

**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.

INTERNAL REVENUE SERVICE,

Respondent.

**UNITED STATES' RESPONSE TO
PLAINTIFF'S MOTION FOR RECONSIDERATION OF
MOTION FOR SUMMONS OF A GRAND JURY
BASED ON STANDING FEDERAL LAW ON GRAND JURY CONTACT (Dkt. 29)**

The United States, the proper party acting for the IRS, hereby responds to plaintiff Jeffrey Maehr's "Motion for Reconsideration" on the Court's January 4, 2019, Report and Recommendation. (Dkt. 26 (the "Report"); Dkt. 29 (motion)). The United States respectfully submits that the motion for reconsideration should be denied, and that the Report and Recommendation should be upheld.

BACKGROUND

This filing stems from pro se plaintiff Jeffrey Maehr's January 2, 2019, "Motion for Summons of [a] Grand Jury" to investigate the IRS. (Dkt. 24). The motion is far beyond the scope of the operative complaint in this civil action. (Dkt. 14). The complaint concerns a specific federal statute designed to facilitate the collection of taxes by allowing the State

Department to revoke (or decline to issue) passports to taxpayers with substantial tax debts. *See* 26 U.S.C. § 7345, “Revocation or denial of passport in case of certain tax delinquencies.”

However, the motion asked the Court to convene a grand jury to investigate the IRS for a far broader array of supposed wrongs, including “taxing private American’s [sic] wages, salary, and compensation for services as ‘income’ when it is not lawful income”, and “falsely claiming that the 16th Amendment authorizes the ‘income’ tax[.]” (Dkt. 24 at 3). He also claims the IRS wrongfully levied on income he received from veterans’ benefits (*id.*), an issue he raised, and lost, in an earlier lawsuit he brought in this District. *See Maehr v. Koskinen et al.*, No. 1:16-cv-00512-PAB-MJW, Dkt. 71 (order granting United States’ motion to dismiss challenge to levy) *and* Dkt. 72 (Final Judgment against Mr. Maehr).

On January 4, 2019, just two days after Mr. Maehr’s request was docketed and before the United States had even appeared, the assigned Magistrate issued a Report recommending that the request be denied. (Dkt. 26). Due to the recent lapse in federal appropriations to the Department of Justice and IRS, the United States did not file a response to Mr. Maehr’s request, or an immediate response to the Report. Instead, on January 10, 2019, the United States asked that the entire matter be stayed during the lapse. (Dkt. 27). The Court granted the stay request the same day. (Dkt. 28). Mr. Maehr filed his “motion for reconsideration” the following day, while the stay was in effect (but likely before he had received notice of it). (Dkt. 29). After appropriations resumed, the Court gave the United States until February 22, 2019, to respond. (Dkt. 27).

ARGUMENT

Whether the “motion for reconsideration” is deemed an objection to the Report or a separate motion, the outcome should be the same: 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 by collecting income taxes, 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).

Third, and more generally, Mr. Maehr’s demand that a grand jury investigate the IRS can only be read as an attack on the United States 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 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.

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).

DATED: February 22, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing is made this 22nd day of February, 2019, as follows:

By U.S. mail:

Jeffrey T. Maehr
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Plaintiff

/s/ E. Carmen Ramirez
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