

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ARVIN W. KUNTZ,

Plaintiff,

v.

INTERNAL REVENUE SERVICE,  
Washington, D.C.  
IRS HOLTESVILLE, N.Y.; CAROL  
PINNAVAIA,

Defendants.  
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ORDER

06-C-0043-C

In this civil action for monetary relief, plaintiff Arvin W. Kuntz contends that defendant Internal Revenue Service committed fraud when it imposed a levy on his bank account and filed a lien against his property without proper notice in violation of his constitutional rights and several federal statutes. Although defendants have not filed an answer or any motions yet, federal district courts have an independent obligation to insure that subject matter jurisdiction exists. See, e.g., Wild v. Subscription Plus, Inc., 292 F.3d 526 (7th Cir. 2002). Where subject matter jurisdiction is lacking, the court may dismiss a lawsuit on its own motion. Vermont Agency of Natural Resources v. United States ex rel.

Stevens, 529 U.S. 765, 778 (2000) (“Questions of jurisdiction, of course, should be given priority – since if there is no jurisdiction there is no authority to sit in judgment of anything else.”). I will dismiss plaintiff’s case because I conclude that this court lacks subject matter jurisdiction over it.

Plaintiff has submitted two documents (“Compliance Violations” dated January 12, 2006, and “Annotation” dated February 18, 2006) which I construe together as the complaint. For the sole purpose of deciding whether the court has subject matter jurisdiction over plaintiff’s claim, I accept as true the allegations in the complaint.

## ALLEGATIONS OF FACT

### A. Parties

Plaintiff Arvin W. Kuntz is a resident of Wausau, Wisconsin. Defendant Internal Revenue Service is the federal agency charged with handling tax matters on behalf of the federal government. (Plaintiff does not specify who defendant Carol Pinnavaia is, but I presume she is an employee of defendant IRS.)

### B. Plaintiff’s Interaction with Defendant Internal Revenue Service

On December 11, 2003, plaintiff sent defendant IRS a cashier’s check for the sum of \$12,637. Plaintiff believed this was the amount he owed defendant IRS for the 2002 fiscal

year. Plaintiff had received an extension of the payment deadline. Two months after he mailed the check, plaintiff received a letter from defendant IRS, notifying him that the IRS would be contacting him within thirty days. Six months went by and plaintiff did not hear from defendant IRS, but at the same time defendant IRS proceeded to take money from plaintiff's bank account in Wisconsin under its levy and to file a lien against plaintiff's property without a warrant of distraint and without providing plaintiff any notice of deficiency. Also, the Pennsylvania IRS office has placed multiple levies against plaintiff's social security account even though plaintiff did not owe defendant IRS any money.

The Tax Court wrote that:

[R]espondent's records kept in the ordinary course of business when respondent issues and mails a notice of deficiency to a specific taxpayer, there is no record, information, or other evidence indicating that a notice of deficiency authorized by I.R.C. s 6212 was mailed to petitioner with respect to the taxable year 2002.

The text of the "Annotation" plaintiff submitted on February 18, 2006 is reproduced below:

I have been advised by the Cincinnati IRS that the amount that I owed for my 2002 Income Tax, was \$12,489.97, they are completely uninformed, that I made a Payment of \$12,637.00 by Cashiers Check on 12/11/03, and this was the payment for the 2002 tax, and this was due on January 15 2003 because we had an extension of time on this tax because of an overload of work on the CPA, the permission was pinned on the back of the form, along with the Check. I have copies of all this material.

The IRS has been harassing me for three years about this account and now

they tell me that the amount I owed for 2002 was \$12,489.97 and I had paid that when it was due, and they don't know about it until three years later.

They also thought there were penalties and interest, but if there was, that was all forgiven, and the Philadelphia office had advised me that all the penalties had been dropped because I had always been a good taxpayer, and had paid on time.

The next letter I received was from the Holtesville, NY office who advised me that all the penalties were forgiven and my tax was paid in full.

Surprisingly, the Bensalem, PA office has taken Fourteen Levys out of my \$314.00 Social Security Account, and Eight of them were taken out after I was advised that my income tax was Paid in Full, all were taken out without a Warrant of Distrainment being issued.

#### OPINION

This court lacks jurisdiction to hear taxpayers' claims involving their tax obligations, Voelker v. Nolen, 365 F.3d 580, 581 (7th Cir. 2004), except where the taxpayer has paid his entire tax due and is suing for a refund. Plaintiffs seeking a review of their liability for income taxes must file an action in the United States Tax Court. Id.

Plaintiff's complaint is difficult to follow. From what I can gather, particularly in light of the "Annotation," it appears that defendant IRS is not presently trying to collect any sum from plaintiff. Therefore, it appears that plaintiff's sole claim is that funds were levied from one or more of his bank accounts and a lien was placed on his property without proper notice. Presumably, when defendant IRS took these allegedly fraudulent and illegal actions

it believed plaintiff owed it money pertaining to fiscal year 2002. This court could not determine the lawfulness of the IRS levies without determining what plaintiff owed the IRS and when he owed it. Unless those determinations have already been made, this court cannot act. When a person's underlying dispute is about his tax liability, he must bring his suit in the tax court, not in this court.

In his complaint, plaintiff cites a paragraph that he contends was written by the tax court, but there is no indication that plaintiff has already filed this case in the tax court. Accordingly, 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 for 2002 and the actions taken by defendant pertaining to that liability.

ORDER

IT IS ORDERED that plaintiff Arvin W. Kuntz's case is dismissed for lack of subject matter jurisdiction.

The clerk of court is directed to close this case.

Entered this 17th day of March, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge