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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

A. ALI ESLAMI,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. C 14-0328 CW

ORDER DENYING
MOTION TO DISMISS;
DENYING MOTION TO
SEAL (Docket Nos.
10, 11)

United States District Court
For the Northern District of California

Plaintiff Ali Eslami, proceeding pro se, brought this action against Defendant United States of America, to obtain a refund for overpayment of his 2007 federal income taxes.¹ Defendant moves to dismiss Plaintiff's first amended complaint (1AC) for lack of subject matter jurisdiction. Plaintiff opposes the motion and moves to seal certain information in his original complaint. Defendant opposes the motion to seal. The Court took both motions under submission without oral argument and, after considering the parties' papers, denies both motions.

BACKGROUND

Plaintiff alleges that he filed his 2007 federal income tax return by mail on September 21, 2009. 1AC ¶ 5a. One week later, on September 28, he received a notice from the Internal Revenue Service (IRS) stating that it had not received his 2007 tax return

¹ Although Plaintiff originally named the Commissioner of Internal Revenue as the defendant, the Internal Revenue Code provides that claims for tax refunds are properly brought against the United States, not the Commissioner. 26 U.S.C. § 7422(f). Accordingly, the United States will be substituted for the Commissioner as the defendant in this action.

1 and that he must file the return immediately. Id., Ex. 3, Sept.
2 2009 CP-516 Notice, at 1. Plaintiff claims that he contacted the
3 IRS the following week to inform the agency that he had already
4 filed his 2007 income tax return. An IRS representative allegedly
5 responded by telling Plaintiff that his return might not have been
6 entered into the agency's system yet because it had been filed so
7 recently but that he should assume that the return had been filed
8 unless the agency sent him another notice about the matter in the
9 next few weeks. Id. ¶ 5c.

10 According to the 1AC, Plaintiff did not receive another
11 notice about his 2007 tax return until June 6, 2011 -- nearly two
12 years after the IRS representative allegedly advised him to assume
13 that his return had been filed. Id. ¶ 5f. Plaintiff then filed a
14 copy of his 2007 return in person at the IRS's Oakland office on
15 August 5, 2011. Id., Ex. 7, Aug. 2011 Tax Return, at 1.
16 Plaintiff also filed a request for a \$6,228.07 refund on his 2007
17 federal income taxes, which the IRS denied in October 2011. In
18 its notice denying the request, the agency explained that,
19 although Plaintiff was "due a refund of \$6,228.07," it could not
20 issue the refund because the "statute of limitations for issuing a
21 refund in [Plaintiff's] case ha[d] expired." Id., Ex. 8, Oct.
22 2011 CP24 Notice, at 1.

23 Plaintiff appealed the denial of his refund request in
24 February 2012 and the agency denied his appeal in April 2013.
25 Plaintiff then filed the instant action in January 2014. In his
26 1AC, he seeks a refund of \$6,192 for overpayment on his 2007
27 income taxes.
28

DICSUSSION

I. Motion to Dismiss

A. Legal Standard

Subject matter jurisdiction is a threshold issue which goes to the power of the court to hear the case. Federal subject matter jurisdiction must exist at the time the action is commenced. Morongo Band of Mission Indians v. Cal. State Bd. of Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988). A federal court is presumed to lack subject matter jurisdiction until the contrary affirmatively appears. Stock W., Inc. v. Confederated Tribes, 873 F.2d 1221, 1225 (9th Cir. 1989).

Dismissal is appropriate under Rule 12(b)(1) when the district court lacks subject matter jurisdiction over the claim. Fed. R. Civ. P. 12(b)(1). A Rule 12(b)(1) motion may either attack the sufficiency of the pleadings to establish federal jurisdiction, or allege an actual lack of jurisdiction which exists despite the formal sufficiency of the complaint. Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp., 594 F.2d 730, 733 (9th Cir. 1979); Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987).

B. Analysis

Federal district courts have original jurisdiction over any civil action filed by a taxpayer "against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws." 28 U.S.C.

1 § 1346(a)(1); see also United States v. Clintwood Elkhorn Min.
2 Co., 553 U.S. 1, 4 (2008) ("A taxpayer seeking a refund of taxes
3 erroneously or unlawfully assessed or collected may bring an
4 action against the Government either in United States district
5 court or in the United States Court of Federal Claims."). Before
6 bringing such an action, however, the taxpayer must first file a
7 claim for refund with the IRS that satisfies the requirements of
8 Internal Revenue Code §§ 6511(a) and 6511(b)(2). Clintwood
9 Elkhorn, 553 U.S. at 5. In this case, Defendant contends that
10 Plaintiff's refund claim does not satisfy § 6511(b)(2)(A).

11 Section 6511(b)(2)(A) "imposes a ceiling on the amount of
12 credit or refund to which a taxpayer is entitled as compensation
13 for an overpayment of tax." Baral v. United States, 528 U.S. 431,
14 432 (2000). Specifically, it provides that the amount of any
15 refund "shall not exceed the portion of the tax paid within the
16 period, immediately preceding the filing of the claim, equal to 3
17 years plus the period of any extension of time for filing the
18 return." 26 U.S.C. § 6511(b)(2)(A). The Ninth Circuit has held
19 that this provision is jurisdictional in nature. Zeier v. IRS, 80
20 F.3d 1360, 1364 (9th Cir. 1996). Thus, if a taxpayer files an
21 action to recover a tax refund but did not make any payments
22 toward the relevant tax during the period set forth in
23 § 6511(b)(2)(A), the court lacks jurisdiction over the claim.

24 To establish that the Court lacks jurisdiction over
25 Plaintiff's refund claim under § 6511(b)(2)(A), Defendant must
26 demonstrate (1) that Plaintiff actually paid his 2007 taxes and
27 (2) that he did so more than three years before he filed his 2007
28

1 tax return. As explained below, Defendant has made the first of
2 showing but not the second.

3 1. Date of Plaintiff's 2007 Tax Payment

4 The undisputed evidence shows that Plaintiff's 2007 taxes
5 were deemed paid in April 2008. Plaintiff's 2007 tax returns --
6 both the version he filed in August 2011 and the version he claims
7 to have filed in September 2009 -- make clear that he sought to
8 pay his 2007 taxes using a credit balance that remained from
9 estimated payments which he had previously made toward his 2006
10 taxes. Under Internal Revenue Code § 6513(b)(2), these payments
11 are "deemed to have been paid on the last day prescribed for
12 filing the return . . . for such taxable year (determined without
13 regard to any extension of time for filing such return)." The
14 last day prescribed for individuals to file their 2007 federal
15 income tax returns was April 15, 2008. 26 U.S.C. § 6072. Thus,
16 regardless of when Plaintiff actually filed his return, his 2007
17 taxes would have been deemed paid in April 2008. See Baral, 528
18 U.S. at 439 (holding that "the date of payment is determined
19 according to the provisions of § 6513, which, as noted, plainly
20 set a deemed date of payment for remittances of withholding and
21 estimated income tax on the April 15 following the relevant
22 taxable year," even in cases where the return itself is filed well
23 after that date (citations omitted)).

24 2. Date of Plaintiff's 2007 Tax Return Filing

25 As noted above, Plaintiff asserts that he filed his 2007
26 federal tax return on September 21, 2009. Eslami Decl. ¶ 6.
27 Although he has not provided a registered mail receipt showing
28 that he mailed the return on that date, he has submitted other

1 extrinsic evidence to support his assertion. In particular, he
2 has submitted a copy of his 2007 state tax return, which he filed
3 in person with the Franchise Tax Board on September 21, 2009.
4 Eslami Decl. ¶¶ 3-5; 1AC, Ex. 1, 2007 Cal. Tax Return, at 1-2.
5 Plaintiff asserts that he filed a copy of his completed 2007
6 federal tax return with his state return and has submitted a copy
7 of his 2007 federal return that bears a signature date of
8 September 21, 2009. Id., Ex. 2, 2007 Cal. Tax Return Attachment,
9 at 2. Plaintiff also notes that the IRS stopped sending him
10 notices about his 2007 return after September 2009 -- shortly
11 after he claims to have filed that return -- despite sending him
12 monthly notices directing him to file the return in July, August,
13 and September 2009. See Newman Decl., Ex. A,² IRS Account Tr., at
14 2 (documenting how the IRS issued notices to Plaintiff in July
15 2009 and August 2009); 1AC, Ex. 3, Sept. 2009 CP-516 Notice, at 1.
16 Although the IRS eventually sent him another notice about his 2007
17 tax return in June 2011, the length and timing of the delay
18 between that notice and the prior notices about the 2007 return
19 provides further circumstantial support for Plaintiff's claim that
20 he filed his 2007 return in September 2009. Taken together,
21 Plaintiff's evidence is sufficient to support jurisdiction under
22 § 6511(b)(2)(A) at this stage.³

24 ² Defendant's counsel refers to this document as Exhibit A in his
25 declaration but mistakenly labeled the document as "Exhibit B."

26 ³ The Court does not rely on Plaintiff's alleged communications
27 with an IRS representative in October 2009 because he has not presented
28 any sworn evidence that those communications occurred. Although he
refers to those communications in his complaint and his opposition
brief, he does not refer to them in his declaration. Because the Court
does not rely on those alleged communications here, Defendant's
arguments regarding the relevance of these communications are moot.

1 Defendant contends that this evidence is not sufficient to
2 support a September 2009 filing date. It cites Internal Revenue
3 Code § 7502, which codifies the common law "mailbox rule" by
4 "allow[ing] a taxpayer to prove timely filing on the basis of
5 timely mailing notwithstanding the date of physical delivery of
6 the tax return to the IRS." Anderson v. United States, 966 F.2d
7 487, 490 (9th Cir. 1992). That provision enables a taxpayer to
8 establish a prima facie case of timely filing by presenting a
9 receipt of certified or registered mail postmarked on or before
10 the applicable deadline. See, e.g., 26 U.S.C. § 7502(c)(1)
11 (providing that, for tax returns submitted by registered mail,
12 "registration shall be prima facie evidence that the return,
13 claim, statement, or other document was delivered to the agency,
14 officer, or office to which addressed"). The provision does not,
15 however, preclude Plaintiff from relying on other evidence to
16 establish the date of filing. In fact, the Ninth Circuit has
17 expressly held, "Neither the language of [§ 7502] nor Ninth
18 Circuit precedent bars admission of extrinsic evidence to prove
19 timely delivery" of a tax return for the purposes of § 6511.
20 Anderson, 966 F.2d at 491. In Anderson, the court affirmed a
21 district court's order relying on an attorney's testimony that she
22 saw a postal clerk postmark her client's tax return. The Ninth
23 Circuit held that the attorney's testimony "provided direct proof
24 of a timely postmark because she actually saw the postal clerk
25 stamp her document." Id. Although Plaintiff has not provided a
26 declaration asserting that he witnessed a postal clerk postmark
27 his 2007 tax return, he has provided other extrinsic evidence --
28 the authenticity of which Defendant has not disputed -- to support

1 his claim that he mailed the return in September 2009.
2 Furthermore, Plaintiff may be able to provide further factual
3 details about when, where, and how he mailed his return to the
4 IRS. Accordingly, because the date when Plaintiff filed his tax
5 return remains in dispute, Plaintiff's refund claim should not be
6 dismissed for lack of subject matter jurisdiction.

7 Defendant's reliance on Sorrentino v. IRS, 383 F.3d 1187
8 (10th Cir. 2004), is misplaced for several reasons. First,
9 Sorrentino is inapposite because it addressed a situation where
10 the taxpayers' only evidence of timely filing consisted of self-
11 serving declarations. Id. at 1191 (stating that "[s]elf-serving
12 declarations of mailing, without more, are insufficient to invoke
13 [a] presumption" that a tax return was received (emphasis added)).
14 Here, in contrast, Plaintiff has provided other circumstantial
15 evidence, discussed above, to support his claim that he mailed his
16 tax return in September 2009. Second, the Sorrentino court
17 decided the jurisdictional question at the summary judgment stage,
18 rather than the motion to dismiss stage; it therefore had a more
19 complete evidentiary record before it when it decided the
20 jurisdictional issue. Finally, Sorrentino was decided by the
21 Tenth Circuit and might have been decided differently under this
22 circuit's precedents. The dissenting judge in Sorrentino
23 specifically highlighted the similarities between the taxpayers'
24 evidence in that case and the evidence that the Ninth Circuit
25 found sufficient in Anderson. See Sorrentino, 383 F.3d at 1198
26 (Seymour, J., dissenting) ("I question why [the taxpayer's
27 evidence in Anderson] is substantially more convincing than that
28 presented by the Sorrentinos, including the sworn testimony of Mr.

1 and Mrs. Sorrentino that they signed the return in early March,
2 the sworn testimony of Mr. Sorrentino that he mailed the return in
3 early March, and a copy of the return dated March 1, 1998."). For
4 all of these reasons, Sorrentino does not support dismissal of
5 Plaintiff's claims here.

6 II. Motion to Seal

7 A. Legal Standard

8 The public interest favors filing all court documents in the
9 public record. Thus, any party seeking to file a document under
10 seal must demonstrate good cause to do so. Pintos v. Pac.
11 Creditors Ass'n, 605 F.3d 665, 678 (9th Cir. 2010). This cannot
12 be established simply by showing that the document is subject to a
13 protective order or by stating in general terms that the material
14 is considered to be confidential, but rather must be supported by
15 a sworn declaration demonstrating with particularity the need to
16 file each document under seal. See Civil Local Rule 79-5(a).

17 B. Analysis

18 Plaintiff moves to redact certain information contained in
19 various documents attached to his original complaint. He contends
20 that this information is sealable pursuant to Federal Rule of
21 Civil Procedure 5.2. That rule provides that

22 in an electronic or paper filing with the
23 court that contains an individual's social-
24 security number, taxpayer-identification
25 number, or birth date, the name of an
26 individual known to be a minor, or a
27 financial-account number, a party or nonparty
28 making the filing may include only: (1) the
last four digits of the social-security number
and taxpayer-identification number; (2) the
year of the individual's birth; (3) the
minor's initials; and (4) the last four digits
of the financial-account number.

1 Fed. R. Civ. P. 5.2.

2 After reviewing the documents attached to Plaintiff's
3 original complaint, the Court finds that all of this information
4 has already been properly redacted. The pages of these documents
5 that Plaintiff has identified in his reply brief do not contain
6 any information sealable under Rule 5.2. Because Plaintiff has
7 not identified any other grounds for sealing this information, his
8 request to redact information contained in the attachments to his
9 original complaint must be denied.

10 CONCLUSION

11 For the reasons set forth above, Defendant's motion to
12 dismiss (Docket No. 11) and Plaintiff's motion to seal (Docket No.
13 10) are DENIED.

14 Defendant shall file its answer to Plaintiff's 1AC within
15 fourteen days of this order. A case management conference will be
16 held at 2:00 p.m. on July 2, 2014 in courtroom 2 of the Oakland
17 federal courthouse, located at 1301 Clay Street.

18 The Court refers Plaintiff to its handbook for pro se
19 litigants, which is available online at: [http://www.cand.uscourts.](http://www.cand.uscourts.gov/prosehandbook)
20 [gov/prosehandbook](http://www.cand.uscourts.gov/prosehandbook). Plaintiff may also consult the Legal Help
21 Center, located on the fourth floor of the Oakland federal
22 courthouse in Room 470S, for further advice. Appointments with
23 the Legal Help Center may be made in person or by phone at 415-
24 782-8982.

25 IT IS SO ORDERED.

26
27 Dated: 6/10/2014

28

CLAUDIA WILKEN
United States District Judge