

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

HOWARD D. WEBER,

Plaintiff,

v.

UNITED STATES OF AMERICA
INTERNAL REVENUE SERVICE,

Defendant.

ORDER

07-C-001-C

In an order dated January 9, 2006, I dismissed this civil action for lack of subject matter jurisdiction. In his lawsuit, plaintiff Howard Weber, proceeding pro se, challenged the process he was afforded by defendant as it attempted to collect delinquent taxes from him and, more fundamentally, asserted that defendant lacked authority to collect personal income taxes from him at all. Now before the court is plaintiff's "Motion to Reconsider Dismissal," which I construe as a timely motion to alter or amend judgment under Fed. R. Civ. P. 59. Because I remain convinced that this court has no jurisdiction over plaintiff's lawsuit, the motion will be denied.

The purpose of a Rule 59 motion is to bring the court's attention to newly discovered

evidence or to a manifest error of law or fact. E.g., Bordelon v. Chicago School Reform Bd. of Trustees, 233 F.3d 524, 529 (7th Cir. 2000). It is not intended as an opportunity to reargue the merits of a case, Neal v. Newspaper Holdings, Inc., 349 F.3d 363, 368 (7th Cir. 2003), or to present evidence that could have been presented at an earlier time. Dal Pozzo v. Basic Machinery Co., Inc., 463 F.3d 609, 65 (7th Cir. 2006). In order to obtain relief under Rule 59, the movant must “clearly establish” his or her grounds for relief. Romo v. Gulf Stream Coach, Inc., 250 F.3d 1119, 1122 n.3 (7th Cir. 2001).

In his Rule 59 motion, plaintiff contends that this court misunderstood his lawsuit and the relief he is requesting. Plaintiff asserts that he is not challenging his tax assessment; rather, he is asking the court to provide him with a legal explanation why defendant has authority to tax him and what kind of process he is due in connection with defendant’s attempt to collect the taxes it has assessed.

With respect to plaintiff’s question regarding the scope of defendant’s authority to tax him, I note that enclosed with the court’s January 9 order was a publication answering many of plaintiff’s questions. If plaintiff wishes to explore further the legal and historical basis for the internal Revenue Service and the United States Tax Courts, he may do so by consulting his local library. However, because there is no question that defendant has the authority to tax plaintiff, plaintiff may not raise his challenges in the context of this lawsuit.

With respect to the process due plaintiff in connection with defendant’s attempts at

collection, I have ruled already that plaintiff is barred by Voelker v. Nolen, 365 F.3d 580, 581 (7th Cir. 2004), from bringing his challenge in this court. Moreover, shortly after plaintiff filed his Rule 59 motion, the United States entered an appearance in this case. In defendant's brief in opposition to plaintiff's motion, it points out that on August 17, 2006, the Pension Protection Act of 2006 was enacted, Pub. L. No. 109-280, § 855(a), 120 Stat. 780, amending 26 U.S.C. § 6330(d)(1) to vest exclusive jurisdiction over due process collection actions in the United States Tax Courts. The Act applies to all determinations made on or after October 17, 2006. The determination in plaintiff's case was issued December 4, 2006. Therefore, under § 6330(d)(1), this court lacks jurisdiction over plaintiff's claims.

Plaintiff has failed to show that either new evidence or a manifest error of law or fact justify amending the judgment entered in this case. Consequently, plaintiff's Rule 59 motion must be denied.

ORDER

IT IS ORDERED that plaintiff Howard Weber's motion under Fed. R. Civ. P. 59 is

DENIED.

Entered this 12th day of February, 2007.

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