

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

ARVIN W. KUNTZ,

Plaintiff,

v.

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

Defendants.

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 multiple levies on his bank account and social security account and filed a lien against his property without proper notice in violation of his constitutional rights and several federal statutes. On March 17, 2006, I issued an order dismissing plaintiff's complaint because I concluded that this court did not have subject matter jurisdiction over the case. I explained to plaintiff that this court lacks jurisdiction to hear taxpayers' claims involving their tax obligations, Voelker v. Nolen, 365 F.3d 580, 581 (7th Cir. 2004), and instructed plaintiff to file his lawsuit in the United

States Tax Court if he wished.

On March 30, 2006, plaintiff filed a document which I construe as a motion for reconsideration of the March 17 order dismissing his case. Plaintiff states that prior to filing this lawsuit he filed a lawsuit against the Internal Revenue Service in Tax Court but the case was dismissed. Public records in the United States Tax Court reveal that the court issued an “Order of Dismissal for Lack of Jurisdiction” in plaintiff’s case on October 18, 2005. In its order, the tax court stated that it lacked jurisdiction to hear plaintiff’s case because the Internal Revenue Service had not issued plaintiff a notice of deficiency with respect to his taxes.

Where the tax court has no jurisdiction, a taxpayer may sue the IRS in district court as long as he has paid his tax liability. Flora v. United States, 362 U.S. 145, 163, 177 (1960). Because the tax court lacks jurisdiction over plaintiff’s underlying tax liability and because plaintiff alleges that he has paid his taxes in full, plaintiff’s lawsuit is properly brought in this court. Accordingly, I will grant plaintiff’s motion for reconsideration and this case will be re-opened.

Plaintiff has advised this court that he is ninety years old. He had great difficulty articulating his claims effectively in his complaint and his motion for reconsideration. His inability to fully explain his claim in the complaint resulted in an unwarranted dismissal of his case. I am satisfied that unless plaintiff is represented by counsel he will

be incapable of presenting his case to this court given its legal complexity. Therefore, if plaintiff qualifies for appointed counsel I will ask a lawyer to represent plaintiff. Pursuant to 28. U.S.C. § 1915(e)(2), a district court “may request an attorney to represent any person unable to afford counsel.” Plaintiff paid the fee for filing this action. To show whether he is indigent, plaintiff must complete the enclosed form for an affidavit of indigency and return it to the court. In the meantime, I will stay all further proceedings in this action. Plaintiff should be aware that if I appoint counsel to represent him, he may not communicate directly with the court about matters pertaining to his case. He must work directly with his lawyer and permit the lawyer to exercise his or her professional judgment to determine which matters are appropriate to bring to the court’s attention and in what form.

ORDER

IT IS ORDERED that

1. Plaintiff Arvin W. Kuntz’s motion for reconsideration is GRANTED. The clerk of court is directed to re-open this case.
2. Plaintiff may have until April 21, 2006, in which to complete the enclosed form for an affidavit of indigency and return it to the court.

3. Pending resolution of the question whether plaintiff Arvin W. Kuntz will be represented by counsel in this action, all proceedings are STAYED.

Entered this 13th day of April, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge