

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICHAEL A. HILLECKE, and
CAROLYNE R. HILLECKE,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

Civil No. 05-1723-SU

HAGGERTY, District Judge:

Magistrate Judge Sullivan referred to this court a Findings and Recommendation [49] in this matter. Magistrate Judge Sullivan recommends granting defendant's Motion for Summary Judgment. Plaintiffs filed timely objections to the Findings and Recommendation and defendant filed a timely response. This court has reviewed the Findings and Recommendation and plaintiffs' objections. For the following reasons, this court fully adopts the Findings and Recommendation.

STANDARDS

When a party objects to any portion of a Findings and Recommendation, the district court must conduct a de novo review. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach. Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The court may accept, reject, or modify, in whole or in part, the Findings and Recommendation made by the Magistrate Judge. 28 U.S.C. § 636(b)(1).

DISCUSSION

The Internal Revenue Service (IRS) has assessed plaintiffs with three frivolous return penalties. The Findings and Recommendation found that the IRS did not abuse its discretion in doing so and recommended that summary judgment be granted to the United States. The Findings and Recommendation provides a thorough recitation of the facts and legal issues that need not be repeated here.

Plaintiffs' first objection to the Findings and Recommendation asserts that their tax returns should not be construed as frivolous because the Ninth Circuit has held that even a tax return filed with false information is nonetheless a valid return. *See United States v. Long*, 618 F.2d 74 (9th Cir. 1980). It is true that the court in *Long* recognized that in the context of a criminal suit for failure to file a tax return, filing a return containing false information may be a defense. *Id.* at 75-76. However, such a rule does not make filing a patently incorrect return any less frivolous.

Plaintiffs also argue that the United States has not met its burden of proof. Plaintiffs do not contest the accuracy of the factual statements summarized by the Findings and Recommendations. Instead, plaintiffs contend that the terms "wages" and "employee" as used in

26 U.S.C. § 3401 should be construed in ways that exclude plaintiffs and the incomes reported on their W-2 forms. Plaintiffs' arguments are unsupported by any authority.

Plaintiffs' third objection posits that "work exchanged for something of equal value results in no income." Pet'r. Obj. at 6. While presenting an interesting concept of the philosophical underpinnings regarding "income," this argument is without merit.

Plaintiffs next challenge this court's jurisdiction, on grounds that plaintiffs have not received a signed copy of a valid Certificate of Assessment. Pursuant to 26 U.S.C. § 6203 plaintiffs may request a copy of the record of the assessment. The purported failure by plaintiffs to exercise this statutory right fails to deprive the court of jurisdiction.

CONCLUSION

This court has scrutinized the undisputed facts, the Findings and Recommendation's legal conclusions, and plaintiffs' objections. After a de novo review, I conclude that plaintiffs have raised no factual or legal questions sufficient to challenge the Findings and Recommendation's sound conclusions. I agree that "[t]he Hilleckes' action has no basis in fact or law." Findings and Recommendation at 8. The court fully adopts the Findings and Recommendation [49]. Defendant's Motion for Summary Judgment [32] is GRANTED. The Hilleckes' Complaint is dismissed with prejudice and any other motions are DENIED as moot.

IT IS SO ORDERED.

DATED this 30 day of June, 2009.


Ancer L. Haggerty
United States District Judge