

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

JOSEPH V. DONALDSON,

*Plaintiff,*

vs.

Case No. 17-01213-EFM-GEB

DEPARTMENT OF TREASURY,  
INTERNAL REVENUE SERVICE, and  
MARK BOSTON, IRS REVENUE  
OFFICER,

*Defendants.*

**ORDER**

This matter comes before the Court on Defendant United States' Motion to Dismiss (Doc. 21), Plaintiff Joseph Donaldson's Motion to Vacate Denial Order for Preliminary Injunction or Show Cause (Doc. 14), Donaldson's Motion for Equitable Estoppel (Doc. 29), and Donaldson's Memorandum Objecting to Denial of Mandatory Judicial Notice (Doc. 38). The United States moves to dismiss Donaldson's claims arguing that they are barred by the doctrine of sovereign immunity and that the Court therefore does not have subject matter jurisdiction over the claims. The United States argues in the alternative that Donaldson failed to state a claim upon which relief can be granted.

Courts lack subject matter jurisdiction over claims against the United States “for which sovereign immunity has not been waived.”<sup>1</sup> The doctrine of sovereign immunity extends to federal agencies<sup>2</sup> and their employees when sued in their official capacities.<sup>3</sup> The burden of establishing an “explicit waiver of sovereign immunity” rests on the plaintiff.<sup>4</sup> Because Donaldson did not assert an “explicit waiver of sovereign immunity” as required by *Fostvedt*, this Court does not have jurisdiction over Donaldson’s claims. The United States’ Motion to Dismiss is therefore granted and the Court need not address the government’s arguments under Fed. R. Civ. P. 12(b)(6).

**IT IS THEREFORE ORDERED** that the United States’ Motion to Dismiss (Doc. 21) is **GRANTED**.

**IT IS FURTHER ORDERED** that Donaldson’s Motion to Vacate Denial Order for Preliminary Injunction or Show Cause (Doc. 14) is **DENIED** as moot.

**IT IS FURTHER ORDERED** that Donaldson’s Motion for Equitable Estoppel (Doc. 29) is **DENIED** as moot.

**IT IS FURTHER ORDERED** that Donaldson’s Memorandum Objecting to Denial of Mandatory Judicial Notice (Doc. 38) is **DENIED** as moot.

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<sup>1</sup> *Iowa Tribe v. Salazar*, 607 F.3d 1225, 1232 (10th Cir. 2010).

<sup>2</sup> *FDIC v. Meyer*, 510 U.S. 471, 475 (1994).

<sup>3</sup> *Atkinson v. O’Neill*, 867 F.2d 589, 590 (10th Cir. 1989).

<sup>4</sup> *Fostvedt v. United States*, 978 F.2d 1201, 1203 (10th Cir. 1992).

The case is thereby dismissed without prejudice.

**IT IS SO ORDERED.**

Dated this 11<sup>th</sup> day of April, 2018.

A handwritten signature in black ink that reads "Eric F. Melgren". The signature is written in a cursive style with a large, stylized "E" and "M".

ERIC F. MELGREN  
UNITED STATES DISTRICT JUDGE