

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH A. EVANS : CIVIL ACTION
 :
 v. :
 :
 UNITED STATES OF AMERICA : No. 01-457

MEMORANDUM AND ORDER

J. M. KELLY, J. **JUNE** , **2001**

Presently before the Court are cross-motions for Summary Judgment filed by the Plaintiff, Kenneth A. Evans ("Evans"), and the Defendant, United States Of America ("United States"). Evans filed suit in this Court alleging that he is entitled to recover from the United States a tax refund of \$12,322.58. Evans contends that he overpaid his income taxes for the 1999 tax year. Evans seeks return of his entire 1999 income tax payment because he claims that no legal authority requires him to file an income tax return or pay income taxes. The United States, through the Internal Revenue Service ("IRS"), has refused to comply with Evans' request for a full refund. Both parties now seek summary judgment as a matter of law pursuant to Federal Rule of Civil Procedure 56. For the following reasons, the Defendant's Motion for Summary Judgment is granted and the Plaintiff's Motion for Summary Judgment is denied.

I. BACKGROUND

The parties are in general agreement regarding the underlying facts of this case. Because there are no issues of material fact, judgment can be rendered as a matter of law. The facts of this case are as follows.

Evans, a citizen of the United States and resident of Pennsylvania, earned in excess of \$62,000.00 in wages during the 1999 tax year. In 1999, Evans' employer withheld from the his salary a total of \$9,422.58 and forwarded that sum to the IRS. In April of 2000, Evans sent an additional \$2,900.00 to the IRS to be applied to his 1999 income taxes. Along with this additional payment, Evans enclosed a letter requesting a refund of all money held by the IRS in payment of his 1999 income taxes.

Evans' letter to the IRS claimed that the filing of an income tax return constituted a voluntary waiver of one's Fifth Amendment right against self-incrimination. Evans claimed he no longer wished to waive his Fifth Amendment right by filing a return. He requested the IRS provide him with instructions on how to file an income tax return without voluntarily waiving his Fifth Amendment right and to provide him with the specific law that required the filing of an income tax return. Also, Evans attached a letter from an attorney that explained the "voluntary nature of filing an income tax return" and made various arguments for the proposition that the United States has no authority to

tax the income of individuals. The IRS did not respond to Evans' requests and did not refund any of his 1999 income taxes.

Proceeding pro se, Evans filed suit in this Court against the United States seeking judgment in the amount of \$12,322.58, the amount held by the United States in payment of Evans' 1999 income taxes. Both parties filed Motions for Summary Judgment, which the Court will now consider.

II. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 56, a court must grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The movant bears the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the movant fails to meet this burden under Rule 56(c), its motion must be denied. If the movant adequately supports its motion, however, the burden shifts to the nonmoving party to defend the motion. To satisfy this burden, the nonmovant must go beyond the mere pleadings by presenting evidence through affidavits, depositions or admissions on file to show that a genuine issue of fact for trial does exist. Id. at 324; Fed. R. Civ. P. 56(e). An issue is

considered genuine when, in light of the nonmovant's burden of proof at trial, the nonmovant produces evidence such that a reasonable jury could return a verdict against the moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). When deciding whether a genuine issue of fact exists, the court is to believe the evidence of the nonmovant, and must draw all reasonable inferences in the light most favorable to the nonmovant. Id. at 255. Moreover, a court must not consider the credibility or weight of the evidence presented, even if the quantity of the moving party's evidence far outweighs that of the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

If the nonmoving party meets this burden, the motion must be denied. If the nonmoving party fails to satisfy its burden, however, the court must enter summary judgment against it on any issue on which that party will bear the burden of proof at trial. Celotex, 477 U.S. at 322-23.

That the parties file cross-motions for summary judgment under Rule 56(c) does not necessarily make summary judgment appropriate. Reading Tube Corp. v. Employers Ins. Of Wausau, 944 F. Supp. 398, 401 (E.D. Pa. 1996). In such a situation, "each

side essentially contends that there are no issues of material fact from the point of view of that party." Bencivenga v. Western Pa. Teamsters, 763 F.2d 574, 576 n.2 (3rd Cir. 1985). Because each side therefore bears the burden of establishing that no genuine issue of material fact exists, "the court must consider the motions separately." Id. (citing Rains v. Cascade Indus., Inc., 402 F.2d 241, 245 (3rd. Cir. 1968)).

III. DISCUSSION

Evans advances three arguments in support of his position that he is entitled to an income tax refund. First, Evans claims that no legal authority requires him to pay income taxes on his wages. Second, Evans contends that any requirement that he file an income tax return would violate his rights under the Fifth Amendment to the United States Constitution, which protects against self-incrimination. Finally, Evans argues that the Sixteenth Amendment to the United States Constitution does not grant the United States the authority to place a direct tax upon his wages because such a tax would be an unconstitutional direct tax that would need to be apportioned.

The United States claims that the "variance doctrine" limits the arguments that Evans may litigate before the Court. The United States contends that the Court can only hear Evans' arguments that were set forth in his original refund claim. The

Court will now discuss the arguments of the parties.

A. The Variance Doctrine

As a preliminary matter, the United States argues that the Court is barred from hearing some of Evans' arguments concerning his tax liability for 1999. Specifically, the United States contends that the Court may only hear Evans' argument that he is not required to file a tax return. The United States bases its claim on the "variance doctrine," which bars a taxpayer from litigating in the courts a basis for a refund that was not originally identified in the taxpayer's administrative claim. See Real Estate-Land Title & Trust Co. v. United States, 309 U.S. 13, 17-18 (1940); Bank of New York v. United States, 526 F.2d 1012, 1019 (3d Cir. 1975); Scott Paper Co. v. United States, 943 F.Supp. 489, 493 (E.D. Pa. 1996). The aim of the doctrine is to facilitate administrative determination of refund claims and to restrict litigation to issues which the IRS has considered and is prepared to defend in court. Id.

A strict application of the variance doctrine would bar Evans from litigating new grounds of recovery. Evans' refund claim to the IRS only explicitly set forth the arguments that he was not required to file a tax return and that any requirement would violate his Fifth Amendment rights. The Court will address Evans' Sixteenth Amendment arguments, however, because they were mentioned in the letter from the attorney that Evans attached to

his refund claim. In addition, the Court will give Evans some latitude because he is proceeding pro se and because many of his arguments are related. Moreover, the Court feels that because these types of tax protest claims have frequently arisen in recent years, a comprehensive discussion of the law surrounding the requirement to file income tax returns is needed.

B. The Requirement to File An Income Tax Return

Evans contends that no legal authority requires him to file a tax return. The law requires, however, that "returns with respect to income taxes under subtitle A shall be made by . . . every individual having for the taxable year gross income which equals or exceeds the exemption amount. . . ." 26 U.S.C. § 6012(a)(1)(A) (1994). The language of this statute is not unconstitutionally vague and clearly specifies who is to file tax returns. United States v. Moore, 692 F.2d 95, 96 (10th Cir. 1979). The statute undeniably requires that every individual who earns a threshold level of gross income must file a tax return. See United States v. Pottorf, 769 F.Supp. 1176, 1183 (D. Kan. 1991).

The United States has demonstrated that Evans clearly met the exemption amount by earning wages in excess of \$62,000 during the 1999 tax year. Evans has not argued to the contrary. Thus, Evans' argument that he is not required to file an income tax return lacks any merit. According to the plain language of

Section 6012, Evans is required to file a income tax return for the 1999 tax year.

C. Evans' Fifth Amendment Objection

Evans argues that any legal authority requiring him to file an income tax return would violate his Fifth Amendment protection against self incrimination. This contention has been uniformly rejected. The Fifth Amendment states "no person shall be . . . compelled in any criminal case to be a witness against himself. . . ." U.S. Const. amend. V. Generally, this Amendment protects individuals from giving compelled self-incriminating testimony.

It is well established that requiring individuals to file federal income tax returns does not violate their Fifth Amendment rights against self-incrimination. See United States v. Sullivan, 274 U.S. 259 (1927). "There is no Fifth Amendment privilege negating one's duty to file a tax return." United States v. Edelson, 604 F.2d 232, 234 (3rd Cir. 1979). Evans' argument is contrary to established law. The requirement to file an income tax return and pay income taxes does not infringe upon Evans' Fifth Amendment rights.

Evans relies on Garner v. United States, 424 U.S. 648 (1976), to support his contention that his Fifth Amendment rights would be violated if he were required to file an income tax return. Evans' reliance on this case is misguided. In Garner, a taxpayer disclosed his occupation as a gambler on his tax return

and was prosecuted for crimes related to illegal gambling. The Court recognized an individual's Fifth Amendment privilege to refuse to answer certain questions on a tax return if the objections are specifically made on the tax return and each objection is justified by a fear of self-incrimination. Id. The Garner Court emphasized that their holding did not disturb the holding of Sullivan, that found that the privilege against self-incrimination is not a defense for failing to file a tax return. Id.

In this case, Evans is making a blanket invocation of his Fifth Amendment privilege in an attempt to convince the Court that any legal authority requiring him to file a tax return is unconstitutional. This argument, and Evans' reliance on Garner to support it, is baseless. The Fifth Amendment privilege may be invoked by a taxpayer who refuses to respond to specific questions included in a tax return. An individual who uses the Fifth Amendment in this manner, however, should confine that use to "specific objections to particular questions on the return for which a valid claim of privilege exists." Edelson, 604 F.2d at 234. "The Fifth Amendment may not be used to draw a 'conjurer's circle' around the duty to file a tax return." Id. In the present case, Evans makes no objections to specific questions on the tax return but claims any authority requiring him to file a return would violate the Fifth Amendment. This assertion is an

over-extension of Garner. The statutory and legal authority requiring Evans to file an income tax return and pay income taxes does not violate his Fifth Amendment rights.

C. The Power to Tax Wages

Evans argues that the Sixteenth Amendment does not grant the United States the authority to place a direct tax upon his wages because such a tax is an unconstitutional direct tax that must be apportioned. Although Evans relies on a number of Supreme Court cases to support his position, he has misinterpreted their meanings. The Sixteenth Amendment eliminated the necessity for apportionment among states of taxes on income. The language of the Amendment is clear and specific: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." U.S. Const. amend. XVI.

Evans relies upon Eisner v. Macomber, 252 U.S. 189 (1920), as support for his position that a direct tax on wages would violate the requirement of apportionment. To the contrary, Eisner held only that a stock dividend made to shareholders in their proportionate interests against profits accumulated by the corporation should not be considered income. Id. at 219. The Court found that a tax on such dividends was a tax on capital

increase and not on income. Id. at 213. Thus, the Court found that the Sixteenth Amendment did not grant the United States the authority to tax, without apportionment, a stock dividend made lawfully and in good faith. Id. at 219. Because the Eisner case only dealt with the treatment of stock dividends as income, it is inapposite to the instant case.

Evans also argues that Stanton v. Baltic Mining Co., 240 U.S. 103 (1916), declares that the Sixteenth Amendment does not permit the United States to place a direct tax on wages because such a tax would violate the requirement of apportionment. This reading of the Stanton case is erroneous. In fact, the Stanton case did clarify the purpose of the Sixteenth Amendment. The Court simply found that the provisions of the Sixteenth Amendment were not a new grant of power to tax but merely a mechanism to eliminate the apportionment requirement for income taxes, regardless of the source of the income. Id. at 112-13.

The position of the Stanton court is clarified in Brushaber v. Union Pac. R.R. Co., 240 U.S. 1 (1916). The Brushaber Court stated that "the authority conferred upon Congress by § 8 of Article I to lay and collect taxes, duties, imposts and excises is exhaustive and embraces every conceivable power of taxation. . . ." Id. at 12. "[T]he whole purpose of the [Sixteenth] Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the

income was derived." Id. at 18. Stanton and Brushaber indicate that the Sixteenth Amendment made clear that income taxes, regardless of the source of the income, are not subject to any apportionment requirement. Thus, Evans' contention that the United States does not have the authority to tax his wages is meritless.

Federal courts have routinely rejected the argument that the United States has no authority to place a direct tax on wages. It is well established that wages are taxable income within the meaning of the Sixteenth Amendment and that the direct tax on wages is not subject to the apportionment requirement according to the plain language of the Amendment. United States v. Connor, 898 F.2d 942, 943-44 (3rd Cir. 1990) (rejecting argument that wages are not taxable income); United States v. Rhodes, 921 F. Supp. 261, 265 (M.D. Pa. 1996) ("The Sixteenth Amendment was passed specifically to eliminate the need to subject any income tax to the requirement of apportionment."). It is quite clear that Evans' argument that the United States has no authority to place a direct tax on his wages is contrary to settled law and therefore without merit.

In summary, this Court rejects all of Evans' arguments concerning his income tax liability for the 1999 tax year. Federal Law requires Evans file an income tax return and pay income taxes, and these requirements are not unconstitutional.

Accordingly, the Court will enter summary judgment against Evans and in favor of the United States.

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O R D E R

AND NOW, this day of June, 2001, in consideration of the Motion for Summary Judgment filed by the Plaintiff, Kenneth A. Evans (Doc. No. 3), and the Motion for Summary Judgment filed by the Defendant, United States of America (Doc. No. 9), and the Responses thereto filed by the parties, it is **ORDERED** that:

1. Motion for Summary Judgment by Plaintiff, Kenneth A. Evans, is **DENIED**.
2. Motion for Summary Judgment by Defendant, United States of America, is **GRANTED**. Judgment is **ENTERED** in favor of the Defendant, and against the Plaintiff, on all Counts of the

Plaintiff's Complaint.

BY THE COURT:

JAMES MCGIRR KELLY, J.

