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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 LEWIS COUNTY,

8 Plaintiff,

9 v.

10 UNITED STATES OF AMERICA and  
11 STEVEN J. GANZER,

12 Defendants.

CASE NO. C16-5170BHS

ORDER GRANTING  
DEFENDANT UNITED STATES  
OF AMERICA'S MOTION TO  
DISMISS

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14 This matter comes before the Court on Defendant United States of America's, on  
15 behalf of the Internal Revenue Service ("IRS"), motion to dismiss (Dkt. 16). The Court  
16 has considered the pleadings filed in support of and in opposition to the motion and the  
17 remainder of the file and hereby grants the motion for the reasons stated herein.

18 **I. PROCEDURAL AND FACTUAL HISTORY**

19 On March 4, 2016, Plaintiff Lewis County filed a complaint-in-interpleader  
20 against the IRS and Steven Ganzer ("Ganzer"). Dkt. 1 ("Comp."). Lewis County alleges  
21 that it foreclosed Ganzer's property to collect unpaid local taxes. *Id.* ¶ 10. Ganzer did  
22 not file an answer or any other responsive pleading in the tax foreclosure action. *Id.* ¶ 18.

1 Ganzer’s property was sold at a public action for \$147,500, yielding \$136,444.67 in  
2 excess proceeds. *Id.* ¶ 24. The IRS subsequently issued a Notice of Levy to Lewis  
3 County in the amount of \$165,778.08. *Id.* ¶ 26. Lewis County filed the instant suit to  
4 determine the correct payee for the excess proceeds. *See Comp.*

5 On April 19, 2016, the United States moved to dismiss. Dkt. 16. On May 6, 2016,  
6 Lewis County responded. Dkt. 17. On May 12, 2016, the United States replied. Dkt. 18.

## 7 II. DISCUSSION

8 The United States moves to dismiss Lewis County’s complaint, arguing it has not  
9 waived sovereign immunity to suit and therefore the Court lacks subject matter  
10 jurisdiction under Federal Rule of Civil Procedure 12(b)(1). Dkt. 16 at 7. Alternatively,  
11 the United States argues Lewis County’s complaint should be dismissed for failure to  
12 state a cause of action for interpleader under Federal Rule of Civil Procedure 12(b)(6).  
13 *Id.* at 8.

14 The United States, as a sovereign, may not be sued without its consent. *United*  
15 *States v. Dalm*, 494 U.S. 596, 608 (1990). “A waiver of sovereign immunity cannot be  
16 implied but must be unequivocally expressed.” *United States v. Mitchell*, 445 U.S. 535,  
17 538 (1980) (internal quotation marks omitted). “The party who sues the United States  
18 bears the burden of pointing to such an unequivocal waiver of immunity.” *Holloman v.*  
19 *Watt*, 708 F.2d 1399, 1401 (9th Cir. 1983). Unless Lewis County “satisfies the burden of  
20 establishing that its action falls within an unequivocally expressed waiver of sovereign  
21 immunity by Congress, it must be dismissed.” *Dunn & Black, P.S. v. United States*, 492  
22 F.3d 1084, 1088 (9th Cir. 2007).

1 Lewis County argues the United States waived its sovereign immunity under 28  
2 U.S.C. § 2410(a)(5). Dkt. 17 at 5. Section 2410(a)(5) provides that “the United States  
3 may be named a party in any civil action or suit in any district court . . . of interpleader or  
4 in the nature of interpleader with respect to, real or personal property on which the United  
5 States has or claims a mortgage or other lien.” Although § 2410 operates as an express  
6 waiver of sovereign immunity, the statute must be strictly construed. *Dunn & Black*, 492  
7 F.3d at 1092. Thus, in order for § 2410(a)(5) to waive sovereign immunity, the instant  
8 suit must be a valid interpleader action.

9 “The purpose of interpleader is for the stakeholder to ‘protect itself against the  
10 problems posed by multiple claimants to a single fund.’” *Mack v. Kuckenmeister*, 619  
11 F.3d 1010, 1024 (9th Cir. 2010) (quoting *Minn. Mut. Life Ins. Co. v. Ensley*, 174 F.3d  
12 977, 980 (9th Cir. 1999)); *see also Airborne Freight Corp. v. United States*, 195 F.3d  
13 238, 240 (5th Cir. 1999) (“The central prerequisite for a ‘true’ interpleader action . . . or  
14 for an action in the nature of interpleader . . . is that the plaintiff-stakeholder runs the  
15 risk—but for determination in interpleader—of multiple liability when several claimants  
16 assert rights to a single stake.”). An interpleader action therefore requires (1) two or  
17 more adverse claimants to a single stake, and (2) the stakeholder must face exposure to  
18 multiple liability.

19 Neither requirement is met in this case. First, there are no adverse claimants. “In  
20 a levy proceeding, the IRS steps into the taxpayer’s shoes” and “acquires whatever rights  
21 the taxpayer himself possesses.” *United States v. Nat’l Bank of Commerce*, 472 U.S. 713,  
22 725 (1985). Thus, any claim the IRS has to the excess proceeds is through Ganzer, not

1 against him. *See Queen City Sav. & Loan Ass'n v. Sanders*, C78-800M, 1980 WL 1642,  
2 at \*1 (W.D. Wash. Aug. 7, 1980). Additionally, there is no threat of multiple liability.  
3 Under 26 U.S.C § 6632(e), a party that complies with an IRS levy is immune from  
4 liability from any other claimant. Given this statutory defense, Lewis County does not  
5 face exposure to multiple liability.

6 Because this suit is not one for interpleader nor in the nature of interpleader,  
7 § 2410(a)(5) does not serve as a waiver of sovereign immunity. The Court similarly  
8 concludes that Lewis County has failed to state a cause of action for interpleader.

9 **III. ORDER**

10 Therefore, it is hereby **ORDERED** that the United States' motion to dismiss (Dkt.  
11 16) is **GRANTED**. The Clerk shall close this case.

12 Dated this 21st day of June, 2016.

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BENJAMIN H. SETTLE  
15 United States District Judge