

**March 29, 2012**

Allison v. Internal Revenue Service, Case No. 3:10-CV-01741 (RNC)

Order re: Recommended Ruling Granting Motion to Dismiss (doc. 18)

The Magistrate Judge's recommended ruling (doc. 18) is adopted over plaintiff's objection. As Judge Martinez correctly notes, 26 U.S.C. § 4973 provides for a 6 percent tax on excess contributions to an individual retirement account. Plaintiff contributed to a Roth IRA in excess of the annual limit for several years and is therefore subject to the tax. He asks to be relieved of the tax on the ground that he acted at all times in good faith. However, no good faith exception exists with regard to the liability imposed by § 4973. See Orzechowski v. Comm'r, 69 T.C. 750, 755-57 (1978), aff'd on reh'g, 592 F.2d 677 (2d Cir. 1979).

Plaintiff objects that the "legal system allows latitude and discretion to do what is right" and emphasizes that the court's responsibility is to do justice. It is true that the goal of the judicial system is to provide equal justice under law, and it is also true that the law often gives decisionmakers discretion to do what seems fair and just in a given case. In this case, however, the law does not give the court discretion to prevent the IRS from enforcing the statute, even if the result is inequitable. See Orzechowski, 69 T.C. at 757.

Plaintiff also objects that the IRS should not have seized his tax refund while this action was pending. Defendant responds that plaintiff did not move for a stay and the court would have been prevented from entering a stay in any event because of the Anti-Injunction Act, 26 U.S.C. § 7421(a). The defendant is correct. See Mullings v. Commissioner, Civ.A. No. CV-95-4159 (DGT), 1996 WL 576999, at \*4 (E.D.N.Y. July 24, 1996), aff'd, 112 F.3d 504 (2d Cir. 1997) ("Claims for injunctive relief against the IRS are barred by the Anti-Injunction Act.").

Accordingly, the motion to dismiss is granted. The Clerk will enter a judgment dismissing the complaint.

So ordered.

\_\_\_\_\_  
/s/ RNC  
Robert N. Chatigny, U.S.D.J.