

In the United States Court of Federal Claims

No. 09-146 T

(Filed: June 23, 2010)

_____)))
MARTHA JACOBS,))	Pro Se Claim for Tax Refund
))	and Injunctive Relief; Tort
Plaintiff,))	Claims Against the United
))	States; Civil Rights Claim;
v.))	Bankruptcy Claim; No Claim
))	for Which Relief Can Be
THE UNITED STATES,))	Granted with Regard to the
))	1999 Tax Year; No Jurisdiction
Defendant.))	for Other Claims
_____)))

Martha Jacobs, Bennettsville, SC, pro se.

Jennifer Dover Spriggs, with whom were John A. DiCicco, Acting Assistant Attorney General, Steven I. Frahm, Chief, and Mary M. Abate, Assistant Chief, Court of Federal Claims Section, Tax Division, United States Department of Justice, Washington, DC, for defendant.____

OPINION AND ORDER

HEWITT, Chief Judge

Before the court are plaintiff's Complaint (Complaint or Compl.), Docket Number (Dkt. No.) 1, filed March 6, 2009¹; defendant's Motion of the United States to Dismiss the Complaint (defendant's Motion or Def.'s Mot.), Dkt. No. 26, filed February 19, 2010; plaintiff's Objections to the Defendant's Motion to Dismiss the Complaint (plaintiff's Response or Pl.'s Resp.), Dkt. No. 27, filed March 8, 2010; and defendant's Reply Brief

¹ The numbered paragraphs in the Complaint (Complaint or Compl.) skip from paragraph three to paragraph six. See Compl. 2-3 (skipping paragraphs four and five). The Complaint contains two paragraphs twelve. See Compl 6-7. Both paragraphs twelve assert wrongful acts by the United States Postal Service (USPS). See *id.* Citations to paragraph twelve in this opinion reference both paragraphs twelve in the Complaint.

for the United States in Support of Its Motion to Dismiss the Complaint (defendant's Reply or Def.'s Reply), Dkt. No. 28, filed March 25, 2010.

I. Background

Martha Jacobs (plaintiff or Ms. Jacobs) filed formal complaints in 1993 and 1994 with the Equal Employment Opportunity Commission (EEOC) in which she asserted that her supervisors discriminated against her during the course of her employment at the United States Postal Service (USPS). Def.'s Mot. 2 (citing Cook v. Runyon (Runyon), No. 01960303, 1998 WL 421558, at *16 (E.E.O.C. Dec. July 17, 1998))²; see Compl. ¶¶ 11-14, 16, 18-23. In 1998, the EEOC found that USPS had discriminated against Ms. Jacobs and, consequently, awarded her \$130,000 in nonpecuniary compensatory damages. Runyon, 1998 WL 421558, at *16-17; Compl. ¶ 6; Def.'s Mot. 2 (citing Cook v. Henderson (Henderson), No. 01A02390, 2001 WL 284823, at *4 (E.E.O.C. Dec. March 13, 2001)). The EEOC also ordered that Ms. Jacobs be given an opportunity to submit evidence of past and future pecuniary damages to be used by USPS as a basis for calculating any pecuniary damages owed to Ms. Jacobs. Runyon, 1998 WL 421448, at *13, 17; see Henderson, 2001 WL 284823, at *1. On October 8, 1999, USPS paid Ms. Jacobs \$130,000 in nonpecuniary compensatory damages in compliance with the 1998 EEOC order. Compl. ¶ 6; Def.'s Mot. 2-3 (citing Runyon 1998 WL 421558, at *16); defendant's Exhibit³ (Def.'s Ex.) 10. Ms. Jacobs also received payments for

² Martha Jacobs (plaintiff or Ms. Jacobs) filed formal complaints with the Equal Employment Opportunity Commission (EEOC) under the name Martha Cook. See Cook v. Henderson, No. 01A02390, 2001 WL 284823 (E.E.O.C. Dec. March 13, 2001); Cook v. Runyon, No. 01960303, 1998 WL 421558 (E.E.O.C. Dec. July 17, 1998).

³ The United States (defendant or United States) included the following ten exhibits (Def.'s Exs.) with its Motion of the United States to Dismiss the Complaint (defendant's Motion or Def.'s Mot.): (1) Internal Revenue Service (IRS) Certificate of Official Record and Certificate of Assessments and Payments for the tax period ending December 31, 1999 (Def.'s Ex. 1); (2) IRS Certificate of Official Record and Certificate of Assessments and Payments for the tax period ending December 31, 2001 (Def.'s Ex. 2); (3) IRS Form 1040, individual income tax return filed by Ms. Jacobs for 1999 (Def.'s Ex. 3); (4) IRS Form 1040, individual income tax return filed by Ms. Jacobs for 2001 (Def.'s Ex. 4); (5) IRS Form 1040X, amended individual income tax return filed by Ms. Jacobs for 1999 (Def.'s Ex. 5); (6) Form 1040X, amended individual income tax return filed by Ms. Jacobs for 2001 (Def.'s Ex. 6); (7) IRS Notice of Partial Claim Disallowance for 2001 tax year (Def.'s Ex. 7); (8) USPS Letter Requesting Payment of Pecuniary Compensatory Damages pursuant to 2001 EEOC Decision (Def.'s Ex. 8); (9) Declaration of Ralph J. Thompson, technical services advisor for the IRS in Greensboro, SC, regarding Ms. Jacobs' outstanding federal income tax liability for 2001 (Def.'s Ex. 9); and (10)

backpay and interest in 2000. Def.'s Ex. 10. Taxes were withheld from the backpay payment only. Id.

In 2001, the EEOC determined that Ms. Jacobs had established entitlement to past pecuniary damages for medical expenses and future pecuniary damages for lost earning capacity. Henderson, 2001 WL 284823, at *3-4. Accordingly, the EEOC ordered USPS to compensate Ms. Jacobs for her medical expenses and to determine and pay the appropriate amount of future pecuniary damages owed to Ms. Jacobs for lost earning capacity. Id. at *7; see Def.'s Mot. 2. USPS paid Ms. Jacobs \$3,663 on June 15, 2001 for medical expenses and \$170,000 on July 3, 2001 for lost earning capacity as calculated by USPS. Def.'s Exs. 8, 10; Def.'s Mot. 2-3; see Compl. ¶¶ 6, 9. In total, USPS paid Ms. Jacobs \$303,663--from which no taxes were withheld--for nonpecuniary and pecuniary compensatory damages and medical expenses in 1999 and 2001. Def.'s Ex. 10.

Because Ms. Jacobs did not file a tax return for the 1999 tax year, the Internal Revenue Service (IRS) prepared a substitute return for her on February 27, 2003, which showed no tax liability. See Def.'s Ex. 1, at A4. The IRS received a Form 1040 for the 1999 tax year from Ms. Jacobs on May 2, 2003. Def.'s Ex. 3; see Def.'s Ex. 1, at A4 (showing additional tax assessed on transaction number 07254-569-54028-3, the number written on the 1040 submitted by Ms. Jacobs). The form, prepared by a paid preparer, reported the \$130,000 received from USPS in 1999 as "other income" and showed a tax liability of \$1,819. Def.'s Ex. 3, at ll. 21, 56, 68. Consequently, on July 7, 2003, the IRS assessed Ms. Jacob's tax deficiency for the 1999 tax year in the amount of \$1,819, plus penalties and interest. Def.'s Ex. 1, at A4. The IRS received Form 1040X from Ms. Jacobs on January 25, 2004, amending her prior Form 1040 for the 1999 tax year and asserting that the \$130,000 nonpecuniary damages award from USPS was nontaxable. Def.'s Ex. 5; see Def.'s Ex. 1, at A4. The IRS, accordingly, abated the prior tax assessment of \$1,819 and the accompanying penalties and interest. Def.'s Ex. 1, at A4-5. Ms. Jacobs paid no taxes for the 1999 tax year. See id. passim; Def.'s Ex. 3, at ll. 57-64; Def.'s Ex. 5, at ll. 11-18.

The IRS received Ms. Jacobs' Form 1040 for the 2001 tax year on May 2, 2003. Def.'s Ex. 4; Def.'s Ex. 2, at A8. This form was prepared by the same paid preparer as Ms. Jacobs' Form 1040 for the 1999 tax year, was received on the same day, and similarly reported the \$173,663 in pecuniary damages received from USPS by Ms. Jacobs in 2001 as "other income." Def.'s Ex. 4, at l. 21; see Def.'s Ex. 2, at A8; Def.'s Ex. 3. Ms. Jacobs' Form 1040 for the 2001 tax year showed a tax liability of \$18,172. Def.'s Ex. 4, at l. 58. But see id. at l. 70 (reporting the amount owed as \$18,891). On June 9, 2003,

USPS Letter Responding to Request for a Corrected 1099 for 2001 (Def.'s Ex. 10).

the IRS assessed Ms. Jacobs' tax deficiency for the 2001 tax year at \$18,172, Def.'s Ex. 2, at A8, consistent with her self-reported tax liability, see Def.'s Ex. 4, at l. 58. Additionally, on June 9, 2003, the IRS assessed an estimated tax penalty of \$719.00, a late filing penalty of \$4,088.70, a failure to pay tax penalty of \$1,272.04 and interest in the amount of \$1,486.75. Def.'s Ex. 2, at A8.

Ms. Jacobs then filed a Form 1040X for the 2001 tax year, which the IRS received on November 3, 2003. Def.'s Ex. 2, at A8; Def.'s Ex. 6. On this amended return, Ms. Jacobs asserted that the money received from USPS in 2001 was nontaxable, "even though US Postal gave her[] a 1099." Def.'s Ex. 6, at A28; see Def.'s Ex. 10. The IRS disallowed Ms. Jacob's claim on February 16, 2004. Def.'s Ex. 2, at A8. The agency subsequently entered Ms. Jacobs into the federal payment levy program on November 8, 2004. See Def.'s Ex. 2, at A9. On December 13, 2004, the IRS notified Ms. Jacobs of its intent to collect payment levies. See Def.'s Ex. 2, at A9. But cf. id. at A13 (recording transaction titled "Statutory Notice of Intent to Levy" on June 21, 2004).

On December 27, 2004, Ms. Jacobs filed a second amended return, asserting a claim for a refund in the amount of \$18,172. Id. at A9. Ms. Jacobs was removed from the federal levy program, prior to any collection, while the IRS evaluated her claim. Id. The IRS assessed Ms. Jacobs' refund claim on September 26, 2005 and reentered her in the levy program. Id. at A10; see Def.'s Ex. 7. On November 28, 2005, the IRS began collecting payment levies from Ms. Jacobs. Def.'s Ex. 2, at A10. In a letter dated January 11, 2006, the IRS notified Ms. Jacobs that her refund claim for \$18,172, submitted on her second amended 2001 return, could not be allowed in its entirety because the \$170,000 that she received from USPS in 2001 was a taxable settlement under section 104(a)(2) of the Internal Revenue Code (I.R.C.). Def.'s Ex. 7. However, as a result of its determination that the \$3,663 received by Ms. Jacobs in 2001 for medical expenses was nontaxable under I.R.C. § 104(a)(2), the IRS did allow \$1,004 of Ms. Jacob's refund claim. Id.; Def.'s Ex. 2, at A10 (showing that prior tax of \$1,004 was abated by examination). The notification letter informing Ms. Jacobs of the partial disallowance also stated that Ms. Jacobs had two years from the January 11, 2006 mailing date "to bring suit or proceedings for the recovery of any tax, penalties or other moneys for which this disallowance notice is issued." Def.'s Ex. 7. The IRS entered a tax abatement for Ms. Jacobs in the amount of \$1,004 on February 6, 2006. Def.'s Ex. 2, at A10.

On April 7, 2006, the IRS entered a federal tax lien on Ms. Jacobs' property. Id. at A11. As of January 31, 2010, Ms. Jacobs owed the IRS an outstanding balance of \$32,839.44 on her 2001 federal income tax deficiency, including accrued interest and penalties. Def.'s Ex. 9, at A32.

Ms. Jacobs filed a Complaint against the United States (defendant or United States) on March 6, 2009, in which she asserts the following bases for relief: (1) wrongful assessment and collection of taxes by the IRS for the 1999 and 2001 tax years, Compl. ¶¶ 1, 3, 6-10; (2) unlawful harassment and collection methods--including levies and failure to release the lien on her property--utilized by the IRS in conspiracy with Ms. Jacobs' former employer, the USPS, and other government agencies, *id.* ¶¶ 1-3, 8, 11, 24-26; (3) civil rights violations by the USPS, *id.* ¶¶ 1-2, 12-24; and (4) bankruptcy as a result of wrongful tax assessment and improper collection methods, *id.* ¶ 1; *see id.* ¶¶ 6, 11 (listing financial problems that Ms. Jacobs asserts stem from the wrongful assessment and collection of her taxes). The United States seeks dismissal of Ms. Jacobs' claims regarding the 1999 tax year pursuant to Rule 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC) and dismissal of Ms. Jacobs' other claims for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1). Def.'s Mot. 1-2.

II. Legal Standards

A. 12(b)(6) Motion to Dismiss for Failure to State a Claim

Pursuant to RCFC 12(b)(6), the court will dismiss a party's claim if that party failed to state in its pleadings a claim upon which relief can be granted. RCFC 12(b)(6). In evaluating whether it should grant a 12(b)(6) motion, the court "must accept as true all the factual allegations in the complaint" and "indulge all reasonable inferences in favor of the non-movant." Sommers Oil Co. v. United States, 241 F.3d 1375, 1378 (Fed. Cir. 2001) (internal citations omitted). A complaint will survive a 12(b)(6) motion if the party making the claim provides a basis for relief beyond "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." Bell Atlantic Corp. v. Twombly (Twombly), 550 U.S. 544, 555 (2007). A party's factual allegations constitute a basis for relief adequate to defeat a 12(b)(6) motion when the complaint contains "facial plausibility," meaning that the pleading "allows the court to draw the reasonable inference that the defendant is liable." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).

B. 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction

A case may proceed on the merits only if subject matter jurisdiction has been established. Steel Co. v. Citizens for a Better Env't (Steel Co.), 523 U.S. 83, 94-95 (1998); PODS, Inc. v. Porta Stor, Inc., 484 F.3d 1359, 1365 (Fed. Cir. 2007). Plaintiff

bears the burden of establishing subject matter jurisdiction.⁴ See Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988) (citing Zunamon v. Brown, 418 F.2d 883, 886 (8th Cir. 1969)). If the court determines that plaintiff has failed to meet this burden, it must dismiss the claim for lack of subject matter jurisdiction. Steel Co., 523 U.S. at 94; Matthews v. United States, 72 Fed. Cl. 274, 278 (2006); see RCFC 12(h)(3).

The subject matter jurisdiction of the United States Court of Federal Claims (CFC) is set out in the Tucker Act, which grants the court “jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any [a]ct of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a) (2006). However, the Tucker Act “does not create any substantive right enforceable against the United States for money damages.” United States v. Testan (Testan), 424 U.S. 392, 398 (1976). In order to establish subject matter jurisdiction in the CFC, a plaintiff must point to a relevant money-mandating statute, regulation, Constitutional provision or contract. See id.

1. Claims for Tax Refund and Injunctive Relief
 - a. Subject Matter Jurisdiction over Tax Refund Claim

As provided in 28 U.S.C. § 1346(a)(1), United States district courts have concurrent jurisdiction with the CFC over any civil claim against the United States for (1) “the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected,” (2) “any penalty claimed to have been collected without authority” and (3) “any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.”⁵ 28 U.S.C. § 1346(a)(1) (2006). The Supreme Court

⁴ Complaints filed by pro se plaintiffs are generally held to “less stringent standards than formal pleadings drafted by lawyers.” Haines v. Kerner, 404 U.S. 519, 520 (1972). Nonetheless, pro se plaintiffs must meet jurisdictional requirements. See Kelley v. Sec’y, U.S. Dep’t of Labor, 812 F.2d 1378, 1380 (Fed. Cir. 1987) (stating that “a court may not . . . take a liberal view of [a] jurisdictional requirement and set a different rule for pro se litigants only”).

⁵ As provided by 28 U.S.C. § 1346(a)(1), the Court of Federal Claims has concurrent jurisdiction with the United States district courts over tax refund claims, including claims for refund based on the assertion that the taxes in question were illegally collected. 28 U.S.C. § 1346(a)(1) (2006). A taxpayer who seeks redress for illegal collection methods has a separate tort claim that may only be brought in a United States district court. Internal Revenue Code

has interpreted “any internal-revenue tax” to refer to a tax assessment paid in full for a given year and “any sum” to refer to an amount, such as interest, that is neither a tax nor a penalty. Flora v. United States (Flora), 362 U.S. 145, 149-50 (1960). Therefore, any assessed tax deficiency must be paid in full before a taxpayer may bring a refund suit in the CFC.⁶ See id. at 177; Shore v. United States (Shore), 9 F.3d 1524, 1526 (Fed. Cir. 1993) (establishing that the full payment rule established in Flora applies to tax refund claims brought in the CFC). In addition, a taxpayer may bring a civil action for a refund only if the taxpayer has already filed a claim for a refund with the IRS. I.R.C. § 7422(a) (2006).

b. Subject Matter Jurisdiction over Claim for Injunctive Relief

The Anti-Injunction Act, I.R.C. § 7421(a), prevents the court from ordering restraints on the assessment or collection of any tax, even if the amount assessed or collected was improper under I.R.C. § 104(a). See I.R.C. § 7421(a) (allowing for certain statutorily exempt situations that are inapplicable here, as explained below in note nine); Hibbs v. Winn (Hibbs), 542 U.S. 88, 102-104 (stating reasons for the Anti-Injunction Act and clarifying that in I.R.C. § 7421(a), Congress has “directed taxpayers to pursue refund suits instead of attempting to restrain collections”). In fact, “no statutory authority exists that would grant the [CFC] the power to enjoin an IRS collection proceeding.” Ledford v. United States (Ledford), 297 F.3d 1378, 1381 (Fed. Cir. 2002).⁷

2. Subject Matter Jurisdiction over Tort Claims against the United States

The jurisdiction conferred by the Tucker Act to the CFC is limited to claims against the United States “in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1)

(I.R.C.) § 7433(a) (2006); see infra Part II.B.2.a.

⁶ An exception to the full payment rule for divisible taxes, such as excise and employment taxes, does not apply to this case. See Flora v. United States (Flora), 362 U.S. 145, 175 n.38 (1960); Rocovich v. United States, 933 F.2d 991, 995 (Fed. Cir. 1991).

⁷ As an alternative to paying the assessed tax deficiency in full and bringing a tax refund claim under 28 U.S.C. § 1346(a)(1), a taxpayer may, within ninety days of the date on which the tax deficiency is mailed (or within 150 days if living outside the United States), petition the United States Tax Court (Tax Court) to redetermine the deficiency owed. I.R.C. § 6213(a) (2006); see Flora, 362 U.S. at 175. If no petition is filed within the statutory period, the tax deficiency will be assessed by the IRS in accordance with the notice, and collection cannot be enjoined by any court. I.R.C. §§ 6213(c), 7421(a).

(emphasis added). The CFC has no authority to hear tort claims against the United States because the Tucker Act expressly excludes such claims from the jurisdiction of the court. See Brown v. United States (Brown), 105 F.3d 621, 623 (Fed. Cir. 1997) (citing 28 U.S.C. § 1491(a); Keene Corp. v. United States, 508 U.S. 200, 214 (1993)); see also, e.g., Cherbanaeff v. United States (Cherbanaeff), 77 Fed. Cl. 490, 501 (2007) (explaining that “contentions that the IRS engaged in unlawful collection activities are claims sounding in tort, and thus [the CFC] lacks jurisdiction over them”); Jumah v. United States (Jumah), 90 Fed. Cl. 603, 607 (2009) (stating that the lack of jurisdiction of the CFC over tort claims, including conspiracy, is well established). The proper forum for federal tort claims is a United States district court. 28 U.S.C. § 1346(b)(1).

a. Unlawful Collection Methods and Tax Lien

A claim asserting that the IRS engaged in unlawful collection activities is a tort claim and, therefore, is within the exclusive federal jurisdiction of the United States district courts. See 28 U.S.C. § 1346(b)(1); Cherbanaeff, 77 Fed. Cl. at 501. Further, federal law expressly provides that a United States district court is the only proper forum for a claim asserting unlawful collection methods against the IRS. I.R.C. § 7433(a); Ledford, 297 F.3d at 1382 (stating that Congress has provided that claims for unlawful collection activities by the IRS can only be brought before a United States district court). As provided in I.R.C. § 7433(a), a taxpayer may, as her exclusive remedy, bring a suit “for damages against the United States in a district court,” “[i]f, in connection with any collection of [f]ederal tax . . . any officer or employee of the [IRS] recklessly or intentionally, or by reason of negligence, disregards any provision of . . . or any regulation promulgated under [the I.R.C.]” I.R.C. § 7433(a).

Similarly, any claim asserting an unlawful failure to remove a federal tax lien from a party’s property may be brought only in a United States district court. I.R.C. § 7432(a); Ledford, 297 F.3d at 1382 n.1 (stating that district courts have sole jurisdiction over claims for failure to release a lien under section 7432(a)). As provided in I.R.C. § 7432(a), “If any officer or employee of the [IRS] knowingly, or by reason of negligence, fails to release a lien . . . on property of the taxpayer, such taxpayer may bring a civil action for damages against the United States in a district court.” I.R.C. § 7432(a).

With respect to claims asserting unlawful collection methods and more specific claims asserting failure to release a lien, a taxpayer may not file suit in a district court until all administrative remedies within the IRS have been exhausted. Id. §§ 7432(d)(1), 7433(d)(1). Such actions must be brought within two years of the date on which the right of action accrues. Id. §§ 7432(d)(3), 7433(d)(3).

b. Criminal and Civil Conspiracy

Any allegations of criminal conspiracy are beyond the jurisdiction of the CFC. See Joshua v. United States (Joshua), 17 F.3d 378, 379 (Fed. Cir. 1994) (stating that the CFC is a court of limited civil jurisdiction with “no jurisdiction to adjudicate any claims whatsoever under the federal criminal code”); see also 18 U.S.C. § 241 (describing criminal conspiracy against rights of citizens). Claims of civil conspiracy are claims sounding in tort, see, e.g., Jumah, 90 Fed. Cl. at 60, and are therefore also beyond the jurisdiction of this court, 28 U.S.C. § 1491(a) (excluding tort claims from the jurisdiction of the CFC). Federal law expressly provides that the only proper forum for a claim asserting conspiracy to interfere with civil rights is a United States district court. 28 U.S.C. § 1343(a); see 42 U.S.C. § 1985(a)(3) (providing cause of action for damages against conspirators).

3. Subject Matter Jurisdiction over Civil Rights Claim

Plaintiff asserts a right to relief in the CFC under title VII of the Civil Rights Act of 1964. Compl. ¶ 1; see title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17 (2006). Title VII contains a provision covering employees of the federal government, which specifies that federal employees, including USPS employees, “shall be made free from any discrimination based on race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-16(a). An employee who files a complaint under this provision but remains aggrieved by the EEOC’s final disposition of that complaint may file a civil action in accordance with certain requirements. Id. § 2000e-16(c); see id. § 2000e-5(f)(1) (setting out procedures for enforcement of title VII, including requirements for bringing a civil action). District courts, however, have exclusive jurisdiction over all civil rights claims for either damages or equitable relief. 28 U.S.C. § 1343(a)(4); see 42 U.S.C. § 2000e-5(f)(3) (stating that district courts have exclusive jurisdiction over the enforcement of title VII). The CFC, therefore, has no jurisdiction over title VII claims. See Hufford v. United States (Hufford), 87 Fed. Cl. 696, 702-03 (2009) (stating that the CFC “cannot hear claims committed by Congress to other courts for adjudication”).

4. Subject Matter Jurisdiction over Bankruptcy Claim

Ms. Jacobs also invokes title 11 of the United States Code. Compl. ¶ 1; see 11 U.S.C. §§ 101-1532 (2006) (Bankruptcy Code or title 11). The United States district courts and the bankruptcy courts have original jurisdiction over all cases brought under title 11. 28 U.S.C. § 1334(b); see id. § 151 (establishing the bankruptcy courts). The

CFC has no subject matter jurisdiction over bankruptcy suits. See Hufford, 87 Fed. Cl. at 702-03.

C. Transfer for Lack of Subject Matter Jurisdiction

Under 28 U.S.C. § 1631 (2006), a federal court may transfer a case to another federal court when (1) the transferring court lacks subject matter jurisdiction; (2) the case could have been brought in the transferee court at the time it was filed; and (3) such a transfer is in the interest of justice. 28 U.S.C. § 1631; see id. § 610 (defining courts); Rodriguez v. United States, 862 F.2d 1558, 1559-60 (Fed. Cir. 1988). The court, if it determines that it lacks subject matter jurisdiction, should always consider whether transfer is appropriate. See Tex. Peanut Farmers v. United States (Peanut Farmers), 409 F.3d 1370, 1374-75 (Fed. Cir. 2005).

III. Application of Legal Standards to This Case

A. Plaintiff Fails to State a Claim for Which Relief Can Be Granted with Respect to the 1999 Tax Year

The United States moves to dismiss Ms. Jacobs' claim with respect to the 1999 tax year under RCFC 12(b)(6). Def.'s Mot. 1. The United States argues that Ms. Jacobs has no basis for relief with respect to the 1999 tax year because she paid no taxes for 1999. See Def.'s Mot. 6-7; Def.'s Ex. 1. Ms. Jacobs contends that although the IRS confirmed that the \$130,000 payment she received in 1999 was tax exempt, the "IRS has failed to make the tax adjustment." Compl. ¶¶ 6-8; cf. id. ¶ 10 ("The IRS did not adjust the taxes assessed as it stated. Not until 01/27/05, tax year 1999 was adjusted . . ."). The court agrees with the United States that Ms. Jacobs has not stated a claim for which relief can be granted with respect to the 1999 tax year. Ms. Jacobs does not claim that she overpaid taxes, interest or penalties for the 1999 tax year, see Def.'s Ex. 5, at ll. 19, 23 (reporting amount overpaid as 0 and showing no entry on the line for the amount taxpayer wants refunded), nor does she provide the court with any other basis for granting relief beyond her conclusion that the IRS did not adjust her 1999 tax assessment until 2007, see Twombly 550 U.S. at 555 (requiring that a party's basis for relief must go beyond conclusions); Compl. passim. In fact, Ms. Jacobs has already obtained the relief that she seeks with regard to the 1999 tax year: the record shows that the IRS abated Ms. Jacobs' prior tax assessment and the accompanying penalties and interest on November 8, 2004. Def.'s Ex. 1. Accordingly, the court GRANTS defendant's 12(b)(6) motion to dismiss Ms. Jacobs' claims regarding the 1999 tax year.

B. This Court Lacks Subject Matter Jurisdiction over Plaintiff's Other Claims

1. Claims for Refund and Injunctive Relief for 2001 Tax Year
 - a. Tax Refund Claim

Ms. Jacobs argues that the payment she received in 2001 from USPS for lost earning capacity in the amount of \$170,000 constituted non-taxable compensatory damages and that she is due a refund from the IRS for the improper garnishment of her workers' compensation checks and tax refunds. Compl. ¶¶ 4, 6, 11. The CFC has jurisdiction over claims for the recovery of federal income taxes, penalties and interest that were erroneously or illegally assessed or collected. 28 U.S.C. § 1346(a)(1). Nevertheless, in order to file such a claim in the CFC, a taxpayer must first meet two conditions: (1) the taxpayer must have filed a claim for a refund with the IRS, I.R.C. § 7422(a), and (2) the taxpayer must have paid the assessed tax deficiency in full, Flora, 362 U.S. at 177; Shore, 9 F.3d at 1526. The parties do not dispute that Ms. Jacobs filed an amended return claiming a refund for the 2001 tax year. See Def.'s Mot. 5; see also Def.'s Exs. 2, 6. However, the United States argues, correctly, that Ms. Jacobs cannot bring suit in the CFC under section 1346(a)(1) because she has not paid her assessed tax deficiency of \$18,172 in full. See Def.'s Mot. 8-9; Def.'s Exs. 2, 9 (showing remaining tax deficiency of \$17,168 as of January 31, 2010).

Further, the United States argues that Ms. Jacobs' claim for a tax refund is barred by the statute of limitation. Def.'s Mot. 11-12; Def.'s Reply 3-4. The statute of limitation for federal income tax refund claims is two years, starting from the date of the disallowance notice sent by the IRS to a taxpayer in response to her administrative refund claim. I.R.C. § 6532(a)(1) (2006); see id. § 7422(a); see also Def.'s Ex. 7 (disallowance notice stating that any suits with regard to the disallowance must be brought within two years of the date on the notice letter). Ms. Jacobs contends that under 28 U.S.C. § 2501, the statute of limitation for bringing a tax refund claim in the CFC is six years. Pl.'s Resp. 1. As provided by 28 U.S.C. § 2501, "every claim of which the [CFC] has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues." 28 U.S.C. § 2501. However, this six-year limitation simply provides an outer limit on the time period within which all suits filed in the CFC must be brought. United States v. A.S. Kreider Co., 313 U.S. 443, 447 (1941). Congress has the authority to create "a different and shorter period of limitation to an individual class of actions." Id.; see United States v. Clintwood Elkhorn Mining Co., 553 U.S. 1, 4 (2008) ("The question in this case is whether a taxpayer suing for a refund . . . may proceed under the Tucker Act, when his suit does not meet the time limits for refund actions in the [I.R.C.]. The answer is no."). Therefore, when a tax refund claim is filed in the CFC, the two-year limit for tax refund claims, established by Congress in the I.R.C., supersedes the general

six-year limit. Id. Ms. Jacobs' Complaint, filed March 6, 2009, initiated this action more than three years after the date of the disallowance notice that she received from the IRS. See Def.'s Ex. 7 (disallowance notice dated Jan. 11, 2006). The CFC has no jurisdiction under 28 U.S.C. § 1346(a)(1) over Ms. Jacobs' claims regarding the 2001 tax year.

Ms. Jacobs suggests that the Fifth Amendment provides this court with an alternative basis for granting her tax refund claim. See Compl. ¶ 1 ("I pray your protection according to the [F]ifth [A]mendment [The assessment and collection of taxes by the IRS] should not have proceeded without due process"). However, a constitutional right "ground[s] a claim within the [the subject matter jurisdiction of the CFC] if, but only if, it 'can fairly be interpreted as mandating compensation by the [f]ederal [g]overnment for the damage sustained.'" United States v. White Mountain Apache Tribe, 537 U.S. 465, 472 (2003) (quoting United States v. Mitchell, 463 U.S. 206, 217 (1983)); Hamlet v. United States (Hamlet), 63 F.3d 1097, 1101 (Fed. Cir. 1995); see 28 U.S.C. § 1491(a)(1). The United States argues, correctly, that because Fifth Amendment due process claims are not money mandating, LeBlanc v. United States (LeBlanc), 50 F.3d 1025, 1028 (Fed. Cir. 1995); Murray v. United States (Murray), 817 F.2d 1580, 1583 (Fed. Cir. 1987), they do not fall within the CFC's subject matter jurisdiction, see Def.'s Mot. 13-14. Therefore, this court does not have subject matter jurisdiction over plaintiff's tax refund claim on the theory that the assessment and collection of her tax deficiency violated due process.

Ms. Jacobs also asserts that I.R.C. § 104(a) provides this court with a basis for granting her relief with respect to her claim regarding the 2001 tax year. See Compl. ¶ 1; Pl.'s Resp. 1. Under I.R.C. § 104(a), certain sources of income may be excluded from a taxpayer's gross income. I.R.C. § 104(a)(2) (2006). For example, damages received by suit or settlement may be excluded from a taxpayer's gross income if the damages are (1) not punitive and (2) provide compensation for personal physical injuries or sickness.⁸ Id. Ms. Jacobs asserts that she "[does] not owe taxes on compensatory damages [of \$300,000] received for a physical illness," Compl. ¶ 6, and requests that the court "[find] the [IRS]'s accessing [sic] and collecting taxes on compensation awarded for a physical

⁸ Prior to 1996, tax exclusions for personal injuries in the context of I.R.C. § 104(a)(2) included nonphysical injuries, such as "diminished future earning capacity on account of the injury . . . emotional distress and pain and suffering," in accordance with traditional tort concepts. United States v. Burke, 504 U.S. 229, 234-235 (1992), modified by Small Business Job Protection Act of 1996 (SBJPA), Pub. L. No. 104-188, § 1605, 110 Stat. 1755, 1838-39 (1996) (codified at I.R.C. § 104(a)(2) (2006)). After the passage of the SBJPA, "emotional distress shall not be treated as a physical injury or physical sickness" for the purpose of I.R.C. § 104(a)(2). SBJPA § 1605(b), 110 Stat. at 1838; see I.R.C. § 104(a)(2).

illness unlawful under Code Sec. 104(a)(2),” id. ¶ 1. Nonetheless, any refund claims on the theory that taxes were improperly assessed under I.R.C. § 104(a)(2) and, consequently, that taxes were wrongly collected, are subject to 28 U.S.C. § 1346(a)(1). See 28 U.S.C. § 1346(a)(1). Such claims are properly brought in the CFC only after full payment of the assessed deficiency. Id.; Flora, 362 U.S. at 177. Ms. Jacobs has not paid her assessed tax deficiency in full, see Def.’s Ex. 9, and, accordingly, I.R.C. § 104(a) does not provide the court with an alternative basis for subject matter jurisdiction. The CFC, therefore, has no subject matter jurisdiction over Ms. Jacobs’ tax refund claim for the 2001 tax year.

b. Claim for Injunctive Relief

Ms. Jacobs requests that the court “bring to naught these illegal [assessment and collection] actions . . . and [o]rder retribution be made in full.” Compl. ¶ 1. Ms. Jacobs cites 31 U.S.C. § 1304 in support of her “pray[er] for a[n] expedient end to these malicious acts.” Compl. 16. This provision provides for appropriations in certain situations to pay “final judgments, awards, compromise settlements, and interest and costs specified in the judgments or otherwise authorized by law.” 31 U.S.C. § 1304(a) (2006). It does not confer subject matter jurisdiction over injunctive relief with respect to tax claims. See id. The United States argues, correctly, that as a general matter, the Anti-Injunction Act bars the court from ordering any restraint on tax assessment or collection.⁹ See I.R.C. § 7421(a); Ledford, 297 F.3d at 1381 (stating that “no statutory authority exists that would grant the [CFC] the power to enjoin an IRS collection proceeding”); Def.’s Mot. 10-11. The law requires taxpayers to pursue refund claims rather than to attempt to restrain the collection of assessed tax deficiencies. See Hibbs, 542 U.S. at 104. Accordingly, this court has no authority to grant injunctive relief with respect to tax assessment and collection.

2. Tort Claims

⁹ None of the exceptions to the Anti-Injunction Act applies to this case. See I.R.C. § 7421(a)(2006). An exception to the rule barring injunctive relief on tax assessment and collection claims may apply when (1) the action by the IRS is premature, see I.R.C. §§ 6225(b), 6246(b); (2) the taxpayer files a petition for administrative review by the IRS and seeks judicial review of the Secretary’s redetermination in a district court or the Tax Court, see I.R.C. § 7429(a); (3) the taxpayer files a petition for relief with the Tax Court, see I.R.C. §§ 6015(e), 6213(a); or (4) a district court or the Tax Court determines that a levy would irreparably injure property rights and that such rights take precedence over the right of the United States to place a levy on the property, see I.R.C. §§ 6330(e)(1), 7426(b)(1).

The United States argues, correctly, that this court must dismiss Ms. Jacobs' tort claims. See Def.'s Mot. 13. The CFC has no jurisdiction over tort claims against the United States. 28 U.S.C. § 1491(a)(1); see Brown, 105 F.3d at 623. Tort claims against the United States are properly brought in a district court. 28 U.S.C. § 1346(b)(1).

a. Unlawful Collection Methods and Tax Lien

Ms. Jacobs asserts that taxes on her “payment for compensatory damages were wrongful[ly] assessed and collected” through “the garnishment twice of [her workers’ compensation] check per month, once before and after it is deposited in [the] bank” and through the “garnishment of [her] entire tax refund checks.” Compl. ¶¶ 3, 8; see id. ¶ 11. Under I.R.C. § 7433(a), a taxpayer may bring a civil action for damages against the United States in a district court if the IRS uses collection methods that are not authorized by the I.R.C. I.R.C. § 7433(a). Ms. Jacobs also asserts that the IRS “maliciously,” “willfully” and “wrongfully” put a lien against her property and refused to release it. Compl. ¶¶ 3, 8. As provided in I.R.C. § 7432(a), a taxpayer may bring a civil action for damages against the United States in a district court if the IRS fails to release a lien. I.R.C. § 7432(a); see also id. § 6325 (stating the conditions for release of a lien).

Ms. Jacobs contends that “defendant knows this [c]ourt has jurisdiction according to . . . [I.R.C.] § 7433.” Pl.’s Resp. 1; see Compl. 16. The United States argues, correctly, that Ms. Jacobs’ reliance on section 7433 is inapposite because a claim under this provision may only be brought in district court. See I.R.C. § 7433(a); 28 U.S.C. § 1346 (b)(1); Def.’s Reply 4-5. District courts have exclusive jurisdiction over claims under sections 7432(a) and 7433(a) on two separate bases. First, such claims sound in tort. See I.R.C. §§ 7432(a), 7433(a) (creating a cause of action if the IRS knowingly or negligently fails to release a lien or intentionally, recklessly, or negligently disregards the provisions of the IRC in collection actions); see, e.g., Cherbanaeff, 77 Fed. Cl. at 501 (“contentions that the IRS engaged in unlawful collection activities are claims sounding in tort”). Second, Congress expressly directs, through the plain language of the provisions, that a United States district court is the only proper forum for any claim against the IRS for failure to release a lien or any other unlawful collection method. I.R.C. §§ 7432(a), 7433(a); Ledford, 297 F.3d at 1382 & n.1. The CFC is not a district court, and I.R.C. § 7433 does not vest it with subject matter jurisdiction over Ms. Jacobs’ claim of wrongful collection methods.

Ms. Jacobs suggests that the Fifth Amendment provides an alternative basis for this court to hear her claim of unlawful collection methods and failure to release the lien on her property on the theory that such methods violated due process. See Compl. ¶¶ 1, 3;

supra Part III.B.1.a. As discussed above in Part III.B.1.a, plaintiff cannot establish jurisdiction in the CFC without “point[ing] to a substantive right to money damages against the United States.” Hamlet, 63 F.3d at 1101. A claim that asserts violation of due process under the Fifth Amendment is not money mandating. LeBlanc, 50 F.3d at 1028; Murray, 817 F.2d at 1583. Accordingly, the Fifth Amendment does not provide this court with an alternative basis of subject matter jurisdiction over these claims, which are explicitly committed to the exclusive jurisdiction of the United States district courts.

b. Criminal and Civil Conspiracy

Ms. Jacobs appears to assert a conspiracy initiated by the USPS and continued by the IRS and other government agencies. See Compl. ¶¶ 2, 11, 15, 24-26. Ms. Jacobs states that actions by the USPS constituted “continued illegal violations of organized schemes for racial harassment.” Id. ¶ 21; see id. ¶¶ 12- 20, 22-24 (describing actions by USPS). She then contends that “[t]he IRS has made itself an accomplice with the USPS,” arguing that “assessing taxes for non[-]taxable income is an organized scheme to destroy” and a statement of conspiracy. Id. ¶ 11; see id. ¶ 2. Further, Ms. Jacobs asserts that the United States Department of Labor (DOL) and the Office of Workers’ Compensation Programs (OWCP) were also involved with the USPS in refusing to adjust her taxes. Id. ¶ 26. The United States argues, correctly, that any claim of conspiracy is beyond the jurisdiction of the CFC. See Def.’s Mot. 12-13. First, if Ms. Jacobs’ Complaint is read to allege criminal conspiracy, such a claim would be beyond the jurisdiction of this court because it lacks the authority to hear criminal suits. See 18 U.S.C. § 3231 (giving the district courts original jurisdiction over “all [criminal] offenses against the laws of the United States”); Joshua, 17 F.3d at 379; see also 18 U.S.C. § 241 (defining crime of conspiracy to deprive a person of rights). Second, if Ms. Jacobs’ Complaint is read to allege civil conspiracy, such a claim sounds in tort and is, therefore, also beyond the jurisdiction of the CFC. See 28 U.S.C. § 1491(a) (excluding cases sounding in tort from the jurisdiction of the CFC); Jumah, 90 Fed. Cl. at 60 (identifying conspiracy as a tort claim); see also 42 U.S.C. § 1985(a) (establishing that district courts have exclusive jurisdiction over actions asserting the deprivation of civil rights in furtherance of conspiracy). Accordingly, the CFC has no subject matter jurisdiction over Ms. Jacobs’ claims of conspiracy.

3. Civil Rights Claim

Ms. Jacobs seeks the “protection” of the CFC pursuant to title VII of the Civil Rights Act of 1964. Compl. ¶ 1. However, as the United States correctly argues, see Def.’s Mot. 14-15, the district courts have exclusive jurisdiction over civil rights claims under title VII, see 28 U.S.C. § 1343(a)(4). Accordingly, the CFC lacks subject matter

jurisdiction over any claims brought by Ms. Jacobs under title VII. See Hufford, 87 Fed. Cl. at 702-03 (stating that the CFC has no power to hear claims that Congress has committed to the exclusive jurisdiction of other courts).

4. Bankruptcy Claim

Ms. Jacobs also seeks “protection” from the CFC pursuant to title 11. Compl. ¶ 1. Each district court has a special division called the bankruptcy court that may carry out the provisions of title 11. 28 U.S.C. § 151; see 11 U.S.C. § 105(a). As expressly provided by Congress, all title 11 claims must be brought in the United States district courts, of which the bankruptcy courts are a part. See 28 U.S.C. § 1334(b). The CFC has no jurisdiction over Ms. Jacobs’ bankruptcy claims. See Hufford, 87 Fed. Cl. at 702-703.

C. Transfer

Because this court finds that it lacks subject matter jurisdiction over Ms. Jacobs’ claims, see infra Part III.B, it considers whether transfer to a United States district court would be appropriate, cf. Peanut Farmers, 409 F.3d at 1374-75 (requiring a court that lacks subject matter jurisdiction to consider transfer to an appropriate court). Under 28 U.S.C. § 1631, transfer is appropriate if the case could have been brought in the transferee court at the time it was filed and if transfer is in the interest of justice. 28 U.S.C. § 1631; see id. § 610 (defining “courts” to include the United States district and appeals courts and the CFC).¹⁰

¹⁰ In determining whether transfer to a district court would be appropriate, this court notes that Ms. Jacobs filed two suits in the United States District Court for the District of South Carolina, both of which were dismissed without prejudice for lack of subject matter jurisdiction. See Jacobs v. United States Treasury IRS, No. 4:08-3013, 2008 WL 5114407, at *1 (D.S.C. Dec. 2, 2008); Jacobs v. IRS, No. 4:06-599, 2007 WL 895782, at *1 (D.S.C. Mar. 21, 2007), aff’d, 234 F. App’x 171 (4th Cir. 2007); accord Compl. 1. The facts asserted in those suits mirror the facts asserted by Ms. Jacobs in her present action.

In the most recent of the two suits, the magistrate judge, whose recommendation was adopted by the district court, concluded that Ms. Jacobs’ claim should be dismissed for four reasons. Jacobs v. United States Treasury IRS, No. 4:08-3013-TLW-TER, 2008 WL 5558242, at *2-4 (D.S.C. Oct. 2, 2008) (report and recommendation by magistrate judge). First, Ms. Jacobs failed to pay her assessed tax deficiency in full, a prerequisite for bringing suit in either the Court of Federal Claims or a district court under 28 U.S.C. § 1346(a)(1). See id. at *2 (citing Flora, 362 U.S. at 177). Second, the Anti-Injunction Act, 26 I.R.C. § 7421(a), bars any court from enjoining the assessment or collection of a tax by the IRS. Id. at *3. Third, if Ms. Jacobs’

1. Claims for Tax Refund and Injunctive Relief

The CFC and the United States district courts have concurrent jurisdiction over claims against the United States for the refund of taxes, penalties and interest. 28 U.S.C. § 1346(a)(1). No taxpayer may seek a refund in either the CFC or a district court unless that taxpayer's assessed tax deficiency has been paid in full. Flora, 362 U.S. at 149-50. Because Ms. Jacobs had not paid her assessed tax deficiency in full at the time she filed her Complaint, see Def.'s Ex. 9, at A32 (showing that Ms. Jacobs owed \$17,168 on her assessed tax deficiency for 2001, as of Jan. 25, 2010), no United States district court would have had jurisdiction over her tax refund claim at the time when it was filed, see Flora, 362 U.S. at 149-50; see also 28 U.S.C. § 1346(a)(1). Additionally, any tax refund claims that Ms. Jacobs has asserted in her Complaint are brought after the statute of limitation has run. See I.R.C. § 6532(a)(1) (establishing two-year statute of limitation for tax refund suits); see supra Part III.B.1.a (concluding that Ms. Jacobs' tax refund claim is barred by the statute of limitation). Accordingly, this court lacks the authority to transfer Ms. Jacobs' tax refund claim with respect to the 2001 tax year to a United States district court. See 28 U.S.C. § 1631.

Ms. Jacobs' claim for injunctive relief could not have been brought in any court at the time her Complaint was filed. See I.R.C. § 7421(a) (stating that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person"). Therefore, this court has no power to transfer such a claim. See 28 U.S.C. § 1631.

2. Tort Claims Against the United States

- a. Unlawful Collection Methods and Tax Lien

complaint could be read to assert negligence by the USPS with regard to the 1099 form it supplied to her in 2001, such a claim could only be brought under the Federal Torts Claim Act, 28 U.S.C. §§ 2671-2680 (2006), after the exhaustion of all administrative remedies. Id. at *4 (citing 28 U.S.C. § 2401(b) (stating that a tort claim against the United States "shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues"). Fourth, Ms. Jacobs did not explain in her complaint why the district court would have jurisdiction over her second suit, which was nearly identical to her first. Id. at *4. Finally, the magistrate judge addressed whether Ms. Jacobs could file suit on behalf of others similarly situated and concluded that she lacked the standing to do so because one pro se plaintiff may not represent another. Id. at *5 (citing Myers v. Loudon County Pub. Schs., 418 F.3d 395, 401 (4th Cir. 2005)).

Congress has provided that district courts are the only proper forum for any claim that asserts unlawful collection methods against the IRS, including improper levies and failure to release a lien. See I.R.C. §§ 7432(a), 7433(a). Such actions must be brought within two years of the date on which the right of action accrues. Id. §§ 7432(d)(3), 7433(d)(3). Ms. Jacobs filed her Complaint in the CFC on March 6, 2009. See Compl. Therefore, the statute of limitation bars any actions concerning IRS collection through levies prior to March 6, 2007. See I.R.C. § 7433(d)(3) (establishing two-year statute of limitation). However, Ms. Jacobs' claim of unlawful collection methods would be timely with respect to any levies collected after March 6, 2007. See id.; Def.'s Ex. 2, at A12-14 (showing levies in May and June of 2006 and enrollment in the federal levy program through 2008). In addition to collecting levies, the IRS entered a federal tax lien on Ms. Jacobs' property on April 7, 2006. Def.'s Ex. 2, at A11. The statute of limitation therefore barred Ms. Jacobs from bringing an action for failure to release a lien at the time she filed her Complaint. See I.R.C. § 7432(d)(3) (establishing two-year statute of limitation).

With respect to any claim Ms. Jacobs asserts regarding levies collected after March 6, 2007, a taxpayer may not file an improper collection suit in a district court until all of the administrative remedies within the IRS have been exhausted.¹¹ I.R.C. § 7433(d)(1). The IRS outlines its collection appeals process, which includes appealing decisions by the IRS to place a levy on wages or a bank account, in Publication (Publication or Publ'n) 594. See I.R.S. Publ'n 594, at 4 (rev. July 2007), available at <http://www.irs.gov/pub/irs-pdf/p594.pdf> (last visited June 21, 2010). The record does not show that Ms. Jacobs participated in the IRS collection appeals process. See Compl. passim; Pl.'s Resp. passim. Further, the record does not indicate that Ms. Jacobs pursued any other administrative actions within the IRS in order to suspend collection actions.¹² See Compl. passim; Pl.'s Resp. passim; see also I.R.S. Publ'n 594, at 5-6 (explaining alternatives for people who are unable to pay their assessed tax deficiencies, including an offer in compromise, request for a temporary delay in collection and request for an installment agreement). Because the record does not indicate that Ms. Jacobs exhausted all administrative remedies within the IRS with respect to levies made after March 6, 2007, Ms. Jacobs could not have brought a claim with regard to these levies in a district court at the time her Complaint was filed. See I.R.C. § 7433(d)(1). This court, therefore,

¹¹ The requirement that a taxpayer must exhaust all administrative remedies within the IRS before filing a suit in a district court also applies to claims regarding failure to release a lien. I.R.C. § 7432(d)(1).

¹² The court notes that collection actions were temporarily suspended while the IRS evaluated amended returns filed by Ms. Jacobs. See Def.'s Ex. 2, at A9-10.

lacks authority to transfer Ms. Jacobs' claims regarding collection methods, including levies and a tax lien, because Ms. Jacobs did not meet the requirements for bringing these actions in a district court at the time her Complaint was filed. See 28 U.S.C. § 1631.

b. Conspiracy and Civil Rights Claim

Ms. Jacobs appears to assert two separate periods of conspiracy. First, she asserts that the USPS acted against her as part of an internal organized scheme of primarily race-based harassment. See Compl. ¶¶ 12-24. Both Ms. Jacobs' EEOC discrimination claims under title VII and the factual allegations she lists against the USPS in her Complaint stem from the same subject matter. Compare Henderson, 2001 WL 284823, at *1-2, and Runyon, 1998 WL 421558, at *1-11, with Compl. passim. The EEOC, in response to Ms. Jacobs' complaints, ordered the USPS to pay her \$300,000 in nonpecuniary and pecuniary damages for "job related anxiety, harassment, and discrimination," as well as payments for backpay, interest, and medical expenses. See Henderson, 2001 WL 284823; Runyon, 1998 WL 421558; Def.'s Ex. 10. With respect to a tort claim against the United States, a claimant's acceptance of any "award, compromise, or settlement [from an administrative agency] shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the government whose act or omission gave rise to the claim, by reason of the same subject matter." 28 U.S.C. § 2672. Because Ms. Jacobs received these settlement payments from USPS, she is barred from bringing any further claims against the United States that are based on the same subject matter as her EEOC claims. See id. Ms. Jacobs, therefore, could not have brought a civil claim of conspiracy by the USPS in a district court at the time the Complaint was filed, and transfer of this claim is inappropriate. See 28 U.S.C. § 1631.

Further, Ms. Jacobs appears to assert that, after an initial period of conspiracy within the USPS, as discussed above, "[t]he IRS has made itself an accomplice with the USPS." Compl. ¶ 11 (asserting that "violations constituting organized schemes" continued by means of the assessment and collection of her assessed tax deficiency); see id. ¶ 2. Ms. Jacobs also asserts that the DOL and OWCP acted against her in collaboration with USPS. Id. ¶ 26. The CFC has discretion in deciding whether to transfer Ms. Jacobs' claim of conspiracy among these government agencies. See Faulkner v. United States, 43 Fed. Cl. 54, 56 (1999). Accordingly, the court may decide that transfer is not within the interest of justice because it would "be futile given the weakness of plaintiff's case on the merits." Id. (quoting Siegel v. United States, 38 Fed. Cl. 386, 390 (1997)). Transfer of Ms. Jacobs' claim that the assessment and collection of her tax deficiency by the IRS is part of a conspiracy between the IRS, USPS and other agencies is likely to be futile because the Complaint fails to establish a basis for relief beyond labels and conclusions. See Twombly, 550 U.S. at 555; see, e.g., Compl. ¶ 11

(contending that the assessment and collection of her taxes is “an organized scheme to destroy” and “[a]ny other reason given by the IRS or the USPS is pretext”). This court, therefore, declines to transfer Ms. Jacobs’ claims of conspiracy among government agencies on the grounds that such a transfer would not be in the interest of justice. See 28 U.S.C. § 1631 (requiring that transfer must be in the interest of justice).

3. Bankruptcy Claim

A voluntary bankruptcy case is commenced when a person who meets the requirements for being a debtor files a petition with the appropriate bankruptcy court. 11 U.S.C. § 301; see id. § 109 (defining who may be a debtor). Ms. Jacobs’ Complaint provides inadequate grounds for the CFC to conclude that she meets the requirements for being a debtor. See 11 U.S.C. § 109; Compl. passim. The CFC, accordingly, declines to transfer her bankruptcy claim. See 28 U.S.C. § 1631.

IV. Conclusion

For the foregoing reasons, defendant’s Motion to Dismiss the Complaint is GRANTED. The Clerk of Court shall ENTER JUDGMENT dismissing plaintiff’s Complaint. No costs.

IT IS SO ORDERED.

EMILY C. HEWITT
Chief Judge