

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

Case Number: 21-14453-CIV-MARTINEZ-MAYNARD

HAROLD B. ROTTE,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

THIS CAUSE was referred to the Honorable Shaniek M. Maynard, United States Magistrate Judge, for a Report and Recommendation ("R&R") on all dispositive matters. (ECF No. 11). Judge Maynard filed an R&R recommending that Defendant's Motion to Dismiss, (ECF No. 8), be **GRANTED IN PART AND DENIED IN PART**. (ECF No. 16). The Court has reviewed the entire file and record, and notes that no objections have been filed. (ECF Nos. 17 & 18). Accordingly, after careful consideration, it is hereby

ADJUDGED that Judge Maynard's R&R, (ECF No. 16), is **AFFIRMED** and **ADOPTED**. Further, it is

ADJUDGED that Defendant's Motion to Dismiss, (ECF No. 8), is **GRANTED IN PART AND DENIED IN PART** as follows:

1. The Motion to Dismiss is **GRANTED IN PART** on grounds of *res judicata*, and claims based on the 2004 Tax Liability are **DISMISSED WITH PREJUDICE**;

2. The Motion to Dismiss is **GRANTED** and the Complaint **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and for failure to state a claim under Fed. R. Civ. P. 12(b)(6);

3. Plaintiff is afforded one opportunity to amend, within 20 days of this Order, in order to sufficiently plead a cause of action based on his 2004 Civil Penalty. Plaintiff shall adhere to the

following instructions. Failure to do so may lead to dismissal with prejudice.

i. The amended complaint may provide a brief introductory overview of the case. It must, however, set forth each cause of action (“Count”) separately in the form of a “short plain statement of the claim,” and must clearly indicate the nature of each cause of action;

ii. Under each count, Plaintiff must identify the specific federal statutes Plaintiff believes give him a cause of action to seek judicial review of the IRS’ conduct in this case;

iii. The amended complaint must provide the relevant facts, including dates, that support Plaintiff’s claim for relief. Plaintiff must provide facts sufficient to show that each claim is plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009);

iv. Any amended complaint must include statements meeting Plaintiff’s burden to establish jurisdiction through a waiver of sovereign immunity and satisfaction of jurisdictional prerequisites. If Plaintiff makes a claim under 26 U.S.C. § 7433, Plaintiff must include statements that meet his burden to show exhaustion of administrative remedies, the specific provision of the Tax Code/regulation Plaintiff says was disregarded, and the officer/employee alleged to have acted recklessly, intentionally, or negligently;

v. Plaintiff is cautioned that any amended complaint will supersede and entirely replace the original complaint. Thus, an amended complaint must contain clear and concise allegations fully stating the basis for Plaintiff’s claims;

4. The Motion to Dismiss is **DENIED AS MOOT** on grounds of lack of service; and

5. All pending motions are **DENIED AS MOOT**.

DONE AND ORDERED in Miami, Florida, this 15 day of September, 2022.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Maynard
Harold B. Rotte, *pro se*
All Counsel of Record