

No. 17-1000 T
(Chief Judge Susan G. Braden)

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

JEFFERY T. MAEHR,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

FILED
NOV. 21, 2017
U.S. COURT OF
FEDERAL CLAIMS

BRIEF IN SUPPORT OF MOTION TO DISMISS

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 17-1000 T
(Chief Judge Susan G. Braden)

JEFFREY T. MAEHR,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

BRIEF IN SUPPORT OF MOTION TO DISMISS

Pursuant to Rule 12(b) of the Rules of the United States Court of Federal Claims (“Rule(s)” or “RCFC”), defendant, the United States, by and through its counsel of record, respectfully moves this Court for an order dismissing the complaint under Rule 12(b)(1) for lack of subject matter jurisdiction, and, alternatively, under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

Plaintiff is a litigious “tax defier” who filed a petition with the Tax Court in which he disputed his income tax deficiencies and asserted numerous arguments regarding why he is not liable for federal income taxes for his tax years 2003-2006. The Tenth Circuit affirmed the Tax Court’s dismissal of his petition for failure to state a claim. Plaintiff’s attempt to re-hash the same arguments for 2003-2006 in this Court should be dismissed both because plaintiff has not met the prerequisites for filing a tax refund suit and because this Court is divested of jurisdiction,

to the extent it might have existed pursuant to I.R.C. § 6512(a).¹ Alternatively, even if the Court had jurisdiction, the complaint must be dismissed under RCFC 12(b)(6) because the claims are barred by the doctrine of *res judicata*.

BACKGROUND

The Tax Court Action

On February 11, 2011, the IRS mailed notices of deficiency for tax years 2003, 2004, 2005, and 2006 to plaintiff by certified mail. (Def.'s Ex. 1, Notices of Deficiency). On May 9, 2011, plaintiff filed a Petition with the United States Tax Court seeking redetermination of the deficiencies. (Def.'s Ex. 2, Petition). Plaintiff asserted several arguments—that the Internal Revenue Service (“IRS”) lacked standing; the Internal Revenue Code has not been enacted into “positive law”; the IRS is not a lawfully created agency, but is instead, an agency of the International Monetary Fund; plaintiff is not a taxpayer because wages are not income; Form 1040 is illegitimate because it is not imprinted with an OMB control number; and the Sixteenth Amendment does not authorize the imposition of federal income taxes on citizens of the individual states. *Maehr*, 480 F. App'x. at 922; (Def.'s Ex. 2 at A3-A39).

On June 21, 2011, the Commissioner filed a motion to dismiss plaintiff's petition (“Motion to Dismiss”) for failure to state a claim, in part because plaintiff did not provide “[c]lear and concise assignments of each and every error . . . in the determination of the deficiency or liability” under Tax Court Rule 34(b), and the facts underlying the assignments of error. (Def.'s Ex. 3, Motion to Dismiss at ¶¶ 2-3). On August 19, 2011, the Tax Court granted the Commissioner's Motion to Dismiss, dismissed plaintiff's petition, and found that plaintiff

¹ Unless otherwise noted, a section symbol (“§”) or the word “section” will refer to the Internal Revenue Code of 1986, codified in Title 26 of the United States Code, as amended and in effect during the relevant period.

owed the amounts in the notices of deficiency. (Def.'s Ex. 4, Order of Dismissal and Decision at 1-3). The court held that the petition did not comply with Rule 34, and "the statements, assertions and allegations made in the petition do not give rise to any justiciable issue." *Id.* at 1. Plaintiff filed two motions to vacate, which were both denied. (Def.'s Exs. 5, 6, Motions to Vacate); *Maehr*, 480 F. App'x. at 922. On December 8, 2011, plaintiff filed a Notice of Appeal to the United States Court of Appeals for the Tenth Circuit, raising the same issues presented to the Tax Court. *Id.* at 922; (Def.'s Ex. 7, Notice of Appeal).

On February 7, 2012, the IRS assessed the deficiencies determined by the Tax Court for tax years 2003 to 2006. (Def.'s Ex. 8, 2003 Transcript at 1); (Def.'s Ex. 9, 2004 Transcript at 1); (Def.'s Ex. 10, 2005 Transcript at 1); (Def.'s Ex. 11, 2006 Transcript at 1). As of that date, plaintiff owed an income tax deficiency of \$35,474.00 for tax year 2003; \$38,928.00 for tax year 2004; \$34,538.00 for tax year 2005; \$28,181.00 for tax year 2006; and additional penalties for failure to file and failure to pay the estimated tax. *Id.*; *Maehr v. Commissioner*, 480 F. App'x. 921, 922 (10th Cir. 2012).

Plaintiff's Appeal to the Tenth Circuit Court of Appeals

The Tenth Circuit affirmed the Tax Court's dismissal of plaintiff's petition for failure to state a claim, holding that the petition did not comply with the requirements of Tax Court Rule 34(b)(4) and (b)(5). *Id.* at 922-923. The Tenth Circuit also held that the petition contained "no valid challenges to the notice of deficiency and fail[ed] to specifically identify errors related to the determination of his income tax deficiencies," but instead raised "conclusory challenges to the constitutionality of the Internal Revenue Code and power of the Commissioner to impose income taxes." *Id.* at 923.

On September 6, 2012, Plaintiff filed a petition for writ of certiorari with the United States Supreme Court (“Supreme Court Petition”) and motion for leave *in forma pauperis*. (Def.’s Ex. 12, Supreme Court Petition). On March 18, 2013, plaintiff’s petition for writ of certiorari was denied. *Maehr v. Commissioner*, 568 U.S. 1232 (2013). Plaintiff filed a petition for rehearing, which was also denied. *Maehr v. Commissioner*, 133 S.Ct. 2384 (2013).

Plaintiff’s Suits in Other Federal Courts

Plaintiff has a long history of challenging the IRS’s authority to collect taxes, having filed at least eight petitions to quash IRS summonses in the federal district courts, all of which were dismissed. *See Maehr v. Commissioner*, 641 F. App’x 813, 816 (10th Cir. 2016) (stating that “[p]etitioner has continuously utilized the judicial system (he claims he ‘has now been in at least [twelve] courts’) to try to avoid paying his underlying tax liabilities even though the courts have repeatedly concluded that his claims are without merit”); *Maehr v. Commissioner*, No. CV 15-mc-00127-JLK-MEH, 2015 WL 5025363, at *3 (D. Colo. July 24, 2015), *aff’d*, 2016 WL 475402 (10th Cir. Feb. 8, 2016); *Maehr v. United States*, No. 8:08-CV-190, 2009 WL 2507457, at *3 (D. Neb. Aug. 13, 2009) (taxpayer’s challenge to validity of Federal income taxes was “without merit and the court will not waste time addressing these frivolous claims”); *Maehr v. United States*, No. CIV. 08-cv-02274-LTB-KLM, 2009 WL 1324239, at *3 (D. Colo. May 1, 2009) (denying petition to quash summons and noting that taxpayer had raised the same argument that had been rejected as without merit in the Western District of North Carolina); *Maehr v. United States*, No A-09-CA-097 (W.D. Tex. April 10, 2009); *Maehr v. United States*, No. C 08-80218 (N.D. Cal. April 2, 2009); *Maehr v. United States*, No. MC 08-00018-BB, 2008 WL 4617375, at *1 (D.N.M. Sept. 10, 2008); *Maehr v. United States*, No. 3:08MC3-HEH, 2008 WL 4491596, at *1 (E.D. Va. July 10, 2008); *Maehr v. United States*, No. 3:08-MC-00067-W,

2008 WL 2705605, at *2 (W.D.N.C. July 10, 2008) (taxpayer's challenge to the IRS's authority to summons information from Lending Tree, LLC, was “wholly without merit”).

Court of Federal Claims Complaint

On July 24, 2017, plaintiff filed a complaint for his tax years 2003-2006, asking the Court to order the United States “to respond to the evidence” in his Supreme Court Petition, or more specifically the following three issues:

(1) Whether the IRS has authority to directly tax wages, salaries and compensation of private Americans as “income;”

(2) Whether the IRS unlawfully levied plaintiff’s accounts because such amounts are unsubstantiated and fraudulent; and

(3) Whether the IRS has authority to tax income under the Sixteenth Amendment.² Compl. at 3-8.

Plaintiff requests a “reversal of unlawful taking, compensatory and punitive damages and/or a federal grand jury investigation.”³ Compl. ¶ 5.

ARGUMENT

I. PLAINTIFF’S COMPLAINT FAILS TO CONFER JURISDICTION ON THIS COURT.

A challenge to the United States Court of Federal Claims’ “general power to adjudicate in specific areas of substantive law . . . is properly raised by a [Rule] 12(b)(1) motion[.]” *Palmer v. United States*, 168 F.3d 1310, 1313 (Fed. Cir. 1999); *see also* RCFC 12(b)(1) (“Every defense to a claim for relief in any pleading must be asserted in the responsive pleading . . . But a party may

² Arguments 1 and 3 were raised in plaintiff’s Tax Court Petition. (Def.’s Ex. 2 at A10-A11).

³ Plaintiff requests such relief pursuant to *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 19 (1991) (holding that a jury’s punitive damages award against an insurance company in a fraud action under state law did not violate the Due Process Clause of the Fourteenth Amendment). *Pacific Mutual* is not a tax refund case, and is wholly inapplicable.

assert the following defenses by motion: (1) lack of jurisdiction over the subject matter[.]”).

“Where the court’s jurisdiction is challenged, the plaintiff bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence and by presenting competent proof.” *Ishler v. United States*, 115 Fed. Cl. 530, 534 (2014). “Should the court find that it lacks subject matter jurisdiction to decide a case on its merits, it is required either to dismiss the action as a matter of law or to transfer it to another federal court that would have jurisdiction.”

Travelers Indem. Co. v. United States, 72 Fed. Cl. 56, 59–60 (2006).

The U.S. Court of Federal Claims derives its jurisdiction from the Tucker Act, which confers jurisdiction in tax refund cases. *Cheesecake Factory Inc. v. United States*, 111 Fed. Cl. 686, 690 (2013) (citing 28 U.S.C. § 1491). In order for the Court to assert jurisdiction over a tax refund claim, a plaintiff must (1) satisfy the full payment rule; (2) timely file a tax refund claim with the IRS; and (3) provide the amount, date, and place of each payment to be refunded, as well as a copy of the refund claim. *Fry v. United States*, 72 Fed. Cl. 500, 510 (2006).

A. Plaintiff has not paid the amounts assessed for 2003-2006.

“Under the full prepayment rule, a court’s jurisdiction over tax refund claims is limited to only those claims where the taxpayer has fully paid all taxes assessed for the tax year at issue prior to the initiation of the claim.” *Simmons v. United States*, 127 Fed. Cl. 153, 159 (2016); citing *Flora v. United States*, 357 U.S. 63, 75 (1958), *aff’d on reh’g*, 362 U.S. 145 (1960). In addition, a plaintiff is required to file a refund claim with the IRS for the amount of tax at issue before filing suit. *Simmons*, 127 Fed. Cl. at 159; I.R.C. § 7422(a) (“No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax . . . until a claim for refund or credit has been duly filed with the Secretary”). *See also* RCFC 9(m) (in pleading a claim for tax refund, a party must include certain information, including a copy of the claim for

refund, the tax years for which a refund is sought, and the date and place the claim for refund was filed).

Plaintiff fails to meet these requirements. Plaintiff's tax transcripts indicate that, as of August 10, 2017, he owes taxes, interest and penalties of \$63,527.67 for tax year 2003; \$80,028.43 for tax year 2004; \$67,516.59 for tax year 2005; and \$51,213.68 for tax year 2006. (Def.'s Ex. 8, 2003 Transcript at 6); (Def.'s Ex. 9, 2004 Transcript at 4); (Def.'s Ex. 10, 2005 Transcript at 3); (Def.'s Ex. 11, 2006 Transcript at 3). In fact, plaintiff disputes that he is a "taxpayer" liable for paying taxes at all, and did not file tax returns for 2003 through 2006 because he disputes that the IRS⁴ has authority to tax "wages, salaries and compensation for services" of private Americans. (Def.'s Ex. 2, Petition at A10); Compl. at 3.

Plaintiff's complaint should therefore be dismissed because he failed to meet the prerequisites for filing a tax refund claim.

B. This Court lacks jurisdiction pursuant to Section 6512(a).

Even if plaintiff satisfied the jurisdictional prerequisites above, this Court is divested of jurisdiction under I.R.C. § 6512(a).⁵ "When a taxpayer is assessed with an income tax deficiency, he may challenge that assessment in one of two ways. One way is to pay the tax,

⁴ In addition, plaintiff failed to produce any evidence or make any allegation in his complaint that he filed a refund claim with the IRS as required by I.R.C. § 7422(a), and failed to provide a copy of a refund claim, as required by RCFC 9(m).

⁵ § 6512(a) states:

(a) Effect of petition to Tax Court.--If the Secretary has mailed to the taxpayer a notice of deficiency . . . and if the taxpayer files a petition with the Tax Court . . . no credit or refund of income tax for the same taxable year . . . to which such petition relates . . . shall be allowed or made and no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court . . .

I.R.C. § 6512(a).

request a refund from the IRS, and then file a refund suit in the Court of Federal Claims or in a district court.” *Smith v. United States*, No. 2012-5074, 2012 WL 3240738, at *3 (Fed. Cir. Aug. 10, 2012); I.R.C. § 7422(a). Alternately, the taxpayer can file a petition with the Tax Court without paying the assessment. *Id.* “[I]f a taxpayer properly files a petition with the Tax Court, he cannot later file a claim in the Court of Federal Claims or in a district court to obtain a credit or refund for the same taxable year,” except in certain limited circumstances, none of which are applicable here.⁶ *Smith*, 2012 WL 3240738, at *3; I.R.C. § 6512(a). As the Federal Circuit explained, plaintiff “chose to bring those claims before the Tax Court first, and when he did so, he put the entire matter into the hands of that Court.” *Stephanatos v. United States*, 306 F. App’x. 560, 563 (Fed. Cir. 2009) (affirming holding that Court of Federal Claims lacked jurisdiction over plaintiff’s claims for refund of taxes and penalties for 1999 and 2000 tax years because plaintiff brought those claims before the Tax Court first). *See also Beatty v. United States*, 121 Fed. Cl. 283, 286 (2015) (holding that Section 6512(a) barred Court of Federal Claims from hearing tax refund claim where plaintiff had received notices of deficiency for 1999 and 2000 and filed a petition in Tax Court for those years). “The Tax Court’s jurisdiction, once it attaches, extends to the entire subject of the correct tax for the particular year,” and the Tax Court has “exclusive jurisdiction of all claims” pertaining to those tax years.⁷ *Stephanatos v. United States*, 81 Fed.Cl. 440, 442 (2008), *aff’d*, 306 F. App’x. 560 (Fed. Cir. 2009).

⁶ None of the six exceptions listed in I.R.C. § 6512(a) apply to plaintiff.

⁷ In addition, § 7422(e) provides:

(e) Stay of proceedings.--If the Secretary prior to the hearing of a suit brought by a taxpayer in . . . the United States Court of Federal Claims . . . mails to the taxpayer a notice that a deficiency has been determined . . . [for the same tax year], the proceedings in taxpayer’s suit shall be stayed . . . If the taxpayer files a petition with the Tax Court . . . the United States Court of Federal Claims . . . shall lose jurisdiction of

Here, plaintiff received notices of deficiency for tax years 2003, 2004, 2005, and 2006, and filed a petition with the Tax Court disputing the deficiencies for those years. (Def.'s Ex. 1, Notices of Deficiency); (Def.'s Ex. 2, Petition at ¶¶ 1, 3) (indicating that plaintiff is disputing the Notices of Deficiency issued by the IRS for tax years 2003 through 2006). Thereafter, plaintiff filed a complaint in this Court attempting to allege a tax refund claim for the same years. Compl. at 5 (identifying tax years 2003, 2004, 2005 and 2006); Compl. ¶ 3, Notice of Directly Related Cases (citing plaintiff's prior actions regarding the same tax years, *Maehr v. Commissioner*, No. 10758-11 (Tax Ct. 2011), *Maehr v. Commissioner*, 480 F. App'x. 921, 922 (10th Cir. 2012)).

Pursuant to I.R.C. § 6512, the Tax Court has exclusive jurisdiction of all claims pertaining to plaintiff's 2003 through 2006 tax years, and plaintiff's complaint before this Court should be dismissed.

C. In any event, the Court does not have jurisdiction over plaintiff's wrongful levy and takings claims.⁸

Plaintiff contends that the IRS fraudulently levied his government benefits and business assets, and requests punitive damages. Compl. ¶ 5, 9. These claims are premised on alleged fraudulent collection activities by the IRS that sound in tort, and the Court lacks subject matter jurisdiction over them. *Hebert v. United States*, 114 Fed. Cl. 590, 592 (2014). *See also Betz v. United States*, 40 Fed. Cl. 286, 292 (1998) (holding that the Court does not have jurisdiction over claims for relief premised on alleged negligent, wrongful or unauthorized conduct of the IRS, or

taxpayer's suit to whatever extent jurisdiction is acquired by the Tax Court.

I.R.C. § 7422(e). Thus, even if plaintiff had filed the complaint in this Court first and this Court had acquired jurisdiction, this Court would be divested of jurisdiction to whatever extent the Tax Court later acquired jurisdiction over the same subject matter.

⁸ Plaintiff's request for a federal grand jury investigation is inapplicable because such an investigation is authorized in criminal matters, under Fed. R. Crim. P. 6(a).

for punitive damages). *See also* 28 U.S.C. 1491(a)(1) (stating that the Court of Federal Claims can issue a judgment for money damages “in cases not sounding in tort”).

Plaintiff’s attempt to allege a takings claim under the Just Compensation Clause of the Fifth Amendment to the U.S. Constitution should also be dismissed. Compl. at ¶ 5. First, to invoke the Court’s jurisdiction over a takings claim, “the plaintiff must admit that the Government’s taking was authorized, because an actionable ‘takings’ can only result from authorized federal actions.” *Fry*, 72 Fed. Cl. at 508. *See Acadia Tech., Inc. v. United States*, 458 F.3d 1327, 1329–32 (Fed. Cir. 2006) (holding that, in a takings case, the court assumes that the underlying action was lawful and decides only whether the governmental action in question constituted a taking for which compensation must be paid). Second, “[u]nauthorized acts by federal officials are torts, not takings[,]” over which the Court does not have jurisdiction. *Fry*, 72 Fed. Cl. at 509. Thirdly, “the lawful exercise of the Government’s tax collection powers does not amount to a taking.” *Id.* Here, plaintiff challenges the IRS levy of his assets as unauthorized, and his challenge therefore amounts to a tort over which the Court does not have jurisdiction. Compl. at 2-3.

D. Moreover, the Court does not have jurisdiction over plaintiff’s claims for declaratory and injunctive relief.

Plaintiff’s complaint states that he “simply desires the court to ORDER the defendant to respond to the evidence as filed in the stated Supreme Court Petition, and as partially discussed [in his complaint].” Compl. ¶ 5. These issues are whether the IRS has authority to tax wages, salaries and compensation of private Americans as “income;” whether the IRS levy was lawful; and whether the IRS has authority to tax income under the Sixteenth Amendment. Compl. at 3-8.

“The court . . . does not have jurisdiction to issue [a] declaratory judgment, where such relief is the primary focus of the suit.” *Thorndike v. United States*, 72 Fed. Cl. 580, 583 (2006). Here, the primary relief requested in plaintiff’s Complaint is an order that the IRS lacks authority to tax wages, and that the IRS’s levy of plaintiff’s assets was unlawful. Compl. ¶ 5. The Court has dismissed such claims for declaratory relief. *See Betz*, 40 Fed. Cl. at 291 (holding that the Tucker Act does not authorize the Court of Federal Claims to grant plaintiff’s request for a declaratory judgment that he is not liable for any type of federal income tax).⁹

Moreover, the Tucker Act, 28 U.S.C. § 1491(a)(1), grants jurisdiction to the Claims Court over claims for “actual, presently due money damages from the United States.” *United States v. King*, 395 U.S. 1, 3 (1969). “The court can only award equitable relief that is “incidental to and collateral to a claim for money damages.” *Buser v. United States*, 85 Fed. Cl. 248, 261–62 (2009); 28 U.S.C. § 1491(a)(2) (to provide an entire remedy and complete the relief afforded by the judgment, the court may issue orders, incident and collateral to such judgment). Where, as here, plaintiff asserts an independent claim for injunctive relief that is not tied to and subordinate to a money judgment, the Court does not have jurisdiction over plaintiff’s claims.

II. EVEN IF THE COURT HAD JURISDICTION, PLAINTIFF’S ARGUMENTS ARE BARRED BY RES JUDICATA AND ARE OTHERWISE MERITLESS.

A. Alternatively, plaintiff’s complaint is barred by the doctrine of *res judicata*.

Under the doctrine of *res judicata* (or claim preclusion), “[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” *Stephanatos*, 81 Fed. Cl. at 442 (*quoting Federated Dep’t Stores, Inc. v. Moitte*, 452 U.S. 394, 398 (1981)). To prevail on the grounds of *res judicata*, the

⁹ Section 1507 of Title 28 confers jurisdiction on this Court to order declaratory relief only in certain specific circumstances, none of which is present here.

Government must prove that: “(1) the parties to this action are identical or in privity with those in the prior litigation; (2) the prior suit proceeded to final judgment on the merits; and (3) the claims asserted in this action are based on the same set of transactional facts as those previously litigated.” *Id.* Those elements are met here, where (1) Mr. Maehr and the United States were the parties to plaintiff’s Tenth Circuit appeal; (2) the Tax Court issued an Order of Dismissal and Decision on August 19, 2011, which was affirmed by the Tenth Circuit on April 13, 2012 and certiorari denied on March 18, 2013; and (3) the claims underlying plaintiff’s Court of Federal Claims complaint are based on the same facts litigated in the Tax Court action—plaintiff’s tax liabilities for tax years 2003 through 2006.

Therefore, even if the Court had jurisdiction (it does not), plaintiff’s complaint must be dismissed pursuant to RCFC 12(b)(6), based on the doctrine of *res judicata*.

B. In addition, wages, salaries and compensation are income subject to tax.

Even if jurisdiction did exist, plaintiff’s remaining arguments have been repeatedly rejected by the courts, and have, in many instances, been considered frivolous.

Plaintiff argues that “wages, salaries and compensation for services of private Americans” are not taxable.” Compl. at 3-4. However, it is “settled law that plaintiff’s theory that wages are not taxable is palpably unsound legal argument.” *Saladino v. United States*, 63 Fed. Cl. 754, 757 (Fed. Cl. 2005) (imposing Rule 11 sanctions against *pro se* tax return preparer that filed multiple suits arguing that wages are not subject to income taxation, despite prior lawsuits dismissing his claims). *See also Carmichael v. United States*, No. 05-5008, 2005 WL 1027199, at *1 (Fed. Cir. 2005) (holding that the argument that wages are not subject to income tax “has been uniformly rejected by the courts that have considered it”); *Ledford v. United States*, 297 F.3d 1378, 1381 (Fed. Cir. 2002) (holding that the argument that compensation for

labor is not income is “wholly without merit—so much so that merely raising it is considered sanctionable”); *Maehr*, 480 F. App'x at 923 (holding that the “petition raises no genuine challenge to the notices of deficiency because Maehr’s arguments have been repeatedly rejected by this court”).

Section 1 of the Code imposes a tax on the taxable income of all individuals who, like plaintiff, are citizens or residents of the United States. Treas. Reg. § 1.1-1(a)(1). Section 61(a) of the Code defines taxable income as “all income from whatever source derived,” and specifically includes compensation for services, I.R.C. § 61(a)(1), and business income, I.R.C. § 61(a)(2). The Supreme Court recognized that Congress intended through § 61(a) and its statutory precursors to exert “the full measure of its taxing power,” *Helvering v. Clifford*, 309 U.S. 331, 334 (1940), and to bring within the definition of income any “accessio[n] to wealth.” *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955). Therefore, plaintiff’s first argument is meritless.

C. The IRS had authority to levy plaintiff’s assets.

Second, plaintiff argues that levy of his assets was fraudulent because it included “‘gross’ assets and business expenses, and protected assets.” Compl. at 5. Section 6331(a) authorizes the Secretary of the Treasury to levy “all property and rights to property” of “any person liable to pay any tax” for the purpose of collecting a tax delinquency. I.R.C. § 6331(a); *Brown v. United States*, 35 Fed. Cl. 258, 269 (1996), *aff’d*, 105 F.3d 621 (Fed. Cir. 1997). Plaintiff owed a tax deficiency for tax years 2003 through 2006, and therefore the IRS levy was proper.

D. The IRS has authority to tax income under the Sixteenth Amendment.

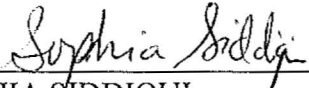
Lastly, plaintiff argues that the IRS does not have authority to tax income under the Sixteenth Amendment. Compl. at 6. Plaintiff made the same argument before the Tenth Circuit, and it was rejected. *Maehr*, 480 F. App'x at 923, citing *United States v. Collins*, 920 F.2d 619, 629 (10th Cir.1990) (“[Taxpayer's] argument that the sixteenth amendment does not authorize a direct, non-apportioned tax on United States citizens ... is devoid of any arguable basis in law.”). The Federal Circuit and other courts have held that “[t]o the extent that the . . . [plaintiff] believe[s] that the United States is without constitutional authorization to tax their income, we need only point to the plain language of the Sixteenth Amendment: “Congress shall have the power to lay and collect taxes on incomes, from whatever source derived . . .” *Bibbs v. United States*, 230 F.3d 1378 (Fed. Cir. 2000). Plaintiff’s constitutional argument therefore fails.

CONCLUSION

WHEREFORE, based on all of the reasons set forth above, defendant requests that the Court enter an order dismissing the complaint for lack of subject matter jurisdiction under Rule 12(b)(1), and, alternatively, for failure to state a claim under Rule 12(b)(6).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that service of the foregoing Brief in Support of Motion to Dismiss, has this 21st day of November 2017, been made on plaintiff by mailing the original thereof, in a postage prepaid envelope, to the following address:

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