

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

Michelle Elizabeth Ballington,

Plaintiff,

v.

Internal Revenue Service,

Defendant.

C/A No.: 3:12-cv-01604-JFA

ORDER

Plaintiff Michelle Elizabeth Ballington, proceeding *pro se*, brought the above-captioned action lawsuit against the Internal Revenue Service (“IRS”), seeking an \$8,000 refund of an alleged overpayment in her 2010 federal income tax. In general, Plaintiff alleges that she qualified for a “first-time homebuyer credit” for her 2010 purchase of real property located at 124 Hunters Mill Court, West Columbia, South Carolina. Plaintiff, however, held an ownership interest, as a joint tenant with a right of survivorship, in a different home from November 2007 to March 2010. The primary matter before this court is the IRS’s motion for summary judgment. ECF No. 37.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation that the court grant the IRS’s motion.² See ECF No. 49. The Report and Recommendation sets forth the relevant facts and standards of law on this matter, and the court incorporates such without a recitation. Plaintiff was advised of her right to file objections to the

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

² An order was issued pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), notifying plaintiff of the summary judgment dismissal procedure and possible consequences if Plaintiff failed to adequately respond to the motion for summary judgment. Plaintiff responded to the motion.

Report and Recommendation, which was mailed to Plaintiff on August 27, 2013. Plaintiff filed a “Response to Report and Recommendation” on September 3, 2013, which this court will construe as Plaintiff’s objections to the Report and Recommendation. ECF No. 52. The IRS replied on September 20, 2013. ECF No. 54.

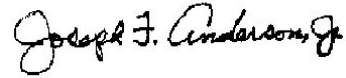
Plaintiff’s objections seem to center around Plaintiff’s “request for a hearing to argue the legality of IRS code 36.” ECF No. 52. The objections vaguely attack the merits of the IRS’s motion, arguing that the “ambiguity of the IRS code 36 and [Plaintiff’s] unusual set of circumstances” entitle Plaintiff to a hearing on the IRS’s motion. ECF No. 52. Presumably, Plaintiff also argues that the alleged ambiguity of I.R.C. § 36 and Plaintiff’s unusual set of circumstances should defeat the IRS’s motion. However, these arguments are all squarely addressed in the Report and Recommendation and fail to rise to the level of “specific” written objections to the Report and Recommendation. *See* FED. R. CIV. P. 72(b). In the absence of specific objections to the Report of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983); *see also* 28 U.S.C. § 636(b)(1) (providing that a judge “shall make a de novo determination of those portions of the report . . . to which objection is made”). Moreover, the court agrees with the Report and Recommendation’s conclusion that I.R.C. § 36 unambiguously precludes Plaintiff from claiming a first-time homebuyer credit, because Plaintiff had an “ownership interest in a principal residence during the 3-year period ending on the date of the purchase of the principal residence to which this section applies.” I.R.C. § 36(c)(1).

After carefully reviewing the applicable laws, the record in this case, and the Report and Recommendation, this court finds the Magistrate Judge’s recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The Report is incorporated herein

by reference in its entirety. Accordingly, the court hereby grants the IRS's motion for summary judgment. ECF No. 37. In light of this ruling, the court also denies as moot Plaintiff's motion for hearing. ECF No. 44. This case is, therefore, dismissed with prejudice.

IT IS SO ORDERED.

March 18, 2014
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge