

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

FRANK ILETT,)	
Plaintiff,)	Case No. CV-08-332-S-BLW
)	
vs.)	
)	MEMORANDUM
UNITED STATES OF AMERICA,)	DECISION & ORDER
(Internal Revenue Service),)	
Defendant.)	
_____)	
)	
UNITED STATES OF AMERICA,)	
Counterclaim plaintiff,)	
)	
vs.)	
)	
FRANK ILETT,)	
Counterclaim defendant.)	
_____)	

INTRODUCTION

Pending before the Court is Defendant United States’ Motion to Amend its Answer and Counterclaims (Docket No. 12), filed March 16, 2009. The Court received Plaintiff Ilett’s Response (Docket No. 13), objecting to the motion on April 6, 2009. Defendant filed a Reply (Docket No. 14) and Affidavit (Docket No. 15) in further support of its motion on April 13, 2009. Plaintiff filed a Motion for leave to file a sur-reply (Docket No. 21), which was denied by this Court on June 9, 2009 (Docket No. 23). For the reasons expressed below, the Court will grant

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Defendant's Motion.

ANALYSIS

In its motion, the United States seeks to add James W. Schram as a counterclaim defendant in the above lawsuit initiated by Plaintiff Frank Ilett. Mr. Ilett's Complaint (Docket No. 1), filed August 12, 2008, states that the Internal Revenue Service ("IRS") erroneously assessed him trust fund recovery penalties under 26 U.S.C. § 6672, and requests a finding that Mr. Ilett is not a "responsible party" as described in 26 U.S.C. § 6672. After filing its Answer and Counterclaim (Docket No. 7), and while investigating Mr. Ilett's Complaint, the United States determined that Mr. Schram, like Mr. Ilett, was assessed trust fund recovery penalties for employment tax periods March and June 2000, during which Mr. Schram and Mr. Ilett were President and Vice President of IDEAL, Inc., respectively.

Federal Rules of Civil Procedure provide that a party may be added as a defendant if "any question of law or fact common to all defendants will arise in the action." FRCP 20(a)(2)(B). The rules also provide that an additional defendant may be joined in an action if "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences." FRCP 20(a)(2)(A).

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Rule 20 is satisfied here. Recovery of tax penalties under 26 U.S.C. § 6672 requires a showing by the United States that an individual is a “responsible person” and that the individual “acted willfully in failing to collect or pay over the withheld taxes.” *Purcell v. United States*, 1 F.3d 932, 936 (9th Cir. 1993), *citing Davis v. United States*, 961 F.2d 867, 869-70 (9th Cir. 1992) (other citations omitted). Joint and several liability attaches to all those who are responsible persons under 26 U.S.C. § 6672. *Haslett v. United States*, 2009 WL 302251, at *3 (D. Alaska Feb. 9, 2009), *citing Purcell*, 1 F.3d at 937.

The United States assessed both Mr. Schram and Mr. Ilett with trust fund recovery penalties and asserts that both were responsible persons, as corporate officers, who willfully neglected to pay employment taxes to the IRS in connection with IDEAL, Inc. The assertion is joint and several, and presents an issue for the court, common to Mr. Schram and Mr. Ilett, arising out of the same occurrence or series of occurrences. Mr. Ilett has raised no argument that FRCP 20 is not satisfied. Although Mr. Ilett offers a number of reasons why the case could proceed without adding Mr. Schram as a counterdefendant, none support that the United States’ motion should be denied. Absent such showing, this Court grants Defendant’s Motion.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that Defendants' Motion to Amend its Answer and Counterclaims (Docket No. 12) is GRANTED.

DATED: **June 22, 2009**



A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable B. Lynn Winmill
Chief U. S. District Judge