

In the United States Court of Federal Claims

No. 08-130 T
(Filed: May 21, 2009)

CARLA J. VAN VORST, *
*
Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *

RULING ON PLAINTIFF’S RESPONSE TO COURT’S ORDER FOR MORE DEFINITE STATEMENT AND MOTION FOR RECONSIDERATION OF THE COURT’S DECEMBER 31, 2008 ORDER

SWEENEY, Judge

Before the court is Plaintiff’s Response to Court’s Order for More Definite Statement and Motion for Reconsideration of the Court’s Ruling. In its December 31, 2008 ruling, the court ordered plaintiff to file a more definite statement that complies with the Rules of the United States Court of Federal Claims (“RCFC”). See *Van Vorst v. United States*, 85 Fed. Cl. 227, 228-29 (2008). In addition, the court granted defendant’s motion to stay proceedings with respect to tax year 2006, *id.* at 230-31, and denied plaintiff’s motions (1) for supplemental pleadings, (2) to add a refund claim for year 2007, (3) for injunctive relief, and (4) for an award of costs. See *id.* at 231-35. On January 28, 2009, plaintiff filed what is styled as a more definite statement, together with a request that the court reconsider its decision disallowing plaintiff’s refund claim for year 2007. The government filed its response on February 25, 2009. Although the court afforded plaintiff ample time—over two months—to file a reply, she has failed to do so. The court determines that there is no reason to further delay its ruling and, for the reasons discussed below, affords plaintiff a third opportunity to comply with RCFC 9(m) and denies plaintiff’s motion for reconsideration.

I. Plaintiff’s More Definite Statement

Plaintiff believes that she has complied with RCFC 9(m) and provided the information necessary for pleading a claim for a tax refund. She asserts that “no claim for refund was filed . . . for the closed years 1975-2002 until the years 2005 through 2007, when she filed the administrative claims for refund for the open years (2003 through 2007).” Pl.’s More Definite

Statement & Mot. Recons. 3. In Appendix B accompanying her more definite statement and motion for reconsideration, plaintiff provides a spreadsheet purporting to set forth “Tax Return, Claim and Refund Information.” However, plaintiff’s submission does not comply with RCFC 9(m).

First, plaintiff has not provided a copy of each claim for refund for years 1975-2002. RCFC 9(m)(1) requires that a party pleading a claim for a tax refund must include “a copy of the claim for refund.” Although plaintiff indicates in her Appendix B that the approximate time of filing her tax refund for these years was “9/2/2008-5/10/2005,” plaintiff has not furnished copies of those claims. Second, plaintiff has not provided the amount, date, and place of each payment to be refunded for years 1975-1983, as required by RCFC 9(m)(2)(B). Instead, plaintiff’s Appendix B only contains the amount of each payment made in years 1975-1983. As a result, plaintiff has not complied with RCFC 9(m) and has not submitted a more definite statement pursuant to the court’s December 31, 2008 ruling. Plaintiff must file a more definite statement that complies with the rules of the court.

II. Plaintiff’s Motion for Reconsideration

Plaintiff asserts that “the court has misread our motion papers regarding the tax year 2007 because we have asserted therein that Ms. Van Vorst has made a full payment of the entire federal taxes for which she is liable and that **a refund is actually due.**” Pl.’s More Definite Statement & Mot. Recons. 4. Plaintiff claims, among other things, that the government did not issue a notice of deficiency for tax year 2007 and, as such, “the ‘account balance’ of \$18,914.30 represents . . . wishful thinking by the Defendant based on an administrative accounting by the Defendant and not a statutory [notice of deficiency] or any asserted tax due on the part of Ms. Van Vorst.” *Id.* Plaintiff claims that the government “has withheld the Congressional payments for the \$600 economic stimulus payment to pay for the ‘frivolous penalties,’” and that she previously provided a full and complete copy of her 2007 tax return and claim. *Id.* at 5.

In its response brief, the government states that the Internal Revenue Service (“IRS”) imposed “an additional assessment of tax of \$18,723.05 . . . on or about June 16, 2008.” Def.’s Resp. Pl.’s More Definite Statement & Mot. Recons. 6; see also id. Ex. (containing a Certificate of Assessments, Payments, and Other Specified Matters related to plaintiff’s 2007 tax period). The Certificate of Assessments, Payments, and Other Specified Matters does not reflect a payment from plaintiff and shows a balance due of \$18,723.05. See id. Furthermore, the government states that the IRS may, pursuant to 26 U.S.C. § 6213(b), summarily assess additional taxes due without sending a notice of deficiency. *Id.* at 6.

In its December 31, 2008 order, the court stated that plaintiff “has not alleged that she fully paid her 2007 tax liability, thereby rendering amendment futile.” Van Vorst, 85 Fed. Cl. at 233. Here, plaintiff has not proffered any evidence that this balance has, in fact, been fully paid. Instead, plaintiff asserts that she “**re-allege[s] that I have made a full payment of the income tax liability for the tax year 2007 and that a refund is due based on the detailed tax refund**

claim that the court has a copy of.” Pl.’s More Definite Statement & Mot. Recons. 4. For the reasons explained in its December 31, 2008 order, the court cannot grant plaintiff’s request to add a refund claim for tax year 2007 at this time. See Flora v. United States, 357 U.S. 63 (1958) (requiring that a taxpayer fully pay all taxes assessed for the tax year at issue prior to the initiation of a claim); Shore v. United States, 9 F.3d 1524 (Fed. Cir. 1993) (applying the full payment rule). Accordingly, plaintiff’s motion for reconsideration is denied.

III.

In order to pursue her claim in this court, plaintiff must provide the materials enumerated in RCFC 9(m). The court affords plaintiff a third opportunity to comply with RCFC 9(m) and advises plaintiff that it may, pursuant to RCFC 41(b), dismiss this action “[i]f the plaintiffs fails . . . to comply with these rules or a court order” Accordingly, plaintiff shall file, **by no later than Friday, June 26, 2009**, a more definite statement containing the materials necessary to maintain a claim for tax refund. See RCFC 9(m). Because plaintiff has not presented evidence that she has fully paid her tax liability for 2007, plaintiff’s motion for reconsideration is **DENIED**.

IT IS SO ORDERED.

MARGARET M. SWEENEY
Judge