

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHAEL RANCIATO, :
Plaintiff, : CIVIL ACTION NO.
v. : 3-00-CV-1024 (JCH)
 :
UNITED STATES OF AMERICA, :
Defendant. : JANUARY 23, 2001

RULING ON DEFENDANT’S MOTION TO DISMISS [DKT. NO. 5]

This is a cause of action for damages alleging that the Internal Revenue Service (“IRS”) took improper collection action against Michael Ranciato (“Ranciato”). It is brought pursuant to 26 U.S.C. §§ 7422 and 7433. The defendant, United States of America (“United States”), has filed a motion to dismiss. The issue is whether the statute of limitations for filing a claim for improper collection has expired. Because the court concludes that the statute of limitations has expired on the improper collection claim, the motion to dismiss is granted.

I. FACTUAL BACKGROUND

The complaint alleges that Ranciato failed to pay taxes totaling \$111,432.00 on commissions he had received while working as a private insurance adjuster from 1981 through 1985. On June 20, 1990, Ranciato entered into an installment

agreement with the IRS to satisfy his tax liabilities from 1984 and 1985. In that agreement, Ranciato agreed to pay \$400.00 per month until, either, the liability was paid in full or the statutory limitation period for collection had run out. Also, as part of the agreement, Ranciato agreed to a waiver of the applicable six-year limitation period, thereby extending the collection period until December 31, 1994. Under the 1990 Budget Act, the statutory collection period was later extended for Ranciato's 1984 and 1985 collection periods to April 1997 and March 1998 respectively.

Ranciato made 57 payments and paid a total of \$22,800.00 under the installment agreement. Between 1995 and 1997, the IRS pressured Ranciato to agree to another extension of the collection period. Ranciato refused to agree to another extension and the IRS served Notices of Levies on six of Ranciato's clients. In addition, the IRS collected \$2,100.00 from Allstate Insurance Co., one of Ranciato's clients. According to Ranciato, the IRS's tactics damaged his reputation with his clients and severely affected his business.

The complaint alleges that, in order to maintain his business, Ranciato raised \$46,628.00 and, in April 1997, paid off the remaining liability in full. In contrast, if

he had followed the installment agreement, he would have paid \$4800.00 by the time the collection period expired and extinguished any further claims by the IRS.

The complaint alleges that, after Ranciato paid his claim in full, the IRS suggested that it might have mishandled the installment agreement and would look into how it handled his tax collection. On June 5, 1998, the IRS issued a press release admitting that its practice of terminating installment agreements because taxpayers would not agree to extend the collection period was “not in accordance with law.” Taxpayer Advocate, IR Notice 98-44, Mem. in Support of United States’ Motion to Dismiss, Ex. 2. The news release stated that the IRS had adopted a policy of not instituting collection action during the pendency of a valid installment agreement based solely on the ground that a taxpayer refuses to extend the statute of limitations because doing so was not allowable under the law. Id. The news release further indicated that the IRS would make “whatever refunds the law allows.” Id.

Ranciato subsequently sent a letter to the Taxpayer Advocate explaining the facts of his case. On November 4, 1998, the IRS sent Ranciato a letter denying that it mishandled his claim. The letter also stated, “[t]his letter is your legal notice that we have disallowed your claim for refund” and authorized a suit in U.S. District

Court or Court of Claims within two years from the date of the letter. Complaint [Dkt. No. 1], Ex. F. The IRS sent another letter on April 21, 1999, which was identical to the November letter except this letter did not include the authorization or above quoted language. Id., Ex. E.

Ranciato filed this suit on June 5, 2000 alleging that the IRS officers violated 26 U.S.C. § 7433 because the tactics used in attempting to extend the collection period in his case violated 26 U.S.C. § 6159(b) and seeking a refund for the \$48,727.92 he paid in 1995.

II. DISCUSSION

Ranciato brought this action pursuant to 26 U.S.C. § 7433 and this court has jurisdiction over such claims under 28 U.S.C. § 1346(a)(1).¹ The United States

¹ The complaint stated that the action was also brought pursuant to 26 U.S.C. § 7422, which provides for a civil action for a refund of overpaid taxes. See Comp. [Dkt. No. 1] at ¶ 4. In its motion to dismiss, the United States argues that Ranciato failed to state a claim for refund of federal taxes under § 7422 because he failed to allege that the amount of tax he paid exceeded the amount of tax he owed. In any action for a refund, a taxpayer must demonstrate that there was an overpayment. See United States v. Janis, 428 U.S. 433, 440 (1976); Lewis v. Reynolds, 284 U.S. 281, 283 (1932); Miller v. United States, 2000 WL 1058964, at *4 (E.D.N.Y. May 22, 2000). If the amount of tax paid does not exceed the tax owed, there is no overpayment of tax and a plaintiff is not entitled to a refund. Lewis, 284 U.S. at 283.

Ranciato did not oppose the motion to dismiss the § 7422 refund claim and admitted at oral argument on January 11, 2001 that he did not have a claim for a refund because the amount of tax he paid did not exceed the amount of tax he owed. Therefore,

filed a motion to dismiss the case pursuant to Federal Rules of Civil Procedure 12(b)(1).

Under Rule 12(b)(1), a defendant can move the court to dismiss the case for lack of subject matter jurisdiction. FED. R. CIV. P. 12(b)(1). When considering a motion to dismiss for lack of subject matter jurisdiction, a court must accept all factual allegations in the complaint as true and draw all inferences from those allegations in plaintiff's favor. Jaghory v. New York State Dept. of Educ., 131 F.3d 326, 329 (2d Cir. 1997). The court may not dismiss a complaint unless "it appears beyond doubt, even when the complaint is liberally construed, that the plaintiff can prove no set of facts which would entitled him to relief." Id. Where the existence of subject matter jurisdiction turns on a factual issue, however, the court is permitted to look beyond the complaint itself and may consider evidence outside the pleadings. See United States v. Vazquez, 145 F.3d 74, 80 (2d Cir. 1998); Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 108 (2d Cir. 1997). The burden of proving jurisdiction is on the party asserting it. See Malik v. Meissner, 82 F.3d 560, 562 (2d Cir. 1996).

the only claim in this case is a claim for damages under 26 U.S.C. § 7433.

The exclusive remedy for recovering damages from unlawful collection is 26 U.S.C. § 7433. Under 26 U.S.C. § 7433, a taxpayer may bring a civil action for damages against the United States “[i]f, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence disregards any provision of [the Internal Revenue Code] . . .” 26 U.S.C. § 7433. An action to enforce liability under § 7433 “may be brought only within 2 years after the date the right of action accrues.” 26 U.S.C. § 7433(c)(3). When sovereign immunity is waived and consent to sue the United States is granted as it is in § 7433, the precise terms, conditions, and qualifications of such consent must be scrupulously followed. Long Island Radio Co. v. Nat’l Labor Relations Bd., 841 F.2d 474, 477 (2d Cir. 1988); United States v. Mansour, 1997 WL 718456, at *2 (D.Conn. Aug. 27, 1997) (citing Caparaso v. Comm’r of Internal Revenue Serv., 907 F. Supp. 1235, 1239 (N.D. Ind. 1995) and Dziura v. United States, 168 F.3d 581 (1st Cir. 1999)).

The United States argues that Ranciato failed to bring his action within two years of its accrual and that it is therefore time barred. The issue is when did Ranciato’s right of action accrue. A cause of action accrues “. . . when an injury is

definite, readily discoverable, and accessible in the sense that nothing impedes the injured party from seeking to redress it.” Dziura v. United States, 168 F.3d 581, 583 (1st Cir. 1999) (citing Wilson v. Giesen, 956 F.2d 738, 743 (7th Cir. 1992)). Treasury Regulation 301.7433-1 stipulates that an injury is definite “when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.” Id. Thus, “absent a disability or other impediment to suit, the applicable limitation period ordinarily will begin to run when an injured party knows or should know the critical facts related to his claim.” Id. (citing United States v. Kubrick, 444 U.S. 111, 122-24 (1979)).

According to the United States, Ranciato had a reasonable opportunity to discover all the essential elements of a cause of action under 26 U.S.C. § 7433 at the time he became aware of the collection activity. He became aware of the collection activity at issue as early as February of 1997, when he received the notice of the levies, and certainly no later than April 21, 1997, when he made a full payment for the 1985 taxes owed. Thus, according to the United States, the statute of limitations for a § 7433 claim expired no later than April 21, 1999. Ranciato argues that actual knowledge that the collection activity is unlawful is an essential element

of a cause of action under § 7433. Therefore, according to Ranciato, he did not have a reasonable opportunity to discover all the essential elements until the IRS published its apology in June of 1998 for actions taken in cases similar to his. Thus, Ranciato contends, the statute of limitations on his § 7433 claim did not expire until June 5, 2000, the date on which he filed his complaint.

The cause of action in this case accrued at the time of the collection activity. Ranciato's claim is that the levies served on his clients violated 26 U.S.C. § 6159(b) and thus the officers violated 26 U.S.C. § 7433 by issuing them. The levies were issued in February of 1997 and Ranciato was aware of them no later than April 21, 1997. Thus, as of April 21, 1997, Ranciato had reasonable opportunity to know that an officer had acted in violation of a provision of the Internal Revenue Code and that he had been injured. As a result, he had a claim under 26 U.S.C. § 7433.

As in United States v. Mansour, “[t]his case did not involve covert deeds by the government which may have gone unnoticed for a long period of time by a reasonable person. Nor did this case involve documentation which was either withheld or required a lengthy investigation by [the plaintiff] to discover.” 1997 WL 718456, at *3 (D.Conn. Aug. 27, 1997). Ranciato also does not allege that he

was under any disability or faced an impediment to bringing his suit. He only argues that he did not have a reasonable opportunity to discover all of the essential elements of his claim until the IRS published its June 1998 letter announcing their change in policy. The fact that the IRS determined that some of its actions in cases similar to Ranciato's case violated the Internal Revenue Code is irrelevant to Ranciato's claim. "[T]axpayers—like the IRS itself—[are] chargeable with knowledge of the law" Dziura, 168 F.3d at 583. The IRS is not obligated to notify taxpayers which of its actions constitute illegal actions and such notification is not an element of a § 7433 claim. In this case, Ranciato knew the essential elements of his § 7433 claim by April 21, 1997. Therefore, the statute of limitations had expired at the time he filed his complaint and his action is time barred.

Ranciato argues that, even if his claim is barred by the statute of limitations, the doctrine of equitable estoppel precludes the United States from asserting the bar of the statute of limitations. Equitable estoppel prohibits a party from asserting the statute of limitations as a defense where the party's conduct "has induced another to refrain from bringing suit during the applicable limitations period." Willis v. Internal Revenue Service, 848 F. Supp. 1127, 1130 (S.D.N.Y. 1994). Equitable

estoppel is to be applied against the government “with utmost caution and restraint.” Estate of Carberry v. Commissioner, 933 F.2d 1124, 1127 (2d Cir.1991); see also United States v. Boccanfuso, 882 F.2d 666, 669 (2d Cir. 1989). Estoppel applies to the government “only in those limited cases where the party can establish both that the [g]overnment made a misrepresentation upon which the party reasonably and detrimentally relied and that the [g]overnment engaged in affirmative misconduct.” United States v. Paredes-Batista, 140 F.3d 367, 375 (2d Cir. 1998) (citing City of New York v. Shalala, 34 F.3d 1161, 1168 (2d Cir. 1994).

In this case, Ranciato fails to demonstrate that the United States engaged in affirmative misconduct. Ranciato makes one allegation of potential affirmative misconduct.² He alleges that the revenue officers engaged in affirmative misconduct by telling him that the termination of his installment agreement and the

² Ranciato also suggests that the IRS engaged in affirmative misconduct by informing him that he could file a claim for refund during the two-year period following November 4, 1998, the mailing date of the letter denying his claim for refund. Pl.’s Mem. in Opp. to Def.’s Mot. to Dismiss for Lack of Subject Matter Jurisdiction [Dkt. No. 9] at 12. The court does not agree because what the IRS told Ranciato was correct: Under 26 U.S.C. § 6532, Ranciato did have two years from the date of the IRS’s letter to file a 26 U.S.C. § 7422 claim for a refund. In addition, as discussed in Footnote 1, supra, the present claim is not a claim for a refund under § 7422, but a claim for damages § 7433. Therefore, the representations by the IRS with regard to a refund claim, even if misconduct, are not relevant to the plaintiff’s collateral estoppel argument with respect to his § 7433 claim.

corresponding collection action were legal. See Pl.'s Mem. in Opp. to Def.'s Mot. to Dismiss for Lack of Subject Matter Jurisdiction [Dkt. No. 9] at 12. Such a statement does not rise to the level of affirmative misconduct.

At the time the IRS terminated Ranciato's installment agreement, agents were authorized to terminate the agreements and undertake collection actions. The IRS later reviewed the policy, revised it, and announced the new policy in a letter to taxpayers. Therefore, at the very most, the revenue officers who made the statements that Ranciato relies on were ignorant of the law at the time they initiated the action with regard to Ranciato and made a mistake.³ "[A] mere failure to provide accurate information . . . will not give rise to estoppel[.]" Hansen v. Harris, 619 F.2d 942, 948 (2d Cir. 1980), rev'd on other grounds, Schweiker v. Hansen, 450 U.S. 785 (1981); see Long Island Radio Co., 841 F.2d at 478 (finding no affirmative misconduct where record demonstrated only honest ignorance on the part of the government). Because the statements about the collection action in Ranciato's case were no more than a mistake on the part of the revenue officers,

³ It has not been determined that the IRS's actions with regard to Ranciato were illegal. The IRS's letter indicated a change in policy to comply with the law in cases similar to Ranciato's case, but did not speak directly to Ranciato's case.

Ranciato has failed to demonstrate affirmative misconduct.

Even where the misrepresentation by the government directly causes a taxpayer to exceed the statute of limitations, if there is no affirmative misconduct, estoppel does not apply. Long Island Radio Co., 841 F.2d at 476. Therefore, because the court does not find that the plaintiff has established affirmative misconduct by the government, even if Ranciato relied on the government's representation that its actions were legal, estoppel does not apply in this case. The statute of limitations thus bars Ranciato's §7433 claim and the motion to dismiss is granted.

III. CONCLUSION

For the foregoing reasons, the United States' Motion to Dismiss [Dkt. No. 5] is GRANTED. The case is dismissed in its entirety and the clerk is directed to close the case.

SO ORDERED.

Dated at Bridgeport, Connecticut this 23rd day of January, 2001.

Janet C. Hall
United States District Judge