

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LINDSEY K. SPRINGER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 06CV 110 CVE-PJC
)	
UNITED STATES, THE INTERNAL)	
REVENUE SERVICE, and THE)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	
)	
Defendants.)	
)	

DEFENDANTS’ BRIEF IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT

Plaintiff Lindsey K. Springer seeks to enjoin the Internal Revenue Service from imposing civil and criminal penalties related to his federal income tax liabilities. This is Springer’s third frivolous complaint filed in an effort to avoid the collection of his unpaid 1990-1995 federal income tax liabilities and the IRC § 6673(a)(1) penalty imposed by the Tax Court. Springer’s complaint is a “hodgepodge of unsupported assertions, irrelevant platitudes, and legalistic gibberish,” essentially arguing that he (and everyone else in the country) is not required to file federal income taxes because of a purported deficiency with the OMB control number on the 1040 form.¹ The Court should dismiss his complaint because he does not set forth a jurisdictional basis for his motion and the basis for his claim is patently frivolous and has repeatedly been dismissed by other Courts.

¹ *Crain v. Internal Revenue Service*, 737 F.2d 1417 (5th Cir. 1984) (dismissing frivolous claims that did not merit refutation “somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.”).

QUESTIONS PRESENTED

1. Plaintiff cites 28 U.S.C. §§ 1331 and 2201, and 5 U.S.C. § 702 of the Administrative Procedure Act as the jurisdictional basis for his suit for injunctive relief. Neither 28 U.S.C. §§ 1331, 2201 nor 5 U.S.C. § 702 waive sovereign immunity or confer subject matter jurisdiction on this Court to entertain suits for injunctive relief. Should this action accordingly be dismissed for lack of subject matter jurisdiction?

2. Springer raises various objections to the Office of Management and Budget (“OMB”) number placed on the Federal income tax (Form 1040) forms. None of these objections, however, relieve taxpayers from their legal obligations to prepare and file income tax returns with the IRS under various provisions of the Internal Revenue Code’s laws. Does the complaint accordingly fail to state a claim upon which relief could be granted?

PROCEDURAL HISTORY

The notices of deficiency issued to Springer

1. On September 3, 1996, the Commissioner of Internal Revenue issued two notices of deficiency to the plaintiff, Lindsey K. Springer, one asserting federal income tax deficiencies against him for the years 1990 through 1992 and the other asserting federal income tax deficiencies against him for the years 1993 through 1995.²

2. Springer filed a timely petition with the United States Tax Court on or about December 5, 1996 to redetermine the tax deficiencies proposed by the Commissioner for the 1990-1995 tax years.³

² *Springer v. United States*, 2005 WL 2467775 (W.D. Okla.) at *1.

³ *Id.*

3. The Tax Court entered an order granting the Commissioner's motion to dismiss and decided that Springer was liable for deficiencies and statutory additions to tax for the 1990-1995 tax years as set forth in the notices of deficiency. In addition, the Tax Court imposed a \$4,000 penalty against Springer pursuant to IRC § 6673.⁴

4. In March 2005 the IRS sent Springer a "Final Notice" detailing both its intent to levy and Springer's right to a Collection Due Process Hearing (CDP hearing) with respect to his 1990-1995 federal income tax liabilities.⁵

5. Springer requested a CDP hearing.⁶

6. In August 2005 the IRS upheld the decision to levy on Springer's assets to collect his unpaid 1990-1995 federal income tax liabilities and the IRC § 6673 penalty imposed by the Tax Court.

The prior civil actions

7. In April 2005, while Springer's CDP hearing described above was pending, Springer filed a complaint seeking injunctive relief against the United States and IRS employees Fred Rice, Scott Penny and Leland Neubauer in the civil action titled *Lindsey K. Springer v. United States of America, et al.*, Case No. CIV-05-466-F (W.D. Okla.).⁷

8. The Western District of Oklahoma granted the United States' motion to dismiss in an Order issued in October 2005, holding that subject matter jurisdiction was lacking because

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Springer's action did not fall within either a statutory or judicial exception to the Anti-Injunction Act, IRC § 7421(a), which generally bars suits for the purpose of restraining the assessment and collection of federal taxes.⁸

9. As part of the Order dismissing Springer's claims in *Lindsey K. Springer v. United States of America, et al.*, Case No. CIV-05-466-F (W.D. Okla.), the court determined that the Tax Court had subject matter jurisdiction over Springer's 1990-1995 federal income tax liabilities under IRC § 6330.⁹

10. In September 2005, after the CDP hearing described above, Springer filed a second complaint seeking injunctive relief against the United States and IRS employees Fred Rice, Scott Penny and Leland Neubauer in the civil action titled *Lindsey K. Springer v. United States of America, et al.*, Case No. CIV-05-1075-F(W.D. Okla.). The United States has moved to dismiss the complaint in that action for lack of subject matter jurisdiction. The motion is pending.

STATEMENT OF THE CASE

Springer's complaint consists of baseless arguments "presenting no colorable claims of error and designed only to delay, obstruct, or incapacitate the operations of the courts or any other governmental authority."¹⁰ Springer is attempting to use this Court in an effort to delay the payment of his 1990-1995 tax assessments. As noted above, this is the third frivolous lawsuit Springer has filed in the past year regarding the collection of his unpaid 1990-1995 tax

⁸ *Id.* at *4.

⁹ *Id.* at *3.

¹⁰ *Crain v. Internal Revenue Service*, 737 F.2d 1417 (5th Cir. 1984).

liabilities.

The Allegations in the Complaint

In the instant action Springer complains that the United States should be enjoined from imposing penalties on taxpayers who have failed to file an individual Federal income tax return.¹¹ Springer's principal argument is that Form 1040 and all of its variations (Forms 1040A, 1040EZ, and 1040ES) do not have valid OMB numbers and therefore do not comply with the Paperwork Reduction Act ("PRA").¹² Springer lists fifteen repetitive and frivolous "causes for judgment," which can be divided into two categories.

The first category contains fourteen of Springer's "causes for judgment" regarding the IRS's compliance the Paperwork Reduction Act. The first category can further be reduced into four sub-groups:

- i) OMB number 1545-0074 appeared on the Form 1040 from 1981 to 2006. The OMB number expired at the earliest 1 year and at the latest 3 years from this date (Fourth, Fifth, Sixth and Seventh Causes for Judgment).¹³
- ii) Forms 1040A, 1040EZ, 1040ES had different OMB numbers until the 2005 tax return. Since 2005, all the 1040 variations have OMB number 1545-0074. None of the forms are valid since they are "bootlegging" the OMB number from Form 1040 (Third Cause for Judgment).¹⁴
- iii) The application to file the OMB 1040 was not timely filed or filed in compliance with the PRA (Second, Eighth, Fourteenth and Fifteenth Causes for Judgment)¹⁵

¹¹ Compl. ¶ 83.

¹² Compl. ¶ 1.

¹³ Compl. ¶¶ 51, 54, 57, 60.

¹⁴ Compl. ¶ 48.

¹⁵ Compl. ¶¶ 45, 62, 80, 83.

- iv) OMB number 1545-0074 is not now, nor ever was, a number properly assigned in accordance with the PRA.(Ninth, Tenth, Eleventh and Twelfth Causes for Judgment).¹⁶
- v) The OMB number on the Form 1040 must comply with the PRA to invoke penalties for failing to file (First Cause for Judgment).¹⁷

Springer attaches copies of Form 1040 for years 1990-2004, 2005 Forms 1040A, 1040EZ and 2006 Form 1040 ES all bearing OMB number 1545-0074 as evidence of these claims.¹⁸

One remaining “cause for injunction” is poorly drafted and appears to argue that the IRS lacks authority to impose penalties (Thirteenth Cause for Judgment).¹⁹ Springer alleges that no employee of the United States Department of Treasury or the IRS is authorized to begin any process that imposes penalties relating to Form 1040.²⁰

Springer does not set forth a proper jurisdictional basis for any of these claims, nor do any of these claims state a cause of action. Therefore, Springer’s complaint should be dismissed in its entirety.

ARGUMENT

I. THIS COURT LACKS SUBJECT MATTER JURISDICTION

¹⁶ Compl. ¶¶ 65, 68, 71, 74.

¹⁷ Compl. ¶¶ 42.

¹⁸ Compl. attachments 1,2, 4-6, 8.

¹⁹ Compl. ¶¶ 40-83.

²⁰ Compl . ¶ 77.

OVER THIS CIVIL ACTION

A. The Anti-Injunction Act Prohibits the Instant Action

Section 7421(a) of the Internal Revenue Code, often referred to as the Anti-Injunction Act, provides that “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.”²¹ The Anti-Injunction Act precludes this Court from exercising jurisdiction over any action which seeks to enjoin the collection of taxes and specifically withdraws subject matter jurisdiction over suits whose aim or practical effect is to restrain the collection of federal taxes.²² The Anti-Injunction Act provides certain statutory exceptions to its application. However, none of the statutory exceptions to the Anti-Injunction Act apply here.

While the Supreme Court has recognized a narrow, judicial exception to Section 7421, that exception does not apply here. In *Enochs v. Williams Packing & Navigation Co.*, the Court concluded that the Anti-Injunction Act would not apply if (1) under no circumstances would the Government be certain of succeeding on the merits and (2) equity jurisdiction otherwise exists, in other words, that the entity seeking the injunction would suffer irreparable harm with no adequate legal remedy absent injunction.²³ The burden is on the movant to show that its case

²¹ The purpose of the Anti-Injunction Act, IRC § 7421(a), is to protect the expeditious collection of tax revenues and minimize pre-collection judicial intervention with that process. See *South Carolina v. Regan*, 465 U.S. 367, 376 (1984); *Lowrie v. United States*, 824 F.2d 827, 830 (10th Cir. 1987).

²² See *Fostvedt*, 978 F.2d at 1202 (district court lacked subject matter jurisdiction over taxpayer’s request for technical advice, to abate IRS notice of deficiency, and to hold IRS appeals conference).

²³ 370 U.S. 1, 7 (1962); see also *Bob Jones University v. Simon*, 416 U.S. 725, 737 (1974).

falls within the judicially created exception to the Anti-Injunction Act.²⁴ Springer plainly has not shown that the United States, under no circumstances, could prevail. To the contrary, as described below, Springer's arguments are frivolous.

The Anti-Injunction Act, therefore, precludes the instant action.

B. Sovereign Immunity is not Waived for this Action

It is well established that the United States, as sovereign, cannot be sued without its consent, that the terms of its consent define a court's jurisdiction to hear the case, and that if a plaintiff cannot fit a claim against the United States into a waiver of sovereign immunity, the court lacks jurisdiction and must dismiss the action.²⁵ In his complaint, plaintiff cites 28 U.S.C. §§ 1331 and 2201, and 5 U.S.C. § 702 as the jurisdictional basis for his suit for injunctive relief against the defendants.²⁶ None of these sections waive sovereign immunity.²⁷

1. Jurisdiction under 28 U.S.C. § 1331

Springer cites 28 U.S.C. § 1331 as a basis for jurisdiction in this matter, but this section does not waive sovereign immunity. Rather, the statute confers general federal question jurisdiction, which "grants the district courts original jurisdiction of all civil actions arising

²⁴*Wyoming Trucking Assoc., Inc. v. Bentsen*, 82 F.3d 930, 935 (10th Cir. 1996); *Bowers v. United States*, 423 F.2d 1207, 1208 (5th Cir. 1970).

²⁵ *United States v. Dalm*, 494 U.S. 596, 608 (1990); *United States v. Mitchell*, 445 U.S. 535, 538 (1980); *Fostvedt v. United States*, 978 F.2d 1201, 1202-03 (10th Cir. 1992); *Labonte v. United States*, 233 F.3d 1049, 1051 (7th Cir. 2000).

²⁶ Springer has not specifically cited the Paperwork Reduction Act as a basis for jurisdiction, but this statute also does not waive the government's sovereign immunity or grant subject matter jurisdiction for the instant action. *Pacific Nat. Cellular v. U.S.*, 41 Fed.Cl. 20 (Fed. Cl. 1998).

²⁷ *Lonsdale v. United States*, 919 F.2d 1440, 1443-44 (10th Cir. 1990); *Fostvedt*, 978 F.2d at 1203.

under the Constitution, laws, or treaties of the United States, but does not waive the government's sovereign immunity. Consequently, district court jurisdiction cannot be based on § 1331 unless some other statute waives sovereign immunity."²⁸

Since 28 U.S.C. § 1331 does not waive sovereign immunity it cannot serve as the jurisdictional basis for Springer's claims.

2. Jurisdiction under Section 2201

Springer cites 28 U.S.C. § 2201 (known as the declaratory judgment statute) as a basis for jurisdiction in this matter. However, the declaratory judgment statute also does not confer jurisdiction on a federal court where none otherwise exists.²⁹ Moreover, the declaratory judgment statute does not permit the relief Springer seeks. The statute authorizes declaratory relief "except with respect to Federal taxes."³⁰ Courts have consistently held that the declaratory judgment statute prohibits any suits to restrain the assessment or collection of any tax.³¹ Therefore, the declaratory judgment statute also does not waive sovereign immunity and does not provide jurisdiction for this matter.

3. Jurisdiction under Administrative Procedure Act Section 702

Springer also relies upon 5 U.S.C. § 702 (Administrative Procedure Act) as a basis for

²⁸ *Merida Delgado v. Gonzales*, 428 F.3d 916, 919 (10th Cir. 2005) citing (*Neighbors for Rational Dev., Inc. v. Norton*, 379 F.3d 956, 960-61 (10th Cir. 2004)); see also *Lonsdale v. United States*, 919 F.2d 1440, 1444 (10th Cir. 1990).

²⁹ *New Mexico v. Regan*, 745 F.2d 1318, 1323 (10th Cir.1984).

³⁰ 28 U.S.C. § 2201.

³¹ *Fostvedt v. United States*, 978 F.2d 1201, 1202-03 (10th Cir. 1992); *New Mexico v. Regan*, 745 F.2d 1318 (10th Cir.1984); *Thomas v. Pierce*, 662 F. Supp. 519 (D. Kan. 1987).

jurisdiction. Section 702 of the Administrative Procedure Act also does not constitute a waiver of sovereign immunity.³² “The Administrative Procedure Act itself is not a grant of jurisdiction for the review of agency actions. The language of this section and the amendments thereto merely suggest that sovereign immunity will not be a defense in an action in which jurisdiction already exists.”³³ In fact, Section 702 explicitly states that “[n]othing herein . . . (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.”

Therefore, this is also not an appropriate jurisdictional basis for jurisdiction in this matter and Springer has failed to include any appropriate jurisdictional basis for the instant action.

II. THIS ACTION FAILS TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED

Dismissal is appropriate “only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.”³⁴ As discussed below, numerous courts have repeatedly found claims similar to Springer’s to be without merit and frivolous. Springer’s arguments are insufficient to state an actionable claim and should be dismissed under Fed. R. Civ. P. 12(b)(6).

The complaint alleges that the defendants should be enjoined from imposing penalties

³² *Lonsdale v. United States*, 919 F.2d 1440, 1444 (10th Cir. 1990).

³³ *Id.*

³⁴ *Cosby v. Dody*, 1996 WL 596736, *1 (D.Kan.,1996) *citing* (*Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (internal citations omitted); *Thatcher Enterprises v. Cache County Corp.*, 902 F.2d 1472 (10th Cir. 1990); *see also* (“Under Rule 12(b)(6), dismissal is inappropriate unless plaintiff can prove no set of facts in support of his claim to entitle him to relief.”).

against Springer and all other individuals resulting from Federal income tax return violations.

As discussed above, Springer's fifteen "causes for judgement" rely extensively on the Paperwork Reduction Act. The PRA was enacted by Congress to reduce the amount of paperwork required by it citizens, and the OMB was authorized to review all "information collection requests."³⁵

The cornerstone of Springer's reliance on the PRA is its public protection provision, 44 U.S.C. § 3512, which provides that "no person shall be subject to any penalty" for failure to satisfy an agency's information request that "does not display a current control number assigned" by the Office of Management and Budget (OMB).³⁶ However, as discussed below, courts have repeatedly and consistently held that this section does not relieve a taxpayer from filing his return. Rather, this section is to be used defensively not as a private right of action.³⁷ Therefore, Springer may not use the PRA as a basis for the instant action.

A. OMB number does not comply with Paperwork Reduction Act

In the first category of "causes for judgment," Springer states a series of frivolous theories in an effort to demonstrate that the Form 1040 does not comply with the PRA. As described above, Springer claims that: (1) OMB number 1545-0074 appearing on the Form 1040 is not, and never has been, a valid OMB number; (2) the Department of Treasury did not properly file the forms necessary to authorize the OMB number; (3) the OMB number has

³⁵ *Dole v. United Steelworkers of America*, 494 U.S. 26, 32 (1990).

³⁶ *Pacific Nat. Cellular v. U.S.*, 41 Fed.Cl. 20. (Fed. Cl. 1998).

³⁷ *Sutton v. Providence St. Joseph Medical Center*, 192 F.3d 826 (9th Cir. 1999) (finding that a prospective employee could not maintain a claim under the Paperwork Reduction Act against a hospital based on the hospital's failure to hire the employee after he refused to provide his social security number, since the Act did not authorize private right of action, but instead authorized its protections to be used as a defense).

expired; (4) because OMB number 1545-0074 appears on the Form 1040 and its variations, the OMB number is “bootlegged” and therefore invalid ; and (5) the OMB number on the Form 1040 must comply with the PRA to invoke penalties for failing to file.

Initially it should be noted that Springer’s claims ignore 26 C.F.R. § 602.101, which assigns the control number to the filing of tax returns and the payment of taxes.³⁸ This Section shows that the OMB has authorized number 1545-0074 for use on forms to collect information for Federal income tax returns. In addition, the PRA does not apply to “[t]he process of assessment and collection of taxes” against specific individuals.³⁹

Springer’s arguments or combinations thereof, based on purported lack of compliance with the PRA, have been addressed repeatedly by the Tax Court, the Courts of Appeals for most of the other circuits, and numerous District Courts.⁴⁰ “Although the courts have considered numerous and different arguments and have stated various reasons for their conclusions, every court that has considered the argument that the PRA in some way relieves taxpayers of their duty to file income tax returns has rejected it.”⁴¹ Therefore, Springer’s claims regarding an invalid

³⁸ *Johnston v. United States*, 1990 WL 152338, *3 (1st Cir. 1990) (finding the OMB control number printed on the Form 1040, 1545-0074, was correctly assigned according to 26 C.F.R. §602.101, which assigned that control number to the filing of tax returns and the payment of taxes under 26 C.F.R. §§ 1.6012-1, 1.6151-1).

³⁹ *Id.* citing (*Cameron v. IRS*, 593 F. Supp. 1540, 1556 (N.D.Ind.1984), *aff’d*, 773 F.2d 126 (7th Cir.1985)).

⁴⁰ *Aldrich v. Commissioner*, 1993 WL 244916 (U.S. Tax Ct. 1993).

⁴¹ *Id.*; see also *James v. United States*, 970 F.2d 750 (10th Cir.1992) (Lack of an OMB number on IRS notices and forms does not violate the PRA); *United States v. Dawes*, 951 F.2d 1189 (10th Cir.1991) (Tax regulations and instruction booklets are not information collection requests and are not required to carry OMB numbers); *United States v. Collins*, 920 F.2d 619 (10th Cir.1990) (Defendant's argument that Forms 1040 lacked expiration dates and, therefore, failed to comply with PRA is legally frivolous); *Lonsdale v. United States*, 919 F.2d 1440 (10th

OMB number are invalid and should be dismissed.

B. IRS Authority

In Springer's final category of "causes for judgment," he contends that the IRS does not have authority to impose penalties related to Form 1040. He cites three irrelevant cases to support his frivolous claim.⁴² Pursuant to I.R.C. §§ 7801 and 7803, the Secretary of Treasury has full authority to administer and enforce the internal revenue laws. The Secretary and the IRS have the clear authority to impose the statutory penalties related to Form 1040 that are found in the Internal Revenue Code.⁴³

The *Lonsdale* court dismissed a similar frivolous claim involving the IRS's enforcement authority.⁴⁴ The plaintiff argued that the IRS lacked the ability to impose penalties because the

Cir.1990) (Alleged failure to comply with the PRA provides no basis for avoiding the levies imposed on the taxpayers' assets); *Salberg v. United States*, 969 F.2d 379 (7th Cir.1992) (Failure to display an expiration date on Form 1040 does not violate the PRA; even if the PRA requires an expiration date, designation of applicable year on tax return is sufficient to satisfy any expiration date requirement; statutes are not subject to the PRA; regulations and the instruction books promulgated by the IRS are not within the scope of the PRA); *United States v. Ryan*, 969 F.2d 238 (7th Cir.1992) (PRA is not applicable to instruction booklets); *United States v. Holden*, 963 F.2d 1114 (8th Cir.1992) (Instruction booklets are not required to display an OMB number); *United States v. Neff*, 954 F.2d 698 (11th Cir.1992) (Congress created duty to file return in section 6012(a), and nowhere did Congress condition this duty on any Treasury regulation); *United States v. Kerwin*, 945 F.2d 92 (5th Cir.1991) (PRA does not apply to the statutory requirement that a taxpayer must file a return); *United States v. Wunder*, 919 F.2d 34 (6th Cir.1990) (Regulations do not need OMB control number because the requirement to file a tax return is mandated by statute and not by regulation; the PRA does not apply to the statutory requirement, but only to the forms themselves, which contained the appropriate numbers); *McDonald v. Commissioner*, 1992 WL 245519 (U.S. Tax Ct. 1992).

⁴² Compl. ¶ 77.

⁴³ *Young v. Internal Revenue Service*, 596 F. Supp. 141 (N.D. Ind. 1984).

⁴⁴ *Lonsdale v. United States*, 919 F.2d 1440, 1444 (10th Cir. 1990).

relevant IRS forms, such as Form 1040, did not have an OMB number.⁴⁵ The court disposed of plaintiff's claim by finding that the PRA, pursuant to 44 U.S.C. § 3518(c)(1)(B)(ii), "did not apply to the collection of information ... during the conduct of ... an administrative action or investigation involving an agency against specific individuals or entities."⁴⁶ Thus the court held that the PRA is inapplicable to "information collection request" forms issued during an investigation against an individual to determine his or her tax liability.⁴⁷

CONCLUSION

For the foregoing reasons, the complaint should be dismissed for lack of subject matter jurisdiction or in the alternative for failure to state a claim upon which relief could be granted.

Dated this 14th day of April, 2006.

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⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing **DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT** was made on this 14th day of April 2006, by mailing a true and correct copy thereof by first-class mail, postage prepaid, to the following non-ECF party:

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