

Goodell v. USA

CV-03-118-M 10/14/03

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Duane Goodell,
Plaintiff

v.

Civil No. 03-118-M
Opinion No. 2003 DNH 174

United States of America,
Defendant

O R D E R

Plaintiff, Duane Goodell, is a taxpayer against whom the Internal Revenue Service ("IRS") imposed two \$500 penalties for filing frivolous income tax returns.¹ He is suing the United States of America, alleging that the IRS penalty was imposed in violation of various sections of the Internal Revenue Code.

Plaintiff's complaint seems to be the first appearance in this district of a set of claims that have been raised, almost verbatim, in courts across the country by "zero-filers" challenging IRS determinations that income tax returns listing

¹ Plaintiff filed an amended personal income tax return for 1998 listing all zeros, despite having earned approximately \$85,000 from insurance sales, and filed a return for 1999 listing all zeros, despite having earned approximately \$112,000 from insurance sales. (Def.'s Mot. Summ. J., Ex. 3 at 5.)

all zeros are frivolous. See, e.g., Loze v. United States, No. CIV A 02-1721, 2003 WL 1547283 (E.D. La. Feb. 13, 2003) (granting defendant's motion for summary judgment); Gregory v. United States, No. CIV A1:02-CV-889-CC, 2003 WL 701218 (N.D. Ga. Jan. 15, 2003) (granting defendant's motion to dismiss or for summary judgment); Tornichio v. United States, 263 F. Supp. 2d 1090, 1097 (N.D. Ohio 2002) (granting defendant's motion to dismiss and noting that "[c]ourts have also consistently found identical arguments to the ones here to be frivolous") (citations omitted); Carroll v. United States, 217 F. Supp. 2d 852, 858 (W.D. Tenn. 2002) (granting defendant's motion for summary judgment and awarding defendant fees and costs, due to "the frivolous nature of plaintiff's arguments"); Kelly v. United States, 209 F. Supp. 2d 981 (E.D. Mo. 2002) (granting defendant's motion for summary judgment); Rennie v. IRS, 216 F. Supp. 2d 1078 (E.D. Cal. 2002) (granting defendant's motion to dismiss or for summary judgment); Cole v. United States, No. 1:02-CV-137, 2002 WL 31495841 (W.D. Mich. Oct. 21, 2002) (granting defendant's motion for summary judgment); Bentley v. IRS, No. 4:02 CV 1391, 2002 WL 31274045 (N.D. Ohio Sept. 10, 2002) (dismissing plaintiff's claim sua sponte); see also Jones v. Comm'r, 338 F.3d 463, 466 (5th Cir.

2003) (affirming Tax Court decision that presentation of Form 4340 meets the statutory requirement that "[t]he appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met"); Roberts v. Comm'r, 329 F.3d 1224, 1228 (11th Cir. 2003) (affirming Tax Court decision that presentation of Form 4340 "meets the requirements of [26 U.S.C.] § 6330 and [26 C.F.R.] § 301.6203-1").

For the reasons stated therein, and for the reasons given in the opinions cited above, Defendant's motion for summary judgment (document no. 6) is granted. The Clerk of Court shall enter judgment in accordance with this order and close the case.

SO ORDERED.

Steven J. McAuliffe
United States District Judge

October 14, 2003

cc: Duane Goodell
Thomas P. Cole, Esq.