

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLORADO**

Civil Action No. 1:18-cv-02273-PAB-NRN

JEFFREY T. MAEHR,

Plaintiff,

v.

UNITED STATES,

Respondent.

**UNITED STATES' RESPONSE TO PLAINTIFF'S
"ADDENDUM TO MOTION FOR SUMMONS OF A GRAND JURY" (Dkt. 79)**

The United States, the proper party acting for the IRS, hereby responds to plaintiff Jeffrey Maehr's "Addendum to Motion for Summons of a Grand Jury". (Dkt. 79). The filing appears to be a supplement to earlier motions. The United States respectfully submits that the underlying motions should still be denied.

BACKGROUND

This is a civil action, not a criminal proceeding. The gist of the operative complaint is that the government has improperly assessed income taxes against Jeffrey Maehr for the 2003 through 2006 tax years; that Mr. Maehr has not had a proper opportunity to challenge the assessments; and that the government should be required to produce various documents Mr.

Maehr asserts it has in its possession that Mr. Maehr believes would help him establish the falsity of the assessments.¹ (*See* Dkt. 70 and Dkt. 78)².

The instant “Addendum” relates to Mr. Maehr’s earlier “Motion for Summons of [a] Grand Jury” to investigate the IRS. (Dkt. 24). The Magistrate issued a Report recommending that the motion be denied two days after Mr. Maehr filed it. (Dkt. 26). Mr. Maehr filed a motion for reconsideration. (Dkt. 29). The United States responded, and argued that whether the motion was treated as a request for reconsideration or as an objection to the Magistrate’s Report, the outcome was the same: the motion should be denied. (Dkt. 29).

The request to seat a criminal grand jury is premised on the theory that if the assessments against Mr. Maehr are false and fraudulent, the IRS probably made fraudulent assessments against other taxpayers. Mr. Maehr asserts that “ALL Americans” need assurance that the IRS is not engaging in crimes. (*See* Dkt. 79 at 3). It appears Mr. Maehr has recently spoken with a “retired forensic and accounting expert.” (*See* Dkt. 79 at 2). Based on discussions with this individual, Mr. Maehr appears to believe that the government possesses “Individual Master File (IMF) evidence” that would help Mr. Maehr prove criminal conduct or other wrongdoing. (*See*

¹ Previous iterations of the complaint also addressed 26 U.S.C. § 7345, a relatively new statute under which taxpayers with certain substantial tax debts may lose their passports. Those claims are no longer part of this suit. (*See* Dkt. 77 at 2 (minute order from status conference discussing case posture, and dismissing passport claims from this suit)).

² At a May 16, 2019, status hearing, the Court determined that the “Amended Brief” Mr. Maehr filed at Dkt. 70 would be the operative complaint. Mr. Maehr has since filed a supplement. (Dkt. 78.) Given that Mr. Maehr is operating *pro se*, the United States is construing the two documents as one pleading for purposes of this response.

id. ¶ 4; *see also* Dkt. 78 at 1). Mr. Maehr has filed this Addendum, along with a separate “Addendum” to the operative pleading (*see* Dkt. 78) to bring this “evidence” to the Court’s attention. He also makes various assertions to the effect that the IRS is not a properly authorized government agency, that it is improperly preventing him from accessing information, and that it is otherwise acting in a “criminal manner.” (*See* Dkt. 79 at 2-3).

ARGUMENT

This Addendum does not save the underlying motion. For the reasons discussed in the Magistrate’s Report and the United States’ prior filings and elaborated on below, the Court should not convene a grand jury to investigate Mr. Maehr’s claims.

First, as the Report correctly noted, there is no requirement that the Court convene a grand jury to investigate the IRS’s basic tax collection activities, because those activities are not criminal acts. (*See* Dkt. 26 at 2 (quoting the Constitutional amendment authorizing Congress “to lay and collect taxes on incomes, from whatever source derived...”). The IRS may lawfully assess and collect income taxes, and courts have repeatedly found claims to the contrary to be frivolous. *See, e.g., United States v. Springer*, 427 F. App’x 650, 652 (10th Cir. 2011); *see also, e.g., Richmond v. Commissioner*, 474 F. App’x 754 (10th Cir. 2012) (“This court has reiterated that the federal government has the power to impose an income tax on individuals and noted that ‘gross income’ includes ‘all income from whatever source derived.’”) (citations omitted). Mr. Maehr cannot compel the Court to encroach upon the power of another branch of government for carrying out its lawful duties. *See Simpson v. Reno*, 902 F. Supp. 254, 257-58 (D.D.C. 1995) (rejecting demand for Court to convene grand jury).

Second, even if Mr. Maehr could claim the IRS had engaged in criminal activity outside its lawful duties, he has not stated a cognizable claim for relief in this civil action. Criminal statutes must be enforced by the proper authorities, and private citizens have no general right to institute criminal proceedings. *See, e.g., Kaplan v. Archer*, 2012 U.S. Dist. LEXIS 111815, at *49-50 (D. Colo. July 3, 2012) (citations omitted); *see also* 18 U.S.C. § 3332 (a) (providing that alleged offenses may be brought to a grand jury’s attention “by the court or by any attorney appearing on behalf of the United States”, not private citizens). Mr. Maehr cannot commandeer the criminal justice system to further his disputes with the IRS.

Third, and more generally, Mr. Maehr’s demand that a grand jury investigate the IRS can only be read as a suit against the government. As a general matter, the United States cannot be sued unless it has explicitly agreed to waive its sovereign immunity. *See Merida Delgado v. Gonzales*, 428 F.3d 916, 919 (10th Cir. 2005). Where Congress has not waived the United States’ immunity, the court lacks subject matter jurisdiction. *See, e.g., Price v. United States*, 7 F.3d 968, 969-70 (10th Cir. 1993). Mr. Maehr initially brought this suit to challenge the IRS’s actions under the tax debt certification statute, 26 U.S.C. § 7345. (While § 7345(e) of that statute allows for limited judicial review of certifications, it does not authorize a broad-based attack on the IRS’s general ability to collect taxes.) He is no longer addressing the passport claims in this suit (*see* Dkt. 77 at 2), and he has not alleged any proper basis for jurisdiction. Indeed, both the Anti-Injunction Act and the Declaratory Injunction Act forbid suits to restrain the collection of taxes, and Mr. Maehr has not shown that any of the narrow exceptions to these principles applies. *See* 26 U.S.C. §§ 7421(a) and 2201(a); *see also Ambort v. United States*, 392 F.3d 1138, 1140 (10th Cir. 2004).

WHEREFORE, for the reasons outlined in the Report and Recommendation (Dkt. 26) and above, the United States respectfully asks the Court to deny the initial request to summons a grand jury (Dkt. 24), and the pending Motion for Reconsideration (Dkt. 29), and to disregard the instant Addendum. (Dkt. 79).

DATED: May 30, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing is made this 30th day of May, 2019, as follows:

By U.S. mail:

Jeffrey T. Maehr
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Plaintiff

/s/ E. Carmen Ramirez
E. Carmen Ramirez
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