additionally, 1984 amendments to the statute stripped § 903 of most of its previous restrictive qualifications, demonstrating the intended flexibility of the standard. Glenn E. Coven, International Comity and the Foreign Tax Credit: Crediting Nonconforming Taxes, 4 Fla. Tax Rev. 83, 117 (1999). Congress introduced the "in lieu of" provision to avoid "discrimination against the American company abroad which is exempted from the ordinary foreign income tax—for administrative convenience or for other reasons of policy or of legal theory—but is instead required to pay another type of tax" to contribute to the foreign nation's revenues. Metro. Life Ins. Co. v. United States, 179 Ct. Cl. 606, 610-11 (Ct. Cl. 1967).

Here, nonresidents are not subject to the general income tax imposed on the residents of Arrakis, so that RAFT is imposed as a substitute under § 903. Historically, the application of Arrakis taxes centered on blood heritage, so that foreign entities doing business in the nation were not subject to the broadly applied income tax. R. at 4. President Corrino imposed a specific, compulsory tax on nonresident corporations in order to modernize the Arrakis Code and to include foreign income in the foreign nation's tax scheme. Id.

RAFT is not solely levied on U.S. corporations or entities in one industry, so that it is substantially similar to a more broadly imposed income tax. Here, the tax was applicable to all nonresident corporations operating in the area, rather than solely focusing on U.S. corporations, rendering it generally applicable enough to be a replacement for an income tax. See New York & Honduras Rosario Min. Co. v. Commissioner, 168 F.2d 745 (2d Cir. 1948) (noting tax was too narrowly applied to qualify as "in lieu of" an income tax). Additionally, RAFT does not target nonresident corporations engaged solely in the oil extraction business; rather, it applies more broadly to corporations that operate machinery within the Arrakis nation. R. at 5.

Harkonnen Oil did not receive a specific economic benefit in return for its payments to Arrakis under RAFT, as the levy was generally exercised on nonresident corporations, and the U.S. Company produced separate consideration to President Corrino for the benefits of the Arrakis Lease. R. at 4-6. Under § 903, a levy is "in lieu of" an income tax if it is not a payment produced for a "specific economic benefit." 26 C.F.R. § 1.903-1. This analysis centers on whether the benefit was actually received in exchange for payment of the tax. Exxon Corp. v. Commissioner, 113 T.C. 338, at *25 (1999) (holding tax was not compensation for any specific economic benefit). That type of quid pro quo exchange did not occur between Harkonnen Oil and Arrakis over RAFT, as the oil and gas extraction rights extended to Harkonnen were by virtue of independent lease negotiations. R. at 3-5. The negotiations between President Corrino and Harkonnen Oil focused on the royalty payments themselves, and the Arrakis Lease was executed months after President Corrino signed RAFT into law. R. at 5-7. Additionally, President Corrino had contemplated the initiation of such a tax years before meeting with Harkonnen Oil. R. at 4. It would be impracticable to prohibit a corporation from receiving a credit for foreign taxes paid simply because they have co-existent business dealings with the foreign country, entirely distinct from the levy imposed.

Additionally, the tax was not in exchange for accessing any specific privilege within the Republic of Arrakis. In Motland v. United States, the court determined an assessment did not qualify for the foreign tax credit where it burdened all capital removed from Cuba, regardless of its origin. 192 F. Supp. 358, 361 (N.D. Iowa 1961) (utilizing a substantially similar version of the Code). In that case, the levy's inherent purpose was to burden individuals and corporations for the privilege of engaging in the use of Cuba's exportation mediums. Additionally, the taxpayer was liable for both the nation's general income tax and the subsequent export tax. Id. at 363. In this case, the underlying intent of RAFT was to reach income generated in the Republic, rather than simply "penalizing" entities for the privilege of engaging in oil or gas production within Arrakis territory. That is evidenced by the fact that Harkonnen was not required to simultaneously pay the general Arrakis income tax.

An examination of the evolution of the Arrakis Tax Code demonstrates the necessity of maintaining a forceful and effective § 903. A foreign nation may be unable or unwilling to apply a general income tax to a nonresident entity for numerous reasons, including the efficient administration of the tax code. See, e.g., Northwestern Mutual Fire Association v. Commissioner, 181 F.2d 133 (9th Cir. 1950) (determining a Canadian tax on mutual insurance companies was a tax in lieu of an income tax where it was imposed to avoid administrative difficulties with the application of the general income tax). Here, Arrakis' religious history demonstrates the nation's unwillingness to subject foreigners to the general income tax. R. at 4. In attempts to modernize aspects of the Code, without overturning the entire system, President Corrino effectuated specific provisions to bring foreign income within the taxing authority of the Republic. Id. Harkonnen Oil should not now be penalized for the reasonable discretion, and engrained history, of a foreign nation and its leader.

Alternatively, the disbursement process requiring the Bank to hold all gross receipts earned prior to remittance qualifies as a "withholding tax" sufficient to produce a § 903 foreign credit. A gross base income tax, such as a withholding tax on dividends, interest, and royalties, can be considered a creditable in-lieu-of tax if it is imposed on nonresidents as a substitute for a general net base income tax applicable to resident. See 26 C.F.R. 1.903-1(b)(3) Ex. 1. Courts have determined that a tax similar to that imposed by I.R.C. § 871(a), under which the U.S. taxes foreign income received from sources within the U.S., can qualify for the credit. See, e.g., Schering, 69 T.C. at 604 (1978) (holding petitioner was entitled to foreign tax credit for withholding tax payments treated as a dividend under Swiss law). To be creditable, the tax cannot solely be withheld, but must also actually be paid to the appropriate taxing authority. See Cont'l Ill. Corp. v. Commissioner, 998 F.2d 513, 516–517 (7th Cir. 1993).

Here, the reimbursement process required by RAFT is a type of withholding tax. R. at 5. Pursuant to RAFT's mandate that the Bank calculate all applicable taxes, it requires the deposit of all monies earned in Arrakis directly into the Bank, which then remits the required RAFT amounts to the Arrakis Treasury and distributes the remainder of the funds to the foreign entity. Id. If the Court limits the analysis of the tax to this process, it can be considered a tax on gross income similar to those imposed by the U.S. Code on income received from any source within the United States that is not earned by a U.S. resident. I.R.C. § 871(a). Additionally, the tax was not solely withheld, but was also remitted to the Arrakis Treasury within ninety days of the initial deposit. R. at 5. Here, the Bank's practice could be deemed a withholding tax on Harkonnen Oil, because it taxes all income the company generates with the Arrakis territory.

C. The policy behind the implementation of § 901 and § 903 dictates that this Court allows Harkonnen Oil's claimed foreign tax credit of all payments to Arrakis.

This Court should reverse the decision of the Fourteenth Circuit and permit Harkonnen Oil to receive a refund for taxes submitted to Arrakis under RAFT because the underlying thrust of the credit provisions demands the equal treatment of equally situated taxpayers. The primary impetus behind the creation of the foreign tax credit provisions was to avoid double taxation for U.S. individuals and entities earning income abroad. Texasgulf, 72 F.3d 209. The statute must be read in light of that purpose. Abbot Laboratories Intern. Co. v. U.S., 160 F. Supp. 321 (N.D. Ill 1958). When Congress enacted the credit provision in 1918, it was in response to the rapidly increasing global tax rates surrounding the World War, where individuals attempting to engage in foreign investment were subjected to crippling double taxation. See generally Michael J. Graetz and Michael M. O'Hear, The 'Original Intent' of U.S. International Taxation, 46 Duke L.J. 1021 (1996). Those burdens demanded an equitable remedy in the form of a permissible credit for such corporations, which would reduce the taxpayer's U.S. liability dollar for dollar in recognition of foreign taxes already remunerated. The provisions regarding foreign tax credits must be construed to give effect to this general purpose and to implement the intended policy of Congress, rather than formalistically applied in all circumstances. Gentsch v. Goodyear Tire & Rubber Co., 151 F.2d 997, 1000 (6th Cir. 1945).

The Circuit Court's strict interpretation of the Tax Code would have a chilling effect on U.S. companies' willingness to engage in foreign trade. The credit was in part intended to serve as a mechanism to "reduce the importance of differing tax burdens on decisions as to where to invest and undertake business activities." Wells Fargo & Co. v. United, 2014 U.S. Dist. LEXIS 99111, *19 (D. Minn. July 21, 2014). The Internal Revenue Service should remain flexible in the application of the Tax Code to account for both the expansion of international trade and the spike in corporate income tax rates. Coven, supra, at 84. If Harkonnen Oil is denied a refund for payments remitted to Arrakis under RAFT, then it will have effectively paid an enormous sum in taxes on the same income stream, cutting off its profits.

The stakes are extraordinarily high for Harkonnen Oil; the company has fully paid both RAFT and U.S. income taxes for 2012. R. at 16. Thus, the same income has been burdened twice, and Harkonnen has most likely paid an exorbitant amount of taxes for a venture expecting to receive some measure of relief under the foreign tax credit provisions of the Code. Harkonnen Oil has even engaged in attempts to reduce their foreign tax liability over time, as evidenced by its participation in the First Annual Caladan Oil Field Conference which led to a significant reduction in RAFT tax rate. R. at 15. If this Court upholds the decision below denying the credit, it will deter companies from engaging in global enterprise that is crucial to a self-sustaining and continually evolving international economy. The intent of the foreign tax credit was not to penalize scrupulous taxpayers, but to help alleviate the burden of double taxation for corporations that were engaged in the practice of foreign trade. Thus, this Court should reverse the decision of the Fourteenth Circuit and permit the application of the foreign tax credit to Harkonnen Oil's payments to Arrakis.

II. THE COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT ERRED IN DENYING A FOREIGN TAX CREDIT FOR HARKONNEN OIL'S PAYMENTS TO THE INTER-SIETCH FREMEN INDEPENDENCE LEAGUE BECAUSE IFIL WAS A VALID TAXING ENTITY, WAS NOT PROHIBITED FROM LEVYING THE TAX UNDER THE SIETCH DUNES PEACE TREATY, AND HARKONNEN EXHAUSTED ALL PRACTICAL REMEDIES TO REDUCE ITS TAX BURDEN.

The decision of the Fourteenth Circuit should be reversed because Harkonnen Oil's payments to IFIL were valid compulsory taxes under 26 U.S.C. § 901.

First, IFIL is a sovereign and independent political entity with the power to levy its own taxes. See Burnet v. Chicago Portrait Co., 285 U.S. 1, 17 (1932). In the alternative, IFIL should be recognized as a sovereign political subdivision of the Sietch State and Arrakis, with the ability to impose its own taxes. See id. 14. In any event, 26 U.S.C. § 901(j), which prohibits payments to certain sanctioned countries from qualifying as foreign tax credits, does not apply to IFIL. However, even if § 901(j) is applicable, the President of the United States validly waived its application through Executive Order 14012.

Second, Harkonnen Oil was reasonable in concluding that IFIL has the authority to levy taxes. The ordinary meaning of the terms and surrounding circumstances of the Sietch Dunes Peace Treaty and the Arrakis constitutional amendment do not prohibit IFIL from levying its own tax because they only limit the ability of the Vice-President to impose a tax within the Sietch State. R. at 8-9. In addition, a rigid interpretation of the Treaty as limiting IFIL's taxing authority would undercut Congress's intent to avoid the "evil of double taxation," Burnet, 285 U.S. at 9, and the President's desire to increase trade with IFIL. R. at 14.

Third, Harkonnen Oil exhausted its available remedies to reduce its tax burden to IFIL. Harkonnen Oil sought to reduce its burden directly with IFIL, which is a sovereign an independent political entity with the sole authority to reduce its own taxes. As a showing of good faith, Harkonnen utilized the only other remedy that could potentially have the authority to determine the status of IFIL by petitioning the Holy Royal Court. In addition, Harkonnen invoked the safe harbor provision of 26 C.F.R. § 1.901-2(e)(5)(i) by consulting with President Corrino, who advised that the Holy Royal Court was the only authority to handle Arrakis tax disputes. R. at 9. Finally, IFIL could not have petitioned the Sietch Council for a determination on the status of IFIL, because the Council does not have the constitutional authority to rule on taxing issues, thus rendering its assessment both futile and impractical.

When applying the technical aspects of the Code, this Court should keep in mind that the underlying Congressional intent in granting foreign tax credits is to avoid the "evil of double taxation" and "to facilitate the[] foreign enterprises" of domestic corporations. Burnet v. Chicago Portrait Co., 285 U.S. 1, 7-8 (1932). It should be noted that if this Court were to determine that the taxes paid to IFIL are not creditable, these taxes would nonetheless continue to exist for Harkonnen Oil. Therefore, Harkonnen Oil and other companies operating in the region would be placed in the exact situation that Congress desired to avoid when it created the credit, where double taxation would "place[] American business concerns at a serious disadvantage in the competitive struggle for foreign trade [and] encourage[] American corporations doing business in foreign countries to surrender their American charters and incorporate under the laws of foreign countries." S. Rep. No. 275, 67th Cong., 1st Sess. 9 (1921). Harkonnen Oil attempted to comply in good faith with the Code's complex provisions, and it and other similarly-situated corporations should not be disincentivized from engaging in foreign trade and investment through an over-technical application of the Code.

A. The Fourteenth Circuit incorrectly denied the foreign tax credit for payments to IFIL because IFIL is a valid foreign taxing entity, § 901(j) is not applicable, and even if 901(j) is applicable, the President validly waived its application.

Harkonnen Oil is entitled to a foreign tax credit because IFIL is a sovereign and independent political entity; or, in the alternative, a valid political subdivision of both Arrakis and the Sietch State with taxing powers. In addition, the provisions of 26 U.S.C. § 901(j) do not apply to IFIL because it has a diplomatic relationship with the United States and does not support international terrorism. However, even if § 901(j) was applicable to IFIL, the President of the United States nonetheless waived its application through Executive Order 14012.

i. The taxes paid to IFIL by Harkonnen Oil qualify for a foreign tax credit because IFIL is a proper taxing authority as a sovereign and

> independent political entity, or, in the alternative, a sovereign political subdivision of the Sietch State and Arrakis.

The United States Tax Code allows domestic corporations to receive a foreign tax credit for "the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States." 26 U.S.C. § 901(b)(1). Treasury Regulations further explain that "foreign country" includes "any foreign state, any possession of the United States, and any political subdivision of any foreign state or of any possession of the United States." 26 C.F.R. § 1.901-2(g)(2).

Pursuant to 26 U.S.C. § 901(b)(1), IFIL is a sovereign and independent foreign entity with the power to levy taxes. This Court and other courts have held that "foreign country" includes a "foreign sovereign state or self-governing colony," Burnet, 285 U.S. at 17, or "any foreign political entity . . . which assess[es] and collect[s] income taxes." Bowring v. C.I.R., 27 B.T.A. 449, 452 (1932). IFIL is a sovereign political entity, separate and apart from Arrakis and the Sietch State, and properly levies taxes pursuant to that status.

IFIL exercises dominion over a substantial piece of territory, the "Badlands," and the area surrounding Onn. R. at 13. Although in recent history the land IFIL controls has been considered part of the Republic of Arrakis, its leader Jessica Mohiam has substantial ties to the area and has reclaimed it on behalf of the Sietch Empire. R. at 11. Moreover, IFIL's exclusive control over its territory has never been contested by any other country or group, including Arrakis or the Sietch State.

R. at 13. IFIL receives independent funding from two separate countries, R. at 12, and does not appear to receive any benefits from Arrakis or the Sietch State. Further, the tax it imposes is kept almost entirely to itself and none goes to Arrakis or the Sietch State, R. at 14, in stark contrast to that of the Sietch State, which must be turned over entirely as tribute to the Arrakis government. R. at 10.

In addition, IFIL's status as a sovereign governmental entity has been reinforced through its recognition by international powers, although international recognition is not required to be a valid taxing entity. See Bowring , 27 B.T.A. at 452. Thus far, IFIL has been recognized as an "independent" and "legitimate foreign government" in the Sietch Dunes region by Al Dhanab, Anbus, France, and Russia, R. at 12, and its sovereign status is currently under consideration by the United States and United Nations. R. at 12-13. The President of the United States has even referred to IFIL as "a sovereign friend of the United States." R. at 14. Therefore, IFIL is a sovereign political entity, separate and apart from Arrakis and the Sietch State, which is entitled to impose its own income tax as a valid taxing authority.

In the alternative, IFIL is a valid taxing entity as a political subdivision of Arrakis and the Sietch State. This Court and lower courts have explained how political subdivisions are treated for foreign taxation purposes. In Burnet v. Chicago Portrait Co., this Court found that the income taxes of New South Wales, a state in Australia, should be granted as foreign tax credits, despite the fact that the Commonwealth of Australia and Dominion of New Zealand also levied their own taxes on the domestic corporation. 285 U.S. at 4-6. In attempting to answer the question of whether the state of New South Wales was a "foreign country" under the Tax Code, this Court observed that "[t]he word 'country' . . . is ambiguous . . . because [i]t may be taken to mean foreign territory or a foreign government." Id. at 5. This Court analyzed the context of the Code to "construe the expression 'foreign country' so as to achieve, and not defeat, its aim," which it determined to be the mitigation of "the evil of double taxation" and the facilitation of international trade. Id. at 8-9. This Court concluded that a country's taxes may be taken as foreign tax credit "whether the foreign government had international standing or was a lesser political entity." Id. at 9. In addition, this Court found it unnecessary to analyze the status of New South Wales in relation to the Commonwealth of Australia, which was similar to IFIL's relationship with Arrakis and the Sietch State here. Id. at 10. Thus, under Burnet, IFIL is manifestly a valid taxing entity, despite its status as a "lesser political entity." Id. at 9.

The holding in Burnet has been applied in other similar situations involving political subdivisions. The IRS has explained that taxes on net profits levied by Swiss cantons (member-states) were considered foreign taxes for the purposes of tax credits because cantons are political subdivisions of Switzerland. See Rev. Rul. 74-435, 1974-2 C.B. 204 (1974). Similarly, in Bowring v. C.I.R., the Board of Tax Appeals noted that "foreign country" includes "any foreign political entity, with or without international standing as a member of the family of nations, which has the power to and does levy and collect income taxes," and thus valid taxes levied by

Newfoundland could be credited. 27 B.T.A. at 452. Likewise, in Havana Elec. Ry., Light & Power Co. v. C.I.R., the Board of Tax Appeals held that taxes paid to the Municipality and Province of Havana, Cuba were creditable as valid foreign taxes, in addition to taxes paid to the Cuban National Government. 34 B.T.A. 782, 782 (1936). Treasury Regulations further provide an example of a situation similar to the one here, where both "country X and province Y (a political subdivision of country X) impose[] a tax on corporations," and both taxes are creditable. 26 C.F.R. § 1.901-2(b)(4)(Example 5).

Pursuant to this well-established law, even if not considered an independent nation, IFIL is a valid taxing authority because it is a sovereign political subdivision of the Sietch State and Arrakis. Arrakis and the Sietch State have recognized IFIL as a political subdivision of Arrakis and the Sietch State, and they are currently in the process of determining where the principal location and headquarters of IFIL should be. R. at 15. Furthermore, in an election supervised by the United States, the leader of IFIL Jessica Mohiam participated in and almost prevailed in the Sietch State election. R. at 14. More importantly, the status of IFIL as a political subdivision was determined conclusively by the Holy Royal Court, which said "Arrakis recognizes IFIL as a part of Sietch."[2] R. at 14.

[2] The Holy Royal Court only stated that IFIL is a part of "Sietch," not the Sietch State, but it is presumed that it meant the Sietch State. However, in the event that the Court actually intended to say that IFIL is part of Sietch, but not necessarily the Sietch State (as some of Sietch falls outside the Sietch State, see R. at n.16), IFIL is nonetheless a valid taxing entity as a sovereign and independent political entity that has reclaimed its historical power over the Badlands and Onn. R. at 11; see supra Part II.A.i. In the alternative, even if IFIL is determined to be part of

Accordingly, this Court should find that at the very least, IFIL is a sovereign political subdivision, and thus a valid taxing entity.

Therefore, although IFIL may be considered a "lesser political entity," Burnet, 285 U.S. at 9, it maintains the indicia of a sovereign and independent international state, or at least a political subdivision of the Sietch State or Arrakis. Therefore, this Court should overturn the Fourteenth Circuit's decision that IFIL is not a valid taxing entity under 26 U.S.C. § 901(b)(1).

ii. § 901(j) does not apply to IFIL because it has a diplomatic relationship with the United States and is not a sponsor of international terrorism. Nevertheless, even if it is applied, the President validly waived any application of that provision through Executive Order 14012.

26 U.S.C. § 901(j), which prohibits foreign tax credits from being granted for taxes paid to specific foreign countries, does not apply here because IFIL has positive domestic relations with the United States. However, even if it were to apply, the President of the United States waived any possible denial through his Executive Order pursuant to § 901(j)(5).

By its terms, 26 U.S.C. § 901(j) prohibits foreign tax credits from being granted for taxes paid to countries "(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act, (ii) with respect to which the United States has severed diplomatic relations, (iii) with respect to which

---

historical Sietch but not fully independent, it is nonetheless a valid taxing authority as a political subdivision of Arrakis, because all of Sietch is allegedly part of the Republic of Arrakis. R. at n.4.

the United States has not severed diplomatic relations but does not conduct such relations, or (iv) which the Secretary of State has, pursuant to § 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorisms." 26 U.S.C. § 901(j)(2)(A)(i-iv). Upon a cursory glance, it might appear that IFIL falls into the trap of § 901(j). Indeed, IFIL has been labeled by the U.S. State Department as an independent splinter group of the Bene Gesserit, which has been classified as a terrorist organization by the U. S. State Department and the U.S. Treasury. R. at 11.

However, there is no indication that the State Department ever actually placed IFIL on the official list of countries covered by § 901(j). Cf. Rev. Rul. 2005-3, 2005-1 C.B. 334 (2004) (listing the countries subject to the sanctions imposed by 901(j)). In addition there is good reason to believe that IFIL is not at all a terrorist organization or entity that the United States desires to sanction. Jessica Mohiam, the democratically-elected leader of IFIL, rebelled against the Bene Gesserit, denounced them as "archaic" and "fundamentalist," and allied with two legitimate countries in opposition to the terrorist group. R. at 11-12. In fact, Bene Gesserit itself actually denounced Mohiam and IFIL, R. at 13, which even further indicates that the organizations are not at all related. Furthermore, substantial time has passed since the State Department's determination was made, during which IFIL became a "sovereign" and "legitimate foreign government" with international recognition and a positive diplomatic relationship with the United States. R. at 12-

14; see supra Part II.A.i. Therefore, it is eminently clear that IFIL is not part of, affiliated with, or providing support for a terrorist organization as contemplated by § 901(j)(iv).

In the alternative, § 901(j) also does not apply to IFIL if this Court finds that it is a legitimate political subdivision of the Sietch State, see supra Part II.A.i., a country which the United States has positive diplomatic relations. R. at 10-11. The State Department has "agreed to establish diplomatic ties with the Sietch State," a temporary consulate for the Sietch State has been established within the U.S. embassy in Arrakeen, and the Treasury Department has announced that it "would accept transactions from the Sietch State." R. at 10-11. Thus, even if IFIL was not recognized as an independent foreign government by the United States, foreign tax credits have been granted if the government is found to be the political subdivision of a recognized governmental entity. See, e.g., I.R.S. P.L.R. 8210075 (Dec. 10, 1981) (allowing a foreign tax credit to be taken for taxes paid to an entity that was "not recognized as a country by the United States," but believed by the IRS to be a political subdivision of another country). Because the United States has an established diplomatic relationship with the Sietch State, IFIL may be imputed the legitimacy of the Sietch State as its political subdivision. Therefore, Harkonnen's payments to IFIL should not be denied as foreign tax credits by virtue of § 901(j).

Nevertheless, even if this Court were to find that § 901(j) prohibits Harkonnen from receiving a foreign tax credit for payments made to IFIL, the President of the United States validly waived any such denial through Executive

Order 14012. Although § 901(j) denies credits for payments made to certain countries, Congress recognized that such a policy might "in certain cases conflict with other policy interests of the United States." STAFF OF JOINT COMM. ON TAXATION, 106TH CONG., GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN THE 106TH CONGRESS, JCS- 2-01 NO 7 (Comm. Print 2001) (citing H.R. REP. No. 106-238, at 256 (1999)). Therefore, in 2000, Congress enacted a provision which states that § 901(j) shall not bar foreign income tax credits for payments to a country if the President determines that "a waiver of the application of such paragraph is in the national interest of the United States and will expand trade and investment opportunities for United States companies in such country." 26 U.S.C. § 901(j)(5). A President validly waives the application of § 901(j) if he or she reports the intention to grant the waiver and provides the reasoning for doing so. 26 U.S.C. § 901(j)(5)(A)-(B).

The President unquestionably met the waiver requirements of 26 U.S.C. § 901(j)(5). Following the Sietch State election in April 2011, the President of the United States issued Executive Order 14012 declaring "IFIL a sovereign friend of the United States, whom we would like to establish trade relations with." R. at 14. Executive Order 14012 also stated that "the United States would always continue to help individuals around the world obtain freedom." R. at 14. In explaining that the United States desires to engage in trade with IFIL and implying that it wants to help IFIL obtain freedom and other benefits, the President's Executive Order meets the requirements of § 901(j)(5). In fact, the President's Order actually provides substantially more information relating to reasons for the waiver of § 901(j) than President George W. Bush's waiver for Libya in 2004. See Presidential Determination to Waive the Application of § 901(j) of the Internal Revenue Code With Respect to Libya, 70 FR 1785 (2004) (President George W. Bush expressing the desire to waive the application of § 901(j), but not providing any reasons). Therefore, Executive Order 14012 fulfills the requirements of § 901(j)(5), and waives the application of § 901(j) to IFIL.

It must also be noted that any finding by this Court that Executive Order 14012 is an inadequate waiver of § 901(j) would undermine Congress's policy rationales for creating the foreign tax credit in the first place. As many courts have noted, one of Congress's major reasons for granting foreign tax credits is to incentivize international trade and investment for domestic companies. See Burnet, 285 U.S. at 9 (finding that a major purpose of foreign tax credits is to "facilitate the[] foreign enterprises" of domestic corporations); S. Rep. No. 275, 67th Cong., 1st Sess. 9 (1921). Supporting that interest, the President stressed in the Executive Order that the United States would like to establish trade relations with IFIL. R. at 14. Accordingly, if this Court found the President's Executive Order insufficient to waive the application of § 901(j)(5), domestic corporations would actually be disincentivized from investing in IFIL's territory, because they would then be subject to "the evil of double taxation." Burnet, 285 U.S. at 7. Thus, denying the President's waiver would be contrary to both the intent of Congress in extending foreign tax credits and the President's express diplomatic intent to facilitate trade relations between the United States and IFIL.

Therefore, even if this Court were to find that 26 U.S.C. § 901(j) prevents IFIL from being considered a valid taxing entity, the President validly waived any denial pursuant to 26 U.S.C. § 901(j)(5). Accordingly, the Fourteenth Circuit erred in finding that IFIL was not a proper taxing entity, and this Court should grant Harkonnen's request for foreign tax credits for its payments to IFIL.[3]

B. The Fourteenth Circuit was incorrect to find that IFIL's tax was an improper second tax, because Harkonnen Oil was reasonable in concluding that the tax was not prohibited under the Sietch Dunes Peace Treaty.

To determine whether a tax is compulsory in order to receive a foreign tax credit, a taxpayer must conclude that the amount paid is "consistent with a reasonable interpretation and application of the substantive and procedural provisions of foreign law (including applicable tax treaties)." 26 C.F.R. § 1.901–2(e)(5)(i); see also Int'l Bus. Machines Corp. v. United States, 38 Fed. Cl. 661, 673 (1997). Therefore, Harkonnen Oil must show that it was reasonable to interpret the Sietch Dunes Peace Treaty, Arrakis constitutional amendment, and ruling by the Holy Royal Court as permitting IFIL to levy a compulsory tax. Harkonnen's assessment of IFIL's ability to enact a tax was eminently reasonable. The Sietch Dunes Peace Treaty, by either its terms or its intent, does not limit IFIL from

[3] Even if this Court finds that Harkonnen's payments to IFIL are not creditable under IRC § 901(j), Harkonnen may still take a deduction pursuant to § 901(j)(3).

levying its own tax. Moreover, interpreting a treaty so strictly undermines the intent of the foreign tax credit, which is to avoid "the evil of double taxation." Burnet, 285 U.S. at 9. Thus, the Fourteenth Circuit was incorrect in finding that Harkonnen Oil could not receive foreign tax credits for amounts paid to IFIL.

In construing the words of a treaty, terms are given their "ordinary meaning in the context of the treaty and are interpreted, in accordance with that meaning, in the way that best fulfills the purposes of the treaty." Xerox Corp. v. United States, 41 F.3d 647, 652 (Fed. Cir. 1994) (citations omitted). It is evident from the terms of the Sietch Dunes Peace Treaty that the Treaty only limits the powers of the Vice-President of Arrakis, as a representative of the Important Province of Arrakis. R. at 8-9. Indeed, every single one of the terms of the constitutional amendment drafted by President Corrino relate to the powers of the Vice-President, not any other entity or actor. R. at 9. Despite the Fourteenth Circuit's holding, R. at 17, there is no language in the Treaty or Arrakis amendment that actually says that only a single tax may exist in the Sietch State, regardless of the entity that imposes it. R. at 8-9. Therefore, the stated limit on the Vice-President to "[d]ecree and levy a single tax," R. at 9, should not be read as preventing any other political subdivision or sovereign governmental authority from levying its own tax. The words plainly do not limit the powers of Jessica Mohiam or IFIL, and this Court should not read into them such an expansive breadth.

Whether or not this Court determines that IFIL is an independent political entity or a political subdivision of the Sietch State, see supra Part II.A.i., the circumstances and character of IFIL's tax indicate that it was not levied by the Sietch State. First, the funds Harkonnen Oil paid to IFIL were kept entirely separate from those paid to the Sietch State and Arrakis. R. at 14. Second, the taxes were not even paid to a bank or entity within the Sietch State or Arrakis, as they were sent directly to an account in Switzerland. R. at 14. And most important, there is no indication that even one single cent of the tax collected by IFIL went to either the Sietch State or Arrakis, R. at 14, in stark contrast to the single tax that the Sietch State imposed. R. at 10. These facts show that as a sovereign political entity, IFIL validly levied, collected, and retained its own tax. Thus, even if the text of the Treaty is interpreted as limiting the Sietch State from having authority over a single tax, the realities of the tax indicate that the result was not at all one levied by or related to the Sietch State. This Court should not, as the Fourteenth Circuit did, elevate form over substance and determine that IFIL's tax was an improper second tax by the Sietch State.

Although courts begin by looking at the language of the Treaty and the "clear import" of those words, it is well-established that this interpretation does not control if "application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories." Sumitomo Shoji Am., Inc. v. Avagliano, 457 U.S. 176, 180 (1982) (citing Maximov v. United States, 373 U.S. 49, 54 (1963)). To that end, courts have stated repeatedly that tax treaties should be "construed more liberally than private agreements," and that they should be interpreted to match the "practical construction adopted by the parties." Field Serv. Advice, IRS FSA 199944026 (Nov. 5, 1999) (quoting Tseng v. El Al Israel Airlines, Ltd., 122 F.3d 99 (2d. Cir. 1997); Choctaw Nation of Indians v. United States, 318 U.S. 423, 431-32 (1943)).

There is no indication from the drafting of the Sietch Dunes Peace Treaty that the intent was to limit the taxing authority of an independent governmental entity, and even if it was, IFIL is not bound by that conclusion because it was not a party to the Treaty. If this Court should find that IFIL is a sovereign nation, separate and apart from Arrakis or the Sietch State, see supra Part II.A.i., it is undoubtedly not bound by the provisions of the Sietch Dunes Peace Treaty. Courts have held that a state has only acceded to the provisions of a treaty when it "has consented to be bound by that treaty." Avero Belgium Ins. v. Am. Airlines, Inc., 423 F.3d 73, 80 (2d Cir. 2005). Although IFIL is considered a "legitimate foreign government" by several countries, R. at 12, and "sovereign by the President of the United States, R. at 14, it did not exist at the time of the Treaty's ratification, so it cannot be bound.

Even if this Court were to determine that IFIL is simply a political subdivision of the Sietch State or Arrakis, there is no indication that the Treaty intended to limit taxing power for any political entity other than the Sietch State itself. R. at 8-9. Indeed, Arrakis and the Sietch State have actually expressed acceptance of IFIL's taxing authority. This was exemplified by the events that took place at the First Annual Caladan Oil Field Conference, where President Corrino, Vice-President Atreides, and IFIL's leader Jessica Mohiam all participated in talks and issued proclamations regarding each of their impositions of taxation on Harkonnen Oil. R. at 15. In addition, Arrakis's treatment of IFIL as a valid political subdivision with taxing authority was confirmed by the Holy Royal Court. R. at 14. Due to all of these facts, it is evident that a conclusion that IFIL does not have taxing authority under the Treaty would be plainly contrary to the surrounding circumstances and "shared expectations of the contracting parties." Air France v. Saks, 470 U.S. 392, 399 (1985).

Finally, a rigid interpretation of the Treaty as limiting IFIL's taxing authority would undercut Congress's intent to provide foreign tax credits, as it would undoubtedly result in "the evil of double taxation." Burnet, 285 U.S. at 9. On this issue, "the Supreme Court has stated that all presumptions are against the imposition of double taxation." Atlas Copco, Inc. v. United States, 651 F. Supp. 1446, 1448 (Ct. Int'l Trade 1986) (citing Tennessee v. Whitworth, 117 U.S. 129, 137 (1885)). Indeed, "[d]ouble taxation in any form is an interpretive conclusion that is to be avoided unless manifestly required." Verkouteren v. D.C., 433 F.2d 461, 469 (D.C. Cir. 1970) (citing Maass v. Higgins, 312 U.S. 443, 449 (1941)). Congress has explained that this is because double taxation would "place[] American business concerns at a serious disadvantage in the competitive struggle for foreign trade [and] encourage[] American corporations doing business in foreign countries to surrender their American charters and incorporate under the laws of foreign countries." S. Rep. No. 275, 67th Cong., 1st Sess. 9 (1921). Here, the Holy Royal Court and President Corrino sanctioned the levying of an income tax by IFIL,

R. at 14, so the tax will exist whether or not this Court determines that IFIL was entitled to levy the tax. As a result, any holding by this Court denying foreign tax credits for payments made to IFIL would undeniably result in double taxation for any domestic corporation doing business in that territory. Because this result is not compelled by a reasonable reading of the text and would be contrary to established Congressional intent, this Court should err on the side of avoiding the evil of double taxation and should permit Harkonnen to receive a foreign tax credit for payments made to IFIL.

C. The Fourteenth Circuit incorrectly concluded that Harkonnen Oil did not exhaust its remedies because it properly pursued all practical remedies to reduce its tax burden to IFIL.

The Fourteenth Circuit was incorrect to hold that Harkonnen Oil did not exhaust its remedies. In order to receive a foreign tax credit, a taxpayer must "exhaust[] all effective and practical remedies, including invocation of competent authority procedures available under applicable tax treaties, to reduce, over time, the taxpayer's liability for foreign tax." 26 C.F.R. § 1.901–2(e)(5)(i). Such a remedy is effective and practical "if the cost thereof . . . is reasonable in light of the amount at issue and the likelihood of success." Id. It is a fundamental principle that a petitioner is not required to "take futile additional administrative steps and . . . is not precluded from [a] foreign tax credit for its failure to do so."[4] Schering, 69 T.C. at 602.

---

[4] It has been noted that "[i]f the drafters of the regulation desired to require a taxpayer to exhaust *all* remedies, regardless of their potential for success, the

Because there was no "competent authority" procedure enunciated in the Sietch Dunes Peace Treaty, one could not have been used by Harkonnen Oil to address questions about the application of the Treaty. Cf. Int'l Bus. Machines Corp., 38 Fed. Cl. at 674 (where the court noted that competent authority procedures were unavailable to the plaintiff because the tax in question was not covered by the relevant treaty). Thus, Harkonnen was faced with four potential options: engage IFIL directly as a sovereign nation in an attempt to persuade it to reduce the tax; seek a determination from authorities in Arrakis; seek a determination from authorities in the Sietch State; or invoke the safe harbor provision by relying on the advice of a tax expert. See 26 C.F.R. § 1.901-2(e)(5)(i). Because a determination from Sietch State authorities would have been futile, Harkonnen's use of the other three remedies fulfilled its exhaustion responsibilities.

First, Harkonnen Oil was only required to exhaust reasonable remedies with IFIL itself, as IFIL is its own sovereign and independent foreign political entity, separate and apart from Arrakis and the Sietch State. See supra Part II.A.i. Therefore, any determination by the government of Arrakis, the Holy Royal Court of Arrakis, or the Sietch Council would be entirely moot as to the authority of IFIL to levy its own income tax. Thus, Harkonnen Oil exhausted all remedies by initially protesting IFIL's tax, R. at 13-14, and through its arrangement of the First Annual Caladan Oil Field Conference, where it attempted to negotiate down its tax liability

---

drafters could have stated this requirement in the regulations." John P. Dombrowski, Foreign Tax Credits: The Recent Decision in Procter & Gamble v. United States Allows Procedure to Override the Statutory Intent, 44 U. TOL. L. REV. 405, 420 (2013) (citing Int'l Bus. Machines Corp., 38 Fed. Cl. at 675 (1997)).

with Arrakis, the Sietch State, and IFIL. R. at 15. Although Harkonnen Oil was not successful in reducing its IFIL tax liability in the immediate time period, the annual Conference undoubtedly serves as an ongoing effort to "reduce, over time, [its] expected liability" for the tax paid to IFIL.[5] 26 C.F.R. § 1.901-2(e)(5)(i). Exhaustion efforts are not required to be successful. See id. Nor are they required to be extensive and burdensome. See Schering, 69 T.C. at 601-602. In Schering, the Tax Court found that merely "tak[ing] steps to ascertain the position" of the taxing authority was sufficient to meet the exhaustion requirement. 69 T.C. at 601-602. Because Harkonnen Oil did far more than simply determine its tax liability from IFIL, and no other remedy would have been effective or practical because IFIL is a sovereign political entity, this Court should find that Harkonnen properly exhausted its remedies under 26 C.F.R. § 1.901-2(e)(5)(i).

Second, even if this Court found were to find that IFIL is a political subdivision of the Sietch State and exhaustion of additional remedies *was* required, petitioning the Holy Royal Court was the proper means to seek a determination on the status of IFIL and the income tax it imposed. Appealing to a foreign Supreme Court has been sanctioned as an effective remedy by the IRS even when there are other possible, and perhaps even more effective, remedies available. See Office of Chief Counsel IRS Memorandum, 20125202F, 12/28/2012, available at http://www.irs.gov/pub/irs-lafa/20125202F.pdf (holding that "[t]axpayer's litigation

[5] The annual Conference serves as an adequate exhaustion of remedies whether this Court finds that IFIL is its own independent and sovereign political entity or a mere political subdivision of the Sietch State or Arrakis, as the Conference includes all relevant parties. R. at 15.

of the interest rate dispute through the Foreign Supreme Court exhausted its Foreign law remedies," even when it rejected relief through a competent authority proposal). Moreover, the Holy Royal Court's exclusive jurisdiction over the matter was confirmed by President Corrino, who levies or approves all taxes in Arrakis and the Sietch State. R. at 9.

Third, Harkonnen's consultation with President Corrino qualifies as solicitation of advice from a foreign tax adviser, putting Harkonnen within the safe harbor created by 26 C.F.R. § 1.901-2(e)(5)(i). In interpreting foreign tax law, "a taxpayer may generally rely on advice obtained in good faith from competent foreign tax advisors to whom the taxpayer has disclosed the relevant facts." 26 C.F.R. § 1.901-2(e)(5)(i). These circumstances are substantially similar to those in <u>Schering Corp. v. Commissioner of Internal Revenue</u>, 69 T.C. at 602 and <u>Int'l Bus. Machines Corp. v. United States</u>, 38 Fed. Cl.at 673, where courts found that taxpayers had properly relied on the advice of competent tax advisers and thus had exhausted all practical remedies. Here, President Corrino qualifies as a foreign tax advisor, as he levies or must grant approval of all taxes and policies enacted within the Republic of Arrakis. R. at 9. Because he advised that "all legal tax disputes in Arrakis are handled by the Holy Royal Court," R. at 14, his expert guidance can be understood as limiting the proper remedies to the Holy Royal Court, and effectively ratifying that Court's decision as both a tax expert and a member of the Executive Branch of Arrakis. Thus, Harkonnen has invoked the safe harbor provision of 26 C.F.R. § 1.901-2(e)(5)(i), and should be deemed to have exhausted all reasonable remedies.

Fourth, although the Fourteenth Circuit suggested that Harkonnen "could have petitioned the Sietch Council for a determination on the status of IFIL," R. at 18, this would have been a futile and impracticable pursuit because the Sietch Council does not have the constitutional authority to make tax determinations. In the Sietch Dunes Peace Treaty, the "limited" Sietch Council was created solely to "regulate the Sietch State, including conducting all judicial functions." R. at 9. However, "[a]ll taxes collected by Sietch were to be paid as tribute to Arrakis," R. at 10, and President Corrino was given approval power over all tax and policy issues. R. at 9. Therefore, it is evident that the Sietch State is not the ultimate arbiter of any tax disputes, as Arrakis retains ultimate jurisdiction over all tax issues.

Moreover, even if the Sietch Council did pass judgment on whether IFIL is part of the Sietch State, any determination would have been erroneous. If the Council determined that IFIL *was* part of the Sietch State, this would not have reduced Harkonnen Oil's tax liability, because this Court has held that political subdivisions are entitled to levy their own taxes, see Burnet, 285 U.S. at 9, and the Sietch Dunes Peace Treaty did not prohibit IFIL from levying a tax, see supra Part II.B. And if the Council had decided that IFIL *was not* part of the Sietch State, that conclusion still would not have resolved the question of whether IFIL was a valid taxing authority. As Judge Layton articulated in his dissent, because "[n]ot all of historical Sietch is a part of the Sietch State," R. at 21, IFIL could nonetheless be found to be a valid taxing authority as a political subdivision of Arrakis. Because determining whether IFIL is part of Arrakis is undoubtedly the exclusive jurisdiction of Arrakis authorities, petitioning the Holy Royal Court was the only proper means to determine whether IFIL was a valid taxing entity. For these reasons, any determination by the Sietch Council would have been wholly erroneous, and would not have had any possible effect on Harkonnen's tax liability.

This situation is fundamentally different from the one considered in the recent case of Procter & Gamble Co. v. United States. 2010 WL 2925099, at *8. In Procter & Gamble, the taxpayer received royalty income for the use of intangible property in Japan and Korea, timely paid withholding taxes levied by Japan, and sought and received a foreign tax credit in the United States for a period of time. Id. at *1. After several years, though, Korea determined that P&G's stream of income was also subject to a Korean withholding tax. Id. at *3. P&G sought legal advice on the propriety of Korea's levying of this tax, and was told that there was no reasonable basis to appeal the tax assessment. Id. at *4. P&G accepted these findings, paid the tax to Korea, and sought a foreign tax credit in the United States, in addition to its addition foreign tax credit for the taxes paid to Japan. Id. After the United States alleged that P&G had not exhausted all of its remedies to reduce its tax burden, the district court found that P&G had properly exhausted its remedies for the Korean tax by consulting with a competent tax advisor. Id. at 6. However, the court also held that P&G was not entitled to claim a foreign tax credit for the taxes paid to Japan because it had not made any attempt to reduce its tax liabilities in that country. Id. at 7.

Procter & Gamble is inapposite to this case.[6] First, as opposed to the taxpayer in Procter & Gamble, Harkonnen Oil made substantial efforts to reduce its tax liability in each of the jurisdictions that imposed taxes on the same stream of income by hosting the Annual Caladan Oil Field Conference, where all parties were present. R. at 15. In fact, Harkonnen was actually successful in substantially lowering its overall tax liability through the first conference, which stands in stark contrast to the taxpayer in Procter & Gamble, which paid all taxes in full. Procter & Gamble, 2010 WL 2925099, at *4. Moreover, unlike Japan and Korea's tax agreements, see id., the Sietch Dunes Peace Treaty does not provide competent authority procedures, which would have governed the process for seeking to remedy a tax dispute. R. at 9. Thus, Harkonnen Oil clearly fulfilled its exhaustion burden by engaging with all of the relevant parties themselves, seeking a determination from a foreign Supreme Court, and consulting with a tax expert.

Finally, the present circumstances do not create the type of "moral hazard" where a taxpayer would have no incentive to challenge the appropriateness of a foreign tax, leaving the United States to "foot the bill." Procter & Gamble, 2010 WL 2925099, at *8. As evidenced by Harkonnen's protest of the tax demand, creation of

[6] In addition, even if Procter & Gamble were to be interpreted as imposing rigorous exhaustion procedures at the expense of the merits, there is some doubt as to whether this is the proper method of adjudication. See Dombrowski, supra, at 420-430 (discussing the widely divergent analyses done by the courts in Procter & Gamble, which focused on inconsequential procedural shortcomings, and Schering, which focused on the merits of the foreign tax credit claim).

the annual Conference, solicitation of Mr. Corrino's advice, and litigation in the Holy Royal Court, Harkonnen made a substantial good faith effort to fulfill the exhaustion requirement and was clearly not attempting to skirt the exhaustion requirement or force the United States to erroneously subsidize a foreign entity. Therefore, because Harkonnen Oil was unable to avoid liability for the income taxes, "multiple countries can claim tax on [this] single source of income and . . . the IRS is required to grant credits for these claims." Procter & Gamble, 2010 WL 2925099, at *7. Although this means that the United States will have to effectively subsidize the taxing entities, "petitioner should not be made to bear the price" of a failure by the United States to enact preferable tax treaties with IFIL and its related entities. Schering, 69 T.C. at 604.

CONCLUSION

For the aforementioned reasons, this Court should reverse the decision of the United States Court of Appeals for the Fourteenth Circuit and grant foreign tax credits for the payments made by Royal Harkonnen Oil Company to the Republic of Arrakis and the Inter-Sietch Fremen Independence League.

APPENDIX

26 U.S.C. § 901 provides, in pertinent part, that:

(a) Allowance of credit.—If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 26 (b).

(b) Amount allowed.—Subject to the limitation of section 904, the following amounts shall be allowed as the credit under subsection (a):

(1) Citizens and domestic corporations

In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States . . .

(j) Denial of foreign tax credit, etc., with respect to certain foreign countries

(1) In general.—Notwithstanding any other provision of this part—

(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) to any country if such taxes are with respect to income attributable to a period during which this subsection applies to such country, and

(B) subsections (a), (b), and (c) of section 904 and sections 902 and 960 shall be applied separately with respect to income attributable to such a period from sources within such country.

(2) Countries to which subsection applies

(A) In general—This subsection shall apply to any foreign country—

(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act,

(ii) with respect to which the United States has severed diplomatic relations,

(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or

(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorisms.

(B) Period for which subsection applies—This subsection shall apply to any foreign country described in subparagraph (A) during the period—

(i) beginning on the later of—

(I) January 1, 1987, or

(II) 6 months after such country becomes a country described in subparagraph (A), and

(ii) ending on the date the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in subparagraph (A).

(3) Taxes allowed as a deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

(4) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations which treat income paid through 1 or more entities as derived from a foreign country to which this subsection applies if such income was, without regard to such entities, derived from such country.

(5) Waiver of denial

(A) In general.—Paragraph (1) shall not apply with respect to taxes paid or accrued to a country if the President—

(i) determines that a waiver of the application of such paragraph is in the national interest of the United States and will expand trade and investment opportunities for United States companies in such country; and

(ii) reports such waiver under subparagraph (B).

(B) Report.—Not less than 30 days before the date on which a waiver is granted under this paragraph, the President shall report to Congress—

(i) the intention to grant such waiver; and

(ii) the reason for the determination under subparagraph (A)(i).

26 U.S.C. § 903 provides:

For purposes of this part and of sections 164 (a) and 275 (a), the term "income, war profits, and excess profits taxes" shall include a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by any foreign country or by any possession of the United States.