IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JOSEPH D. MEYER,

OPINION AND ORDER

Plaintiff,

04-C-0857-C

v.

COMMISSIONER, INTERNAL
REVENUE SERVICE,

Defendant.

- -

Plaintiff Joseph D. Meyer contends that defendant Commissioner, Internal Revenue Service has been trying illegally to collect tax from him despite his efforts to convince the service that he is not subject to any taxes. He seeks a declaration affirming the due process violations of which he has been a victim, the misapplication of the income tax laws and the fraudulent nature of defendant's documents, assessments, fines, penalties and acts of extortion. In addition, he wants injunctive relief in the form of the removal of all federal liens and levies against his property, disgorgement of funds withheld illegally from his wages from the 1999 tax year to the present, an end to wage withholding and the prohibition of future acts of fraud and extortion resulting from defendant's misapplication of the tax laws.

(Although he says nothing about a claim for refund in his complaint, he asserts in his brief in response to defendant's motion that he is seeking a refund of income taxes pursuant to 26 U.S.C. § 7422.) Defendant has moved to dismiss plaintiff's complaint or for summary judgment. That motion is before the court, along with plaintiff's motion for a jury trial.

Plaintiff has submitted lengthy arguments in an effort to support his claims that he has no obligation to pay federal income taxes. Among them is the argument that the federal government has no authority to collect such taxes from individuals in the United States who do not earn their wages from international commerce or from business activity in or involving United States possessions. Despite his efforts, he has failed to show that he is not liable for taxes on the income he earns as a physician in a medical clinic or that he should not have to pay the penalties assessed against him for filing frivolous returns and false information relating to withholding of taxes. Therefore, defendant's motions will be granted. Plaintiff will have to take his challenges to the legality of the income tax to the United States Tax Court and he will have to pay the penalties assessed against him because he either failed to take advantage of his chance to be heard on the penalties or he has failed to show any error in the assessment.

From the findings of fact proposed by the parties, I find that the following are relevant and undisputed.

UNDISPUTED FACTS

Plaintiff filed federal income tax returns for the tax years 1999 through 2002 showing zero income and zero taxes due. He attached to his 2000, 2001 and 2002 returns a document in which he argued that no Internal Revenue Code section makes him liable for income tax.

The W-2 Wage and Tax Statement attached to plaintiff's 1999, 2000 and 2001 returns showed that plaintiff had received wages, tips and other compensation in amounts considerably greater than zero. The W-2 statements for 2000 and 2001 showed that no federal income tax had been withheld from his compensation for those years.

On May 8, 2000, December 31, 2001, June 30, 2003 and October 6, 2003, defendant assessed a $500 frivolous return penalty against plaintiff under 26 U.S.C. § 6702 for each of the tax years 1999, 2000, 2001 and 2002. On March 31, 2003, defendant assessed plaintiff a penalty in the 2000 and 2001 years pursuant to 26 U.S.C. § 6682 for providing false information about the withholding of his federal taxes.

On November 14, 2003, defendant issued plaintiff a final notice of intent to levy and notice of his right to a "collection due process" hearing regarding the assessed frivolous return penalties for the 1999, 2000 and 2001 years. Plaintiff failed to request such a hearing.

On March 24, 2004, defendant issued plaintiff a final notice of intent to levy and of

his right to a collection due process hearing with respect to the frivolous return penalty assessed against him for the 2002 year. On March 11, 2004, defendant sent plaintiff a notice of federal tax lien filing and of his right to a collection due process hearing involving the frivolous return penalties for the 1999, 2000, 2001 and 2002 years and the section 6682 penalties assessed in the 2000 and 2001 tax years for false withholding information. (It appears that this notice re-opened plaintiff's opportunity to seek review of the frivolous return penalties that he had waived after receiving the November 12, 3003 notice.) After receiving the March 9 and March 11 notices, plaintiff requested a hearing with respect to both the income taxes and the penalties assessed for the 2000, 2001 and 2002 years. Attached to his request for a hearing was a document in which plaintiff contended that nothing in the Internal Revenue Code requires him to pay federal income taxes.

On August 16, 2004, Settlement Officer Ursula Kordasiewicz Wastian of the IRS Appeals Office sent plaintiff a letter scheduling a telephone conference for August 31, 2004, along with Certificates of Official Record reflecting each of the assessed penalties. She advised plaintiff in the letter that she would not consider the items he had raised in his request for a hearing because the courts had determined that they were frivolous or because they were based on moral, religious, political, constitutional or conscientious grounds. She told plaintiff that her office would not offer plaintiff an in-person conference if those were the only items he wanted to discuss. Instead, she offered plaintiff a telephone conference

that focused on issues relevant to the payment of the liabilities under consideration. She informed plaintiff that if he preferred a face-to-face conference, he would have to submit legitimate matters for discussion within 15 days of her letter.

Plaintiff telephoned Wastian and arranged for a telephone conference for September 29, 2004. Wastian reminded plaintiff that he needed to clarify the issues open to discussion. Plaintiff did not telephone Wastian on September 29, 2004 and never submitted a list of legitimate issues relating to payment that he wished to discuss. By letter dated October 15, 2004, the Settlement Officer issued her Notice of Determination regarding the penalties assessed against plaintiff under 26 U.S.C. §§ 6702 and 6682. She determined that the required notices issued to plaintiff on March 9, 2004 and March 11, 2004 were in compliance, that the issues plaintiff raised in the attachment to his request for collection due process hearing were frivolous and that the issuing of the final notice of intent to levy and the recording of the notice of federal tax lien were not overly intrusive and promoted efficient administration of the tax laws in relation to compliance factors or issues weighing heavily against consideration of alternative payment methods. She sustained defendant's March 8, 2004 federal tax lien filing and the March 9, 2004 notice of intent to levy.

OPINION

To the extent that plaintiff is seeking a review of his liability for income taxes or a

refund of tax, he must file an action in the United States Tax Court. This court lacks jurisdiction to hear taxpayers' claims involving their tax obligations, Voelker v. Nolen, 365 F.3d 580, 581 (7th Cir. 2004), except in the situation in which the taxpayer has paid his entire tax due and is suing for a refund. Although plaintiff is the party asserting jurisdiction in this court and therefore, the party with the burden of proving that it exists, plaintiff has not submitted any documentary evidence that he has met the jurisdictional prerequisites to pursue a claim for refund of any tax. These prerequisites include payment of the tax assessments in full, filing an administrative claim for refund pursuant to 26 U.S.C. § 7422(a) and waiting six months or until defendant has denied the claim before filing suit. Therefore, his only recourse is the Tax Court. It makes no difference that plaintiff does not consider the Tax Court a real court; whatever he thinks about that court does not change the fact that this court has no authority to entertain his request for review of defendant's administrative determination that he is liable for taxes for prior years.

As to the penalties assessed against plaintiff for the years 1999, 2000, 2001 and 2002 for filing frivolous returns and for the years 2000 and 2001 for providing false information with respect to his federal tax withholding, this court has jurisdiction to review the determinations of Settlement Officers. This does not mean, however, that plaintiff can prevail on his objections to these penalty assessments.

Plaintiff does not deny that he received a notice of deficiency or that he had an

opportunity to dispute his liability for a penalty assessment for the years 1999, 2000 and 2001. Ordinarily, his failure to take advantage of that opportunity would bar him from challenging either the validity or the amount of the penalties that were assessed. However, on March 11, 2004, defendant sent plaintiff a notice of federal tax lien filing involving the same frivolous return penalties for the 1999, 2000, 2001 and 2002 years. This time plaintiff made a request for a collection due process hearing. Because he did, this court can review the Settlement Officer's determination that defendant acted properly when it filed the federal tax liens against plaintiff. The standard of review is abuse of discretion.

Plaintiff does not suggest that the Settlement Officer erred in determining that defendant had met the requirements of all applicable laws and administrative procedure. He argues that he raised a number of issues, primarily having to do with his unfounded assertion that the "[t]here is no such thing as a 1040 tax." Dft.'s Statement of Undisputed Facts, dkt. #13, Exh. K at 2. He alleged also that despite his repeated requests, defendant failed or refused to provide him with specific code sections and language making him liable for income taxes; therefore, he had no obligation to file a proper return or remit his taxes.

None of the issues that plaintiff wanted to raise was one that the Settlement Officer would have been permitted to hear, such as an offer of collection alternatives or the propriety of a particular collection action. 26 U.S.C. § 6330(c)(2). Instead, plaintiff limited himself to groundless arguments along the line that he is not an employee within the meaning of the

Internal Revenue Code and wages are not income subject to taxation. These contentions and similar ones have been rejected by all the federal courts that have heard them. See, e.g., Commissioner v. Granzow, 739 F.2d 265, 267-68 (7th Cir. 1984) ("It is well settled that wages received by taxpayers constitute gross income within the meaning of section 61(a) of the Internal Revenue Code and that such gross income is subject to taxation.") (internal citations omitted). Plaintiff may not believe that the holdings of any court below the United States Supreme Court are valid, but he is wrong. In any event, the holdings of the Court of Appeals for the Seventh Circuit bind this court. If the court of appeals says that wages are income subject to taxation, this court is not free to take a contrary view.

Plaintiff did not try to show that the issuing of the final notice of intent to levy and the recording of the notice of federal tax lien were overly intrusive or did not promote the efficient administration of the tax laws. Therefore, I find that the Settlement Officer's determination regarding plaintiff's frivolous return penalties for the years 1999-2002 was correct.

I find also that the officer's determination regarding penalties assessed against plaintiff for false withholding information was correct. Defendant submitted Form 4340 for each of the penalty assessments. Plaintiff failed to show that the assessments were incorrect; he merely argued that he is not liable for income taxes. This totally frivolous argument does not overcome the presumption that the penalty assessments were correct.

It appears from plaintiff's submissions that he obtains his erroneous view of the Internal Revenue Code from an internet website, www.taxableincome.net. The excerpt that plaintiff submitted to the court as an attachment to his "Report per order scheduling preliminary pre-trial conference" indicates that this website is typical of similar websites and seminars that have proliferated in recent years and have convinced many people, incorrectly, that they are not liable for payment of federal income taxes. Somehow, the charlatans who run these websites and conduct tax avoidance seminars continue to fool unsophisticated people to the benefit of their own bank accounts. They manage to do this despite the fact that no court anywhere has agreed with their interpretations of the tax code or Constitution and in the face of numerous successful felony prosecutions of many of their colleagues. See, e.g., www.cbsnews.com/stories/2002/04/16/national/main506237.shtml (reporting arrest of anti-tax seminar leader Lynne Meredith on federal charges)

If the websites did not have such adverse consequences for their credulous audience, they would be humorous. For example, the document entitled "Cutting to the Chase," by Tom Clayton, MD, that plaintiff submitted to defendant's counsel begins by arguing that one of the reasons that "most Americans (those with only domestic commerce) have been **DECEIVED** by the Treasury Department and DOJ into paying income taxes that they did **NOT** owe by law" is "Limited access to the law and the lack of computer search engines." Enclosure to Ltr. to Dft.'s Counsel, dkt. #5. Obviously, when Tom Clayton, MD, made this

statement, he had not looked in the telephone book to count the number of lawyers specializing in tax law or tried using the long established, technologically advanced legal search engines, Westlaw or LexisNexis. Can either Clayton or plaintiff really believe that if their view of the law were correct, highly paid, highly trained and highly motivated tax lawyers would not be challenging the Internal Revenue Service's efforts to collect income tax from persons who are not engaged in "international and possessions commerce"? Id. Do they really think that as lay people, they have discovered a valid view of the tax laws that has eluded not only the tax lawyers in private practice but all of the judges in the United States?

Rather than spending his money and time reading the misrepresentations, half-truths and full-fledged falsehoods perpetrated by Tom Clayton, MD, and his ilk, plaintiff would be better served if he were to read a legal text on taxation, its history, constitutionality and application such as Federal Taxation of Income, Estates and Gifts, by Boris I. Bittker and Lawrence Lokken. If he does not want to make the effort such a text requires, he might find much of interest at www.quatloos.com/taxscams/Tax_Scams_Museum.htm or www.irs.gov/pub/irs-utl/friv_tax.pdf. At the latter website, he would find the legal reasons why his arguments are groundless, at the former, he would find excellent advice. Among other things, he would be reminded that no one has ever won a civil case arguing the kinds of theories that he is arguing in this case and that hundreds of people who have relied on the arguments have not only lost their cases but have been required to pay penalties to the IRS

and have been sanctioned for advocating a frivolous theory to the court. www.quatloos.com/taxscams/taxprot.htm.

The frivolous nature of this lawsuit and plaintiff's obstinate refusal to check the reasonableness of his position in the face of adverse rulings persuade me that this is an instance in which a sanction should be imposed on plaintiff pursuant to Fed. R. Civ. P. 11 for his submission of unwarranted pleadings. Plaintiff has put forth senseless, long discredited arguments that do nothing but take up the court's time and make it difficult to reach more deserving cases. As the court of appeals observed almost twenty years ago in Coleman v. C.I.R., 791 F.2d 68, 72 (7th Cir. 1986):

> Groundless litigation diverts the time and energies of judges from more serious claims; it imposes needless costs on other litigants. Once the legal system has resolved a claim, judges and lawyers must move on to other things. They cannot endlessly rehear stale arguments. . . . [T]here is no constitutional right to bring frivolous suits, see Bill Johnson's Restaurants, Inc. v. NLRB, 461 U.S. 731, 743 (1983). People who wish to express displeasure with taxes must choose other forums, and there are many available. Taxes are onerous, no doubt, and the size of the tax burden gives people reason to hope that they can escape payment. Self-interest calls forth obtuseness. An obtuse belief— even if sincerely held— is no refuge, no warrant for imposing delay on the legal system and costs on one's adversaries. The more costly obtuseness becomes, the less there will be.

Rule 11 requires a hearing before a sanction can be imposed at which the alleged violator can be heard. Therefore, I will give plaintiff an opportunity to show why he should not be sanctioned for his frivolous pleadings.

ORDER

IT IS ORDERED that the motion to dismiss and the motion for summary judgment filed by defendant Commissioner, Internal Revenue Service are GRANTED. This court has no jurisdiction to hear plaintiff Joseph D. Meyer's claims relating to his federal income tax liability, which include claims for relief in the form of a declaration affirming the due process violations of which he has been a victim and the misapplication of the income tax laws and injunctive relief in the form of disgorgement of funds withheld illegally from his wages from the 1999 tax year to the present and an end to wage withholding and prohibition of future acts of fraud and extortion resulting from defendant's misapplication of the tax laws; all of these claims are DISMISSED. Plaintiff has thirty days from the date of this order in which to file an appeal with the United States Tax Court if he wishes to contest his tax liability. Defendant is entitled to judgment on plaintiff's claims relating to the frivolous return penalties assessed against him for the years 1999, 2000, 2001 and 2002 and false withholding information penalties assessed against him for the years 2000 and 2001 because plaintiff has failed to show that the Settlement Officer abused her discretion in determining that the frivolous return penalties for the years 1999-2002 and the false withholding information penalties for the years 2000 and 2001 were imposed properly.

FURTHER, IT IS ORDERED that plaintiff is to appear before the court in Courtroom 250, United States Courthouse, 120 N. Henry Street, Madison, WI, on June 3,

2005 at 1:40 p.m. to show cause, if any there be, why a monetary sanction should not be imposed on him for advancing frivolous claims in violation of Fed. R. Civ. P. 11(b).

Plaintiff's motion for trial by jury is DENIED as moot.

Entered this 18th day of May, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge