

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

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DARNELL WESLY MOON,

Plaintiff,

v.

COMMISSIONER OF INTERNAL  
REVENUE SERVICE and  
CRIMINAL INVESTIGATION  
DIVISION OF INTERNAL  
REVENUE SERVICE,

Defendants.

ORDER

09-cv-130-slc<sup>1</sup>

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This is a proposed civil action for monetary and injunctive relief. Plaintiff Darnell Wesly Moon alleges that the Internal Revenue Service has improperly denied him refund claims for tax years 2000 through 2007 and that two members of the Criminal Investigation Division of the Internal Revenue Service have been interfering with this lawsuit.

Before the court is plaintiff's request for leave to proceed under the in forma pauperis

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<sup>1</sup>While this court has a judicial vacancy, it is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. For the purpose of issuing this order only, I am assuming jurisdiction over this case.

statute, 28 U.S.C. § 1915. Plaintiff has made his initial partial payment in accordance with 28 U.S.C. § 1915. This case was filed initially in the Western District of Missouri and transferred to this court on March 6, 2009. Dkt #1. The district court issued two separate orders granting plaintiff “Provisional Leave to Proceed In Forma Pauperis.” However, in neither of these orders granting plaintiff provisional leave to proceed did the court screen plaintiff’s complaint as required under the 1996 Prison Litigation Reform Act. Under the Act, because plaintiff is a prisoner, this court must screen his complaint and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or ask for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A.

Since this case was transferred, plaintiff has filed three motions for appointment of counsel, dkt. ##14, 17 and 20; two motions to be transferred from the Federal Correctional Institution in Oxford, Wisconsin, dkt. ##13 and 20; and a motion to add defendants to this proposed action, dkt. #21, which I construe as a motion for leave to amend his complaint. Plaintiff’s request for leave to proceed in forma pauperis will be denied because this court lacks subject matter jurisdiction to hear his claims. Accordingly, his motions for appointments of counsel, transfer and leave to amend his complaint will be denied as moot.

In addressing any pro se litigant’s complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972).

## ALLEGATIONS OF FACT

Plaintiff Darnell Wesly Moon is an inmate at the Federal Correctional Institution in Oxford, Wisconsin. Between 2001 and 2004, plaintiff was self-employed as a domestic worker. In 2004, he received his first wage-paying job and continued to pursue other side jobs.

The Internal Revenue Service has denied refund claims filed by plaintiff for tax years 2001 through 2007 in the sums of \$40,000.00 to \$60,000.00. Between 2000 and 2002, plaintiff received an income of at least \$11,000.00, \$12,000.00 and \$13,000.00. For the purpose of the earned income tax credit, he had three qualifying children and one qualifying dependent. During those years, plaintiff made a loan each year that was not repaid and became “worthless” the same year it was issued. The loans were for \$2,800.00, \$3,000.00 and \$4,000.00. Plaintiff filed an amended income tax return that included these unpaid “bad loans.”

In 2003, plaintiff earned \$13,000.00. At the time, he had three qualifying children for the purpose of the Earned Income Tax Credit. In his original return he reported \$4,200.00 in income. He filed an amended tax return in which he reported the full amount of \$13,000.00 and a “bad debt” of \$1,800.00 that became worthless in 2003. His 2003 claim was disallowed.

In 2004, plaintiff filed a return in which he reported \$6,000.00 in income but he

grossed \$16,000.00. With his \$6,000 reported income and two qualifying children, plaintiff was eligible for a \$2,410.00 refund. The IRS issued a refund of \$2,000.00. He wrote the IRS about the remaining \$410.00 owed him. Plaintiff has requested a “notice of deficiency” from the IRS to petition the tax court. He has not received one. Plaintiff also filed an amended income tax return for 2004 in which he included his gross income of \$16,000.00, all of the necessary deductions and an unpaid “bad debt.”

In 2005, plaintiff earned \$11,250.00 in gross income. In his amended income tax return, he reported these changes and a “bad debt” of \$5,600.00. At the time, he had three qualifying dependents.

In 2006, plaintiff earned \$15,952.00 in gross income. For the purpose of the earned income tax credit, he had two qualifying children. He received a refund of \$1,376.00 that was deposited into his savings account. He filed his amended return on April 17, 2008, reporting an additional “bad debt” of \$5,600.00. The IRS denied his refund claim of \$2,846.00.

In 2007, plaintiff had an adjusted gross income of \$14,600.00. He reported only \$2,300 in income on his original tax return. For the purpose of the earned income tax credit, he had two qualifying children. In his amended income tax return, he added claims for three loans that became worthless in 2007. (Plaintiff did not list the amount of these loans.)

Two members of defendant Criminal Investigation Division Unit of the IRS have been “interfering” with plaintiff’s lawsuit against the IRS.

## DISCUSSION

I understand plaintiff to be alleging two separate but interrelated claims. The first claim involves refunds that the IRS allegedly owes plaintiff. The second claim involves “interference” by members of defendant Criminal Investigation Division Unit of the IRS.

As a general rule, district courts lack jurisdiction to hear a taxpayer’s claims involving tax obligations. Voelker v. Nolen, 365 F.3d 580, 581 (7th Cir. 2004). It is presumed “that review should be sought in the Tax Court . . . [because it] has jurisdiction over cases involving income, gift, and estate taxes.” Id. Therefore, plaintiffs seeking a review of income taxes must file an action in the United States Tax Court. Id.

Plaintiff’s complaint is difficult to follow. However, from what I understand, plaintiff alleges that he is entitled to refunds based on his amended income tax returns in which he included a number of loans that were unpaid and therefore became “bad debts” as defined by 26 U.S.C. §§ 166 and 6511(d). Plaintiff appears to be referring to a provision in § 6511 that allows a taxpayer to claim a credit or refund for overpayment of taxes imposed on the taxpayer as result of non-business debt that became “worthless” in a given tax year. Id. Therefore, it appears that plaintiff is alleging that the IRS has failed to adequately process

his income taxes. Because plaintiff's refund claim involve income taxes, it must be filed in the Tax Court. That court's jurisdiction over such claims is exclusive. This court lacks subject matter jurisdiction to hear plaintiff's refund claim.

It is not clear from plaintiff's complaint how members of the Criminal Investigation Division interfered with plaintiff's lawsuit. Moreover, it may not satisfy the notice requirement of Rule 8 of the Federal Rules of Civil Procedure. However, I cannot address it because it is intertwined with his refund claim. Only the Tax Court can hear it. Voelker, 365 F.3d at 580 (affirming district court's holding that where Tax Court has exclusive jurisdiction over an income tax dispute it has jurisdiction over related claims). Therefore, this court lacks subject matter jurisdiction over both of plaintiff's claims. If plaintiff wishes to contest the refunds he has been denied by the IRS, he may file an appeal with the United States Tax Court.

ORDER

IT IS ORDERED that plaintiff Darnell Wesly Moon's request to proceed in forma pauperis is DENIED, his motions for appointment of counsel, transfer and leave to amend his complaint are DENIED as moot and his case is DISMISSED for lack of subject matter jurisdiction.

The clerk of court is directed to close this case.

Entered this 6<sup>th</sup> day of April, 2009.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge