

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 12-cv-00988-RPM

FRED KLODT,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER OF DISMISSAL

A default judgment was entered against Frederick J. Klodt as a counterclaim defendant in Civil Action No. 04-cv-00437-WYD-CBS on May 16, 2007, holding him liable for employer taxes owed by Bailco, Inc. On May 31, 2011, Klodt filed a motion for relief from judgment under Fed.R.Civ.P. 60(b). That motion was denied by order entered on June 28, 2011.

Fred Klodt filed this civil action on April 13, 2012, asserting a claim for refund under 26 U.S.C. § 7422, having paid \$21,094.51 of the taxes owed. He seeks now to litigate his liability for the taxes that were the bases for the counterclaim and default judgment. The government filed its motion to dismiss on June 22, 2012, asserting the preclusive effect of the default judgment. The plaintiff responded on July 4, 2012, arguing that his claim is not the same claim as the counterclaim. That argument is rejected. The issue of liability is the same and he is precluded from re-opening the issue. It is

ORDERED that this civil action is dismissed under Rule 12(b)(6) for the failure to state a claim for relief.

DATED: July 9th, 2012

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge