

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

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HOWARD D. WEBER,

Plaintiff,

v.

UNITED STATES OF AMERICA  
INTERNAL REVENUE SERVICE,

Defendant.  
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ORDER

07-C-001-C

In this civil action for monetary relief, plaintiff Howard Weber contends that defendant Internal Revenue Service violated his due process rights by failing to provide him with an adequate hearing to address his tax liabilities and the manner in which his delinquent taxes would be collected. 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, Wild v. Subscription Plus, Inc., 292 F.3d 526 (7th Cir. 2002), and where it is lacking, the court must dismiss a lawsuit on its own motion. Fed. R. Civ. P. 12(h)(3); 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.”). Plaintiff’s case will be dismissed because this court lacks subject matter jurisdiction over it.

## FACTUAL ALLEGATIONS

### A. Parties

Plaintiff Howard Weber is a resident of New Glarus, Wisconsin. Defendant Internal Revenue Service is the federal agency charged with handling tax matters on behalf of the federal government.

### B. Plaintiff’s Interactions with the Internal Revenue Service

Plaintiff filed a timely 2002 income tax return. On that return, he reported that he had no income.

Sometime in the year 2004, the Internal Revenue Service determined that plaintiff had misreported his income, and levied back taxes on him. On May 29, 2004, the Internal Revenue Service imposed a \$500 civil penalty on plaintiff for “filing a tax return that contained frivolous arguments to reduce taxes.” On November 8, 2004, a second \$500 penalty was imposed for the same reason.

On at least fifteen occasions between June 17, 2004 and November 21, 2006, plaintiff sent letters to the Internal Revenue Service asking to meet with agents to discuss

his 2002 tax return. At no time did an agent meet with him in person.

On March 6, 2006, the Internal Revenue Service issued plaintiff a “Final Notice of Intent to Levy and Notice of . . . Right to a Hearing.” The notice indicated that plaintiff owed \$7,758.07 in back taxes and civil penalties. Plaintiff appealed the decision to collect his taxes and penalties.

On May 25, 2006, plaintiff received a letter from the Internal Revenue Service informing him that a “telephone conference” had been scheduled for June 22, 2006. Plaintiff wrote back, stating that he was hearing impaired and unable to participate in a telephone conference. Still, no meeting was scheduled.

On December 4, 2006, the Internal Revenue Service issued plaintiff a “Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330,” denying plaintiff’s appeal and informing him of his right to appeal the decision to the United States Tax Court within 30 days.

## OPINION

In Voelker v. Nolen, 365 F.3d 580, 581 (7th Cir. 2004), the Court of Appeals for the Seventh Circuit addressed a case much like this one, in which a taxpayer contended that the Internal Revenue Service has violated his due process rights in connection with an administrative hearing. When the taxpayer brought suit in district court, the case was

dismissed for lack of subject matter jurisdiction. The court of appeals affirmed the dismissal, holding that the United States Tax Court (and not the United States District Court) had jurisdiction over all appeals “involving income, gift, and estate taxes.” Id. at 581. Although the taxpayer was challenging the process he had been given, the court of appeals held that the underlying dispute between the plaintiff and the IRS was a dispute over tax liability; consequently, the tax court was the only federal court with jurisdiction to hear the taxpayer’s appeal of the administrative decision.

Plaintiff contends that the Internal Revenue Service refused to hold an in-person hearing to discuss his tax liability and, by doing so, violated his due process rights and his rights under 26 U.S.C. § 6330(b). Although plaintiff may have legitimate complaints about the manner in which the Internal Revenue Service handled his case, this court is without authority to address them. As plaintiff was told in the Notice of Determination sent to him by the Internal Revenue Service, dkt. #2, exh. C, his only means for challenging the administrative agency’s decision was to appeal to the United States Tax Court within 30 days of his receipt of the decision, which was issued December 4, 2006. The Tax Court has authority to hear due process challenges, as well as challenges to the underlying tax questions plaintiff raised with the agency and in his complaint to this court. This court does not. Therefore, plaintiff’s complaint must be dismissed.

Although I may not consider the merits of plaintiff’s claims, I note that he expresses

some confusion about the law that governs income tax. Throughout his complaint and his correspondence with the Internal Revenue Services, which he has attached to his complaint, he asks repeatedly for clarification of the law and explanation why the Internal Revenue Service considers his positions to be frivolous. It is unclear whether his questions result from genuine misunderstanding or obstinacy. Assuming the former, I am enclosing with this order a document produced by the Internal Revenue Service, The Truth About Frivolous Tax Arguments, available at [http://www.irs.gov/pub/irs-utl/friv\\_tax.pdf](http://www.irs.gov/pub/irs-utl/friv_tax.pdf), that may answer some of plaintiff's lingering questions about the tax code and his duty to comply with it.

#### ORDER

IT IS ORDERED that plaintiff Howard Weber's case is dismissed for lack of subject matter jurisdiction. The clerk of court is directed to close this case.

Entered this 8th day of January, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge