

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

DAVID NELSON,
Plaintiff,

v.

Case No. 3:08cv508/MCR/EMT

UNITED STATES OF AMERICA,
Defendant.

_____ /

ORDER

This cause comes on for consideration upon the magistrate judge's Report and Recommendation dated December 7, 2009. (Doc. 33). The parties have been furnished a copy of the Report and Recommendation and have been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). Neither party has filed any objections, but in response to the Report and Recommendation Plaintiff David Nelson ("Plaintiff") filed a motion for leave to file a second amended complaint (doc. 36), along with a proposed second amended complaint (doc. 37). Defendant United States of America ("Defendant") has filed a response in opposition to Plaintiff's motion. (Doc. 39).

For the reasons stated in the response filed by the Defendant, the court denies Plaintiff's motion for leave to file an amended complaint. Additionally, having considered the magistrate judge's Report and Recommendation, the court has determined that the Report and Recommendation should be adopted.

Accordingly, it is ORDERED as follows:

1. Plaintiff David Nelson's motion for leave to file a second amended complaint (doc. 36) is DENIED.
2. The magistrate judge's Report and Recommendation (doc. 33) is ADOPTED and INCORPORATED by reference in this order.

3. Defendant United States of America's motion to dismiss Plaintiff's refund claims for tax years 2002 and 2006 for lack of subject matter jurisdiction (doc. 17) is GRANTED; in the alternative, Defendant's motion for summary judgment on these claims is GRANTED.

4. Defendant's motion for summary judgment (doc. 17) on Plaintiff's refund claims for tax years 2003, 2004, and 2007 is GRANTED.

5. Plaintiff's motion for summary judgment (doc. 26) is DENIED.

6. Judgment shall be entered in favor of Defendant.

DONE AND ORDERED this 8th day of January 2010.

s/ M. Casey Rodgers

**M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE**