

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 OPPOSITION TO
PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Lindsey K. Springer filed this action for injunctive relief in connection with his effort to enjoin the Internal Revenue Service from imposing civil and criminal penalties related to his federal income tax returns because “OMB # 1545-0074 ...is clearly an outlaw form and a bootleg request.”¹ This case is third in a series of cases Springer has filed in this Court and in the Western District of Oklahoma in response to the IRS efforts to collect his unpaid 1990-1995 federal income tax liabilities and the section 66773(a)(1) penalty imposed by the Tax Court.

We moved to dismiss this action for lack of subject matter jurisdiction on April 14, 2006. Springer is not entitled to preliminary relief under Fed. R. Civ. P. 65 or any provision of the Internal Revenue Code (26 U.S.C.) (“IRC”) because this Court lacks subject matter jurisdiction over his complaint. Furthermore, the Anti-Injunction Act, IRC § 7421(a), expressly forbids suits to enjoin the assessment or collection of federal taxes, and none of the statutory or judicial

¹ Preliminary Injunction Motion, p. 1.

exceptions to the Act apply to this case. Lastly, Springer's claims regarding Office of Management and Budget ("OMB") numbers are frivolous and fail to state a cause of action. Accordingly, Springer's motion for a preliminary injunction should be denied.

STATEMENT OF THE CASE

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

3. The Tax Court entered an order granting the Commissioner's motion to dismiss and deciding 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

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

³ *Id.*

⁴ *Id.*

1990-1995 federal income tax liabilities.⁵

5. In April 2005 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 District Court for 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 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

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at *4.

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.

ARGUMENT

I. THIS COURT LACKS SUBJECT MATTER JURISDICTION 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.” The Anti-Injunction Act precludes this Court from exercising jurisdiction over any action which seeks to enjoin the collection of taxes.¹⁰ The Anti-Injunction Act provides certain exceptions to its application. However, none of the exceptions to the Anti-Injunction Act apply here.

The Anti-Injunction Act bars suits, such as this one, brought simply to delay or restrain

⁹ *Springer v. United States*, 2005 WL 2467775 (W.D. Okla.) at *3.

¹⁰ 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).

the assessment and collection of tax.¹¹ Because this Court lacks jurisdiction over this action, plaintiff's motion for a preliminary injunction should be denied.

B. Sovereign Immunity is not Waived for this Action

As discussed in the United States' motion to dismiss, plaintiff has not identified a waiver of sovereign immunity that would allow him to proceed with the instant action for injunctive relief. In the instant action, Springer cites 28 U.S.C. §§ 1331, 2201 and 5 U.S.C. § 702 as the basis for jurisdiction in this matter.¹² None of these statutes waive sovereign immunity for Springer's claims. Therefore, the Court lacks jurisdiction to hear this matter and must dismiss this preliminary injunction motion and the underlying complaint.

II. Springer Cannot Establish the Required Preliminary Injunction Elements

Springer has not established the requirements for a preliminary injunction. A party seeking a preliminary injunction must show (1) a substantial likelihood of success on the merits; (2) irreparable injury to the movant in the absence of an injunction; (3) that the threatened injury to the movant outweighs the injury to the party opposing the injunction; and (4) that the injunction would not be adverse to the public interest.¹³ Springer has not shown that irreparable harm would result if an injunction is not granted. Nor has he shown that he is likely to succeed on the merits, since he has failed to show that the Court has subject matter jurisdiction to decide this matter and has failed to state a viable cause of action.

Springer's claims in the instant matter are difficult to comprehend, but it appears his

¹¹ *Bob Jones University v. Simon*, 416 U.S. 725, 736 (1974).

¹² Compl. ¶ 2.

¹³ *Utah Licensed Beverage Ass'n v. Leavitt*, 256 F.3d 1061, 1065-66 (10th Cir. 2001).

claim is that neither he nor anyone else is required to file a Form 1040 income tax return, because the form does not satisfy the requirements of the Paperwork Reduction Act (“PRA”) and is invalid. As set out in more detail in the United States’ motion to dismiss, the PRA does not excuse or exempt Springer from the filing of income tax returns or payment of income taxes. Courts have repeatedly and unanimously confirmed that personal income tax is validly imposed under the Internal Revenue Code on United States citizens.¹⁴

Springer complaint fails to state a cause of action and as set forth within the United States’ motion to dismiss his complaint should dismissed. Therefore, Springer cannot show that he will likely succeed on the merits in this matter.

¹⁴ *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 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).

CONCLUSION

For the foregoing reasons, the motion for a preliminary injunction should be denied.

Dated this 14th day of April, 2006.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing **UNITED STATES' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** 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:

Mr. Lindsey K. Springer
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