

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

_____)
SCOTT R. MARTIN,)
)
Petitioner,)
)
vs.)
)
NINA E. OLSON,)
)
Respondent.)
_____)

3:17-cv-00474-RCJ-VPC

ORDER

This is a *pro se* Petition for a writ of mandamus ordering Nina Olson, the National Taxpayer Advocate (“the Advocate”), to respond to various inquiries. Specifically, Plaintiff Scott Martin has demanded that the Advocate investigate certain “procedural irregularities” by employees of the Internal Revenue Service (“IRS”) and report her findings to him. (Pet. 2, ECF No. 1). Plaintiff disclaims any desire for a taxpayer assistance order (“TPO”). (*See id.*). The United States has moved to dismiss for lack of subject matter jurisdiction, sovereign immunity, and failure to state a claim.

The Court grants the motion for lack of jurisdiction. “The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” 28 U.S.C. § 1361. “Mandamus is an extraordinary remedy and is available to compel a federal official to

1 perform a duty only if: (1) the individual's claim is clear and certain; (2) the official's duty is
2 nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt, and (3) no other
3 adequate remedy is available." *Patel v. Reno*, 134 F.3d 929, 931 (9th Cir. 1997) (citing *Azurin v.*
4 *Von Raab*, 803 F.2d 993, 995 (9th Cir. 1986)). Plaintiff has identified no nondiscretionary,
5 ministerial duty owed to him by the Advocate. The Advocate's power to issue a TPO is
6 discretionary. *See* 26 U.S.C. § 7811(a)(1) ("may issue"). In any case, Plaintiff disclaims any
7 desire for a TPO. Rather, he seeks to compel an investigation and subsequent report to him by
8 the Advocate. But in neither the Petition nor the response to the motion to dismiss does Plaintiff
9 identify any statute or regulation creating a duty in the Advocate to do so.

10 CONCLUSION

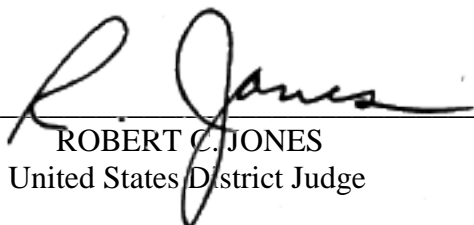
11 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 7) is GRANTED.

12 IT IS FURTHER ORDERED that the Motion to Admit Evidence (ECF No. 9) is
13 DENIED as moot.

14 IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

15 IT IS SO ORDERED.

16 Dated January 16, 2018.

17
18 
19 _____
20 ROBERT C. JONES
21 United States District Judge
22
23
24