

JUL 31 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONNIE FRANCIS SCHROEDER, DBA
Quality # 1 Sweeping & Steam Cleaning,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 13-16563

D.C. No. 3:12-cv-00152-LRH-
VPC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted July 21, 2015**

Before: CANBY, BEA, and MURGUIA, Circuit Judges.

Donnie Francis Schroeder appeals pro se from the district court's judgment dismissing his action alleging unlawful inspection and disclosure of his tax return information, in violation of 26 U.S.C. § 7431. We have jurisdiction under 28

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

U.S.C. § 1291. We review de novo a dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), *Shwarz v. United States*, 234 F.3d 428, 432 (9th Cir. 2000), and we affirm.

The district court properly dismissed the portion of Schroeder’s action pertaining to inspections because Schroeder failed to allege facts sufficient to show that Internal Revenue Service (“IRS”) employees unlawfully inspected confidential return information. *See* 26 U.S.C. § 6103(h)(1) (authorizing inspection or disclosure of return information for tax administration purposes); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (to avoid dismissal, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face” (citation and internal quotation marks omitted)). Contrary to Schroeder’s contention, 26 U.S.C. § 7608 applies only to criminal enforcement officers performing certain functions, and thus has no bearing on whether the IRS employees acted within the scope of their authority. *See Beam v. IRS (In re Beam)*, 192 F.3d 941, 945-46 (9th Cir. 1999).

The district court properly dismissed the portion of Schroeder’s action pertaining to disclosures because Schroeder was precluded from bringing a claim under 26 U.S.C. § 7431. *See Schwarz*, 234 F.3d at 432-33 (claim based on improper disclosure occurring in the course of tax collection activity must proceed under 26

U.S.C. § 7433, not under 26 U.S.C. § 7431); *see also* 26 U.S.C. § 6103(k)(6) (authorizing disclosure of return information for collection activity under conditions prescribed by regulations); 26 C.F.R. § 301.6103(k)(6)-1(a)(1)(vi) (authorizing disclosure of return information to levy on assets).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED.