

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

HUMES HOUSTON HART : CIVIL ACTION  
v. :  
UNITED STATES : No. 96-5639  
INTERNAL REVENUE SERVICE :  
COMMISSIONER OF INTERNAL REVENUE :

Ludwig, J.

May \_\_, 1998

**O R D E R - M E M O R A N D U M**

And now, this \_\_\_ day of May, 1998 the motions of plaintiff Humes Houston Hart are ruled on as follows:

1. "Motion to Reconsider Order of April 16, 1998" filed April 23, 1998 - denied. In support of his motion, plaintiff presents a letter dated April 28, 1998 from the I.R.S. as "newly discovered evidence." See "Plaintiff's Response to Defendant's Response to Plaintiff's Motion to Reconsider Order of April 16, 1998," Exhibit A. That letter is a response to plaintiff's "Freedom of Information Act and Privacy Act request," dated October 26, 1997. Although plaintiff submits the letter as evidence that the I.R.S. is in violation of its Freedom of Information Act and Privacy Act duties, the letter demonstrates that the I.R.S. complied with plaintiff's request - albeit finding no responsive documents. Therefore this "newly discovered evidence" does not support plaintiff's request for reconsideration.

Aside from this letter, plaintiff has not set forth any manifest error or change in the law necessary to support such a

motion. See Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied 476 U.S. 1171, 106 S. Ct. 2895, 90 L.Ed. 2d. 982 (1986); Cohen v. Austin, 869 F. Supp. 320, 321 (E.D. Pa. 1994). Rather, in his "Memorandum in Support" of his motion, plaintiff makes further argument that the I.R.S. intentionally withheld information relevant to the determination of his 1991 tax liability.<sup>1</sup>

This argument has already been considered and ruled upon. See Memorandum of November 21, 1997 and Memorandum of April 16, 1998. In sum, plaintiff's submissions assert that the I.R.S. violated its duty to maintain and permit him access to his records, 5 U.S.C. § 552a(d)(1).<sup>2</sup> Nothing in the record supports this argument in any way. First, plaintiff admits that upon his request in August 1996, the entire "Master File" maintained by the I.R.S. for the 1991 tax year was produced to him.<sup>3</sup> Plaintiff's motion, ¶

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<sup>1</sup> As noted previously, the I.R.S. had originally assessed plaintiff taxes due that turned out to be in error. The I.R.S. corrected its error, and has since then refunded plaintiff \$190.

<sup>2</sup> Plaintiff invokes the Privacy Act, 5 U.S.C. 552a et seq. This was the only claim remaining in plaintiff's amended complaint after the November 21, 1997 order dismissing plaintiff's complaint.

<sup>3</sup> Plaintiff has argued that one document was missing from a numerical sequence of his 1991 tax file. Plaintiff's motion at ¶ 48. Plaintiff had previously argued that this document must have been the contested "Fairmont Mortgage Company" document, upon which he presumed his erroneous 1991 liability was based. In response, the I.R.S., upon request of the Court, searched its files and certified that no such document existed in plaintiff's file or was used in any assessment of his tax liabilities. See Memorandum of November 21, 1997. Since then,  
**(continued...)**

48. Second, as noted, plaintiff submitted a letter demonstrating that the I.R.S. complied with his October, 1997 requests. Finally, plaintiff states in an "affidavit" attached to his motion to reconsider that the 1991 file produced to him contains no documentation to support the I.R.S.'s position that the original erroneous assessment was derived from two sources - a form 1099-B from First Union Brokerage Service and a form 1099-R from U.S. Trust Company. However, the I.R.S. attached this documentation to its motion to dismiss. Therefore, plaintiff's argument that the I.R.S. is intentionally withholding the "source documents" that explain the original erroneous assessment was belied by defendants' submission of July 24, 1997. Indeed, the only outstanding issue of fact after November, 1997 concerned the possible existence of another document - the "Fairmont Mortgage Company" document - that plaintiff thought may have contributed to the erroneous assessment. As noted in the April 16, 1998 memorandum, plaintiff did not submit any evidence to support that theory, and that issue was closed.

In total, plaintiff has submitted no evidence that the I.R.S. has not complied with its duties to plaintiff. Further,

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<sup>3</sup>(...continued)

plaintiff has been given numerous chances to submit evidence to rebut that declaration, but submitted no evidence beyond conjecture. See Memorandum of April 16, 1998. Then, summary judgment was entered against him on the issue under the Privacy Act. Id. Plaintiff now argues that whatever the source of the missing document, the fact that one document is missing is evidence that the I.R.S. is withholding something from him. As noted, plaintiff has offered nothing besides conjecture to support this position, and can show no current effect of the original erroneous 1991 liability determination - now corrected.

even if plaintiff had done so, there is no remedy that this court could award because the I.R.S. has already corrected its original erroneous assessment of plaintiff's tax liability and has refunded plaintiff \$190 for that tax year. See Memorandum of April 16, 1998. This is what is meant when it is said that the issue is "moot."

2. "Motion to Amend Complaint to Conform to Evidence", filed May 5, 1998 - denied. The Privacy Act cause of action that plaintiff wishes to assert anew has already been pleaded, see amended complaint ¶ 115, considered, and rejected.

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Edmund V. Ludwig, J.