

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

United States of America,)
)
 Plaintiff,)
)
 v.)
)
 David Popowski and Mindy B. Popowski,)
)
 Defendants.)
_____)

Case No. 2:10-cv-2816-RMG

ORDER

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate recommending that this Court grant Plaintiff’s motion for summary judgment. For the reasons set forth below, the Court agrees with and adopts the R&R.

Background

Plaintiff filed this action on November 1, 2010 seeking a judgment concerning owed tax liabilities of the Defendants. (Dkt. No. 1). David Popowski is proceeding *pro se*, and, pursuant to 28 U.S.C. § 636(b)(1)(A) and Local Civil Rule 73.02(B)(2)(e) DSC, all pretrial matters were referred to the Magistrate Judge for consideration. On April 16, 2012, Plaintiff filed a motion for summary judgment (Dkt. No. 44), to which Defendants responded (Dkt. Nos. 57, 58). Subsequently, the Magistrate Judge issued a R&R recommending this Court grant Plaintiff’s motion for summary judgment. (Dkt. No. 61). Defendants failed to file timely objections.

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made.

Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.* Where the plaintiff fails to file any specific objections, the Magistrate Judge’s conclusions are reviewed only for clear error, *see Diamond v. Colonial Life & Accident Insurance Co.*, 416 F.3d 310, 315 (4th Cir. 2005), and this Court is not required to give any explanation for adopting the recommendation of the Magistrate Judge, *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983).

Discussion

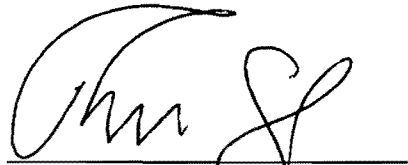
The Court has reviewed the record and R&R and, finding no clear error, approves of and adopts the R&R as the order of the Court. This action concerns Defendants’ liability for taxes they reported on Forms 1040 for tax years 2000 to 2007. As of April 15, 2012, the Defendants, collectively, owe a total of \$367,759.96 for tax years 2000 to 2004. As of April 15, 2012, David Popowski, individually, owes an additional total of \$96,305.89 for tax years 2005 to 2007. (Dkt. No. 61 at 1-2). Defendant David Popowski concedes summary judgment should be entered against him. (Dkt. No. 58). Defendant Mindy Popowski has raised a single defense, the “innocent spouse exception” (Dkt. No. 57), but has made no evidentiary showing in support of the defense and has not shown she has followed procedural requirements for the defense. Further, this defense may only be heard by the Tax Court and may not be raised here. (Dkt. No. 61 at 4-5).

Conclusion

After a thorough review of the record, the Court finds no clear error and therefore adopts the R&R as the order of the Court. (Dkt. No. 61). Accordingly, Plaintiff’s motion for summary judgment (Dkt. No. 44) is GRANTED. The Court orders judgment be entered against both

Defendants in the amount of \$367,759.96 and against David Popowski in the additional amount of \$96,305.89.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Gergel', written over a horizontal line.

Richard Mark Gergel
United States District Court Judge

December 5, 2012
Charleston, South Carolina